THE PRACTICABILITY OF SEPARATING BUSINESS FROM POLITICS IN TANZANIA

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1. *Theoretical discussion and typology of conflict of interest*

Public bureaucracies are expected to be apolitical, fair, neutral and unbiased when it comes to performing their duties. Politicians on the other hand, set policies and authorize extraction of resources from the population as well as their use by the government, in the implementation of those policies. In multiparty democracies where power can change hands any time there is a general election, this ideal situation makes it easy for a bureaucracy to continue performing its duties without a lot of disruption, and business goes on as usual. When a public bureaucracy performs its duties with these features in play it also attracts public trust. Public trust is very important when it comes to extracting resources from the population. Taxes are the commonest resource derived from the population for government use. Willingness to pay taxes is key to government success. However, one of the factors that discourage tax payers and the public in general and thereby lose trust in the government bureaucracy and politicians is the presence of conflict of interest amongst public functionaries. These public functionaries would include members of the bureaucracy as well as elected officials. For politicians, things become complicated when they, as policy makers, get involved in business thereby inviting the possibility of doing business with the government itself. This becomes a self-serving act of its kind, and it puts their integrity on the line, in that actual or potential conflict of interest arises. The consequence there from is that objectivity in policy making may be compromised. Similarly, bureaucrats may compromise their objectivity if they are involved in activities that set in a situation of conflict of interest. Let us at this point define conflict of interest.

A conflict of interest is any situation in which a public employee, either for himself/herself or some other person(s), attempts to promote a private or personal interest which results or appears to result in either an interference with the objective exercise of his/her duties in the public service; or a gain or an advantage by virtue of his/her position

in the public service (IPAC, 1987). A conflict of interest may occur in any situation where a public official's duties to the public are affected by his or her own private interests. "a public official has a private or personal interest sufficient to influence the objective exercise of his or her official duties." [Kernaghan and Langford, 1990, p. 134]. In seeking to define conflict of interest one of the key issues to be addressed is the compatibility of individual and organizational ethics in public settings. Also, there is the issue of defining private as opposed to public interest. Implicit in this definitional quest is the concept of "official duty" whereby we have a public office holder and the powers embodied in that office, public interest, and private or personal interest. The play of these three may lead to what we term conflict of interest – where the private interests interfere with or come in, in the process of implementing official business leading to one acting improperly.

Kaufman (2008) while reviewing a book by Trost and Gash titled *Conflict of Interest and Public Life* acknowledges that we lack a clear definition of conflict of interest or a clear theory of what sorts of conflict are wrong, let alone how best to regulate it without compromising democratic values; but also comments on the apparently simple problem of distinguishing private interest from public interest. She gives an example of a politician who pursues legislation that would benefit himself or his family at the cost of the public interest as a clear a clear conflict. But what if the legislation benefits his constituents at the cost of the general public interest? And what is to count as a "private interest"? Does it mean the interests of oneself, close friends, and family members? What about a broader group with which one is associated (say, Muslims or Christians)? Does private interest encompass more than financial gain? Things can get quite complicated when one takes a very broad meaning of private interest. Peele (2008: p.184) talks of a British case where it was ruled that one has a private interest whenever one's well-being is enhanced by the outcome of an official decision. If this would be taken as the standard definition, a politician with strong environmentalist leanings would have to abstain from any decision that might affect the environment one way or another, because his personal well-being will be affected by it. Further, the very notion of a "public interest" is itself deeply contested and extremely difficult to define.

From the above position, there would be the problem of the relation between conflict of interest regulation and democracy. For example, if the voters have chosen a particular representative, to force that representative to abstain from an important decision is to restrict the sovereignty of the popular choice. Things are even worse when the voters seem to have chosen their representative even knowing of the conflict of interest. Moreover, conflict of interest seems to be far more of a concern among the elites than among the common populace. Further, conflict of interest issues regularly become politicized, as there are times when politicians use ethics charges as means to discredit their political opponents.

The distinction between private and public interests has also been complicated by developments in the public domain. As the OECD (2005) notes in its policy brief on conflict of interest, there have been developments and new forms of cooperation which to a large extent have made the separation of the public from the private difficult. The OECD is concerned that developments on the way governments work today have led to scandals related to conflict of interest and more are likely to come. The developments include modern ways of cooperation between public and private sectors such as private/public partnerships, sponsorships, contracting out and self regulation. The OECD notes that barriers between public and private employment are breaking down leading to new pressures on traditional employment obligations and loyalties. It further notes that at the same time governments are under pressure to make sure that their employees do their jobs in a fair and unbiased way (OECD: op. cit. p.3).

In the concept of conflict of interest we may need to elaborate a little further the term conflict. Parker (1987) distinguished between three types of conflict situation and therefore the distinction between actual conflict, the appearance of conflict and the potential for conflict. He noted that actual conflict of interest has three prerequisites. These are the existence of a private interest; that it is known to the public office holder; and that it has a connection or nexus with his or her public duties or responsibilities that is sufficient to influence the exercise of those duties or responsibilities." An apparent conflict of interest exists when there is a reasonable apprehension, which reasonably

well-informed persons could properly have, that a conflict of interest exists." For example a senior official with shares in a transportation company decides to stand aside from all decisions in relation to the contract for which the transportation company is competing, in order to resolve the conflict. This arrangement is normally called 'recusal'. These arrangements are not necessarily known to the public at large, but it is satisfactory to the official's organization. And, a potential conflict of interest exists as soon as the public office holder can foresee that he or she has a private economic interest that may be sufficient to influence a public duty or responsibility at some point in the future. As soon as a real conflict of interest is foreseeable, the public office holder must take all appropriate steps to extricate himself or herself from the predicament. Significantly, Parker argued that "the line is crossed and a situation of real conflict ensues if the caution signs are ignored and a duty is discharged that could affect or be affected by the private interest."

Kernaghan and Langford (op. cit.) have identified eight categories of conflict of interest. These cover the range from criminal to administrative in terms of both seriousness and sanction:

Self-dealing

Self-dealing refers to a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity and which confers a benefit on oneself (Kernaghan and Langford, p. 142). In some countries, conflict guidelines extend this definition to include other family members and, in others, may also include associates.

The most appropriate way for members to avoid conflict is to divest themselves of potentially conflicting interests. Ministers, parliamentarians and other public officials may be asked to divest themselves of all financial interests, including business interests, which cause or could appear to cause a conflict. Where hardship might occur, a holding may be kept, with the public interest protected by full public disclosure and scrutiny. We shall discuss this aspect further under the blind trust arrangements later in this paper.

Accepting benefits

The general principle is that public employees should not solicit nor, unless duly authorized, accept transfers of economic value from persons with whom they have contact in their official capacity." Such benefits range from token gifts to significant "transfers" prohibited by the criminal code. Janos Bertok (2007) gives us a checklist that can help determine whether gifts are likely to lead to conflict of interest or not. First, it is whether the gift is genuine – is it truly a gift or a trap of some kind? A gift has to be one aimed at appreciating something that has been done in one's role as a public official, not sought or encouraged by the official. Second, once one has received the gift, will s/he be independent in doing their job in the future when the gift giver is involved or affected? Third, will the received of the gift remain free of any obligation to do something in return for the giver, his or her family and friends? Fourth, is the whole gift-giving transaction transparent and subject to transparency? The issue here is for the receiver to be able to declare its source to all stakeholders of the office holder.

Influence peddling

This is "the practice of soliciting some form of benefit... in exchange for the exercise of one's official authority or influence on their behalf". In an ideal situation, legislation would be on the ground specifying that a public official shall not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

Using government property

In its simplest form, this may involve using government telephones for personal use, or the archetypal taking office items home. In more serious iterations, it might involve significant private use of government vehicles, aircraft, computers, etc. Kernaghan and Langford concluded that "the important point here is that government property should not be used for private gain. Public servants should not use, or permit the use of, government

property of any kind for activities not associated with the performance of their official duties, unless they are authorized to do so."

Using confidential information

The ethical standard with regard to this is to respect and protect the privileged information to which we have access in the course of our official duties. Members should not disclose to others, or use to further their personal interest, confidential information acquired by them in the course of their official duties.

Outside employment (moonlighting)

The general rule with regard to this is that members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service or business creates a conflict with or impairs the proper discharge of their official duties. As such, it is a fairly complete statement on the issues of "moonlighting". All codes recognize that there is nothing inherently wrong with outside employment except where it conflicts, or appears to conflict, with public responsibilities. In some circumstances, this can be circumvented by giving a prior notification to a relevant body or committee in all cases of outside employment.

Post-public employment

One of the newest areas of conflict of interest review relates to post employment. Public office holders shall not act after they leave public office, in such a manner as to take improper advantage of their previous office. Hence, efforts to control what Kernaghan and Langford call "one of the most difficult to regulate... the post employment problems..." will always be there. The key dilemma here, as discussed by the authors, is how can an appropriate balance be struck between the right of public servants to move

between public and private sector employment and the need to prevent abuse of confidential information and preserve public trust in the integrity of public officials?

Personal conduct

In today's world, individual freedom would appear substantially a matter of personal choice, except where, as Mill argued, a greater good is impaired. For Kernaghan and Langford, the question was whether "public servants (are) entitled to the same privacy as other citizens." Under fundamental principles on conflict of interest the answer would appear to be an expectation of a superior standard of personal conduct. There are two key circumstances where personal conduct may create a conflict situation:

Firstly, when a public servant's conduct makes him or her vulnerable to pressure to use his or her public office improperly (as with cases of uncontrollable addictions); and secondly when a public servant's conduct brings significant discredit to the government or to a particular department and thereby undermining public trust in public officials. The solution regarding personal conduct, according to Kernaghan and Langford is that each case of questionable or improper personal conduct involving public servants needs to be carefully considered on its merits (p. 153).

Some situations which may give rise to a conflict of interest affecting performance of official duties include:

- financial interests (of the staff member, a friend or relative) that could influence the impartiality of the performance of duties.
- personal beliefs or attitudes not relevant to the situation that influence the impartiality of the advice given.
- party political activities or membership of politically active groups if it impedes the staff member serving the government of the day.
- personal relationships with other staff, applicants for positions, service users or business customers dealings with a friend, a relative or colleague who is also a service user.

- representational duties where a staff member who is representing the interests of the state is also asked to represent the interests of a community group - private employment which may conflict with departmental duties - approval of expenditure which will benefit thyself, a friend, a relative or an organization with which one identifies.

Conflict of Interest and Corruption

Is conflict of interest the same as corruption? The answer is no but the former can lead to latter. When conflict of interest is not identified, managed and resolved it can lead to corruption. The message here is that conflict of interest is an incubator for corruption if not detected, managed and resolved in time. However, in some countries, like Ireland, whereas corruption is the abuse of public office for personal gain, in parliamentary language and situations it is termed 'conflict of interest'.

2. *Historical treatment of conflict of interest during single party and after*

General techniques of dealing with conflicts of interest

A number of methods are available to control conflicts of interest.

- *Disclosure* requires that public functionaries reveal their assets, typically, first confidentially to a designated public official or body as is the case with the Ethics Commission in Tanzania.
- *Avoidance* requires public functionaries to *divest* themselves of interests that might impair their judgment, either by a sale at arm's length or by use of a trust administered by a trustee independently of the functionaries; in the latter case, it must be ensured that the trust is beyond the functionaries' control.
- *Withdrawal* (also called recusal) requires public functionaries to refrain from acting on matters in which they have personal financial interests.

Typically, conflict of interest regimes would incorporate a combination of the above controls.

During the single-party state in Tanzania there were some instruments for the control and regulation of conflict of interest. One general instrument was the condition that everyone in public employment or in a government institution like a university or even a secondary school had to be a party member. Given that the party had its own creed, once one was a member it meant they believed in that creed.

- *Permanent Commission of Inquiry/The Commission for Human Rights and Good Governance*

The Permanent Commission of Inquiry (PCI) was established in 1965 and was incorporated into the Interim Constitution as an alternative to the incorporation of a Bill of Rights. It is believed that the PCI was the first ombudsman on the continent (Maloka: 2005). The then ombudsman was formed to, among other things, *check the misuse and abuse of power by public and governmental actors.* Tanzania's current Ombudsman – the Commission for Human Rights and Good Governance – states in its vision that it intends to be "committed to the creation of a just society and culture in which Human Rights and Principles of Good Governance are promoted, protected and preserved. This is a vision with a noble goal in this world where human rights and governance issues have come to the fore than never before.

- *The Management of Election Campaigns*

The 1965 parliamentary elections were the first elections under "one-party democracy" in which two candidates of the same political party, selected by the party were to compete for a seat. This was after the 1965 interim constitution that officially made Tanzania a one party state. The only political party then was Tanganyika African National Union (TANU) for the Mainland and ASP for Zanzibar. Campaign meetings were arranged, financed and stage-managed by TANU district executive committees; they were muted in that no one was allowed to show signs of favouring either of the candidates presented, but to merely listen to what they had to say. The candidates were allocated identification symbols of either a hoe or a house; these were dropped in 1985 when pictures of the candidates were used. Few questions were allowed. In 1975 some more features emerged

among which was the introduction of an election manifesto that was to guide the campaign issues whereby each of the two parliamentary candidates would only focus on issues raised in the manifesto. The election manifesto approach also features in the following three general elections (1980, 1985, and 1990). From the above one can note that it was not easy for a candidate to use own resources to influence voters as is the case today. This implies that corruption was at low level and impliedly, those elected into parliament had less urge to seek means to recoup resources used in campaigns as it is the case today. It is a fact that in the effort to recoup resources used in campaigns, post-1992 parliamentarians risk getting into conflict of interest situations more than those elected in the period before because of the way the campaigns were managed.

- *The 1967 Arusha Declaration and its Leadership Code*

One of the most outspoken documents about conflict of interest – and the separation of politics from business – was the Arusha Declaration through the leadership code. The code specifically mentioned the dos and don'ts for leaders including not being part to commercial enterprises through owning shares. And the restrictions applied to the leader as well as the spouse. Leaders were expected to earn their livelihood from the leadership jobs they occupied. Leaders were defined by means of one's salary level which ended in including all those in managerial positions in public corporations, MPs, senior politicians and so on.

- *The Mwongozo wa TANU 1971*

Mwongozo wa TANU 1971 (translated *Party Guidelines of 1971*) was a party document targeting among others, those in leadership position and the way they should behave towards those whom they led. It was kind of trying to democratize the working place whereby managers were required not to be whip boys vis-à-vis employees, allowing employees to contribute to the policy decisions that were to be made at the work place. Managers were basically not allowed a free hand to manage their units, rather it was extensively consultative management practices that were advocated and in many cases

the policical leaders won the day over technical leaders of units. And, during this time up until 1992 when multiparty politics came back, all public institutions had a party branch with very powerful party commissars. There would have been very small loophole through which a manager or any other leader could advance his/her personal economic interests or otherwise in such a situation. Party leaders were watchdogs for the state, leave alone the presence of secret services agents as well as informers. Politics was in command.

- *The Party Creed and Ideological Statements (Imani, Madhumuni and Ahadi za mwana TANU)*

The party had a long list of items on its creed as well as some ideological statements which in total discouraged any unbecoming behaviour on the part of its members. For one, the items in the Arusha Declaration's leadership code were re-emphasized plus others ethics statements like "*Corruption is the enemy of justice, I will never receive nor give bribes".* Given the strength of the party in resource distribution, and the fact that all were party members, these statements created a real threat and many adhered to the contents of the creed and the ideological statements.

3. *Effectiveness of the Current Instruments: Ethics Commission and the Disclosure of Assets Requirement.*

The Ethics Commission

The Ethics Secretariat was created to monitor the leadership fraternity with regard to upholding public service integrity. Specifically, its mandate is to curb the misuse of public office by top public officials. The body came into being in 1995 vide the Public Leadership Code of Ethics Act No.13 of 1995. The Ethics Secretariat was established in accordance with Section 132 of the Constitution. It is primarily designed to deal with breaches of ethics by public officials, which may or may not be corruption related. All high-ranking elected and non-elected officials are required to make a declaration of their

assets and liabilities. Section 9(1) of the Act holds that every public leader shall within thirty days after taking office, at the end of each year and at the end of his term of office declare in a prescribed form, all assets owed by, or liabilities owed to him, his spouse or unmarried minor children. Section 12 of the Act bars a public leader from acquiring dishonestly any pecuniary advantage or assisting any other person to acquire any pecuniary advantage. A public leader is also obliged to disclose any pecuniary interest to forum vide section 13 of the Act. Further, section 14 of the Act requires a public leader to declare his interest in a contract that is made, or is proposed to be made. The interest of the public leader in this case includes the interest of the spouse or spouses or of the children of a public leader in relation to the government contract.

All declarations required from public leaders are submitted to the Commissioner of Ethics Secretariat. Failure to make declaration or making false declaration constitutes a breach of the code. Any breach to the code shall result in warning and caution or demotion, suspension, dismissal, resignation, imposition of other penalties provided for under the rules of discipline related to the office of the leader; and initiating action for the leader to be dealt with under the appropriate law. However, there are no hard data which show that there is any public leader who has ever been held accountable for breaching the public leadership code of ethics since the establishment of the secretariat. While this is the case, there is a growing public outcry on increasing breaching of the code amongst the leadership fraternity.

The head and chief executive of the Ethics Secretariat is the Ethics Commissioner. The commissioner is appointed by the president amongst persons of a high proved or provable integrity, who are holding or have held or are eligible for appointment to hold the office of permanent secretary, the office of a judge of the high court, or any other high public office. The commissioner holds office for a term of five years and is eligible for reappointment for another one term. The president may remove the commissioner from office for good cause.

Problems with current Asset Declaration Approach

There are problems encountered when one is to make follow-up of the rate and completeness of registration of assets and liabilities. First, there is the question of compliance costs. Second there are issues related to enforcement costs, and thirdly, there is the fungibility problem. With regard to compliance costs, the responsible office would require resources to find data about who has what (especially when those expected to declare do not do so) as a means of verification. There is also the cost of filling in forms. As for the second issue of enforcement, it has to do with the problem of verification and making sure that the eligible do fill in the forms and they fill them correctly. There are issues of people changing status (financial or otherwise) and the task of having the data updated can be tremendous. The last aspect of fungibility has to do with the fact that property can pass hands for the moment when the officer is in office but the real controller of the property is the very officer. Relatives can stand in for office holders and it would constitute a big problem for the enforcing agency to be able to prove the real ownership. And there is also the problem of who is covered and who not in a family. Looked at generally, the big issue is lack of resources for the enforcement agency to be able to track all that needs to be in the register. A sample of what is registrable for members of parliament from the Republic of South Africa would help gauge the magnitude of the problem:

The following kinds of financial interests are registrable interests:

a. shares and other financial interests in companies and other corporate entities;
b. remunerated employment outside parliament;
c. (paid) directorships and partnerships;
d. consultancies;
e. sponsorships;
f. gifts and hospitality from a source other than a family member or permanent companion;
g. any other benefit of a material nature;

h. foreign travel (other than personal visits paid for by the member, business visits unrelated to the member's role as a public representative and official and formal visits paid for by the state or the member's party);
i. ownership and other interests in land and property; and
j. pensions.

Not all parliaments have such a register. Among those that do, however, there are quite substantial differences in its content and operation. These differences include:

a. whether the register is compulsory or voluntary, as the latter is the case in the Nordic countries;
b. whether it includes only assets and property, as in most Francophone countries, or other financial interests as well;
c. whether the declaration of assets extends to the member's partner and children or not;
d. whether all of the register is made public, or some parts are reported only to the Presiding Officer or registrar on privacy grounds;
e. whether a declaration is made by parliamentarians only at the beginning and end of their mandate, or is updated on an annual basis;
f. whether a potential conflict of interest is merely declared upon a member's involvement in the relevant item of business, or they are actually debarred from taking part at all;
g. whether the register is monitored and enforced by an external body or a parliamentary committee, or some combination of the two.

Given these widely differing practices in different parliaments, it is difficult to define any one as exemplary, especially when so much depends upon consensus and the corresponding enforceability of any code of practice, and the country in question. Yet it could serve as a reasonable rule of thumb that, the more conflicts of interest are a matter of public concern in a particular country, the more the need for a clear and enforceable register of interests, and for an impartial figure to adjudicate such matters, in order to

restore or maintain public confidence. However, when it comes to Tanzania, the agency that is charged with this important task has not done enough, and the contents of the registers are kept secret. Accessing them involves a bureaucratic process. More needs to be done for the sake of transparency.

4. The viability of separating politics from business and the 2010 General Elections

Talking to parliamentarians in August 2008, the President of Tanzania indicated his intention to initiate legislation that would keep businesspersons from politics and politicians from business. Under the president's proposals, individuals who aspire for election to public office will not be allowed to be actively engaged in business at the same time. Currently, a good number of members of Parliament and even cabinet ministers also concurrently serve as managing directors, shareholders or members of the boards of directors of private business companies. There are cases of companies that do business with government while some of their shareholders are active politicians! This has raised serious ethical and conflict of interest questions. The latest national debate on the need to separate politics from business was partly triggered by claims that the previous President and his wife were engaged in business for personal financial gains while they were in State House.

There is some difficulty, though, of defining 'business' and categorizing businesses to indicate which ones are the ones targeted by the said intended legislation and which would not. In Tanzania, and elsewhere, politicians are normally not part of the lowest class of people. They have some resources which allow them compete for the positions they occupy. This means for one to be a politician one has to have a source of income of some sort – including a few who can claim to have had savings from employment. But the question now is which business would qualify as one that a politician should not engage in? Probably it will have to be one that attracts big (relatively) tenders from government and other sectors, and ones which have relatively high turnovers. We have MPs, for example, with transport companies, law firms, factories and so on. But there are also those with what one could call 'from hand to mouth' businesses like having one or two retail consumer shops in town, two or three guest houses in an urban area, or two to

three milling machines etc. Definitely one would not expect these small scale businesses to constitute serious conflict of interest while their owners would be passing legislation, for example. It means therefore that a threshold of business capitalization needs to be specified so that some politicians can be said to be doing business while others would be having businesses that are innocuous as far as the issue at hand is concerned. When finally the Tanzanian 'big' businesses have been defined then the intended legislation can have some subjects.

In the Tanzanian newspaper *The Citizen* of the 4th February 2009, staff writer D. Kanyabwoya reported that Tanzanian academicians have said mixing business and politics is not essentially bad if clear cut code of leadership is laid bare to guide and direct leaders and politicians' dos and don'ts and avoid conflict of interests. They said the assumption that leaders serve the people better when they a barred from business can be counterproductive. One of them – Dr Haji Semboja[1] – is quoted by the paper as saying:

> It is not bad for businessmen and entrepreneurs to engage in public offices. It is only bad when there is a conflict of interests. And leaders should therefore declare their interest first and be open whenever a conflict of interest is imminent.

The academicians insisted that the issue was that there was no code of conduct that was effective and which would bind leaders to be open when conflict of interest was apparent or real and therefore declare their interests. They also blamed the liberal economy as the cause of people not upholding ethics as everyone is for own business interests whether in public office or not. Not only that many feel that the separation would complicate matters but there are reports that there is resistance to the proposed legislation from within President Kikwete's political party – CCM. (see for example, *Thisday* newspaper of October 12, 2008).

On a practical note, it would seem that in the liberalized politics of post-1992 it is unthinkable of a person wanting to contest for an elective post to have 'nothing' as was

[1] Others in the interview include Prof F. Matambalya and Prof M. Mbilinyi.

the case in the single-party state era, and when the party stage managed campaigns. Then it was possible but nowadays money has come to be a key input into one's success in elections. This is evidenced by the debates about traditional hospitality, political parties funding, modalities for distributing subventions from the state and so on. It is therefore a fact that the poor by Tanzanian standards are not likely to be able to participate in competitive politics as candidates. The issue of income, therefore, becomes crucial.

There are some difficult questions when one talks of separating politics from business though. The issue of which income can assist a potential candidate to run for an elective post needs to be discussed here. Most civil servants and other employed Tanzanians do not have big enough incomes to support their families and have substantial savings for contesting elections in today's environment. And, even the few who can claim to have saved enough to see them through in an election on their own savings would raise eye brows! Who then can run for elective posts if employees cannot? It would mean, may be a few farmers and businesspersons. What happens then if businesspersons are asked not to contest elective posts? What is the point at which politics and business would be separated – that is, when would a blind trust come in, in case this was taken as a solution? If it is once one is in parliament, then businesspersons will be able to use their economic might to enter parliament anyway. If the incumbents will have had their businesses put under trusts, would it not be unfair if they were to compete with new comers whose businesses would be yet to be put under trusts in an up coming election? Can a politician with assets managed by a trust access any funding from their businesses during the period they are serving their terms? In other words, are salaries paid adequate such that every need will be catered for by salaries? And for the 2010 elections the time remaining seems too little to have all these issues addressed for the separation to be tried.

At a higher level – that of politicians making business decisions as well as government doing business – some people and countries are trying to see how the two can go together because of their intertwined nature in today's reality. The US and other developed capitalist countries response to the economic and financial meltdown in 2008/9 is such a case. With the steps that the government took – and some of which some commentators

were seeing as taking the US in a socialist way - the Congress was being asked to make business decisions for the big companies that went burst as a result of the meltdown. This piece from *The Nation* (New York) newspaper of May 1st 2009 with a title *Its Time to Merge Business and Politics* is indicative of the debate that ensued and the feelings from some quarters that business and politics are inseparable.

> I am heartened by proposals for a new Pecora Commission, and I'm hopeful that Congress will start to use more of its muscle to bring forward new proposals, countering the administration's. Why? Because business and politics are already merged, but if we want people to feel more competent, to feel the power that they actually have (but aren't always sure how to use) over the future of how we live, how we produce, and what we produce, we need to get over this artificial divide between economics and politics.

5. *Experience elsewhere on managing conflict of interest*

Mafunisa (2003, p. 13) lists some measures and instruments for the management of conflict of interest. The first he mentions are the oversight bodies. In Tanzania these would include the National Audit Office, The Ethics Commission, and the Public Service Commission. Second, he mentions the judicial institutions and third, the Commissions of Inquiry. These commissions may be set from time to time as situations may dictate.

The OECD has issued *Guidelines for Managing Conflict of Interest in the Public Sector* in order to help governments of member states promote integrity and high standards of conduct in both public and private sectors (OECD: op. cit.). The guidelines have four core principles and each member is expected to do as much as possible to make sure that the public service adheres to these principles.

- serving the public interest:

Public officials should make decisions and provide advice without regard for personal gain. The decision maker's religious, professional, party-political, ethnic, family, or other personal preferences should not affect the integrity of official decision making. At the same time, public officials should dispose of, or restrict the operation of, private financial interests, personal relationships or affiliations that could compromise official decisions in which they are involved. Where this is not feasible – an official can hardly be expected to abandon her relationship with her husband or children in the interests of her job – a public official should abstain from involvement in official decisions that could be compromised by private interests

- supporting transparency

The Guidelines state that public officials and public organizations are expected to act in a way that will bear the closest public scrutiny. Public officials should disclose any private interests and affiliations that could compromise the disinterested performance of public duties when taking up office and afterwards if circumstances change, to enable adequate control and management of the situation. Public organizations and officials should also ensure consistency and openness in resolving or managing conflict-of-interest situations, for example by providing up-to-date information about the organization's policy, rules and administrative procedures regarding conflict of interest, or by encouraging discussion on how specific situations have been handled in the past and are expected to be handled in the future.

- promoting individual responsibility

Public officials, particularly public office holders and senior managers, should act at all times in a manner that demonstrates integrity and thus serves as an example to other officials and the public. When dealing with individual cases, senior officials and managers should balance the interests of the organization, the individual and the public. Public officials should also accept responsibility for arranging their private affairs so as to prevent conflicts of interest, and for identifying and resolving conflicts in favour of the

public interest when a conflict does arise. So an official could sell a relevant financial interest, or declare an interest in a particular issue and withdraw from the decision-making process.

- creating an organization culture that does not tolerate conflict of interest

The Guidelines also call on public organizations to create an organizational culture that does not tolerate conflict of interest. This can be done in a number of ways, such as raising awareness by publishing the conflict-of-interest policy, giving regular reminders, developing learning tools to help employees apply and integrate the policy and by providing concrete advice when need arises. Organizational practices should encourage public officials to disclose and discuss real, apparent or potential conflict-of-interest cases, and provide reasonable measures to protect them from retaliation. Public organizations should also create and sustain a culture of open communication and dialogue to promote integrity, while at the same time providing guidance and training to promote understanding.

In Canada, federal and provincial governments have various pieces of legislation which deal with conflict of interest. For example, in the province of British Columbia, a 1990 Conflict of Interest Act states, that insider information abuse is prohibited: "a member shall not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest" (Section 3). As with other legislative provisions, this B.C. section is a direct re-citation of Ontario's 1987 Bill 1 (Section 3). In the Federal Government, one general rule with regard to gifts to public officials stipulates that gifts are allowed but only those which can be consumed within a twenty-four hour period. In British Columbia legislation, only "gifts or personal benefits... received as an incident of the protocol or social obligations that normally accompany the responsibilities of office" are allowed. Any such benefit over the value of $250 requires full disclosure to the Conflict Commissioner. Under the Federal Conflict Code, the value is set at $200; in Ontario, it is a $100 limit. Again in Ontario the practice requires Ministers/Parliamentary Assistants "to divest themselves of

all financial interests, including business interests, which cause or could appear to cause a conflict...." though where hardship might occur, a holding may be kept, with the public interest protected by full public disclosure and scrutiny. The following don'ts apply as general rules:

- Public employees should not engage in any business or transaction or have any financial or other personal interest that is, or may appear to be, incompatible with the performance of their official duties.
- Public employees should not, in the performance of their official duties, seek personal or private gain by granting preferential treatment to any persons.
- Public employees should not solicit nor, unless duly authorized, accept transfers of economic value from persons with whom they have contact in their official capacity.
- Public employees should not use, or permit the use of, government property of any kind for activities not associated with the performance of their official duties, unless they are authorized to do so.
- Public employees should not seek or obtain personal or private gain from the use of information acquired during the course of their official duties which is not generally available to the public.

In Zimbabwe, one area where conflict of interest is checked by legislation is the Reserve Bank of Zimbabwe where it is stated in law. Recognizing the risks involved when it comes to the Governor of the Bank and his Deputies, Section 18(2) of the Reserve Bank of Zimbabwe Act effectively prohibits the Governor of the Reserve Bank or his Deputies from engaging in *'any occupation of a commercial, industrial or financial nature'* except with the permission of the Minister of Finance.

This is a significant clause, which recognizes the importance of the office of the Governor of the central bank and the potential for conflicts of interest that exist as a result of one's occupation of that office. If a person holding such office must have other business interests that fall within the scope of the defined activities, then he must of

necessity declare them to the minister and seek permission to carry on such activities. The law requires it and for a very good reason.

In South Korea, public officials of grade 4 and above are required to register their assets by law. In addition to assets registration and disclosures, some public officials are subjected to the blind trust system that has been in force since June 2006 where by some high-ranking officials who work in the ministry of finance or financial institutions and own stocks worth 30,000 US$ and above are required to sell their stock or put them in a bank tryst accounts. Further, there is restriction aimed at preventing public officials from favouring private companies while in public employment so that they (officials) can be employed by the favoured companies at a later point while out of office. The restrictions include barring officers of a certain level from being employed in a for-profit for a period of 2 years after leaving public office (Park, 2007).

In Britain MPs must inform the House of their private and financial interests by declaring them in the Register of Members' Interests. Similarly, peers must inform the House of Lords of their private and financial interests by declaring them in the Register of Lords' Interests. When taking part in parliamentary debates, MPs and peers must declare their relevant interests before they speak. A Standing Committee on Standards in Public Life was set up in 1994 after scandals involving politicians and it produced a series of reports as well as a new, strengthened mechanism for regulating the conduct of MPs, political parties, Ministers and civil servants. These included:

- A new Code of Conduct for MPs requiring them to act solely in the interests of their constituents and the wider public;
- Requiring MPs to give more detail of their outside interests in the compulsory Register of Members' Interests;
- Establishing a Parliamentary Commissioner for Standards with the task of overseeing the Register of Members' Interests and the operation of the Code of Conduct, and investigating specific complaints against individual MPs;

- Establishing a House of Commons Committee on Standards and Privileges whose task is to supervise the Parliamentary Commissioner;
- Passing of the Political Parties, Elections and Referendums Act which requires political parties to report to an independent Electoral Commission on their spending during election campaigns and on the sources of the funds;
- A new Ministerial Code which sets out in some detail how ministers are expected to conduct themselves in relation to their private interests;
- Appointment of an Adviser on Ministerial Interests whose task is to advise individual ministers on how they should handle potential conflicts of interest and investigate any alleged breaches of the Ministerial Code;
- A new Code of Practice for Ministerial Appointments to Public Bodies (to ensure that merit reigns) and the appointment of Commissioner for Public Appointments whose task is to regulate and monitor such appointments;
- A revised Civil Service Management Code which covers a whole range of management issues, and a separate Civil Service Code which sets out the values and the standards that civil servants are expected to uphold;
- Civil Service Commissioners (appointed by the Prime Minister) to audit recruitment by individual ministries to make sure that they comply with the principle of selection and promotion on merit and fair and open competition;
- The Freedom of Information Act of 2002 which enables citizens to have access to all government papers unless the agency in question can demonstrate that in providing the information, the nation's security would be put at risk or that some commercial confidentiality will be breached.

The list is comprehensive but the items in bullets third and fourth bullets above raise some questions as to how these two structures work as the one monitoring the MPs is being monitored by MPs!

In most of the SADC countries there are institutions that deal with these issues of conflict of interest bearing different names. There are Ombudsman offices, Offices of Public

Protector, Commissions for Good Governance, Commissions for Investigations and so on. Below are some of these institutions:

- *Zambia's Commission for Investigations (1974)*

In terms of its mandate, the commission deals with complaints relating to arbitrary use of authority, omissions, improper uses of discretionary powers, decisions made with bad or malicious motives or influenced by irrelevant considerations, unexplained or unnecessary delays, bad decisions, misapplication and misinterpretation of the law. However, action by the commission shall be taken where a person complains within a period of two years and has exhausted all administrative and legal procedures.

- *South Africa's Office of the Public Protector*

The Office of the Public Protector (OPP) came into being on 1st October 2005. The 1996 Constitution together with the Public Protector Act 23 of 1994 provide the legal framework of the OPP which is mandated to "investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; to report on that conduct; and to take appropriate remedial action". The Public Protector's jurisdiction therefore extends to all levels of government but it cannot investigate the judicial functions of courts and the private sector. Section 7 of the Public Protector Act of 1994 gives the Public Protector the right to initiate investigations.

- *Office of the Ombudsman Namibia*

According to the Namibian constitution, the functions of the office of the Ombudsman are defined and prescribed by an Act of Parliament. Amongst many other functions, the most pertinent functions are encapsulated in Article 91 (a and d) of the Namibian constitution. Article 91 (a) states that: "… the duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of Government (whether central or local), manifest

injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society."

- *Office of the Ombudsman, Botswana*

The Office of the Ombudsman in Botswana is responsible for overseeing the implementation of the relevant pieces of legislation with regard to good governance. For one, the Public Service Act is used to guide private, commercial and financial interests. The act is used for chief executive officers, chairpersons and commissioners to disclose or seek permission for private commercial and financial interests. According to the Public Service Act and General Orders, all public servants are expected to disclose their commercial and financial dealing to avoid conflict of interest (Mpabanga 2008). Public servants are also supposed to declare any items of gift no matter how small. These items of gifts are declared to the supervisor and the supervisor will decide what to do the gifts, they advise the gifts to be returned to the giver or can be displayed in the conference or board room. The office of the Ombudsman is in the process of developing a conflict resolution mechanism to deal with conflict. These governance structures are aimed at promoting transparency and openness in public officers' dealings and this also applies to the staff in the office of the Ombudsman.

All these institutions meant to curb maladministration and other abuses of office in the SADC region have their weaknesses but at least they are there and some have been quite effective. One of the greatest weaknesses is their inability by law to investigate the head of the Executive who in most of these countries is the appointing officer for the office holders. And, the institutions are accountable to the Head of the executive branch with the exception of the ombudsman in Malawi who is accountable to parliament.

6. Blind trusts in Tanzanian politics and civil service

Blind Trust definition

A blind trust is a financial arrangement in which a person, such as a high-ranking elected official, avoids possible conflict of interest by relegating his or her financial affairs to a fiduciary who has sole discretion as to their management. The person choosing the trust also gives up the right to information regarding the status of the assets. The trust which is a fiduciary third party, such as a bank or money management firm, is given complete discretion to make investments on behalf of the trust beneficiaries. The trust is called blind because the beneficiary is not informed about the holdings of the trust. Blind trusts often are set up when there is a potential conflict of interest involving the beneficiary and the investments held in the trust. For example, a politician may be required to place his assets in a blind trust so that his votes are not influenced by his trust's portfolio holdings. Blind trust has also been defined as a legal arrangement in which an individual (the trustor) gives fiduciary control of property to a person or institution (the trustee) for the benefit of beneficiaries. People assuming public office such as being a parliamentarian use such trusts to avoid conflicts of interest.

The situation on the ground

Tanzania is a developing country whose economy is not that big. Many of the economic sectors are not that strong either. The country has had a catalogue of management problems ranging from incompetence, inadequacy, embezzlement, political interference, sabotage, and so on. Simply stated, Tanzania needs a major boost in its management capacity in all sectors of the economy. The hangover of the socialist experience when managers plundered public resources because of the '*mali ya umma* syndrome'[2] is still around – if not in the minds of the current management cohort, then in the minds of the common Tanzanian and Tanzanian investors. In short, it would be very difficult for a businessperson in Tanzania to get into the blind trust arrangement even though they would not know who was going to manage their property. No one would trust the trust let alone a trust one does not know. The basic fact in any one's mind is that there would not be a management firm that is competent, trustworthy and readily available to manage

[2] *Mali ya Umma* means public property, and which nobody seemed to care very much about when most of the enterprises were state owned or the state had a majority share.

their property on behalf. And, there are no management companies, to the author's knowledge, which have tried this practice. The only institution in mind that has been doing this is the Registration, Insolvency and Trusteeship Agency (RITA), formerly Administrator General's Office in the Ministry of Justice and Constitutional Affairs. However, RITA is a government agency and in its trusteeship business it has been managing smaller-capital properties like housing estates left behind by diseased on behalf of heirs, something which does not need a lot of expertise. The past and the management capacity available do encourage potential clients to go down the blind trust road in Tanzania. The verdict can give about the use of blind trusts in Tanzania is that it will not work in the current situation where management capacity is low, it has not been tested to give the people confidence and reference, and those targeted by the expected experimentation are not that easily identifiable given the nature of Tanzanian businesses. There would be also a need for the establishment of thresholds as to who is a businessman to be recorded as one to fall in which bracket. Connected to this is the instability of businesses in Tanzania where someone seen as a prominent businessperson can be bankrupt in a matter of months. This would imply that there has to be an institution permanently assessing who goes up – and therefore into the blind trust arrangement – and who goes down, and therefore being struck out of the list and so on. This would pose a big challenge to the implementation of the scheme.

7. The way forward

Given the fact that the political and administrative infrastructure in Tanzania is limited when it comes to capacity and needs further development, many of the means and ways used in the developed world to curb conflict of interest will not work to their optimal levels here. In the absence of an operational blind trust system, the only way forward would be to regulate conflict of interest. Measures and means for the control of conflict of interest already in place should be applied and make sure that enforcement is enhanced. Best practices would be borrowed from the developed world and tried in the context of Tanzania. Apparently the measures need to be directed at two levels in the political system. The first level is that of the political parties as institutions that get individuals into political office. The issue of political parties' funding needs to be

addressed. There are obvious cases where members of parliament or organs of parliament have been forced to enter into conflict of interest because of the relationships between the party and some powerful interests. This needs to be resolved. The second level is that of individual politician whereby the electoral system has forced them to have substantial amounts of funds if they are to remain in or retain their political offices.

As for the political party's level, studies have shown that there are three problem areas and once they are addressed some of the issues can be resolved. Firstly we have to deal with the issue of *inadequate resources.* This problem is particularly acute in developing countries, where finance from party membership dues is so meager that candidates often have to finance their campaign expenses from personal sources. As a result, many resort to relationships with individual donors who expect preferential treatment once the candidate is elected, or worse, many reformers choose not to run at all, leaving the field to candidates who are independently wealthy.

Secondly, there is the issue of *unequal resources.* The electoral playing field can be distorted by inequalities of wealth in society, which are differentially accessible to competing parties. Another distortion occurs where governing parties are able to use government resources, facilities and patronage improperly to gain advantage over opposition parties. Only governing parties are in a position to award contracts, grant other favours or divert state funds illegally to themselves.

Thirdly, it has to do with *compromising sources.* Campaign money from powerful interests may be given in expectation of legislative or other benefits which frustrate the democratic process or undermine public confidence in the integrity of government. The issue at stake is whether interested money should be allowed to override equal voting rights.

It should be evident from the above concerns that the issue of party and campaign financing touches on a number of the features of a democratic parliament: on the fairness of the electoral process, and its capacity to produce a parliament that is politically

representative of the electorate; on parliament's social representativeness through the role of personal wealth in access to candidacy; above all, on the degree of parliament's accountability to the electorate.

To address these concerns then, the use of regulation, public subvention and transparency can greatly minimize the distortions that have led to, among other things, conflict of interest. First, more direct regulations are needed where political parties and politicians rely too heavily on hospitality to win elections. The purpose of regulation is to limit both the demand for resources by parties and individual politicians and the way they are supplied. This can be effected by limiting campaign expenditure and restrictions on paid political advertising in the broadcast media; but also contributions above certain levels may be banned. All such restrictions have to meet with broad political agreement and be effectively enforced if they are not to be regularly circumvented through fraudulent practices.

Second would be public subvention to parties, and subsequently to candidates. The management of campaigns by the party in Tanzania in the pre-1992 elections seemed to have reduced corrupt practices a lot. Public subsidies can go some way towards creating a more level playing field between parties, and supporting their essential public role. Subsidies in kind are often seen as preferable to cash subventions. These can take the form of free broadcast time on public media; free distribution of election literature; use of public buildings for meetings, and so on. Cash subsidies can be indirect, through tax exemptions or income tax deductions for donations; if direct, subsidies above a minimum threshold may be linked to the size of party membership or membership dues, as an encouragement to recruiting voluntary support. Subsidies have also been used as an incentive for good practice in other aspects of party activity, such as candidate selection.

Thirdly it has to do with openness and transparency in ways in which parties and candidates are financed. In many countries details about party finances are obscure, and known only to a tight inner circle. Yet transparency is essential to public confidence. And open accounts mean that party members and competing parties as well, can contribute to

more effective enforcement. Free flow of information of what the government is doing to the general public is extremely necessary. The role of independent media to inform the public on what the government is doing is equally important. The civil society and private sector citizen's groups will play an important role as partners in curbing corruption in the country.

At the individual politician level more direct regulations are needed where politicians rely too heavily on hospitality to win elections. The regulations would include the usual disclosure of interests by politicians, but also recusals, as discussed earlier. We have seen that divestment of properties would be difficult in the Tanzanian environment, as well as costly if it were to be tried. But also, since in Tanzania all candidates are sponsored by political parties, the proposed ways to address the situation which leads conflicts of interest will also apply. The parties will, for example, show who got what amount from, say, a public subvention.

Civic education has always been wanting in the likes of Tanzania. Civic education to the public would make the electorate much aware of what is acceptable and what not with regard to politicians and other officials. Competent citizens are likely not to accept corrupt politicians and when whistle blowing becomes necessary then whistles would be blown. And when politicians know that the electorate is aware of the dos and don'ts for them they are likely to avoid conflicts of interest by following the exit options laid in law and any other regulation.

It is the opinion of the author that Tanzania seems not ready for the separation of politics from business and it may neither be practical nor desirable given the trends in governmental politics and the running of public affairs in today's world. The more likely way forward that would manageable would be the use of regulation coupled with enforcement mechanisms that are effective and efficient. The impending laws on election financing and separation of politics from business are likely to be controversial and difficult to enforce.

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