



Oversee the Overseers: An Insight from Ethics Secretariat

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Abstract

This paper explored the contextual setback of the Ethics Secretariat in managing public leaders' ethics in Tanzania. Specifically, it examines functional relations between the ethics secretariat and the Executive, Parliament, Judiciary and other ethical governing institutions and how these functional relations affect the institution in discharging its duties. The study employed the principal agent model and its methodology was primarily qualitative. The findings relied heavily on interviews and documentary reviews. Generally, it was found that the contextual setback of the Ethics secretariat in managing public leaders' ethics originated from interferences made by the three organs of government namely Executive, judiciary and legislature as well as weakness in functional relations between the ethics secretariat and other ethics governing institutions namely Prevention and Combating Corruption Bureau (PCCB) and the Commission for human rights and good governance (CHRGG). The paper concludes first, that under inappropriate law, and inappropriate functional relations between the Ethics secretariat and other ethics governing institutions it is difficult for the institution to perform its constitutional powers; at best, it is likely to remain an elusive phenomenon. Second, in a context where unethical behaviour public leaders are rarely controlled, some leaders have an opportunity to act according to their wishes and not according to the law, hence affect negatively the provision of public goods and services. The study recommends substantial amendment of the Constitution of united republic of Tanzania and the leadership code of ethics Act in order to make the ethics secretariat free in performing its duties

Subject Areas

Philosophy

Keywords

Ethics Secretariat, Public Leaders' Ethics, Leadership Code of Ethics

1. Historical Overview of the Concept

In Tanzania, the concern to control immoral practices among public officials originated from the British Colonial Administration. The British Government enacted the first anti-unethical behaviour legislation notably—the Prevention of Corruption Ordinance Cap 400 of 1958. The enactment was among other, a reaction to ever increasing fraud and misuse of public office of colonial administration. For example, [1] observed that: *‘the act of receiving commission and rewards among public servants were growing to the extent of considered as a justice among the civil servants’*. The 1958 fraud ordinance among other things prohibited and recognized receiving commission and rewards as crimes acts of corruption.

In 1961, soon after independence, President Julius Nyerere attempted to regulate unethical practices among the leadership through establishing the Permanent Commission of Enquiry mentioned in the provision of the Interim Constitution of the United Republic of Tanzania of 1965. The Commission was designed to function as a mechanism, by which Citizens could protect themselves from the abuse of governmental powers [2].

A number of weaknesses were noted in this enactment such as much patronage of the president and his discretion on whether a matter to be investigated or not and the decision of the Commission was to be presented to the president for determination (Presidential Commission for Multiparty, 1991).

In 1995 the Constitution of the United Republic of Tanzania was amended by introducing Article 132, which provides among other the enactment of the Public Leadership Code of Ethics Act No. 13 of 1995. The Act provides a legal basis for the development of standards of ethics for public leaders. These standards intend to strengthening ethics, accountability, and transparency of specified bureaucrats and politicians defined as public leaders [3]. These public leaders are from various public institutions such as the executive, legislature, judiciary, police, and the military and state corporations. Again, the same Article 132 established the Ethics Secretariat, which is an extra ministerial department of Government under the Office of the President. The Article 132 (1) states that: *“There is hereby established a Public Leaders’ Ethics Secretariat which shall have power to inquire into the behaviour and conduct of any public leader for the purpose of ensuring that the provisions of the law concerning the ethics of public leaders are duly complied with”*.

The Ethics Secretariat supervises the implementation of the Act and among of its main functions are:

- 1) To collect declaration which are mandatory to be declared by public leaders under the Constitution or any other law;
- 2) To receive claims and notifications of any violation of the Code by members of the public;
- 3) To investigate any suspected violation of the Code by all public leaders who are subject to the Act;
- 4) To ensure the public leaders perform their duties according to ethics and

they behave ethically¹;

5) To ensure the leadership code of ethics Act number 13 of 1995 as it was revised by Act number 5 of 2001 is enhanced;

6) To ensure public leaders work according to guidelines and avoid all sorts of misconduct such as corruption, conflict of interest and misuse of power.

The establishment of the Ethics Secretariat (ES) raised new expectations that unethical practices among public leaders and even civil servants will be significantly reduced or eliminated taking into consideration the power granted to this institution but situation seems to be in inversely as allegations of misuse of public resources among public leaders continued to prevail in various platforms see for example [4]-[7]. Therefore, this paper addresses this phenomenon in order to better understand the factors affecting ethics secretariat in the management of public leaders' ethics.

1.1. General Objective

The main objective of this study was to explore the contextual setback facing the Ethics Secretariat in managing public leaders' ethics in Tanzania.

1.2. Specific Objectives

1) To highlight the effects of functional relations between the ethics secretariat and the three organs of the state in management of public leaders' ethics.

2) To assess the current functional relations between oversight institutions namely PCCB, CHRGG and ES in managing public leaders' ethics in Tanzania.

2. Methodology

The paper employed qualitative method to address the problem studied, and purposive sampling was used in selected sample as it is the appropriate strategy for qualitative research. The primary data were obtained through interview whereby the units to be observed were selected on the basis of researcher's judgments about which ones will be the most useful [8]. The study interested in talking to people who have actually experienced the problem investigated and could serve as key informants.

Secondary data were mainly obtained through documentary review, the reviewed documents include the Public Leadership Code of Ethics Act No. 13 of 1995 as revised by Act No 5 of 2001, the Prevention and Combating Corruption Act No 11 of 2007, the Commission for Human Right and Good Governance Act of 2001; the Constitution of United Republic of Tanzania of 1977, the CHRGG Act of 2001, 2007 and communication strategy of the Ethics Secretariat 2015/2016 and 2016/2017. Others sources were ministerial annual reports on the status of good governance, commission reports, civil society and parliamentary reports.

¹In his book, *Ethics and Leadership* William Hitt (1990) lists three requirements of leaders that allow them to capitalize on their ability to influence ethical conduct. These three requirements are 1) Achieve an understanding of ethics; 2) Serve as a role model in making ethical decisions; and 3) Develop and implement a plan of action for promoting ethical conduct on the part of his or her staff.

Electronic data as part of secondary information were collected through website, online journals, articles, books and papers.

3. Presentation of the Findings

In presenting the findings, this article divided into five sections. The first section examines the executive powers and how they are used to impose policy decisions on the Ethics Secretariat. This section therefore, elaborate executive powers in Tanzania as reflected in the constitution of the United Republic of Tanzania and prevailing practices. The objective is to reveal the challenges of executive powers and show how these challenges incapacitate the Ethics Secretariat. The second section examines how the parliament as the watchdog of executive institutions exercises its constitutional power over the Ethics Secretariat and how these powers and other informal mechanisms affect the functions of the institution. The third part provides an overview of the power of the judiciary to the Ethics Secretariat performance. This part also examines the constitutional powers of the judiciary as law interpreting organ and how these powers have a negative effect on the management of public leaders' ethics. Fourth, the chapter provides a general overview of the functional relations between the Ethics Secretariat, PCCB and CHRGG and how these relations incapacitate the institution in discharging its key responsibilities. Finally, is conclusion.

3.1. The Executive and the Ethics Secretariat

The practices in government operations reveal that the functional relations between the Executive and the Ethics Secretariat are based on principal –agent relations, whereby the principal is the executive and the agent is the Ethics Secretariat. These relations make the Ethics Secretariat an agent which implements orders, directives circulars without having any discretionary powers on its part. This kind of unequal relations in most developing countries including Tanzania cannot be understood without providing an overview of the history of the post- colonial state in Tanzania [4].

In 1962 when Tanganyika became republic, the president became the head of state, the Head of Government and Commander-in-Chief of Armed forces. All the powers of the executive were shifted to the president [9]. For example, article 3 of the 1962 constitution provided that: “*the president exercises the executive powers of the republic, or any other officers under his delegation at his own discretion, and he she shall not obliged to follow advice tendered by any other person*”. Such unrestrained powers were meant to enable the leaders of the country to confront the economic and political challenges the country was confronted within the immediate post-independence period as it struggled to establish unity [4].

From 1962 to 1980 as observed by many scholars such [10]-[12] the power of the executive increased; as a result, the government faced popular pressure threatened to weaken its social and economic policies. This situation necessitated the

government to take some steps including the expansion and consolidating the executive power especially the president's power.²

For example, the abolition of traditional authorities in 1963, the passing of the Prevention and Detention Act in 1962, the multiparty system were formally banned in 1965 and making the country a single part state, the abolition of the local government authorities in 1972. Again, in 1977 two major events occurred, first the two ruling political parties in Tanzania Mainland and Zanzibar were merged to form CCM. Second was the enactment of the permanent Constitution of the United Republic of Tanzania which extended the power of the executive in the country. In justifying the consolidation of power to the executive organ, Nyerere argued that: "*The government should have enough power so as to deal firmly and promptly with trouble maker*" [13]. In principles the measures taken to give the president extreme powers intended to make the executive the more powerful organ among the organs of the state.

3.2. Executive Powers over Ethics Secretariat

The Constitution of the United Republic of Tanzania of 1977 creates the system of executive presidency. The President is the head of the executive, chairperson of the Cabinet meetings and appoints heads of executive institutions. These responsibilities place him or her in a position with considerable influence over policies within the executive and even on Parliament. As the supreme decision-making organ in Tanzania, the executive is powerful in the absence of effective checks and balances [14] [15]. Article 53 (2) of the constitution of the United Republic of Tanzania stipulates that the executive of the United Republic, under the authority of the president, shall be the organ having the power to determine the policy of the Government. Article 34 (4) added that the president is free to act on her/his discretion without being bound to seek consultation from any angle. As a result, some scholars such as [4] [10] as a results executive has been able to command, impose and dispose policies at its will which weaken appointed executive officials.

The literature on Tanzania points to the corruption risks posed by the dominance of the Tanzanian executive. More specifically, political interference has been argued to undermine anti-corruption initiatives. For example, appointments to law enforcement agencies are often based on nonprofessional criteria, and party loyalties or personal relationships are often a decisive factor, law enforcement officials, most often high-level ones, can allegedly enjoy protection from criminal investigations [16]. The institution has been faced with various and serious challenges related to poor service delivery. There have been complaints about the appointment of under qualified or unqualified officials for strategic positions.

²For details of this see Tordoff William (1993) Government and Politics in Africa. Tordoff observed that the newly independent African states had an unsettled political culture. Not only had the political leadership next to no experience of operating a governmental system on a national scale, but the institutions (such as parties, parliaments and civil society) through which had to work were also relatively new and weak. The weakness of the inherited institutions was serious because the private sector was under-developed and the state itself had to assume a major entrepreneurial role. The result was an increase in the scope executive powers.

In analysing the functional relations between executive powers and the Ethics Secretariat the paper focuses on the power of the executive on appointing the Ethics Secretariat officials, the discretionary power of appointing authority to the appointed officials and how the officials appointed exercise their legal power in discharging their responsibilities.

3.3. Appointment Power

Article 132 (3) of the constitution of United Republic of Tanzania provides that the Public Leaders' Ethics Secretariat shall consist of the Ethics Commissioner and such other employees whose number shall be as specified by a law enacted by Parliament. Again, the Leadership Code of Ethics Act No 13 of 1995 as amended in 2001 Section 18 (7) provides that: "*the president shall provide for the staffing of the Ethics Secretariat and the taking by them the oath of secrecy in respect of matters handled by them*". Section 19 (1) added that there shall be established in the Ethics Secretariat the office of the Commissioner, the holder of which shall be the head and chief executive of the department.

Basing on these two cited sections, it is obvious that the constitution empowers the parliament to provide the staff of the institution while the parliament through its Leadership of Code of Ethics Act No 13 of 1995 as amended in 2001 transfers this power to the president who is the chief in charge of the executive organ of government. Basing on Leadership Code of ethics Act No 13 of 1995 as amended in 2001, it is obvious that there is a direct relationship between the Ethics Secretariat and the Executive in the sense that the senior staffs of the Ethics Secretariat are appointed by the head of government. Focusing on this appointment power, it is obviously the law gives power to the president as a chief of the Ethics for public leaders to appoint the staff of the Ethics Secretariat. But logically, the exercise of presidential powers over the institution shows the continuation of political interference in the administration of public institutions. This remains as a serious challenge to both administrative practitioners and politicians in government. As the president appoints the Commissioner of Ethics Secretariat at the same time the president is accountable to the Leadership Code of Ethics Act No 13 of 1995³. It becomes difficult for such public officials to deal with cases that might negative destroy the image of the president, his relative, friends and even his administration in general. One interesting case where the ethics secretariat fails to take action due to executive power is the case in Serengeti where the then Serengeti District

³Section 22 (1) of the Leadership Code of Ethics Act No 13 of 1995 provides that an allegation that a public leader has breached code of ethics may be made to the Commissioner by any person in writing signed by the complainant and giving the complainant's name, address and particulars of the breach or breaches alleged. Sub Section 2 added that upon receipt of a complaint or allegation against any public leader in relation to compliance with the Code, the Commissioner shall cause thorough preliminary investigation to be carried out by or on behalf of the Secretariat into the allegation or complaints, and if he is satisfied that the investigation discloses a prima facie case for which a public leader may be justly required to give a public explanation of his conduct or property, he shall- if the allegations or complaints relate to the President, submit them to the President and to the Speaker who shall submit the allegation to the Standing Committee of the National Assembly.

Commissioner who was appointed by the president. The then District Commissioner acted unethically by violation of the Code of Ethics and principles of good governance but the then president did not take any disciplinary action against him regardless the pressure from the public. This scenario justifies the extent of the executive powers over ethics governing institutions⁴. But to some countries for example, Botswana where the independent of the institution is maintained things are quite different the country has maintained Zero tolerance for Corruption and abuse of office for public officials⁵.

In view of the above argument, one interviewee had this to say: “*the degree of political interference in the affairs of the ethics management bodies in Tanzania is rather high*”. He added that: “*It is therefore advisable to learn from other experiences Ghanaian model, for example, seems to be more effective*”. The review of Ghanaian model revealed that the president cannot act alone to appoint the chief executive of the Commission on Human Rights and Administrative Justice, he is required by the law to consult the Council of the State⁶ before appoint the Commissioners⁷. This practice to a considerable extent guarantees the independence of the oversight institution, because the power of the president is regulated by the other institution which to a large extent ensures checks and balances in order avoid the abuse of power by appointing authority.

The president power to appoint the Commissioner of Ethics Secretariat, the United Republic of Tanzania Constitution of 1977 article 35 (1) provides that: ‘all the Executive functions of the Government of the United Republic shall be discharged by officers of the Government on behalf of the president’. Article 36 (1)

⁴In this case Mr. Thomas Loy Ole Sabaya the then District Commissioner of Serengeti District invaded the Village near Serengeti National Park and set into Fire all residences Nyamuma Village and when the Commission for Human Rights and Good Governance among of Ethics governing institution tried to assist the villagers in seeking for justice the DC had this to say ‘That minuscule Commission is not capable of doing anything to me because it is the President who brought me here and he is the one who knows what I am doing here’ (CHRGG, 2006, LHRC 2005b).

⁵For details of this see J. Jingu (2013), in his study titled State Capture in Tanzania A case of mineral Extraction industry (1990-2013) he observed that when corruption scandals were revealed by the media in the 1990s, the state of Botswana established the Directorate of Corruption and Economic Crime (DCEC). The institution web extends to those who with close relationships to political establishment as well. For example, Louis Nchindo was a powerful figure in the Botswana business and political circles. He was former resident director of the Anglo-American Corporation in Botswana, CEO of De Beers and head of Debswana and an influential member of the ruling party, the Botswana Democratic Party (BDP). Again, he was a close allied of former president Festus Mogae. However, when an expose established that he had abuse his office; multiple charges, including allegedly trying to blackmail President Mogae to prevent stop charges from being brought against him, were filed. Two weeks after the charges were leveled; he committed suicide. Nchindo was prosecuted alongside his son, Garvas, and the former the Debswana Secretary, Joseph Malope Matome. The two men were convicted for the crimes.

⁶The Council of State in Ghana is a small body of prominent citizens, analogous to the Council of Elders in the traditional political system, which advises the President on national issues. The Council of State was established by Articles 89 to 92 of the 1992 Constitution of Ghana: among of the functions of the Council of State is to counsel the President in the performance of his functions.

⁷Section 2 (2) of the Ghanaian Commission for Human Rights and Administrative Justice Act of 1993 provides that the President shall acting in consultation with the Council of State in appointing t the Commissioner and Deputy Commissioners of the Commission.

added that subject to the other provision of this constitution and of any other law, the President shall have power to constitute or abolish any office in the service of the United Republic.

From these pieces of articles cited, it is obviously that apart from having power to appoint, the president also has a mandate to terminate the appointment as well as advise the Commissioner in discharging their function⁸. In part, the author observed that the president can appoint, terminate and even advise the appointed authority of Ethics Secretariat, as a result the president holds unchallenged power which may be extremely dangerous in a situation where the accountability of Commissioners to tackle unethical conducts come into conflict with the appointing authority. For example, in 2008 the then president formed a probe committee consisting of the Attorney General, the Director General of the PCCB and Inspector—General of Police to investigate the US\$133 million embezzlement scandal at the Bank of Tanzania (BOT), the country's central bank which was not properly addressed by an audit report by Ernst and Young. On 21 August 2008. The President told the Parliament that the suspects, who would return the stolen money by 31 October 2008, would not be prosecuted⁹.

Also, the Constitution of United Republic of Tanzania of 1977 allows the president to pardon convicts, but the problem is that this power cannot be challenged by either the National Assembly or any law enforcement agencies. At the same time no authority can hold the president accountable in exercising this power. In another case, regarding the External Payment Arrears (EPA) whereby the money claimed to be deposited with the Tanzania Investment Bank (TIB) under president directive, it was neither available nor used for agriculture as directed (Jingu 2013: 188). The experience of the above cases indicates that the president can interfere any public institution to direct what to do without being questioned by anyone else. Under this environment the Ethics Secretariat may not be expected to be capable in holding the executive officials accountable including the president as stipulated in Section 22 (2) of the leadership Code of Ethics Act No 13 of 1995 where the Commissioner was empowered to investigate the unethical allegation for the president of United Republic of Tanzania. Section 2 (a) of the Leadership Code of Ethics Act No 13 of 1995 states that: “*if the allegations or complaints relate to the President, the Commissioner shall submit them to the President and to the Speaker who shall submit the allegation to the Standing Committee of the National Assembly*”. The question to ask from this citation is that how the Ethics Secretariat can make president accountable? At the same time their survival depends on president's discretionary power. This is obviously impossible for developing countries like Tanzania in which oversight institutions not only depend on

⁸Section 19 (2) of the Leadership Code of Ethics Act No 13 of 1995.

⁹According to Mkinga (2008, 23rd October), Only Sh234 million has been recovered by the Attorney-General Johnson Mwanyika-led Bank of Tanzania External Payments Arrears (EPA) account scandal investigation team during the presidential amnesty window that ends in a week's time, This falls far short of the more than Sh10 billion the task force appointed by President Jakaya Kikwete early in the year had hoped to recover from the 22 companies that benefited from a total of Sh133 billion that was siphoned out of the central bank through the EPA account.

presidential appointment but also depend on the executive financial support. The argument here is that the performance of watchdog institutions in Tanzania appears powerless in enforcing the rule of law when it comes to top executive officials, especially those with close connection to the president because in one way or another president at his discretion appoints the principals of the state oversight agencies such as Ethics Secretariat (ES), Prevention and Combating of Corruption Bureau (PCCB), the Directorate of Public Prosecutions (DPP), Commission for Human Rights and Good Governance and the Tanzania Intelligence Systems Services (TISS).

The reviewed literature revealed that the power of anti-unethical Commissioners to investigate and submit the claims of the president of the country worldwide depend on two important factors, one is the powers given by the law either from the constitution or parliamentary Act and second is who appoint the officials of the institution. For example, if officials are appointed or approved by the parliament (the parliamentary model) the institution enjoy much independent from executive interference while those appointed by the president without approve of the parliament (executive model) enjoy limited independence from the executive interference [17]. This is absolute true, for example, the South Africa Public Protector can investigate any allegations of any person except court decisions, and this power is due to the fact that the appointment and functions of the office is not determined by a single person but the combination of the Executive and the Parliament (Public Protector Act No 23 of 1994)¹⁰.

The leadership code of ethics allows the Ethics Secretariat Commissioner and other officials within the institutions to conduct investigation to any public officials regardless of the power he/she possesses. For example, Section 22 (2) (a) the Leadership Code of Ethics Act No 13 of 1995 provides that the Commissioner of the Ethics Secretariat is empowered to investigate the allegations of any public officials including the president. The section states that: “*if the allegations or complaints relate to the president, the Commissioner submits them to the president and to the speaker who shall submit the allegations to the standing Committee of the National Assembly*”. The task here if the president is an alleged leader, how the Ethics Commissioner can submit the allegation to his boss who has the power to hire and fire him/her? It is always impossible to attempt such exercise unless otherwise the Commissioner is protected by the mother law of the land. Under these circumstances the power of the executive especially the president’s power negatively affects the performance of the institution. For example, the power to

¹⁰The Public Protector is both an institution and a person. The person, who holds the same rank as judge of the Supreme Court, is appointed on the basis of a parliamentary selection process, which culminates in a National Assembly vote followed by a Presidential appointment of whoever is recommended by Parliament. The mandate of the Public Protector focuses on strengthening democracy by ensuring that all state organs are accountable, fair and responsive in the way they treat all persons and deliver services. The mandate includes ensuring integrity and general good governance in the management of public resources. The constitution of South Africa Article 183 (1 - 5) requires the Public Protector to investigate all complaints or allegations of improper conduct by public officials and public office bearers and take remedial actions.

hire and fire the staff of the institution, the power to abolish any office in the service of the Government in the United Republic as stipulated in article 36 (1) of the Constitution is a great weapon that can be used by the authority to threaten the survival of the institution and their staff if the institution would threaten the interest of the appointing authority. Something to note here is, the terms and conditions of services of the Commissioners is not strong enough to give them more power over the discretion of the appointing authority¹¹. For example, some African countries like Ghana have successfully developed the terms and conditions for the Commissioners which guarantee their tenure of office. For example, Section 4 (1 - 3) of Commission on Human Rights and Administrative Justice Act No 456 of 1993 clearly states that the Commissioner and Deputy Commissioner shall enjoy the terms and conditions of services of a Judge of the Court of Appeal and High Court respectively. This section also states that the Commissioner and Deputy Commissioner shall cease to hold office upon attaining the ages of seventy and sixty-five years respectively. Section 5 of this law provides that the procedure for removal of the Commissioner and Deputy Commissioner shall be the same as that provided for the removal of a justice of the Court of Appeal and a Justice of the High Court respectively¹².

3.4. Parliamentary Power

The constitution of United Republic of Tanzania article 62 (1) establishes the Parliament of the United Republic of Tanzania which shall consist of the President

¹¹Section 19 (2) of the Leadership Code of Ethics Act No 13 of 1995 provides that the Commissioner shall be appointed from amongst persons of a high proved or provable integrity, who are holding or have held or are eligible for appointment to hold- a) The office of Permanent Secretary; b) The office of Judge of the High Court; c) Any other high public office in the Service. Section 19 (3) The Commissioner shall be appointed by the President and- shall hold office for a term of five years; is eligible for reappointment for another one term; and may be removed from office for good cause.

¹²Article 146 of the Republic of Ghana Constitution provides the long procedures on the removal of Judges of the Court of Appeal and the High court. Among these procedures include. 1) A Justice of the Superior Court or a Chairman of the Regional Tribunal shall not be removed from office except for stated misbehavior or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind. 2) If the President receives a petition for the removal of a Justice of a Superior Court other than the Chief Justice or for the removal of the Chairman of a Regional Tribunal, he shall refer the petition to the Chief Justice, who shall determine whether there is a prima facie case. 3) Where the Chief Justice decides that there is a prima facie case, he shall set up a committee consisting of three Justices of the Superior Courts or Chairmen of the Regional Tribunals or both, appointed by the Judicial Council and two other persons who are not members of the Council of State, nor members of Parliament, nor lawyers, and who shall be appointed by the Chief Justice on the advice of the Council of State. 4) The committee appointed shall investigate the complaint and shall make its recommendations to the Chief Justice who shall forward it to the President. 5) Where the petition is for the removal of the Chief Justice, the President shall, acting in consultation with the Council of State, appoint a committee consisting of two Justices of the Supreme Court, one of whom shall be appointed chairman by the President, and three other persons who are not members of the Council of State, nor members of Parliament, nor lawyers. 6) The committee appointed shall inquire into the petition and recommend to the President whether the Chief Justice ought to be removed from office. 7) All proceedings under this article shall be held in camera, and the Justice or Chairman against whom the petition is made is entitled to be heard in his defence by himself or by a lawyer or other expert of his choice. 8) The President shall, in each case, act in accordance with the recommendations of the committee.

and the National Assembly. Article 63 (1) provides that the President as one part of the Parliament shall exercise all the authority vested in him by this constitution. Article 63 (2) provides that the parliament shall be the principal organ of the United Republic which shall have the authority on behalf of the people to oversee and advise the Government of the United Republic and all its organs in the discharge of their respective responsibilities in accordance with this Constitution. Article 63 (3) provides that for the purposes of discharging its functions the National Assembly of the united republic of Tanzania may:

- 1) Put any question to any Minister concerning public affairs in the United Republic which are within his responsibility;
- 2) Debate the performance of each Ministry during the annual budget session of the National Assembly;
- 3) Deliberate upon and authorize any long- or short-term Plan which is intended to be implemented in the United Republic and enact a law to regulate the implementation of that plan.

In performing oversight function, the Parliament oversees the performance of the executive and its institutions. For example, parliament can establish a special Anti-Corruption Committee and discuss and debate corruption and other unethical practices with public officials regularly. The study sought to examine the relationship between the parliament and the Ethics Secretariat as executive oversight institution. In principle Section 22 of Leadership Code of Ethics Act No 13 of 1995 as amended in 2001 provides the avenue for the Ethics Secretariat Commissioner to notify the Speaker of the National Assembly over the alleged misconduct. Section 22 (2) provides that:

Upon receipt of a complaint or allegation against any public leader in relation to compliance with the Code, the Commissioner shall cause thorough preliminary investigation to be carried out by or on behalf of the Secretariat into the allegation or complaints, and if he is satisfied that the investigation discloses a prima facie case for which a public leader may be justly required to give a public explanation of his conduct or property.

The section 22(2) further states that:

- a) If the allegations or complaints relate to the President, submit them to the President and to the Speaker who shall submit the allegation to the Standing Committee of the National Assembly;
- b) If the allegations or complaints relate to any other public leader, notify the President and the Speaker and proceed.

Section 22 (7) and (8) respectively provide that the Speaker shall, not later than seven days after the first sitting of the National Assembly next after receiving the report, cause a copy of the report to be laid before the National Assembly and the Commissioner shall each year compile a report on the affairs and business of the Secretariat, including cases dealt with by the tribunal and submit it to the President who shall lay it before the National Assembly.

The above cited sections justify the assumption that the parliament as one of

the key state institutions in a democratic system of governance has a critical role to play in promoting democracy and good governance. As the democratically elected representatives of the people, a parliament has the honourable task to ensure government by the people and for the people is maintained. But the experience indicates that in spite of the fact that the parliament has constitutional powers to check the performance of the Ethics Secretariat, its contribution to the capacity of the institution is very low.

It is true that the parliament has a constitutional power to oversee the executive including its institutions, the oversight function of parliament to the Ethics Secretariat become a contradictory in the sense that the Ethics Secretariat and its officials are subject to parliament scrutiny that is the parliament is empowered to assess the performance of this institution at the same time the members of parliament are accountable to the Ethics Secretariat over their ethical conduct as the public leaders. Under this situation contradiction occur over accountability because the system where the ethics secretariat officials have the power to check the ethical conducts of the parliamentarians at the same time the parliamentarians have the power to oversee the performance of ethics secretariat seems to create opposing camps as a result protecting the interest of each one become the best option instead of protecting the interest of the public.

It is obvious that the constitution and the Leadership Code of Ethics Act No 13 of 1995 as amended in 2001 provides a competing law over the two institutions, that is the parliament and the Ethics Secretariat each one has the power to check the other. Under this situation two important points must be noted. One is maintenance of the balance of power between the two institutions and the second is to collude. All these points seem incapacitate the Ethics Secretariat as far as management of public leaders' ethics is concerned as balance of power create a fear for each one to check the other and collusion create a friendship environment for protecting each other.

Actually, it is not something new to have different public institutions each one checking the functions of the other. Ideally insisted on the separation of powers where by the same person in the public offices should not form part of more than one of the three organs of Government, example, the minister should not sit parliament, the judiciary should be independent of the Executive or that Ministers should not be responsible to Parliament and one organ of the Government should not exercise the functions of another. The doctrine is based on the assumption that the three functions of the Government that are legislative, executive and judicial are distinguishable from one another [18]. The arguments here is that no watertight compartments and not easy to draw a demarcating line between one power and another with mathematical precision.

The observations revealed that all executive institutions are accountable to the parliament because the parliament is empowered by the Constitutions to oversight the working of executive branch of the government. But in the case of the Ethics Secretariat things are seems to be different in the sense that there are two

trafficking ways between the parliament and the Ethics Secretariat. One way is that the Ethics Secretariat as executive institution is accountable to the parliament at the same time parliamentarians are subject to assets and liabilities declaration to the Ethics Secretariat as other public leaders required by the Leadership Code of Ethics Act No 13 of 1995 as amended in 2001. Principally in term of structure and composition the parliament seems to exercise overwhelming power to the Ethics Secretariat as executive and its institutions are accountable to the parliament but in functions each institutions exercise either direct or indirect power over the other as the Ethics Secretariat exercise indirect power to the parliament because all parliamentarians are required by the law to adhere to the code of ethical standards as prescribed by the leadership code of ethics Act No 13 of 1995.

The existing Laws provides contradictions rather than complementarity as the parliament also exercise constitution powers over executive institutions including the Ethics Secretariat hence provides two institutions each one check the ethical conducts of the members of other institution, as a result the effectiveness of each institution may be affected either through collusion or conflict of interest between the members of these institutions [19].

The experience reveals that the special parliamentary committee established by the Parliament to investigate the deed or misdeed of the government seems to work more effectively than permanent executive institutions which oversee the conducts of parliamentarians and government officials. For example, all major scandals of EPA, ESCROW, and RICHMOND were reported by the special committee of the parliament and not from executive institutions. Some scholars [20] [21] provided that, the effectiveness of the parliament to check the abuse of powers by officials from other state organs depend much on the extent of independent of the parliament from executive interference, the composition of the house and the party politics in the house. He added that: “*if the constitution practically guarantees the independent of the parliament, the members seem to be more free to debate and advice the government accordingly than the parliament that enjoy limited freedom from executive*”. In principle the three factors mentioned above, independent of the parliament from executive interference, composition of the house and the party politics in the house determine the effectiveness of the parliament as an oversight institution. For example, in Tanzania since the introduction of multiparty politics in 1992 revealed the major changes in the working of the Parliament as a watchdog institution as the number of opposition members of parliament increase, the institution seems to exercise its oversight effectively more effectively than the time of a single party parliament¹³.

3.5. Ethics Secretariat and the Court

Article 107A of the United Republic of Tanzania Constitution guarantees the

¹³The existing literature (Msekwa 1975, 1995, 2005) revealed that since independence until 1990s no major corruption were introduced in the parliament but after the reintroduction of multiparty politics in 1992s For example, (EPA, 2006 RICHMOND, 2007 and ESCROW, 2014) to cite a few ,are among of the major corruption scandals addressed in the multiparty parliament.

independence of the judiciary. The article states that:

The authority to dispense justice in the United Republic is vested in the judiciary and the judiciary of Zanzibar and therefore no other organ of the Government or Parliament or House of Representative of Zanzibar shall have the final say in dispensing of justice. Article 107B further states that: “in exercising its authority all courts shall be independent and shall be bound only by the constitution and law of the land”.

The judiciary is considered as the watchdog of the fundamental rights and freedoms of individuals. For instance, the constitution provides that every individual who is of the opinion that his or her fundamental rights have been violated or threatened by any private or public institutions and individuals is entitled to approach a competent court to protect such right or freedom. The interesting point is when the Constitution of the United Republic of Tanzania of 1977 article 132 (1) guarantees the independence of the Ethics Secretariat, the section clearly states that:

There is hereby established a public leaders’ Ethics Secretariat which shall have power to inquire into the behaviour and conduct of any public leader for the purpose of ensuring that the provisions of the law concerning the ethics of public leaders are dully compiled with (PLCE, 1995).

This citation indicates that the constitution guarantees the independence of the Judiciary at the same time, it guarantees the independence of the Ethics Secretariat. Under this, the logic is to see every institution performs its functions without other institution interfering in the performance of other institutions. The reviewed documents revealed that the High Court had managed to interfere in the affairs of the Ethics Secretariat in discharging its duties. The vivid example was experienced in 2015 when, the former Attorney General Andrew Change submitted to the High Court the stop order to bar the Ethics Secretariat from interrogating him [22]. Mr. Change was accused of violating the Leadership Code of Ethics when it was alleged that he pocketed Tsh 1.6 billion. Mr. Change’s charge sheet included facilitating illegal selling of 35 percent of shares from the Independent Power Tanzania Limited (IPTL) to VIP Engineering and Marketing against the law and public servant’s ethics while he was the Attorney General (Kisanga, 2015). In interview over the decision of the High Court to bar the Ethics Secretariat to interrogate him, Mr. Change had this to say:

Respect of court orders and observance of the rule of law is of paramount importance. I get disturbed as to how we can proceed debating the matter in presence of the verdict of the High Court, bearing in mind that the court is superior to this tribunal.

The above citation reveals that in spite of the Ethics Secretariat and the Court established by different laws with different functions but the Court has managed to interference the Ethics Secretariat in performing its administrative proceedings.

Again, the contradiction between the Ethics Secretariat and the Court occurs when the Leadership Code of Ethics Act No 13 of 1995 as amended in 2001 provides that, the officials of the Court of Tanzania particularly judges, magistrates and other senior officials are subject to public leaders' code of conducts. Here two important things appeared, one the court have the power to nullify the administrative proceedings of the Ethics Secretariat. Secondly the Ethics Secretariat has also been empowered legally to check the ethical conducts of the judges and magistrates and other senior judicial officials. The interesting point is this kind of relationship whereby the constitution guarantees the independence of the two institutions, but in practice, the court has more power to interfere in the function of the Ethics Secretariat. This is another striking example of ineffective law which incapacitates not only the Ethics Secretariat but also all oversight institutions in Tanzania due to the fact that the practice of the court always tends to insubordinate the Ethics Secretariat to perform its functions independently.

In practice the interference of the court in the functions of the Ethics Secretariat affect the institution in discharging its duties because some powerful public leaders use this as a loophole to get away with their misconduct. The question to ask is, if the constitution guarantees the independence of the institution why it is the court that was created by the same constitution interferes in the functions of the institution which is also created by the same constitution¹⁴?

The contradiction between ethics secretariat and the court revealed two important observations. One is the weakness in the law mother law (constitution) as it guarantees the independence of the two institutions without providing a clear linkage, if one institution needed to work with the other. Second, the existing structure create avenue for balance of power between the two institutions as each one is empowered to check the other. All these are not healthy for the Ethics Secretariat in performing its functions effectively because the court uses its law interpreter powers to subordinate the Ethics Secretariat; the officials of the two institutions may fear each other or may collude in order to maintain their statusquo hence affect the Ethics Secretariat effectiveness.

3.6. The Ethics Secretariat and Other Institutions Governing Ethics

The constitution of the United Republic of Tanzania among other things recognizes the existence of ethics governing institutions. Among of them includes the Prevention and Combating of Corruption Bureau, Commission for Human Rights and Good Governance and Ethics Secretariat. These institutions were established under different parliamentary Acts. For example, the Ethics Secretariat

¹⁴One interesting cases over inconsistency of the Court against executive occurred when Mwalimu John Paul Mhozya vs. Attorney General. The applicant invited the court to put injunction restraining the president of URT from discharging his function due to pending case in the high court. This is pursuant with Article 26 (1) (2), 30 (3) and 108 (2). In his Judgments, Judge Samatta among other things point out that the balance of power between the three branches of government, namely executive, the legislature and the judicial and their relations of the courts to other two branches must be carefully maintained, he added any statutory alteration (change) balance must be unmistakable terms. One branch of government should not usurp the power of another branch.

was established with Act No 13 of 1995 as amended in 2001, the Prevention and Combating Corruption Bureau was established under Act No 11 of 2007 and the Commission for Human Rights and Good Governance was established through Act No 7 of 2001. Although the institutions were established through different parliamentary Acts the problems and contradictions could be noticed in their functions. In principle the institutions seem to bear different names, but their functions are more or less similar. For example, the function performed by the Ethics Secretariat seems to be performed by the Prevention and Combating of Corruption and Commission for Human Rights and Good Governance.

Reference is made in Section 4 (1) of the Prevention and Combating of Corruption Bureau provides the objective of the Act which among others include promotion and enhancement of good governance and eradication of corruption. Section 6 (1) of the Commission for Human Rights and Good Governance provides functions of the Commission, among other those related with the objective and functions of the Prevention and Combating of Corruption Bureau under Section 6 (1) (d) include to conduct research into human rights, administrative justice and good governance issues and to educate the public about such issues. Section 6 of the Leadership Code of Ethics of 1995 provides principles to be invoked by the code, Section 6 (c) state that: "In relation to decision making, that public leaders shall, in fulfilling their official duties and responsibilities make decisions in accordance with law, in the public interest and with regard to the merits of each case."

There are contradictions and duplications of functions among these three institutions. For example, the issue of promotion of good governance and combating corruption seems to be the responsibility of all three institutions.¹⁵ The difference between these three institutions is only the structure and composition but in term of functions, they are performing the same functions as all three institutions deal with misuse of public offices and resources, logic here is that, there is a need to restructure these institutions so as to have a single institutions which oversee all unethical practices regardless of political, social and economic status of Tanzanians as what Ghanaian Commission for Human Rights and Administrative justice do.

Logically having three independent institutions performing the same function create an environment of weak accountability especially in a situation where the law did not specify the hierarchical arrangement of the institutions. A clearly defined hierarchy create a path of accountability between the institutions hence

¹⁵For details of these see the communication strategy of the Ethics Secretariat 2015/2016-2016/2017. In this strategy it was revealed that there was confusion between functions performed by the Ethics Secretariat and those performed by other institutions like PCCB, Police, PO-PSM. As a result the majority of ordinary citizens fail to distinguish the functions and mandate of these institutions. Again it was observed that the Ethics Secretariat does not have formal feedback mechanisms and institutional relationships with the secondary and tertiary stakeholders. That is, there is lack of two way flow of information between the Ethics Secretariat and its stakeholders. As such, there are no inputs of ideas from the stakeholders Ethics Secretariat communication products and messages are not well disseminated to the public and there is lack of consistency and coordinated messages.

facilitate the complement of functions. The absence of the hierarchy between the three institutions tends to affect the performance not only of the Ethics Secretariat but also of the Prevention and Combating of Corruption Bureau and the Commission for Human Rights and Good Governance. This is because there are some functions performed by these institutions which are similar and hence requiring proper coordination to avoid duplications, contradictions and conflict of interest. But the existing structures however seem to miss the proper coordination between these three institutions hence weaken the functions of these institutions including those of the Ethics Secretariat.

The observation reveals that the dysfunctional of anti-corruption commissions in developing countries is manifest by the numerous agencies that lack independence from the executive, receive no budgetary support from the legislature to investigate top officials, and have no procedures for forwarding cases of corruption for prosecution by the relevant judicial authorities [23].

The current arrangement of these institutions does not offer the chance for them to work together because each one has its own mandate either from the constitution or any other law. Due to this, one of the effects is complication of accountability among the three institutions when it comes to the situation of cross cutting issues which need all institutions to be accountable for. For example, in ESCROW scandal we have witness some of those involves treated with different institutions in spite of being accused under the same law, the public leaders (such as the Former Attorney General, and the former Minister of Land) were accused of breaking the leadership code of ethics by the Ethics Secretariat while those who are not public leaders (James, Rugemalila and Harbinder Sethi on June 19, 2017) were arrested by the Prevention and Combating of Corruption.

The complimentarily of these institutions is due to the fact that the Prevention and Combating Corruption Bureau (PCCB) have avenue according to Section 29 of Ethics Act No 13 of 1995 as amended in 2001 (Act not to derogate from other law) to institute criminal proceedings against those leaders who have been accused of abusing their office by the Ethics Secretariat. But the problem as discussed in this paper is weak coordination that exists between these institutions in the sense that there are no clear procedures that have been developed to coordinate the functions of these institutions.

4. Conclusions

In an actual sense, the constitution and other laws in Tanzania give the executive more power to make decisions in the country. These powers historically originated from colonial administration system whereby the government assumed strong power to protect the interest of colonialists. The same structure was inherited by the post-colonial government, especially during the single party system when the government was attempting to establish its hegemony and ban political opposition in the name of national unity and development. From the introduction of multipartyism in 1992 to the present, such powers have continued to create con-

ditions that have weakened the performance of executive institutions. For example, the executive can make policy decisions without being questioned with regard to his discretionary powers; as a result, the chance for using such powers for private gains is likely to happen. As the findings of the study indicate the executive power allows the president not only to appoint the Commissioner of the Ethics Secretariat but also advise in execution of the functions as well as can terminate his appointment. This is uncontrolled power exercised by the executive over the institutions which need absolute independence just like the Judiciary in performing its functions; this, to a large extent, affects the performance of the institution in a situation of competing interests between the Ethics Secretariat officials and the appointing authority.

Second, the executive has the power to reform and restructure the Ethics Secretariat. This is also the challenge to the independence of the institution in the sense that the survival of the institution itself largely depends on the executive's discretion.

Third, apart from appointment and termination powers, the president is empowered by the law to pardon the guilt person; this is also the continuation of the domination of the executive over its institutions. This situation, to a large extent, affects the independence of the decisions made by the executive institutions.

Fourth, the study found that although the Ethics Secretariat officials have discretionary powers, this power is limited to the extent that it cannot provide enough chance to investigate the ethical conduct of the chief executive of the executive branch of the government.

Fifth, is the influence of Parliament on the function of the Ethics Secretariat. This currently does not seem to have a positive effect on the performance of the Ethics Secretariat in managing public leaders' ethics. In principle, the parliament as a watchdog institution have the legal power to oversee the performance of executive institutions including the Ethics Secretariat. At the same time the Member of Parliament individually are accountable to the institution for their ethical conducts. This, to a large extent, creates a contradiction as well as the possibility of having collusion between the officials of the two institutions in order to maintain the status quo.

Sixth, is the functional relation between the Ethics Secretariat and the Judiciary, the existing laws and practices show that the Judiciary has the power to intervene in the functions of the Ethics Secretariat. At the same time, member of the Judiciary especially the judges, magistrates and other senior staff are accountable to the institutions for their ethical conducts. This to a large extent creates a dilemma of accountability, whereby the officials of the two institutions seek to maintain their statusquo. This is due to the fact that in practice the Judiciary seems to exercise more power to the Ethics Secretariat, hence weakening the performance of the institution.

Seventh, the functional relations between the Ethics Secretariat, the Prevention and Combating of Corruption Bureau and the Commission for Human Rights

and Good Governance generate a lot of contradictions and duplications of the functions. The functional relations between the three institutions tend to affect the performance of the Ethics Secretariat in the situation whereby the institution is supposed to seek assistance from the others. The existing arrangement does not provides enough proper channel of communication between the three institutions. As results coordination of the matters that need the accountability of the three institutions becomes difficult. For example, corruption is an act of violating the Leadership Code of Ethics of 1995 as amended in 2001 is also a violation of the Prevention and Combating of Corruption act No 11 of 2007 and it is also a violation of the Human Rights and Good Governance Act of 2001. Under this tripartite scenario the possibility of contradiction and competition instead of co-operation is likely to happen because each institution has its own law and procedures to handle those matters.

Lastly, there is the role of professional associations in supporting ethics secretariat to manage public leaders' ethics. The existing laws and practice do not provide avenue for professional associations in which the public leaders come from to involve in managing ethical conducts of public leaders. This to large extent isolate ethics secretariat from stakeholders as a results the responsibility to ensure the public leaders work within the established code of conducts become the burden of a single institution.

Conflicts of Interest

The author declares no conflicts of interest.

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