Memorandum

To: REDACTED
CC: Elizabeth Brundige, Executive Director, Avon Global Center for Women and Justice; Sital Kalantry, Faculty Director, Avon Global Center for Women and Justice
From: Maithili Pradhan, Women & Justice Fellow, Avon Global Center for Women and Justice
Date: August 13, 2012
Re: Problems in Prosecuting or Adjudicating Corruption Cases in Tanzania

This memorandum responds to your request for information on issues relating to corruption cases in Tanzania. It provides a brief overview of corruption in Tanzania and efforts taken by the government to address the problem and examines the problems that emerge in prosecuting or adjudicating corruption cases in Tanzania and the reasons corruption cases fail.

Corruption in Tanzania and Government Efforts to Address the Problem

The Tanzanian government has taken various steps to address the problem of corruption. In 1996, former Tanzanian President Benjamin Mkapa established the Presidential Commission Against Corruption, which released a report (known as the Warioba report) that found much evidence of corruption in the country.\(^1\) The government responded to the report’s findings by creating a number of institutions to address the problem\(^2\) including, among others, the Director of Public Prosecutions, which carries out prosecutions of corruption cases,\(^3\) an Ethics Secretariat responsible for “promoting and monitoring the ethical conduct of public leaders,”\(^4\) and the Prevention of Corruption Bureau, PCB (which later became the Prevention and Combating of Corruption Bureau (PCCB)), which is “responsible for investigating suspected corruption cases and prosecuting offenders in coordination with the DPP and educating the public about corruption.”\(^5\) The Anti Corruption Act No. 11 of 2007 brings Tanzanian laws into conformity

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3 *Id.* at 16.
4 *Id.* at 16.
with the United Nations Convention Against Corruption.\textsuperscript{6} Additionally, Tanzania has instituted a National Anti-Corruption Strategy and Action Plan, which “brings together a coalition of stakeholders (public/private) to combat corruption” and aims to reduce corruption through increased transparency and efficiency of regulations and raising public awareness.\textsuperscript{7} Indeed, a 2010 Global Integrity Country Report gave Tanzania a score of 100 (strong) in relation to having anti-corruption laws in place.\textsuperscript{8}

However, enforcement of the anti-corruption initiatives “remains limited, and anti-corruption institutions suffer[\ldots] from lack of staff, resources and coordination.”\textsuperscript{9} The same Global Integrity Country Report gives Tanzania’s anti-corruption agency a rating of 59 (very weak).\textsuperscript{10} Indeed, Tanzania continues to hold a low ranking in Transparency International’s Corruptions Perceptions Index with a ranking of 100 of 183.\textsuperscript{11} Furthermore, as the 2011 OECD Joint Evaluation of Support to Anti-Corruption Efforts Report notes, “Tanzania suffers from a high level of corruption, with reportedly at least 20\% of the government’s budget being lost to corruption\ldots.”\textsuperscript{12} One survey found that 49.5\% of surveyed companies reported that they expected to make informal payments to accomplish tasks with the government bureaucracy, while in another survey 42\% of companies expected to give ‘gifts’ to secure government contracts.\textsuperscript{13} It is evident, then, that corruption continues to be a grave problem in Tanzania.

In this environment, prosecution of corruption cases becomes especially important as a tool in curbing corruption and increasing accountability for those engaging in corruption. However, in Tanzania, the successful prosecution of corruption cases has been elusive thus far. According to one 2008 report, “[O]f more than 10,000 reported cases, only several hundred have been prosecuted and even fewer convicted. Hardly any high level officials have been tried on corruption charges. Only around 5\% of corruption cases reported to the [Prevention of Corruption Bureau’s] regional offices between 2000 and 2005 were heard by a court of law.”\textsuperscript{14}


\textsuperscript{7} Sitta, \textit{supra} note 1, at 12.


\textsuperscript{9} MARIE CHENE, U4 ANTICORRUPTION RESOURCE CENTER, \textit{OVERVIEW OF CORRUPTION IN TANZANIA}, (2009).

\textsuperscript{10} GLOBAL INTEGRITY REPORT, Tanzania Scorecard 2010, \textit{supra} n. 8.


\textsuperscript{12} OECD, \textit{supra} note 2, at 11.

\textsuperscript{13} CHENE, \textit{supra} note 9 at 3.

\textsuperscript{14} \textit{Id.} at 4-5.
A Cycle of Corruption

A number of obstacles hinder efforts to prosecute corruption cases in Tanzania. These include corruption within the criminal justice system itself, especially within the police, but also the judiciary. A recent U.S. State Department report on the situation of human rights in Tanzania notes that “[j]udicial and police corruption were problems.” Furthermore, according to a 2006 Commonwealth Human Rights Report, the Prevention of Corruption Bureau reported in 2003 that “among all Government departments [in Tanzania] the police department was the most corrupt, with the highest number of corruption allegations.” Thus in a vicious cycle, the existing corruption in the criminal justice system forms the first roadblock to a successful corruption prosecution.

Ineffective or Insufficient Laws

Gaps and ambiguities in the law may also serve as obstacles to successful prosecution of corruption cases. For example, whistleblower protections are often not successful in protecting whistleblowers from retaliation as they are often not upheld, which can prevent civil servants and private sector employees from coming forward to report corruption. Although the 1971 Prevention of Corruption Act has been replaced with the Prevention and Combating of Corruption Act of 2007, which fills in some of the loopholes of the 1971 law, the law may still not do enough to deter corruption. “Corruption is designated as an economic offence, and provisions exist for prison sentences…[,] there are no financial penalties for economic crimes except for the recovery of stolen assets.” Insufficiently severe penalties for corruption limit the ability of prosecutions to achieve just outcomes and to deter others from engaging in corrupt acts.

Evidentiary Standards

The prosecution of corruption cases may also be hindered by evidentiary standards, namely, Tanzania’s common law tradition of reliance on direct evidence to prove the crime. In Corruption in Tanzania: The Case for Circumstantial Evidence, Edward Hoseah suggests that the common law tradition of the law of evidence which, “since medieval times depended on direct evidence…did not contemplate corruption as understood today. Therefore, the law of

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19 CHENE, supra note 9, at 6.
evidence emphasized direct evidence as opposed to circumstantial evidence.”

The reluctance of judges to consider circumstantial evidence in the face of long-standing common law tradition in favor of direct evidence is a major obstacle to successful prosecution of corruption cases. Indeed, the non-use of circumstantial evidence can be disastrous to an corruption prosecution, as corruption is inherently “illusive and concealed in its operation,” and circumstantial evidence may contain “the bulk of the collected evidence during the investigation of allegations received.” Where circumstantial evidence is ignored, then, the cases that are brought to court may be too weak to stand up solely with the support of direct evidence, and may not be able to “pass the required threshold of prima facie evidence.”

Inefficiency of Government Institutions and Lack of Resources

The PCCB, which is the primary Tanzanian institution charged with prosecuting corruption cases, faces a serious lack of resources and related problems of inefficiency that hamper its ability to carry out successful prosecutions. Additionally, the PCCB may also be unable to successfully prosecute all the corruption cases that come under its purview due to its lack of independence from other government institutions.

In Mr. Hoseah’s study, he finds that

[u]ntil 2002 all cases that were reported to the PCCB [Prevention and Combating of Corruption Bureau] were investigated. However, this efficiency has been falling ever since, largely due to the magnitude and complexity of the recent cases that involve large amounts of money and high ranking officials, and since tracing the paper trail involves a lot of background checks, accounts tracking, international cooperation, mutual legal assistance, and extradition matters in relation to corruption offences that have been included in the Prevention and Combating of Corruption Act (PCCA).

The complexity of corruption cases and investigations requires dedicating adequate resources to the institutions, like the PCCB, that must carry out the investigation and prosecution of these cases. However, a “lack of resources such as financial resources” has been a major problem for the PCCB, and the institution has been “regarded as under-resourced, under-powered and without the capability to investigate administrative and political corruption efficiently and

20 Edward Hoseah, Corruption in Tanzania: The Case for Circumstantial Evidence 1 (2008). We were unable to obtain a copy of this book within the time available, but we reviewed its first chapter, which is available online at http://www.cambriapress.com/cambriapress.cfm?template=8&bid=286.

21 See id.

22 Id. at 26.

23 Id. at 24.

24 Id. at 24.

25 Id. at 22, 23.

effectively.”27 Indeed, one report finds that the PCCB suffers from lack of resources to the extent that it is “inadequately resourced in terms of vehicles, telecommunications and computer equipment, [and] qualified investigators.”28

The PCCB has also been criticized for a lack of independence, including the fact that its power to investigate and prosecute corruption offences is subject to the instructions of the Director of Public Prosecutions,29 its close relationship with the President’s Office,30 and its “financial dependence upon government for its operational budget.”31

The lack of resources that hinders the PCCB also hinders other government institutions that have the ability to address corruption, especially through prosecutions of corruption cases. For example, the heavy caseload and the lack of resources to be able to handle this caseload have been highlighted as major factors contributing to judicial inefficiency,32 which in turn can contribute to unsuccessful prosecutions of corruption cases. The inefficiency of the PCCB and the Tanzanian anti-corruption initiatives in general has also been attributed to “overlapping roles and responsibilities, ambiguities in inter-institutional relationships and a governmental infrastructure and culture that is highly underdeveloped in terms of its policies and practices to prevent, detect or deter corrupt practices in all areas and at all levels of the public administration systems.”33

Summary and Conclusion

It is evident that prosecutions of corruption cases in Tanzania often encounter multiple obstacles. The chief of these are:

- Corruption within the law enforcement and justice system: where the institutions responsible for investigating and prosecuting corruption cases are themselves subject to corruption and bribery, it is difficult for an corruption case to succeed.
- Legal hurdles: where the laws do not go far enough to penalize corruption and where the laws do not make it as easy as possible for individuals to expose corruption anonymously and without exposing themselves to retaliation, it is difficult for corruption cases to effectively address the problem of corruption.
- Evidentiary hurdles: circumstantial evidence, which may form the bulk of evidence in corruption cases, is rarely, if ever, used in prosecuting corruption cases, and direct evidence is difficult to find due to the secretive nature of corruption, leading to difficulties in proving guilt in corruption cases.
- Inefficiency and lack of resources: where the government institutions responsible for investigating and prosecuting corruption cases are themselves hindered by a severe lack

28 Id. at 72, 73.
29 TrustLaw, Anti-corruption Profile – Tanzania, supra note 26.
30 DOIG ET AL., supra note 18, at 69.
31 Id.
32 CHENE, supra note 9, at 4, 5.
33 DOIG ET AL., supra note 18, at 72, 73.
of resources, they become inefficient (and finally, incompetent) at successfully prosecuting corruption cases and addressing corruption.