

## CHAPTER THREE

### Magufuli's Anti-Corruption Drive

#### The Broad Context of Corruption in Tanzania

There are two parallel narratives of corruption in Tanzania. The first is captured by an imaginary internet conversation between Mwinyi, Mkapa and Kikwete about their cut from white investors in the country:

Kikwete: I asked the white man where my ten per cent was. He answered that Mwinyi and Mkapa were taking only five per cent.

Mkapa: He just wanted to push you into town. He gives ten per cent, not five.

Mwinyi: What is that? I was getting twenty per cent from them.

All: Hahahaha hahahah ahahahahahah!<sup>1</sup>

What this conversation portrays is that corruption in Tanzania was so pervasive that even the presidents were involved in it and that the corrupters had, with time, managed to lower the payments. If presidents are engaged in corruption, then how can you fight it? The fact of the matter is that after the Zanzibar Declaration in 1992 removed the constraints of the leadership code on public leaders the gates of corruption were opened. The Arusha Declaration in 1967 had a special section on the qualifications for leadership. It is this section that came to be known as the leadership code. This initially prevented party leaders from being associated with capitalist practices that

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<sup>1</sup> This is a pictured conversation between President Kikwete and his two predecessors, president Mwinyi and Mkapa that circulated on Tanzania social media after Kikwete became president in 2005. In the Tanzania context it is taboo to accuse the president of corruption. There is an unwritten political rule in Tanzania that presidents must always be assumed to be ignorant of the corruption practised by those around them. This has been referred to as plausible deniability (Cooksey 2011). Magufuli maintained this rule by smashing any attempt to accuse both Mkapa and Kikwete of corruption while they were presidents.

included, among other things, the buying of shares, taking up directorships in private companies, building houses for rent or employing labour. In 1973, the code was extended to all leaders who earned TSh 1 060.70 per month. At the same time, a committee within the party was created to enforce the leadership code. The Zanzibar declaration removed these restrictions and allowed the leadership to create businesses and enter into partnerships with business enterprises.<sup>2</sup> This opened the gates of corruption, which grew so rampant under Mkapa and Kikwete that scholars refer to their period in office (1995-2015) as the period of democracy and corruption (Kelsall 2018). This is the period of grand corruption scandals, which are discussed below. Those who were publicly exposed resigned from their positions until public cries died out. After the Richmond scandal in 2006-2008 (discussed below), few would have expected Edward Lowassa to put his name forward for nomination as presidential candidate for the CCM in 2015, let alone that he would be picked by UKAWA, the opposition grouping, as their presidential candidate despite their constant cries against corruption, or that he would win more than 30 per cent of the national vote.<sup>3</sup> In short, corruption is politically and socially condoned. The anti-corruption hype by the government served different purposes. The U4 report in 2004<sup>4</sup> noted that:

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Government anti-corruption efforts in Tanzania seem to be the result of rational calculations by the ruling party with regard to expected returns. In other words anti-corruption initiatives are seemingly part of a political survival strategy of one-party state

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2 For a detailed treatment of the leadership code and the changes brought about by the Zanzibar Declaration in 1991, see Aili Mari Tripp. 1997. *Changing the Rules. The Political Liberalization and the Urban Informal Economy in Tanzania*. University of California Press. See, in particular, chapter seven, "From the Arusha Declaration to the Zanzibar Declaration" (pp. 172-190). See also Patrick J McGovan and NKM Wacirah. 1974. *The Evolution of Political Leadership in Tanzania*. *African Studies Review*, Vol. 17, No. 1; and Marie Aude Fouche (ed). 2015. *Remembering Nyerere in Tanzania: History, Memory, Legacy*. African Studies.

3 Edward Lowassa became Prime Minister in Kikwete's first presidential term (2005-2010). He was forced to resign from office after a special committee of parliament (formed to investigate the agreement between the Tanzania Electricity Supply Company and the Richmond Company that failed to increase the electricity supply to the national grid while Richmond was being paid huge amounts of money) implicated him in the signing of this fraudulent agreement. However, he retained his seat as a member of parliament.

4 Transparency International runs the U4 Helpdesk that provides reports on corruption on various countries in the world to various people and institutions and is under the Anti-Corruption Resource Centre of Transparency International. The 2004 report was authored by Marie Chene for U4 Helpdesk under the title: *Overview of Corruption in Tanzania*. Transparency International. The 2014 Report was authored by Samira Lindner: *Overview of Corruption and Anti-Corruption in Tanzania*. Transparency International.

pursuing two main objectives. One is outward looking and geared to maintaining the trust of the international community to ensure continued aid and foreign investment flows, while the other is inward looking aimed at securing political legitimacy (U4 Report 2004).

Clearly anti-corruption was a donor-driven agenda (championed by the World Bank) that came with privatization.<sup>5</sup> Anti-corruption was aimed at removing administrative (bureaucratic) corruption to facilitate private foreign investments. It was directly linked to the creation of independent state agencies that would also ease the entry of foreign investments. Thus, each incoming president had to sing the anti-corruption song to the donors who were paying for all the anti-corruption institutions. On becoming president, Mkapa set up the Warrioba Commission and accepted the institution of the first National Anti-Corruption Strategy and Action Plan (NACSAP I) (2001-2005). An Enhanced National Anti-Corruption Strategy and Action Plan (NACSAP II) (2008-2011) was accepted by Kikwete, and Magufuli signed NACSAP III (2017-2022). (These are detailed below). On the local political front, anti-corruption became part of the political campaign with Mkapa being branded as “Mr Clean” during his 1995 presidential campaign. During the presidential campaign in 2005 and the initial days of his presidency, Kikwete talked of combating corruption. The anti-corruption campaign was taken over by Magufuli and emphasized in his opening speech to parliament in November 2015. He noted in his speech that:

I have promised the wananchi, and I want to repeat before your sublime Parliament, that I will fight bribery and corruption without fear or favour. The way to cure a boil is by opening it up. I have given myself a job of opener of boils. I understand that opening a boil is accompanied by immense pain but unfortunately there is no other cure. Therefore, I ask you honourable Members of Parliament and all Tanzanians to pray for me and give me support as I open these boils.

I am aware of the difficulties of the war I have chosen to fight. I am saying that I understand the difficulties and challenges because those who engage in grand corruption are not common people. Acts of corruption that hugely negatively impact

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<sup>5</sup> Privatization in the context of Tanzania refers to the sale of state entities (formally known as parastatals) to the private sector. This was one of the conditions imposed by the IMF and World Bank in the mid 1980s for Tanzania to access funds from the two institutions and aid donors.

on the country's welfare are those committed by people entrusted with huge leadership responsibilities, public positions that they obtained after they were installed by people. Therefore, if I were to succeed I must get a lot of support from your sublime Parliament and other organs that have been given powers and responsibility to fight against that action.

One must look at the entire anti-corruption exercise since Mkapa to establish how far Magufuli went in combatting corruption. But before doing that, let us turn to the second corruption narrative.

The second depiction of corruption in Tanzania was presented by Christopher Mtikila (1950-2015) in his many recorded speeches in the 1990s that led to his being arrested in 1999 and accused of sedition. He was among the first leaders to form opposition parties once the multiparty system was reintroduced in 1992.<sup>6</sup> He was the founder and leader of the Democratic Party in 1993. For him, politicians were being corrupted by wealthy non-Tanzanians (mostly rich Asians referred to as "Magabachori") to the detriment of fellow Africans described as "walala hoi", people living in abject poverty. In this presentation, greedy African leaders are selling the country to mostly wealthy Asians at the expense of the poor. In fact, Mtikila went on to claim that the country was controlled by 181 Magabachori who transferred the wealth of Tanzanians abroad (Helman and Ndumbaro 2002). It has been noted that, during the Mwinyi presidency, the Asian and Arab minorities benefited through widespread tax evasions on own-funded imported goods and the systematic non-payment of counter-part funds for raw materials to boost local industrial production. It was after donors froze aid because of the corruption that Mwinyi forced the then Minister of Finance Kigoma Malima to resign over the reported scams concerning imported sugar, rice and wheat. Two years later, Mkapa had to fire the finance minister Simon Mbilinyi and his deputy over the tax evasion scams (Cooksey 2011).

This narrative has a racial nationalist strain that seeks to promote the empowerment of the "Wazawa" black indigenous citizens. The same happened in 1999 with Iddi Simba, then Minister of Trade and Industry, calling for the economic empowerment of the wazawa (indigenous citizens), going to the extent of calling for reserving almost 30 industrial and commercial sectors for the wazawa

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<sup>6</sup> He is better known both within and outside Tanzania as a Human rights campaigner since he continuously took the government to court on human rights issues. These cases include that instituted against the Attorney-General in the High Court of Tanzania in 1993 and 1995; the case against the Attorney-General of Tanzania and others in the East African Court of Justice in 2007; and the case against Tanzania in the African Court on Human Peoples Rights in 2011. He died in a car accident in 2015.

and demanding joint ventures in other sectors.<sup>7</sup> In 2004, a National Economic Empowerment Policy was issued by the Prime Minister's Office and was immediately followed by the National Economic Empowerment Act. The local content legislation in the gas and petrol sectors under Kikwete echo the same demand for indigenous citizen participation in the economy. Magufuli's demand that foreign companies should register on the Dar Es Salaam Stock Exchange, with 30 per cent reserved for citizens, is part of the same narrative. This narrative is not against Asians or Arabs or foreign investments, per se, but seeks to ensure that citizens benefit from whatever is taking place.

In discussing anti-corruption in Tanzania, one needs to take cognizance of the two narratives, the pervasiveness of corruption and the racist corrupters of the political leaders.

## Anti-Corruption under Mkapa

The the brief given to the Warrioba Commission appointed by President Mkapa in January 1996, hardly two months after his swearing-in, was that it should review statutes, rules, regulations and working procedures in government and the public sector to close existing loopholes for giving and receiving bribes and growth of corruption and to increase transparency in government activities. We should therefore start by briefly looking at the existing anti-corruption legislation and mechanisms prior to the Warrioba Commission. The starting point is the 1930 amendment to the penal code which made it a criminal offence to demand, solicit or give bribes.<sup>8</sup> This was followed in 1958 with the Prevention of Corruption Ordinance which prohibited the receiving of gifts and commissions which gave an advantage to public servants. In 1963, an amendment was made to the Minimum Sentences Act which stipulated the sentences with regard to criminal offences. In addition to imprisonment, corporal punishment of 24 strokes was stipulated for offenders found guilty of taking part in corrupt transactions with an agent or obtaining an advantage contrary to sections 3 and 6 of the Prevention of Corruption Ordinance.<sup>9</sup> The 1965 Interim Constitution

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7 Iddi Simba (1935-2020) resigned from his ministerial post in 2001 after Mkapa instituted a commission to investigate the sugar importation scandal in which he was accused of either recklessly or corruptly issuing permits, which had adversely affected Tanzania's sugar industry and led to a steep rise in the price of the commodity. See *The Citizen* of 14 February 2020: Iddi Simba's share of Ups and Downs.

8 A good summary of the laws and mechanisms in place before the commission is given by Lukiko Vedastus Lukiko. 2017. *Exploring a Sustainable Anti-corruption Regime in Tanzania*. Master of Laws Mini Dissertation, Faculty of Law, University of Cape Town.

9 Strokes as a form of punishment goes back to German rule and Arab sultanate. Surprisingly, strokes are still administered to individuals in some rural areas of Tanzania.

created a Permanent Commission of Inquiry (PCI), whose job was to check on the abuse of power by government officials and agencies. The Commission made recommendations to the president but had no further powers. In 1971, the Prevention of Corruption Act was passed, thus repealing and replacing the 1958 Prevention of Corruption Ordinance. The major addition of the new act was illicit enrichment. Public officers could now be asked to account for how they obtained their properties (articles 8 and 9), and failure to do so would result in a jail term not exceeding five years and the possible forfeiture of the property. The act was amended in 1974, leading to the creation in 1975 of a Special Anti-Corruption Squad within the police force with three main functions: (i) to take all necessary measures to prevent corruption in the public, parastatal and private sectors, (ii) to investigate and, subject to the directions of the Director of Public Prosecutions (DPP,) prosecute offenders involved in corruption and (iii) to advise the government and the general community on ways and means of preventing corruption. In 1991, by Government Gazette no 27, the Anti-Corruption Squad was changed to the Prevention of Corruption Bureau and moved from the police to the president's office.

In 1995, just before Mkapa became president, the Public Leadership Code of Ethics was passed. The act has a long list of public leaders to whom it applies, and the president is free to add to the list. The act then calls on the president to create ethical standards to enhance public confidence in the integrity of public leaders and the decision-making process in the government and public sector in general. Simply stated, from then on, the success of all the anti-corruption efforts would depend on how strictly the president can hold all other leaders accountable. The act demands that leaders declare their assets at the beginning of their office and annually to the Ethics Secretariat, headed by a commissioner appointed by the president. The commission then reports directly to the president (the Public Leadership Code of Ethics of 1995. Part V. Administration and Enforcement).

There were great expectations at the beginning of the Mkapa presidency that the man who had been brought in as "Mr Clean" would enforce the new leadership code of ethics and enforce integrity in his new government. The establishment of a commissioner of inquiry into corruption in January 1996 was considered to be a good starting point. There is no need to discuss the lengthy report here with its long list of evidence of corruption in all sectors of the government. There are, however, a number of things that the commission raised. In the first instance, it indicated the lack of cooperation from the leadership in its work and concluded that the greatest source of corruption was the laxity of leadership in overseeing the implementation of established norms, as well as the absence of clear guidelines on accountability of leaders in their respective positions, be it in political leadership or senior administrative posts. It stated further that the existing leadership condoned

corruption. Therefore, for the nation to fight corruption resolutely, to clean the top leadership in government, parastatals and even in political parties was most important.<sup>10</sup> This was the biggest challenge for President Mkapa. Was he ready and bold enough to tackle the corrupt leaders within his party and government? A few leaders were, of course, fired from their jobs on the basis of the commission's report, but that was not enough.

The president did not take heed of the related recommendation that those who had previously been sources of injustice and in breach of established rules and regulations be severely punished by nationalization or forfeiture of their property. The other recommendation was that rich businessmen should be required to report which of the leaders held shares in their companies and how they were acquired. If the shares were paid for by the company, they should be acquired by the government. To understand these recommendations, one has to go back to the distinction made by the commission between petty corruption aimed at making ends meet by small public officials and grand corruption in which national leaders work for the interests of businessmen and breach all tender rules. The commission linked this grand corruption to the liberalization process that had been taking place since Nyerere left office in 1985. The process led to the growing links between businessmen and politicians and compromised top leaders. This type of corruption was fueled by the emergence of competition in conspicuous consumption among the leaders.<sup>11</sup>

The commission further identified the weaknesses of the Public Leadership Code of Ethics Act of 1995. These include the fact that the act did not identify all the ethical standards that should be adhered to; it involved the president in the evolution of the ethical standards; it provided for a lengthy inquiry into indictments; it provided a loophole for one to conceal illegal incomes by differentiating between declarable and non-declarable assets; it did not give explicit powers to the commissioner; and it did not provide for penalties to be imposed on those who breached the code. It therefore recommended that all ethical requirements should be listed in the law, and if the need should arise, parliament should make additions to the list; penalties for breach of the code should be explicitly provided in the law; if it concerns a member of parliament, the report should be tabled in parliament for decision; and if it concerns an appointee of the president, the president should remove him from office and the ethics commissioner should be empowered to

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<sup>10</sup> Warioba Report 1996: Executive Summary, pp. 2-19.

<sup>11</sup> The commission actually noted that the biggest receivers of bribes are not those who receive minimum wages. They are the people who are well paid, own residential and rented houses, own vehicles for leisure and for business, eat and dress well, and educate their children in expensive private schools outside and within the country (Warioba Report 1996: Executive Summary, pp. 2-19).

make investigations, and if satisfied, he should pronounce that the leader has breached the code (Warioba Report 1996: Executive Summary pages 2-19). Most of these recommendations went unheeded as the next step in the anti-corruption drive came through the World Bank rather than the presidency.

In 1998, a World Bank mission visited Tanzania under the support of the Government of Tanzania's anti-corruption programme. It is important to note the World Bank's understanding of corruption and subsequent recommendations. It states that the specific objective of the mission (apparently invited by the Government of Tanzania) was to examine the feasibility of incorporating anti-bribery mechanisms, in particular, an anti-corruption understanding, into International Development Assistance (IDA) financed procurement as an element of the anti-corruption programme. But the true work of the mission was to review progress to date and problems encountered in addressing the areas of corruption identified in the Warrioba Report – in short, finding their own way of implementing the Warrioba Report based on their own understanding of corruption. This understanding is given directly in their report, where it is stated that:

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In the Bank's view economic reform and liberalization can play an important role in the fight against corruption because many opportunities for corruption of the "rent seeking" form are provided by distorted economic policies and excessive regulations. (World Bank Report 1998: iv).

The Bank, therefore, blames corruption in Tanzania on the past socialist system. It could, however, not run away from the fact that its liberalization drive increased in grand corruption. It thus acknowledges that:

While the economic liberalization and political opening have eliminated or reduced some opportunities for corruption (read petty corruption) they have also presented, in the absence of adequate enforcement of existing laws and rules, opportunities for "grand corruption" on a scale not known in the past (World Bank Report 1998: V).

The Bank goes on to identify several activities which it was ready to finance and which it believed would reduce corruption in Tanzania. These included reform of the Public Sector Financial Management, Public Expenditure Review, Public Procurement Assessments, support for the Tanzania Revenue Authority (which it had helped to create and which turned out to be the centre



of corruption), privatization of public enterprises (where most of the grand corruption took place), and the creation of the Governance Coordinating Unit (GCU) in the Office of the President (created in 2000) (World Bank Report 1998: VI). The Bank then made three specific recommendations: the enactment of new public procurement legislation (enacted in 2001 and discussed below); the establishment of a reliable, effective complaint and enforcement mechanism (which resulted in the establishment of the Prevention of Corruption Bureau-PCB); and the implementation of a national anti-corruption programme by preparing a National Anti-Corruption Strategy and Action Plan (NACSAP) (World Bank Report 1998: VI-VII). Funds were immediately made available under the Accountability and Transparency Programme (ATP) financed by the Institutional Development Fund Grant to prepare the NACSAP. In June 1999, the programme sent the five key players in the formulation of the NACSAP to Washington for a course on controlling corruption through an integrated strategy. The course was also attended by officials from Benin, Ethiopia, Ghana, Kenya, Malawi and Uganda. At the end of the course, the participants presented to the 9th International Anti-Corruption Conference their national anti-corruption strategies, which had been drawn up during the course. The Tanzania participants presented to the conference an executive summary of the NACSAP I. The following six priority areas of the strategy were highlighted:

1. Rule of law, which involved the creation of conditions to restore confidence in the judiciary services and law enforcement agencies. This came to focus on judicial reforms and combating corruption in the police force.
2. Financial discipline, involving the reduction in the siphoning of public funds and increasing revenue collection to enable the funding of social services.
3. Procurement, which stood for the strict adherence to and transparent administration of tendering procedures. In practice, this came to mean the decentralization of the government procurement system to allow the mushrooming of the private sector. The end result, however, was the broadening of the corruption networks to the regional and local governments.
4. Creating public awareness of how corruption harms the economy and ultimately transforms the fabric of society. This came to focus on the support of civil society organizations to fight against corruption.
5. Public service, by instituting a sense of responsibility and accountability. This came to focus on public service reform.
6. Media, through strengthening the media to report on corrupt elements without fear or

favour and to publicize the harm they do to the innocent, the poor and the weak in Tanzania (URT 1999).

Two things need to be noted here. The first is that the recommendations made by the Warrioba Commission on combating corruption within the national leadership through the Ethics Commission no longer feature in the NACSAP, which was to be implemented by the same leadership. It should not be surprising that the NACSAP I had no impact on grand corruption in Tanzania. In fact, its implementation was accompanied by a significant increase in grand corruption. Secondly, donors decided which elements of the priority areas to support. The UNDP and Finland focused their attention on strengthening capacities to combat corruption in Tanzania (2000-2005), Norway focused on the Governance Coordination Unit, the World Bank on the Tanzania Revenue Authority and so on. The end result was the mushrooming of too many projects which, while not directly related to corruption, were expected to reduce corruption practices.<sup>12</sup> These new programmes and projects, referred to as MIRADI in Swahili, became additional sources from which money was siphoned.

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Attention needs to be paid here to one of the NACSAP I priority areas – procurement. This was an area for which the World Bank had made a specific recommendation in 1998. The rationale for focusing on procurement is explained in its Country Procurement Assessment Report in 2003. By its own estimations, 20 per cent of government expenditure on procurement was lost to corruption every year through kickbacks and bogus investments that had been written off. And if procurement accounts for 70 per cent of the entire government expenditure budget, this translates into a loss of TSh 300 billion (US\$ 300 million) per year. These major losses occur in the construction and supply contracts. What this actually meant was that the Procurement Act of 2001, which had replaced the old procurement system, was not working as anticipated.<sup>13</sup>

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12 The chain of programmes and projects included, among others: Assistance to Parliament Oversight Roles under the United Kingdom; Business Environment Strengthening in Tanzania under the United Kingdom, Denmark and Sweden (2003-2013); Legal Sector Reform Programme – Denmark, Norway, Sweden (2000-2004, 2006-2010); Local Government Reform Programme – Denmark, Norway, Sweden (2002-2005, 2005-2008); Public Service Reform Programme – Denmark, United Kingdom (2001-2008); Foundation for Civil Society (FCS) – Denmark, United Kingdom (2000-2008); NGO Policy Forum – United Kingdom (2004-2006); Legal and Human Rights Centre – Denmark; National Organization for Legal Assistance – Denmark, Sweden, Norway; and Support for Media Council – United Kingdom, Denmark. For more details, see NORAD. 2011. Joint Evaluation of Support to Anti-corruption Efforts in Tanzania. Country Report 8/2011.

13 In July 2009, The Citizen quoted president Kikwete saying that 30 per cent of annual government budgetary allocations end up in individual pockets through rampant corruption (10 July, 2009)

The old procurement system was based on government stores that had been created to procure and supply ministries and departments. Because these stores purchased in bulk, and therefore obtained goods at a discount, their prices were relatively low. These government stores included those operated by the Ministry of Works, which until 1995 had the overall responsibility for government procurement. This then shifted to the Ministry of Finance (but the Ministry of Works stores continued to supply most of the goods needed); the Medical Stores operated by the Ministry of Health; the Veterinary Stores and Water (Maji) Stores operated by the Ministry of Water and Livestock; and the Government Press and Printer operated by the Prime Minister's office. Various regulations had been set up to control and manage government funds. These included the Exchequer and Audit Ordinances of 1961; the Financial Orders Part III (stores regulations) of 1965; the General Regulations for the Procurement of Works, Services and Supplies for the Integrated Road Projects; the Local Government Finances Act of 1982; and the Executive Agencies (Finance, Procurement Stores) Regulations of 1999. It is true that there were many fragmented policies governing public procurement, but this was not a problem. It was seen as a problem because it was inimical to private suppliers. The centralization of procurement and supplies did not allow open participation by the private sector that was being created under liberalization and privatization. The call for a single procurement act was intended to decentralize the procurement system by allowing the ministries, departments, agencies, regions and local governments to secure their procurements outside the government stores system. The decentralization of procurement was thus part and parcel of the promotion of the private sector and, unfortunately, this came with the growth of corruption and kickbacks at various levels.

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The Public Procurement Act of 2001 thus created a central tender board in the Ministry of Finance which was to oversee and monitor the conduct of procurement by ministries and departments, regions, districts and parastatal organizations. All these, in turn, had their own tender boards. Thus was created the ministry and independent department tender boards, regional tender boards, district tender boards, local government tender boards and parastatal tender boards. These differed in terms of the financial ceiling for each board beyond which they had to refer to a higher board. The only element of the act that dealt with corruption was a long list of prohibitions and penalties if caught. A Public Procurement Appeals Authority was also established in the Ministry of Finance, chaired by the Judge of the High Court with a three-year non-renewable tenure.

The 2003 World Bank Country Assessment Report, which ushered in the 2004 Procurement Act, was concerned with the granting of more procurement powers to the created tender boards by lifting the financial limitations, arguing that they should be free to operate their allocated budgets,

and also moving the control of the central tender board on the other boards. It thus proposed the creation of an autonomous regulatory authority or agency as it had done for many aspects of government services in the name of efficiency. Thus, the Public Procurement Act of 2004 created a Public Procurement Regulatory Authority whose main objectives were to:

1. Ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement standards
2. Harmonize the procurement policies, systems and practices of the central government, local government and statutory bodies
3. Monitor compliance of procuring entities.

The Authority was given investigative powers over contracts entered into by the now autonomous tender boards. The Chief Executive Officer of the Authority was to be appointed by the president while the minister was to appoint the board members.<sup>14</sup> This allowed the private sector to vie for lucrative government tenders. It also opened the door for grand corruption as the stakes to obtain government tenders became high. One should therefore not be surprised that, by the end of Mkapa's presidency, grand corruption had become endemic and was to reach its peak under Kikwete, described by Magufuli as Mzee waraha (Mzee is a Swahili word for "old man" but also used for a respected person, and raha is leisure. In this instance, it refers to a person who enjoys leisure).

## Anti-Corruption under Kikwete

Mkapa's second presidential term was marked internally by the rise of grand corruption perpetrated by the untouchables, so-called because nothing was being done to them even after revelations of

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<sup>14</sup> A new Procurement Act was passed in 2011. The major changes under this Act included: The establishment of a Public Procurement Policy Division in the Ministry of Finance whose functions were: develop a national procurement policy, monitor the implementation of public procurement policies and advise the central government, local government and statutory bodies on issues related to procurement and; Emergency procurement which could only be done if there was a compelling urgency that creates threat to life, health, welfare and safety of the public and in situations whereby without the urgent procurement the continued functioning of the government would suffer irreparable loss. The Act was again amended in 2016 where one of the major issues was local participation referred to in the earlier Act as national preferences symbolizing the growth of economic nationalism.

their corrupt dealings. A number of these scandals came to light under Kikwete. There were also more brazen scandals under his watch. A brief summary of these is given below.

## **An Overview of the Main Grand Corruption Scandals**

The oldest scandal, known as the British Aerospace (BAE) scandal took place in 1999 and involved the purchase from the UK BAE Systems of an overpriced and unmaintainable security radar for GBP 28 million (US\$ 40 million). A middleman pocketed a third of the purchase price and the attorney-general (Chenge) was given GBP 1 million. It was not until 2008, when the BAE Systems was investigated for corruption in the UK, that the scandal came to light. Investigations could not continue because the BAE Systems pleaded guilty and was fined GBP 286 million and ordered to pay Tanzania GBP 30 million (TSh 75 billion) for the controversial radar. This meant that nothing could be revealed about the GBP 1 million bribe described by Chenge as small change (vijisenti). He resigned from his ministerial portfolio but ended up as the chairman of the CCM Ethics Committee. (Send a thief to catch a thief – what irony.)

Chenge was again implicated in the Meremeta Gold Scandal, alternatively known as the Deep Green Finance Limited Scandal. An unregistered finance company known as Deep Green was used to funnel money between Meremeta Gold and Tangold. Meremeta Gold was registered as a joint venture (50-50) between the Government of Tanzania and Trinnex Ltd. of South Africa in 1997. It started gold production in 2003 only to be liquidated in 2005 and taken over by Tangold, a company hastily formed in Mauritius in 2005 and registered in Tanzania as a foreign branch in February 2006. The takeover involved dubious transactions, with the Bank of Tanzania transferring US\$ 118 million (TSh 50 billion) to Nedbank South Africa for Deep Green Finance through HSB Bank in New York and paying Tangold US\$ 13.4 million in the National Bank of Commerce Account. When everything came to light, the directors of Tangold were the Bank of Tanzania Governor Daudi Bilali, then Minister of Infrastructure Development Chenge, and Permanent Secretaries in the Ministry of Finance (Gray Mgonja), Ministry of Water (Patrick Rutabanzibwa) and Prime Minister's Office (Vicent Mrisho).<sup>15</sup>

Under Mkapa, the External Payment Arrears (EPA) scandal started again. The EPA facility at the Bank of Tanzania allows companies to borrow from the bank when they are making foreign currency transactions. The scandal took place in the 2005/6 financial year but was discovered in 2007

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<sup>15</sup> Details of the scandal are found at <http://star.worldbank.org/corruption-cases/node18612>.

following a national audit of the bank. It was then revealed that 22 companies had fraudulently borrowed TSh 133 billion (US\$ 96 million) from the EPA. This finding by the national audit team was collaborated by Ernst and Young auditors. The bank's Governor Daudi Balali was sacked in January 2008. The companies that had engaged in the fraud were never revealed to the public but were asked by Kikwete to bring the money back.

The Bank of Tanzania was involved in another big scandal involving the construction of its twin towers headquarters. The construction of the 76-meter-high twin towers was originally estimated to cost US\$ 37 million. This increased to US\$ 70 million in 2000, and the final cost in 2006 was over US\$ 350 million. According to the then PCCB director, with the same amount of money, one could have built four similar buildings in London or Tokyo. This estimation was based on the fact that at the time of building the twin towers, the construction cost per square meter in New York was US\$ 2 000; the cost to build the twin towers was US\$ 8 628 per square meter. The only person to face prosecution was Amatus Liyumba, the Director of Personnel and Administration. He received a three-year jail sentence for abuse of public office and causing a loss of more than US\$ 153 million in 2011.

The last two scandals that need to be mentioned involve the Tanzania Electric Supply Company's (TANESCO) bid to increase electricity supply for the city of Dar Es Salaam and its entering into contracts with private electricity suppliers at the behest of politicians. These resulted in two scandals: the Richmond scandal and the Independent Power Tanzania Limited (IPTL) Escrow Account scandal.<sup>16</sup> The Richmond Development Company of Texas USA was contracted to supply generators to meet the emergency needs of TANESCO. The generators were supposed to be operational within 60 days, that is, between 18 September and 18 November 2006. The generators failed to arrive on time, and when they did, they did not work at all, but the government had to pay US\$ 137 000 a day regardless of whether electricity was supplied or not. This prompted investigations by PCCB, which stated that no corruption was found. Parliament then instituted its own probe and found that the contract was fraudulently concluded. This led to the resignation of Prime Minister Lowassa, the firing of Karamagi and Msabaha (the current and former ministers of energy) from their ministerial position and a complete reconstruction of the cabinet. The story of Independent Power Tanzania

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<sup>16</sup> Details of the Richmond scandal are to be found in the 2008 Report of the Special Committee of the Parliament of the United Republic of Tanzania, which was created in November 2007 to investigate the criteria used to award the contract for the production of the emergency electricity to Richmond Development Company of Houston Texas USA in 2006. Details of the IPTL Escrow scandal are presented by the Policy Forum: Tanzania Governance Review 2014: The Year of Escrow.

Limited (IPTL) goes back to 1991 when the Malaysian Prime Minister visited Tanzania, resulting in an agreement for a Malaysian company, Mechmar Bhd, to supply electricity to TANESCO. A joint venture was created between Mechmar (70 per cent shares) and VIP Engineering Ltd. In 2005 TANESCO wanted to terminate the IPTL contract because the company was over-charging for the electricity it sold to TANESCO. The company went to the International Centre for the Settlement of Investment Disputes (ICSID). In November 2006, TANESCO set up the Tegeta Escrow with the Bank of Tanzania in which it continued paying IPTL, pending the settlement of the dispute. But before the dispute was settled, a new company known as Pan African Power Solutions (PAP), owned by Hharbinder Singh Sethi, claimed to have bought Mechmar's shares. Without any verification, the Bank of Tanzania transferred US\$ 122 million to IPTL/PAPs account at Stanbic Bank, which used PAP to buy a 30 per cent stake in IPTL for US\$ 75 million. This money was paid to James Rugemalira's personal account in Mkombozi Bank. When, finally, the judgment came that IPTL had been over-charging TANESCO and therefore a portion of the money had to be paid back to TANESCO, the money was gone. Furthermore, when the money was paid to Rugemalira, he splashed the money on whoever he wanted, causing a lot of political backlashes. The unfortunate element about this is that Kikwete maintained that this was a private deal in which the government had no reason to interfere, initially prompting the suspension of budget support from donors. It was only after Magufuli came to power that Rugemalira and Sethi were charged in court.<sup>17</sup>

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At the international level, a global anti-corruption campaign was emerging, spearheaded by Transparency International, a Berlin-backed non-governmental organization founded in 1993. By 2000, their campaign had been taken over by the United Nations and on the African continent by the African Union (AU) and the Southern African Development Community (SADC). Thus, part of the anti-corruption measures taken under Kikwete was a response to the international conventions and protocols and concerted pressure by development partners to ensure that Tanzania conforms to the conventions.

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<sup>17</sup> The two were set free by the new President Samia Suluhu Hassan in September 2021.

## International Conventions and Protocols against Corruption

The United Nations signed a convention against corruption in December 2003. The process had, however, started in 2000 when the General Assembly, through resolution 55/66 of December 2000, requested the Secretary-General to convene an open-ended intergovernmental expert group to draft and prepare terms of reference for the negotiations of such instruments. The expert group was formed by the Secretary-General, and its work was completed in 2003, leading to the signing of the convention in Mexico on 9 December, a day which was subsequently declared International Anti-Corruption Day. What is highlighted here are some of the most important elements of the convention to which state parties had to adhere. These can be divided into two parts. The first focuses on what governments are called upon to do – the preventive measures (chapter two). These include the development of anti-corruption policies; the creation of anti-corruption bodies; the establishment of codes or standards of conduct for public officials; the establishment of public procurement systems; the establishment of a mechanism for the public to report corruption; the establishment of judicial independence; the prevention of corruption in the public sector; and the participation of society in anti-corruption and the prevention of money laundering.

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The second aspect deals with the criminalization of specific activities (chapter three). Among these activities are bribery of national public officials; bribery of foreign public officials and officials of public international organizations; embezzlement, misappropriation or diversion of property by public officials; trading of influence; abuse of functions; illicit enrichment; bribery in the public sector; embezzlement in the private sector; laundering of the proceeds of crime; concealment; and the obstruction of justice. With criminalization comes prosecution, adjudication and sanctions, the protection of witnesses, experts and victims, and dealing with the consequences of corruption. It is important to note that article 34 allows states to consider corruption a relevant factor in legal proceedings to annul or rescind a contract, and to withdraw a concession or other similar instruments or take other remedial action. Some of the actions taken by Magufuli against mining companies were partially based on this article. The United Nations Convention Against Corruption was ratified by Tanzania in 2005.

In August 2000, at their meeting in Victoria Falls, the SADC Ministers of Justice and Attorney-Generals called for the drafting and ratification of a SADC Protocol on Corruption. The next year, the protocol was signed in Blantyre and came into force in 2003. Among the objectives of the protocol were: to promote and strengthen the development, by each of the state parties, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private



sector; and to foster the development and harmonization of policies and domestic legislations of state parties relating to the prevention, detection, punishment and eradication of corruption in the public and private sector. As was the case with the UN convention, it set out the criminalized activities (article 3) and the preventive measures (article 4). These were taken wholesale by the African Union Convention on Corruption, which is discussed below.

An African Union Convention on Preventing and Combating Corruption was signed in Maputo in 2003. One of its main objectives is to promote and strengthen development in Africa by requiring mechanisms to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors. The convention then criminalizes the following actions (article 4):

1. Solicitation and acceptance by public officials or any other person of goods of monetary value or other benefits in exchange for any act or omission in the performance of his or her public functions
2. Offering or granting to a public official or any other person of any goods of monetary value or other benefits in exchange for any act in the performance of his or her public functions
3. Any act or omission in the discharge of his or her duties by a public official or any other person to illicitly obtain benefits for himself or herself or a third party
4. The diversion by a public official or any other person for his own benefit or third party, of any property belonging to the state or its agencies, to an independent agency, or an individual, that such official has received by virtue of his or her position
5. The offering or giving, promising, soliciting or accepting of any undue advantage to or by any person who directs or works for a private sector entity
6. Offering, giving, soliciting or accepting or promising of any undue advantage to or by any person or asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector
7. Illicit enrichment which is defined as the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income
8. The use or concealment of proceeds derived from any of the acts referred to in this article.

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The convention then requires the state parties to:

1. Adopt legislative and other measures that are required to establish as offences, the acts mentioned in article 4

2. Strengthen national control measures to ensure that the setting up and operations of foreign companies in the territory of the state party shall be subject to the respect of the national legislation in force
3. Establish, maintain and strengthen independent national anti-corruption authorities or agencies
4. Adopt legislative and other measures to create, maintain and strengthen internal accounting, auditing and follow up systems, in particular in income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services
5. Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including the protection of their identities
6. Adopt measures that ensure citizens can report instances of corruption without fear of consequent reprisals
7. Adopt national legislative measures in order to punish those who make false or malicious reports against innocent persons in corruption or related offences
8. Adopt and strengthen a mechanism of promoting education of populations to respect public goods and public interest, and awareness to fight against corruption and related offences.

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To combat corruption in public services, the convention demands that state parties (article 7):

1. Require all or designated public officials to declare their assets at the time of the assumption of office, during and after the term of office in the public service
2. To create an internal committee or similar body mandated to establish a code of conduct and to monitor its implementation and sensitize and train public officials on matters of ethics
3. Ensure transparency, equity and efficiency in the public management of tendering and hiring in the public service.

The convention then addresses specific corruption issues that are endemic to the continent. These include the funding of political parties by proscribing the use of funds acquired through illegal and corrupt practices to finance political parties and by incorporating the principle of transparency into funding political parties (article 10); private sector corruption by calling upon

states to adopt measures to prevent and combat acts of corruption by agents of the private sector including the payment of bribes to win tenders (article 11); and ensuring that civil society and the media participate in the fight against corruption and hold governments to the highest levels of transparency and accountability in the management of public affairs (article 12).

It was important to go into some detail on the conventions because they provide the background to the main anti-corruption acts and programmes undertaken under Kikwete.

## **Anti-Corruption Related Acts**

Despite being a signatory and having ratified the conventions and protocols, the Tanzanian government was not keen on enacting new legislations. It took pressure from development partners for it to enact the call for legislations. For example, Denmark tied its budgetary support to the enactment of the Prevention and Combatting Corruption Act and the tabling of the Public Audit Act, and the Anti-Money Laundering was passed under pressure from the USA.

**The Prevention and Combatting of Corruption Act of 2007.** Three main objectives are given for the act:

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1. Providing for the promotion and enhancement of good governance and eradication of corruption
2. Creating an institutional framework necessary for preventing and combatting corruption by:
  - (1) Examining and advising on practices and procedures of public, parastatal or private organizations, to facilitate the detection of corruption and prevent corruption
  - (2) Disseminating information to the public of the evils and effects of corruption and corrupt practices as well as negative traditions and usage
  - (3) Cooperating and collaborating with local and international institutions, agencies or organizations to fight corruption
  - (4) Investigate and prosecute offences related to corruption (although this could only be done with the consent of the Director of Public Prosecutions).
3. The establishment of the Prevention and Combatting of Corruption Bureau (replacing the Prevention of Corruption Bureau operating since 1991).

Apart from its being renamed from the PACB to the PCCB, there was nothing special about the

act, which just reproduces the SADC and AU list of criminalized offences, only adding penalties to the offences. Special emphasis is placed on corrupt transactions under procurement (article 17) and in auctions (article 18f); possession of unexplained property (article 27); embezzlement and misappropriation (article 28f) and transfer of proceeds of corruption (article 34ff).

**The Public Audit Act of 2008.** The main focus of the act was to create a National Audit Office (NAO) as the supreme audit office in the country and to appoint the Controller and Auditor-General, whose constitutional mandate is to:

1. Authorize the use of money to be paid out of the Consolidated Fund upon being satisfied that article 136 of the constitution has been satisfied
2. Ensure that the money authorized to be charged on the Consolidated Fund or the money the use of which is authorized by law has been spent for purposes connected and incurred with authorization
3. Audit and report on the accounts, financial statements and financial management of:
  - (i) The Government of the United Republic, that is to say ministries, independent departments, executive agencies, public authorities and other bodies and donor funded projects
  - (ii) The Local Government Authorities
  - (iii) The Judiciary
  - (iv) The National Assembly

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The audit reports should be submitted to the National Assembly, but more important is that all the statutory reports issued by the Controller and Auditor-General become public documents after being tabled in the National Assembly, and that is how some of the grand corruption has come to light.

**The Anti-Money Laundering Act of 2006:** The title for this is: An Act to better provisions for the prevention and prohibition of money laundering, to provide for the disclosure of information on money laundering, to establish a Financial Intelligence Unit and the National Multidisciplinary Committee on Anti-money Laundering and to provide matters connected thereto. This long definition is necessary because there are so many predicate offences subsumed under money laundering. These include illicit drug trafficking, terrorism, illicit arms trafficking, organized

criminal groups and racketeering, trafficking in human beings and smuggling immigrants, sexual exploitation including sexual exploitation of kids, illicit trafficking in stolen goods, corrupt practice, counterfeiting, armed robbery, theft, kidnapping, illegal restraint, smuggling, extortion, forgery, piracy, hijacking, inside dealing and market manipulation, illicit trafficking or dealing in human organs and tissues, poaching, tax evasion, illegal fishing, illegal mining and environmental crime.

The act called for the establishment of the Financial Intelligence Unit in the Ministry of Finance, responsible for receiving, analysing and disseminating suspicious transaction reports and other information regarding potential money laundering and terrorist financing received from the reporting persons or other sources within and outside the republic. At the head of this unit is the commissioner, appointed by the president. The unit would be guided by a Multidisciplinary Committee on Anti-money Laundering, chaired by the Bank of Tanzania representative with representatives from the Ministry of Finance Mainland and Zanzibar, the Attorney-General's Chambers Mainland and Zanzibar, the Directorate of Criminal Investigations Mainland and Zanzibar, the Ministry of Foreign Affairs, the Commission of FIU, the Capital Markets and Securities Authority and the Tanzania Intelligence and Security Services.

What is important to note under the act are the heavy penalties meted out. A person convicted under this act is to pay a fine not exceeding TSh 500 million and not less than TSh 100 million or be imprisoned for a term no more than 10 years and not less than five years. For a body corporate, the fines are not more than TSh 1 billion and not less than TSh 500 million or the amount equivalent to three times the market value of the property, whichever is greater. This was expected to be a deterrent to money laundering and predicate offences.

Apart from the acts, which were largely passed to conform to the international norms, the Kikwete administration entered into phase two of the donor-driven anti-corruption strategy and action plan detailed below.

## **The Enhanced National Anti-Corruption Strategy and Action Plan (NACSAP II) 2008-2011**

The government, together with the UNDP as the main funder, had wanted to embark on phase two of the NACSAP in 2007, but the other donor partners would not support it until the Prevention of Corruption Act had been passed. Once this was done, they wanted the newly established PCCB to complete a National Governance and Corruption Survey. It was only when this was completed that they gave their consent for the start of phase two of the NACSAP to cover the 2008-2011 period.

To most of the donors, the aim of NACSAP II was to support the enforcement of the national procurement laws and complement the ongoing public sector reforms (Public Finance Management Reform Programme – PFMRP; Legal Sector Reform Programme – LSRP; Local Government Reform Programme – LGRP) and to enhance cluster 3 (accountable governance) of the National Strategy for Growth and Reduction of Poverty (NSGRP – MKUKUTA). This weakened NACSAP II from the start as most of the donors continued to support their existing programmes independently of NACSAP II. Only the UNDP was left as the main funder, and it could not raise the anticipated TSh 12.56 billion needed to run the programme. In the end, only TSh 1.8 billion was raised over four years of the programme (UNDP 2012).

Eight main goals were set for NACSAP II. These were:

1. Combating corruption in a scientific way and by addressing its root causes. This would involve the use of corruption surveys, public expenditure watch surveys and the use of the National Audit Office (NAO) and Public Accounts Committees to target anti-corruption interventions.
2. Strengthening anti-corruption mechanism at the Ministries, Departments and Agencies (MDAs). This included building the capacity of the committee’s year-end review workshops, annual reports and the use of whistle blowing and hotline systems.
3. Introducing systems of integrity, accountability and transparency in local government administration by introducing Council Integrity Committees and building their capacity and the capacity of council tender boards on procurement systems and procedures.
4. Mainstreaming and empowering the private sector into anti-corruption. This was to be done by: identifying potential business and corporate associations and building their capacity for anti-corruption initiatives; convening a national forum for the business sector to identify interests and goal setting for anti corruption; building capacity of the private sector for corporate governance to complement ongoing national reform processes; promoting corporate social responsibility at both local and central levels; introducing an “integrity pact” and getting businesses and corporate entities to commit to transparency and accountability in financial transactions, and instituting and sponsoring an annual forum on anti-corruption for the private sector.
5. Maintaining and empowering Civil Society Organizations (CSOs) and other non-state actors in the anti-corruption processes. This would be done by: stimulating the formation

of “civil society anti-corruption coalitions” and institutionalizing regular interface with state anti-corruption agencies; building capacity for advocacy of identified non-state integrity organizations; supporting political parties to develop internal anti-corruption mechanisms; encouraging and supporting faith-based organizations in anti-corruption advocacy; and building capacity for the media for investigative responsible journalism and improve reporting on anti-corruption.

6. Raising public awareness by developing an effective and sustained public communication strategy for anti-corruption to include the extensive use of the media and public anti-corruption education.
7. Building synergy between NACSAP and legislative and judicial integrity programmes by linking NACSAP with parliamentary committees, the Legal Sector Reform Programme (LSRP), Procurement Authority, Tawala za Mikoa na Serikali za Mitaa (TAMISEMI) ( Prime Minister’s Office Regional Administration and Local Government – PMO-RALG) and National Audit Office.
8. Enhancing the capacity of the Prevention and Combatting Corruption Bureau (PCCB), the Governance Coordinating Unit (GCU) and the Director of Public Prosecutions to deal with corruption and manage NACSAP (NASCAP II, 2008-2011).

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For the implementation of NACSAP II, a National Steering Committee was created with a chairman appointed by the government, with membership including the Coordinator of the GCU, the Director-General of the PCCB and representatives each from civil society, the media, private sector, PMO RALG, LSRP, PFMRP, PSRP, MKUKUTA Secretariat, UNDP and development partners. A NACSAP Implementation Unit with a programme manager was established under the PCCB. The overall responsibility for the implementation of NACSAP II was put into the hands of the Director of the PCCB. Finally, a National Anti-Corruption Forum was instituted, which met annually (NASCAP II, 2008).

Before going into some details on the review of NACSAP II by the UNDP (2012) and Norad (2011), it is important to mention three common elements of NACSAP throughout most of its goals. The first is capacity building, which was identified as the main bottleneck in the fight against corruption. Capacity building has two main elements: human and material. The second is the secondment of competent staff to the PCCB and the training and running workshops for the PCCB staff to enable them to carry out proper surveys and analysis and write reports. The third element is the establishment of forums, forms of public gatherings on anti-corruption in the hope that these

would act as catalysts to push the government to deal with corruption. The public voice, coupled with mass education through the mass media and civil society, will awaken the government to action. This is in line with the prevention focus of the anti-corruption drive in Tanzania set by president Mkapa, who identified prosecution as witch-hunting.

The UNDP (2012) report on NACSAP II notes that the effectiveness of the programme was constrained by inadequate resources, slow disbursement of resources, low quality of reports, ad hoc planning and duplication of efforts by other development partners and non-state actors. NACSAP II did not succeed in: mainstreaming and empowering the private sector in anti-corruption (goal 4); mainstreaming and empowering civil society organizations and other non-state actors (goal 5), and building synergy between NACSAP and legislative and judicial integrity programmes (goal 7). This is attributed to conflicts and limitations in mandates and limited interface, duplication of efforts and parallel funding sources and lack of harmonious reporting requirements by international development partners on similar activities; in enhancing the capacity of PCCB, GCU and DPP (goal 8) because these did not attract direct financial support from partners. The conclusion is that the eight goals were dangerously over-ambitious given the financial and capacity circumstances and need to be reviewed in future against the backdrop of “on the ground reality, capacity and mandate”. The main recommendation was that the focus should be on countering grand corruption to address the impunity of those committing grand corruption, the untouchables. There were, however, more specific recommendations, and these were: the repeal of the Procurement Act and the Public Code of Ethics Act; the enactment of the Right to Information Act (as opposed to Freedom of Information Act) and the National Whistle Blowers Act; the formalization of the open budget process; and the establishment of Anti-Corruption Courts.

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The Norad (2011) evaluation was much broader than the UNDP NACSAP II report in that it covered the anti-corruption programmes in Tanzania supported by Denmark, through the Danish International Development Assistance (Danida); Norway, through the Norwegian Agency for Development Cooperation; Sweden, through the Swedish International Development Cooperation Agency (Sida); and the United Kingdom, through the Department of International Development (DFID) between 2002 and 2010. The list of programmes and projects supported by these countries is listed in footnote 32 above. These countries were not happy with the UNDP management of funds under NACSAP I and the General Budget Support (GBS) through the government claiming that funds were being misused, and therefore, they decided to micromanage their specific projects.<sup>18</sup>

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18 For a discussion on budget support in Tanzania, see Hellen Tilley. 2014. *The Political Economy of Aid and Accountability: The Rise and Fall of Budget Support in Tanzania*. Ashgate.



Two interesting conclusions were made by the evaluation team. The first was that donors have little impact on the domestic political issues that drive reforms. The second was that donors can inadvertently contribute to the reduction of the political will to fight corruption. The World Bank and donors became drivers of anti-corruption during Mkapa's second term (2000-2005). This reduced the political will of the government to participate in anti-corruption reforms. But having said this, the evaluators recommend that donors strengthen their "leverage" on anti-corruption through GBS by developing a more robust and predictable linkage between GBS and the Government of Tanzania's anti-corruption efforts – perhaps through a joint donor variable tranche of GBS linked to NACSAP outcomes and actions and explicitly and predictably linking an increase in the percentage of aid provided by way of GBS to increased Public Expenditure and Financial Accountability Review (PEFAR) scores. This is real donor talk of setting conditions for aid even after noting that it reduces the political will. The other recommendations made were that the donors should continue support monitoring and evaluation for NACSAP and address issues about the roles and capacity of UNDP, as well as addressing the weaknesses in the anti-corruption legislative framework – in particular where appointments and reporting lines are directly accountable to the president, rather than parliament – that is more directly accountable to the electorate and increasingly able to hold the executive to account. This last recommendation directly concerns the PCCB, which was the central implementing agency for NACSAP II, and it is important that we turn to it.

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An evaluation of the PCCB by the Policy Forum (2018) noted that the development community promoted a standalone anti-corruption agency 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 the PCCB should be seen as part of a global trend to replicate existing Anti-Corruption Agencies (ACA) models. It is then noted that Tanzania's political economy inhibits the emergence of an independent agency with a mandate to tackle corruption freely and fairly. Corruption as a systemic challenge cannot be addressed by one state institution. It should be clearly understood that the PCCB was intentionally compromised by those who drafted the Act 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 a key player.

Since 2007, the PCCB has grown into a huge institution with over 2 000 staff members and offices in every region and most districts. There has, however, been little progress in sanctioning top officials and businesspeople involved in grand and political corruption. It has turned out to be an instrument to fight petty corruption, with prosecuted petty offenders often fined a multiple of the

amount they misappropriated or extorted, and they are jailed when they cannot pay the minimum fine of TSh 500 000. In contrast, the few senior officials found guilty of large-scale corruption are fined relatively trivial amounts, and corruptly obtained property is rarely confiscated (Policy Forum).<sup>19</sup> Since 2012, the DFID, through its Strengthening the Anti-Corruption Agencies (STACA) namely PCCB, NAO, FIU, DPP and police and judiciary, has tried to increase the prosecution of grand corruption but without success. The evaluation of STACA commissioned by the DFID in 2016 concluded that at the outcome level, there are no visible signs that STACA has led to increased active enforcement of anti-corruption laws and systems in Tanzania (UKaid 2016). What, then, should be done? The answer comes from AfriMap (2015): Overhaul the legal framework for the PCCB in terms of appointment, tenure and removal procedure, remove the PCCB from the presidency and give it an independent budget and, if possible, transform it into an anti-corruption commission.

It is within this broad context of the anti-corruption processes, which have developed over time, that Magufuli entered the scene. Two processes that accompanied his presidency. The first was his personalized approach to anti-corruption and government; the second was his acceptance of the existing anti-corruption institutional and operational set. This was apparent in the elaboration of NACSAP III.

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### **Magufuli's Anti-Corruption Drive**

The National Anti-Corruption Strategy and Action Plan Phase III (2017-2022) differs very little from NACSAP II, implemented by Kikwete between 2008 and 2011. The objectives and strategies remained the same apart from the wording. Perhaps the only new element was the identification of priority sectors and areas to which attention was to be paid in the fight against corruption so as to restore public trust and confidence in government. These areas are identified as public procurement, revenue collection, and administration of justice, police, health care, education and utilization of natural resources. There was no change in the watchdog and oversight institutions. The PCCB remained the main actor in the anti-corruption drive, but all the recommendations on the operations of the PCCB noted in the above section were ignored. The PCCB remained under the control of the president in all respects. His first action as president was to fire the PCCB Director-

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<sup>19</sup> This is basically because the PCCB does not allow it to prosecute cases of grand corruption or high-profile corruption. These are the preserve of the Director of Public Prosecution, and the PCCB can only prosecute such cases if they are given the go-ahead by the DPP.

General Edward Hosea. But his replacement, Valentino Mlowola, did not last long. He was soon replaced by Diwani Athumani. These changes were an indication that the PCCB must be in line with the presidential wishes and execute his instructions. This led to the criticism that his approach to fighting corruption was not sustainable because it did not seek to empower institutions to fight corruption persistently but concentrated on ambushing it. His anti-corruption drive was therefore interpreted as image-building (to be seen as a strong leader) and not on building institutions that can fight corruption even in his absence (The Policy Forum 2018).

The other implementing organs for NACSAP III remained the same apart from name changes with the Chief Secretary as the overseer of the entire NACSAP implementation process. The National Anti-Corruption Forum and the National Steering Committee have remained. The other structures have been renamed consultative committees extending from the national level to the region, district, ward and village. What is new in the NACSAP III is the detailing of the roles of the development partners, private sector, political parties, civil society and the media. The main role of the development partners is to provide financial support and technical assistance to the government and non-state actors and support independent assessment on the implementation of NACSAP III. The role of civil society is to form anti-corruption coalitions with the government, promote national ethics and conduct research and training in the areas of corruption, ethics and good governance and fight corruption within their organizations. The private sector should focus on establishing ethical standards within the private sector and strengthen public-private partnerships on the fight against corruption. Media should promote and monitor national and public-sector ethics as a measure to fight corruption and other crimes around the country, apart from implementing measures to fight corruption in their respective media houses. As for political parties, they should fight corruption within their parties and forge strong ethics and anti-corruption measures in their constitutions and election manifestos. Going through the above list, it appears that the other entities should leave the government to fight corruption at the national level and they should put their houses in order. This led to the feeling of marginalization and the accusation of authoritarianism against the Magufuli government.

The accusation of authoritarianism was mainly based on the fact that the Magufuli government had, for all intents and purposes, limited freedom of expression and, by extension, human rights with the enactment of various legislations. These include the enactment of the Media Services Act 2016; the promulgation of the Electronic and Postal Communications (online content) Regulations 2018; the amendment of the Statistics Act 2015 through the Written Laws (Miscellaneous Amendments) (no 3) Act 2018; and the amendment of the Non-Governmental Organizations Act of 2002 and the

Non-Governmental Regulations of 2004 by the Written Laws (Miscellaneous Amendments) (no 3) Act 2019. These acts limited freedom of expression in Tanzania. The situation is worse with the prohibition of political party rallies since 2016.

The Media Services Act of 2016 was aimed at controlling the activities of media houses and journalists. The act's main objective was to ensure that information issued does not: undermine national security and lawful investigations; impede the due process of law or endanger safety or life of any person; disclose the proceedings of cabinet; involve the unwarranted invasion of privacy of an individual; infringe lawful commercial interests, and hinder or cause substantial harm to the government to manage the economy. The act establishes the Journalists Accreditation Board, which was expected to enforce the adopted code of ethics with powers to suspend or expunge journalists from the roll of accredited journalists and to impose fines for non-compliance. What was more worrying, however, was the introduction and enforcement of defamation and sedition clauses with huge penalties. It becomes an offence to publish information which was intentionally or recklessly falsified in a manner which: threatened the interests of defence, public safety, public order, the economic interests of the United Republic, public morality or public health; and was injurious to the reputation and rights of other persons. The fine for such offences was not less than TSh 5 million but not exceeding TSh 20 million or imprisonment for a period of not less than three years but not exceeding five years, or both. Furthermore, the act made it a crime to print, publish, sell, offer for sale, distribute or reproduce any seditious publication. The critical issue was to define sedition, but because this was difficult to define, the act deals with seditious intentions in article 49. A seditious intention is an intention to:

1. Bring into hatred or contempt or to excite disaffection against the lawful authority of the government of the United Republic;
2. Excite any of the inhabitants of the United Republic to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the United Republic as by law established;
3. Bring into hatred, contempt or to excite dissatisfaction against the administration of justice in the United Republic;
4. Raise discontent or dissatisfaction amongst people or section of the people of the United Republic;
5. Promote feelings of ill will and hostility between different categories of the population of the United Republic (Media Services Act 2016: Article 49).

Penalties under this section were a fine of not less than TSh 7 million and not exceeding TSh 20 million, or imprisonment of not less than five years but not exceeding ten years, or both. It was also an offence to possess seditious materials for which one has to pay a fine of not less than TSh2 million and not exceeding TSh5 million, or imprisonment of not less than two years but not exceeding five years or both. The Act provided for prohibiting any further publication of a newspaper that published seditious materials for a period of not less than 12 months and not exceeding three years. Article 51 of the Act states that any person who publishes any false statement, rumour or report which is likely to cause fear or alarm to the public or disturb public peace commits an offence whose punishment is a fine of not less than TSh 10 million but not exceeding TSh 20 million or imprisonment of not less than four years and not exceeding six years, or both.

The Human Rights Watch (2018) *Tanzania Events of 2017* and the Human Rights Watch (2019) *Tanzania Events of 2018* detail how the act was used in Tanzania against newspapers (Mawio, Raia Mwema and Mwanahalisi) and TV stations, five of which were forced to pay TSh 60 million for broadcasting what was regarded as 'seditious' content. The result was increased self-censorship in the media fraternity for fear of incurring the wrath of the Head of State or his acolytes (Zitto Kabwe 2017).

The Electronic and Postal Communications Act of 2010, article 103(1) grants powers to the minister to make regulations for the online communication sector. New regulations were adopted by parliament on 16 March 2018 as Electronic and Postal Communications (online content) Regulations. In the first instance was the demand for registration and licensing of the online content suppliers and users. The Communications Regulatory Authority was to keep a register of bloggers, online forums, online radio and television and to act against non-compliance with regulations including the removal of prohibited content. Prohibited content includes: hate speech; obscene and indecent content; pornography; sexual offences (bans publication of sex crimes, rape, attempted rape, statutory rape and bestiality); violent content (content that portrays violence, whether physical, verbal or psychological that can upset, alarm and offend viewers or cause undue fear among the audience or encourage imitation); torture and killings (prohibits content portraying sadistic practices, explicit and excessive imagery of injury and aggression and of blood or scares of execution or of people clearly being killed); annoyance, threats of harm or evil that encourages or incites crime or leads to public disorder; threatening national security of public health and safety such as making available instructions or guidance on bomb-making, illegal drug production or counterfeiting; disseminating false information with regard to outbreak of racial disturbances

in any specific part of the country or information and statements with regard to possible terrorist attacks; information on the outbreak of a deadly disease; content that uses bad language (including the use of disparaging or abusive words which are calculated to offend an individual or group of persons; crude reference to words in any language commonly used in the United Republic which are considered obscene, including references to sexual intercourse and sexual language); and false content which is likely to mislead or deceive the public.<sup>20</sup> Offences under these regulations are punishable by a fine of not less than TSh 5 million, or imprisonment of not less than 12 months, or both. This represents sweeping control of the online information similar to that applied to the print media. Cases, where the law was applied, are supplied by Human Rights Watch analysis of events in 2017 and 2018 referred to above.

From the media, the control of information was extended to statistics, hence the amendment of the Statistics Act 2015 under the Written Laws (Miscellaneous Amendments) (no 3) Act of 2018. The amendment was with respect to article 24. It included the adding of 24 A (2e), which states that: "A person shall not disseminate or otherwise communicate to the public any statistical information which is intended to invalidate, distort or discredit official statistics". Another amendment was in article 37, where section 4 was substituted to read: "Any person who publishes or causes to publish or communicate any official statistics or statistical information contrary to the provisions of the Act, commits an offence and is liable on conviction to a fine of not less than 10 million shillings or to imprisonment for a term of not less than three years or both".

The amendment caused an outcry from development partners in particular the World Bank that threatened to withdraw funding until the act was amended. The government responded to this threat by another amendment in 2019. Article 24 A (2) now reads: "A person who has different findings from statistics disseminated by the Bureau, shall subject to consultations with the Bureau, have the right to challenge such statistics provided that the consultation shall involve discussion on the methodology used, data sources, analysis and interpretation". It then sets a lengthy process of resolving the differences through a technical committee appointed by the minister. The new amendment adds 24 B (1), which states that: "A person shall not publish non-official statistics without consultation with the Statistician General". As a concession, a long list of statistical information which can be published without consultation, was added. This includes statistics collected by universities, conducted by international organizations, regional bodies, intergovernmental organizations,

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<sup>20</sup> A critique of these regulations from the freedom of expression perspective is provided by Article 19, Tanzania: Electronic and Postal Communications (online content) Regulations 2018. [www.article19.org](http://www.article19.org).

bilateral institutions, diplomatic missions or international development organizations. The penalties for publishing non-official statistics remain in place. For the individual, the fine should be not less than TSh 1 million but not exceeding TSh 5 million or imprisonment of not less than six months but not exceeding 12 months or both. For an institution, the fine is not less than TSh 10 million but not exceeding TSh 50 million.

Once the government had taken control of the information outlets, print and online media, it turned its attention to civil society, in particular, the non-governmental organizations. The first move was in 2017 when the government called for a verification exercise of all the NGOs in the country. It was made clear that the NGOs that failed to comply or did not cooperate with the exercise would be deregistered. The aim was to take stock of what the more than 8 000 registered NGOs were doing. 20 September 2017 was set as a deadline for the verification, and no new registration of NGOs was to take place until 30 November 2017. The amendments to the NGO Act of 2002 came in 2019 under the Written Laws (Miscellaneous Amendments) (no 3) Act of 2019. The act starts by defining NGOs. The term 'Non-Governmental Organization', which includes Community Based Organizations (CBOs), was defined as a voluntary group which is non-partisan or non-profit sharing, established for the benefit or welfare of the community or public organized at the local, national and international levels to enhance economic environmental, social and cultural development or protect the environment, lobbying or advocating on such issues. They should, in short, stick to the said issues and not meddle in politics. The act, then, imposes strict control over their finances. They are thus required to:

1. Disclose to the public, registrar of NGOs and other stakeholders regarding sources, expenditure, purpose and activities obtained from fund raising activities. This disclosure has to be made within 14 days after completion of fund raising activities;
2. Disclose amount of funds raised in excess of TSh 20 million by:
  - (a) Publishing by annually funds reports together with expenditure in a media that can be easily accessed by targeted beneficiaries;
  - (b) Submitting to the treasury and registrar of NGOs contracts entered into with the person who grants the said amount;
  - (c) Declaring to the registrar of NGOs any other sources received in cash or kind before expenditure (Written Laws (Miscellaneous Amendments) (no 3) Act of 2019).

The act gave the registrar powers to suspend the operations of any NGO which violated its

provisions, pending determination by the Board, and to conduct monitoring and evaluation of NGOs on a quarterly basis and report to the Board. In short, the NGOs were placed under continuous scrutiny. The justification for this was to: ensure that there was zero tolerance of corruption, money laundering and other forms of substantive misuse of funds; take effective actions to hold persons or institutions responsible to account; ensure that NGOs do not enter into contracts that undermine the sovereignty of the state and rights of the people, and ensure that they work in accordance with the laws of Tanzania.

To the above set of social control must be added the ban on political party rallies. This directive that appears to have come directly from the president was initially to prevent the Anti-Magufuli rallies that were being organized in Kahama in June 2016 by Chama cha Demokrasia na Maendeleo (CHADEMA) and Alliance for Change and Transparency (ACT). The reason given by the police for the ban was that the parties planned to use the rallies to create civil disobedience that was likely to lead to violence. The real reason behind the ban was to prevent the use of political rallies to mobilize discontent. The ban prevented peaceful protests organized as part of Operation Ukuta, an alliance against the dictatorship which was planned for September 2016. The ban was justified by the president who stated that the elections were over and it was now time for work (*kazi tu*). Rallies, if allowed, would distract government actions.

*The Citizen* (24 January 2019) reported Magufuli's response to religious leaders when they questioned him about the ban on political rallies. He is reported to have said, "I never banned political rallies". Political leaders were not prohibited from organizing rallies in their respective constituencies (MPs and councillors). It was not proper for politicians to organize rallies in places outside their constituencies. The ban turned parties into electoral machines that come alive during the elections and wind down until the next elections. Furthermore, it made it impossible for parties to rally support in areas where they did not win the elections, thus limiting their chances of growing beyond their current areas. But the ban on rallies and seditious clauses was used to arrest a number of opposition leaders on charges of illegal demonstrations and inciting hatred and rebellion (Human Rights Watch 2018, 2019).

The above caused a dilemma for development partners who, on the one hand, lauded Magufuli's anti-corruption crusade but, on the other, were alarmed by the rise of authoritarianism and infringement on human rights (which strayed into anti-gay and anti-lesbian spheres, causing the EU to recall its ambassador and Denmark to withhold funding). This dilemma was captured by the policy forum (2018) when it stated that donors are caught between supporting Magufuli's home-grown attack on corruption, tax evasion, legal waste and inefficiency and criticizing his heavy-handed



approach to freedom of speech and party politics, areas where they have committed resources over the years. For Kelsall (2018), those development partners who claim that democracy and civil rights trump all other considerations may wish to shift their foreign and development policy to giving sanctuary to opponents and victims of the regime. What is important to note here is that Magufuli's success hinged on how he managed development partners (discussed in chapter six). Some decided to temporarily halt their aid disbursement, forcing Magufuli to increase domestic government borrowings to fill the gaps in the budgets. Within the broad context of anti-corruption, the role of civil society and the media, which appeared under all the NACSAPs, was curtailed, leaving the government, and in particular the president, to pursue what was dubbed the home-grown attack on anti-corruption to which we need to pay attention.

Magufuli's home-grown strategy was said to be based on three elements (Andreoni 2018). The first was rule by fear by blaming and shaming allegedly corrupt people in both the public and private sectors and direct involvement in anti-corruption operations backed by the police and intelligence. The second was punishment, which involved removing people from key positions in public offices and authorities and prosecution enforcement (also in the form of ultimatums and amnesty agreements). The list of people fired from office is very long. Immediately after coming to power, he fired the heads of the Tanzania Investment Centre, Tanzania Communications Regulatory Authority, Tanzania Revenue Authority, Tanzania Ports Authority, Reli Assets Holding Company, the Director of Public Prosecutions and the Chief Executive Officer for Dar Es Salaam City Council. The list kept growing and came to include ministers and other government officials.<sup>21</sup> Citizens were happy to see heads rolling because there had been a growing sense of widespread entitlement (the untouchables' syndrome) and inequality. The firing, however, was done without regard to disciplinary processes and the law and sometimes resulted in victimization as some of those fired were reinstated or compensated (Zitto Kabwe 2017). The creation of an anti-corruption division of the High Court in November 2016 was meant to fast-track prosecution of those accused of corruption. The anti-corruption court was created under the Written Laws (Miscellaneous Amendments) Act of 2016, which amended the Economic and Organized Crimes Act.<sup>22</sup>

The third strategy in the fight against corruption was the centralization of power and

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21 The fired ministers include Nape Nnauye (Information, Culture, Arts and Sports (23/3/2017); Sospeter Muhongo (Energy and Minerals) (24/5/2017); Mwigulu Nchemba (Home Affairs) (10/6/2018); Charles Tizaba (Agriculture) (10/11/2018); Charles Mwijage (Industry, Trade and Investments) (10/11/2018); and January Makamba (21/7/2019).

22 Miscellaneous amendments, mostly brought to Parliament under a certificate of urgency, became a hallmark of Magufuli's presidency. If something cannot be done because the law prevents or there exists no law to legitimize it, then change or create the law. This was referred to by Lukiko (2017) as autocratic legalism – the use, abuse and non-use of the law in the service of the executive branch.

personalization of decision-making. The staffing of his government with academics and bureaucrats with no independent political base led to his demand of personal loyalty from those he directly appointed (referred to as workhorses/magicians by Kelsall 2018). This list was indeed very large and kept growing, and it included the upper echelons of the bureaucracy, starting with deputy directors upwards, leaders and executives of independent government agencies, institutions and parastatals and the politicians and executives running the regions and districts. This has gone as far as direct allocation of resources from the presidency and bypassing the ministries to the regions and districts (as in the case of fertilizer, education and purchase of cashew nuts from the farmers using the army). It has also included the centralization of functions within the Office of the President. On the one hand, this was interpreted as a means of wresting power from the informal networks of politicians and business interests. But it also came to involve the president in direct negotiations and economic deal-making, which could be seen during the renegotiations of mining agreements, the central railway deal and the Aliko Dangote cement agreement. Even the opposition acknowledged that Magufuli demonstrated decisiveness and at times ruthlessness in dealing with his priority areas (Zitto Kabwe 2017).

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The centralization of power around the presidency was said to have been necessary to allow him to prioritize economic development. But his “developmentalism” served two purposes (ACE 2017). It was used as a means of shoring up his political power, which was used to shift emphasis from the private sector back to the state. It was also used to limit the political finances available to the official opposition as well as oppositional factions within the CCM, thus reinforcing his control over the national resources. Developmentalism and a state-centred approach became the hallmarks of his short tenure in office. It is, however, likely to become the Achilles’ heel of his successor, who is already indicating that his actions pushed the government into the red zone of budgetary and debt stress, which might in turn necessitate another round of debt relief and development partners’ control of the development process. This is highlighted in chapter six.

The centralization of power and control of the government could only be consolidated by his control and imposition of discipline over the CCM party, which was at the centre of corruption in the country. His chance came with the transfer of the party chairmanship from Kikwete to himself. This resulted in major changes to the governance of the party. There was an immediate reduction in the number of the National Executive Committee members. The members were reduced from 388 to 158, and their quarterly meetings were reduced to bi-annual meetings. The reduced NEC is now composed of regional party chairmen (36), regional representatives (50), national representatives (30), presidential appointees (7), secretaries to CCM parliamentarians, elected parliamentary

speakers, prime minister, the Vice-President and President of Zanzibar. Equally, the party's Central Committee was reduced from 34 to 24 members, and instead of meeting six times a year, it was to meet three times a year. While the justification was to cut costs, the move reduced the influence of the party over the government, apart from many members' losing political influence. To stamp his authority over the party, he appointed an academic as party Secretary-General.

What was the impact of all the above on corruption in Tanzania? The Risk Advisory Group (2019) saw Magufuli's reforms as having been effective in undermining what were previously common corruption schemes in Tanzania. But how did this affect the private sector and investment flow into the country? No research has been undertaken in this regard yet. Could Magufuli have maintained his anti-corruption momentum in his second term and when CCM notables started to manoeuvre for succession? Now that he is gone, the question remains speculative. What can be said is that a form of discipline was instituted through the government administrative machinery opening ways for improved bureaucratic effectiveness and economic management. Furthermore, the president was in full control of resource allocation within the government and capable of controlling the pilferage of government resources. He was also in charge of the patronage system through his control of tendering and procurement in terms of the main investments, mostly infrastructure spending.