



## Public Right of Access to Public Leaders' Asset Declarations in Tanzania: A Critique of the Law

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### Abstract

This paper examines the legal framework governing the public right of access to public leaders' asset declarations in Tanzania. It argues that the existing legal framework does not clearly define the scope of the public right of access to public leaders' asset declarations. It does not set the criteria for determining the relevance and genuineness of a complaint or the good faith of the complainant. The law contains some procedural gaps and vests too much discretionary power in the Ethics Commissioner to allow or disallow individuals to access asset declarations. Moreover, there are several other pieces of legislation inconsistent with the public right of access to asset declarations. The authors contend that, unless the Government undertakes comprehensive legal reforms to address the noted legal weaknesses, ineffective implementation of the public right of access to asset declarations in Tanzania will continue to be a notable feature.

### Article History

Received: 17 July 2025

Accepted: 19 December 2025

### Keywords:

Asset declarations, accountability, ethics, law, public leaders, right of access, Tanzania

## 1. INTRODUCTION

Public right of access to public leaders' asset declarations is globally a cornerstone of democratic governance that combats corruption while promoting the integrity and accountability of public leaders in the public service.<sup>1</sup> It has been part of the legal system of Tanzania since 1995 when it was first enacted under the Constitution of the United Republic of Tanzania, 1977<sup>2</sup> and later codified under the Public Leadership Code of Ethics Act (PLCEA).<sup>3</sup> The constitutionalisation and codification of this right in Tanzania is a significant demonstration of the government's commitment to uphold public leaders' transparency, accountability and integrity.<sup>4</sup>

Nonetheless, practical implementation of this right has remained insignificant.<sup>5</sup> For instance, government reports show that between 1995 and 2002, there were no public requests to inspect asset declarations.<sup>6</sup> Only 14 inspection

requests were lodged between 2003 and 2020 and all were denied except for one request.<sup>7</sup> Despite such denials, there has been only one petition to challenge the denial filed in 2008 by the National Legal Assistance Association (NOLA) and others.<sup>8</sup> A few studies have shown that difficulties in public access to public leaders' asset declarations is common to all African countries.<sup>9</sup> This encourages illicit enrichment; conflicts of interests; submission of incomplete and inaccurate or deceptive asset declarations; and unchecked corruption among public leaders in the country.<sup>10</sup>

This article is an extract from PhD research conducted on the law and practice regarding the implementation of the public right of access to public leaders' asset declarations in

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efficient and Effective Public Service Delivery' (Brainstorming Meeting of Senior Officers of Good Governance Institutions, Dar es Salaam January 2006); & \$Mandara, F.A, 'The Role of Tanzania's Ethics Secretariat and Ethics Tribunal in Ethics Promotion and Enforcement' ( Inspectorate General of Government, Uganda, September 2010).

<sup>7</sup> Hansards, 'Estimates and Expenditure of the Office of the President, Public Service Management and Good Governance for the year 2012/2013' (Dodoma, July 14<sup>th</sup>, 2012) pp. 204-206; & Presidents'Office Public Service Management and Good Governance, 'Ethics Secretariat Performance Report, 2020/2021' (Presidents'Office Public Service Management and Good Governance,2021) p. 69.

<sup>8</sup> *The National Legal Assistance Organization & Others vs the Attorney Generals and the Ethics Secretariat*, Miscellaneous Civil Cause No. 28 of 2008, (HC).

<sup>9</sup> Mfikwa, T., 'The Constitutional Right of the Access to Information in Tanzania: Insight on Laws, Practice and Problems' (Unpublished Masters Dissertation, Open University of Tanzania 2018) 88-89; Mpambije (n5) pp 150-153 and Ashukem (n1) pp 507-576.

<sup>10</sup> Presidents'Office Public Service Management and Good Governance, 'Integrity Survey Report In Tanzania Public Service, 2022 ( Public Service Management 2022) 62; Simbachawene, G.B., 'Speech by the Minister of Public Service Management and Good Governance on the Estimated Revenue and Expenditure for the Year 2024/25' (Dodoma May 6<sup>th</sup> 2024); Nkwame, M., 'VP issued red alert on fraud next polls' The Guardian ( Dar es Salaam, December 17<sup>th</sup> 2024 )1.

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<sup>1</sup>Ashukem J.C.N., *Asset Declarations as the Tool in Combating Corruption in Africa*. In Democratic Governance, Law, and Development in Africa (2022) 556; Hanl, T.H., Some Theoretical Issues about Assets and Incomes Auditing by State Officers. *Academy Policy Development Journal* (2021) 11(2) 337; & Nwozor, A., Beyond Symbolism-The Politics of Assets Declaration and Public Accountability in Nigeria. *AJPAM* (2010) XXI (I &2) 156.

<sup>2</sup> C AP. 2, R.E.2002, Arts 8, 9 (c), 18, 27 & 132 (5) (b) (c) (f).

<sup>3</sup> CAP. 398, R.E.2020, s 23 (1) and (2).

<sup>4</sup>Hansards, 'Debates on the Bill of the Public Leadership Code of Ethics, 1995' (May 2<sup>nd</sup>, 1995) 968, 966 & 974; Hansards 'Debate on the Bill for Amendment of the Public Leadership Code of Ethics Act, 1995' (February 8<sup>th</sup>, 2001) 8.

<sup>5</sup>Mpambije, C.J., Income and Assets Disclosure among Public Officials in Tanzania: A Leadership Code of Ethics or a Leadership Cost of Ethics? *International Journal of Humanities and Social Science* (2016) 6(4) 152-153.

<sup>6</sup>Masilingi,W., 'Speech by Minister of State, President's Office-Good Governance' (Dodoama, April 2025); Mandara, F.A., The Role of the Ethics Secretariat and its complaints handling Mechanism in ensuring

Tanzania between 2020 and 2025. The research had two specific objectives: to analyze the legal framework governing public right of access to leaders' asset declarations in Tanzania; and to explore the practical challenges affecting the effective implementation of public right of access to leaders' asset declarations in Tanzania.

Exploratory descriptive design and qualitative approaches were employed to collect data through documentary review. Documentary review involved content analysis of legal and non-legal texts in public domain and those not in public domain obtained from relevant authorities. Literal and purposive rules of statutory interpretation, and deductive and inductive reasoning were used in interpreting legal texts. This article disseminates the findings related to the first objective.

The article is organized into six sections: this introduction, methodology, legal framework of public right of access to leaders' asset declarations, findings, conclusion and recommendations.

## **2. THE LEGAL FRAMEWORK OF PUBLIC RIGHT OF ACCESS TO LEADERS' ASSET DECLARATIONS IN TANZANIA**

This section examines the international and regional instruments as well as the domestic legal framework governing the public right of access to leaders' asset declarations in Tanzania.

### **2.1. International Legal Framework of Public Right of Access to Leaders' Asset Declarations**

At the International level, the Universal Declaration of Human Rights (UDHR), 1948 marks the foundation of the public right of access to public leaders' asset declarations via

the right to information. It vests in everyone the right to seek, receive and impart information.<sup>11</sup> Even though it is a soft law instrument, Tanzania being a signatory to the UN Charter is obligated to adhere to it and other treaties arising therefrom.<sup>12</sup> Besides the UDHR, the International Covenant on Civil and Political Rights (ICCPR), 1966,<sup>13</sup> as a binding covenant, imposes on state parties the duty to respect and observe the right to information.<sup>14</sup> Tanzania being a state party to the ICCPR is, therefore, bound to respect and observe individual's right to information which embeds the right of access to leaders' asset declarations.<sup>15</sup>

The right of access to public leaders' asset declaration is further found under the International Code of Conduct for Public Officials (ICCPOs) of 1996, which requires state parties to adopt asset declaration systems in line with their legal frameworks. This highlights the spirit of promoting transparency and integrity among public officials.<sup>16</sup> Specifically, the Code requires public officials to declare their financial and

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<sup>11</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 19.

<sup>12</sup> Director of Public Prosecution vs. Ally Haji Ahmed and 10 others, Criminal Appeal No.4 of 1985, Court of Appeal of Tanzania (unreported); and Legal and Human Right Centre, Lawyer Environmental Action Tem (LEAT) and the National Organization for Legal Assistance versus the Attorney General, the High Court of Tanzania at Dar es salaam, Miscellaneous Civil Cause No. 77 of 2005 (unreported).

<sup>13</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>14</sup> Ibid, Arts 7, 17&19.

<sup>15</sup> United Nations Human Right Treaties Bodies, UN Treaty Database, Ratification Status to United Republic of Tanzania, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=186&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=186&Lang=EN) accessed 22 February, 2023.

<sup>16</sup> International Code of Conduct for Public Officials, UNGA Res 51/59 (adopted 13 December 1996) Art 5 & Art 8.

business interests and prohibits them from engaging in transactions that could result in conflicts of interest.<sup>17</sup> It extends this duty to spouses and dependents of the public officials. This is critical in curbing potential conflicts of interest, illicit enrichment, corruption and improper use of office for personal gain.<sup>18</sup>

Tanzania is also a state party to the United Nations Convention against Corruption (UNCAC), 2003.<sup>19</sup> The UNCAC requires each State Party to promote, among other things, integrity, honesty and responsibility among its public officials to fight corruption. It specifically requires every state party to devise a system to compel public officials to declare their assets to control corruption.<sup>20</sup> It relies on transparency and public right to information through engagement of individuals outside the public sector, the media, civil society and other key stakeholders in anti-corruption efforts.<sup>21</sup>

The UNCAC further supports international cooperation in the fight against corruption. It facilitates exchange of asset declaration information between states, investigation and recovery of illicit wealth.<sup>22</sup> This provision strengthens public ability to hold leaders accountable beyond national borders. Nonetheless, the UNCAC is more of an inspirational than a mandatory instrument.<sup>23</sup> It allows flexibility for state parties to implement asset declaration laws and public access to declarations in accordance with their domestic legal systems. This waters down its ability to compel member states to adhere to and

uniformly implement public right of access to leaders' asset declarations.

## 2.2. African Regional and Sub Regional Legal Framework of Public Right of Access to Leaders' Asset Declarations

At the African regional and sub-regional level, the key instruments governing public right of access to leaders' asset declarations is the African Charter on Human and Peoples Rights, 1981 (the ACHPR) which requires state parties to uphold the right to information pursuant to the UDHR and ICCPR.<sup>24</sup> Other important instruments include the Charter for Public Service in Africa, 2001(CPSA)<sup>25</sup> the African Union Convention on Combating and Preventing Corruption (AUCPCC)<sup>26</sup> and the African Charter on Values and Principles of Public Service and Administration, 2011(ACVPPSA).<sup>27</sup>

CPSA sets minimum standards of ethics and conduct for public service employees generally and specifically for certain designated officers in public service. It requires all public service employees to demonstrate high standard of integrity and refrain from all activities or conducts which are inconsistent with ethics and morality such as misappropriation of public funds.<sup>28</sup> It further prohibits public service employees from soliciting, accepting, demanding or receiving,

<sup>17</sup> Ibid Art II (4) & (5).

<sup>18</sup> Id, Art II (6), Art III & Art IV.

<sup>19</sup> United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) UN Doc A/58/422, 2349 UNTS 41.

<sup>20</sup> Ibid, Art. 8 (5) (6), Art13, Art 20 & Art 52 (5).

<sup>21</sup> Id, Art13.

<sup>22</sup> Id, Art 52(5).

<sup>23</sup> Id, Art 8(5) &13.

<sup>24</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) Art9.

<sup>25</sup> Charter for Public Service in Africa (adopted 5 February 2001, Windhoek, Namibia).

<sup>26</sup> African Union, African Union Convention on Preventing and Combating Corruption (adopted 11 July 2003, entered into force 5 August 2006).

<sup>27</sup> African Union, African Charter on Values and Principles of Public Service and Administration (adopted 31 January 2011, entered into force 23 July 2016).

<sup>28</sup> Id (n25) Art25.

directly or indirectly, any payment, gift or other advantage in kind, in return for performing or refraining from performing their functions or obligations.<sup>29</sup>

CPSA also restricts public service employees from taking up functions or positions, engaging in transactions or having any financial, commercial or material interests that might be incompatible with their functions and responsibilities or duties.<sup>30</sup> In case of conflict of interest, the CPSA demands that the public service employee or his family members declare such interest. For those appointed to certain positions of responsibility specified by law, the CPSA requires them to declare their assets as well as those of their family members upon taking and leaving office. This ensures the monitoring of any excessive accumulation of wealth or illicit enrichment.<sup>31</sup> Even though the CPSA does not expressly provide for the public right of access to declared information, it still lays the foundation of asset declaration laws in African states including Tanzania.

Unlike the CPSA, which lacks explicit provisions for public right of access to leaders' assets declarations, the AUCPCC has an express provision which requires state parties to take legislative measures to effect the right of access to any information required to assist in fighting against corruption and related offenses.<sup>32</sup> Besides the AUCPCC, the ACVPPSA further contributes to the regional framework for public right of access to leaders' asset declarations through its provisions on transparency and accessibility to information. It requires public officers to make asset declarations at the beginning, during, and the end of public service.<sup>33</sup>

Significantly, the ACVPPSA compels the Public Service and Administration to make information about public service delivery procedures available to users.<sup>34</sup> Although it does not explicitly mention asset declaration, the provision of Article 6 on public availability of public service delivery information can be interpreted to include public access to asset declaration information. This interpretation is implicit under Article 9(1) which emphasizes transparency as a core principle of public service. This provision creates a legal foundation that supports the public's right to access asset declarations.

The ratification by Tanzania of the ACVPPSA in 2015 marks an additional legal basis for the promotion and implementation of public right of access to public leaders' asset declarations in the domestic legal framework. The next section examines the domestic legal framework.

### 2.3. Tanzanian Legal Framework of Public Right of Access to Leaders' Asset Declarations

The domestic legal framework of public right of access to public leaders assets declarations in Tanzania consists of the Constitution of the United Republic of Tanzania, 1977 (the Constitution);<sup>35</sup> the Public Leadership Code of Ethics Act, 1995;<sup>36</sup> the Basic Rights and Duties Enforcement Act;<sup>37</sup> the Code of Conduct for Local (District) Councils, 2000;<sup>38</sup> Code of Ethics and Conduct for Public Service, 2023;<sup>39</sup> Prevention and Combating of Corruption Act, 2007;<sup>40</sup> Zanzibar Public Leaders Code of Ethics Act, 2015;<sup>41</sup> National

<sup>29</sup> Ibid, Art25.

<sup>30</sup> Ibid, Art24.

<sup>31</sup> Ibid, Art 25.

<sup>32</sup> Id (n26) Art 9.

<sup>33</sup> Id (n27) Art13.

<sup>34</sup> Ibid, Art 6.

<sup>35</sup> Cap.2 R.E.2002.

<sup>36</sup> Cap. 398 R.E. 2020.

<sup>37</sup> Cap.3R.E.2019.

<sup>38</sup> G.N. No. 280 of 2000.

<sup>39</sup> G.N. No. 856 of 2023.

<sup>40</sup> Cap. 329 R.E. 2022.

<sup>41</sup> Act No. 7 of 2015.

Security Act, 1970;<sup>42</sup> the Public Service Act, 2002;<sup>43</sup> Access to Information Act, 2016;<sup>44</sup> and the Personal Data Protection Act, 2022.<sup>45</sup> This section analyses this framework albeit briefly, starting with the Constitution.

### ***2.3.1. The Constitution of the United Republic***

The Constitution marks the foundation of public right of access to public leaders' asset declarations in Tanzania in many ways. It provides for the right to information in line with various provisions of the international and regional instruments analysed under items 3.1 and 3.2 above.<sup>46</sup> It also provides for sovereignty of the people and accountability of the government to the people which constitutes the basis for public leaders' asset declarations and public right of access to the declarations made.<sup>47</sup> The Constitution also imposes a duty to every citizen to protect the resources of the nation.<sup>48</sup> The public right of access to public leaders asset declarations form part of practical implementation of this duty as without it the public cannot detect misuse of public resources or illicit enrichment by those entrusted with the duty of managing such resources.

The Constitution establishes the Public leaders' ethics secretariat and sets the foundation for enactment of asset declaration law and the public right of access to leaders asset declarations.<sup>49</sup> It requires the Parliament

to stipulate basic rules of ethics for public leaders and to require persons holding certain public offices to make formal declaration from time to time concerning their income, assets and liabilities.<sup>50</sup> The Constitution expressly names certain political officers who are required to make asset declarations immediately after assuming office. Some of these officers include every Member of Parliament and his spouse and Speaker of the National Assembly.<sup>51</sup>

The Constitution further empowers the Parliament to enact a law that provides for the dismissal or removal of a person from office for breaches of the code of ethics regardless of whether the office is elective or appointive.<sup>52</sup> Details of officers required to make asset declarations is provided under section 4 of the Public Leadership Code of Ethics Act (PLCEA) discussed in the next item.

### ***2.3.2. The Public Leadership Code of Ethics Act***

The Public Leadership Code of Ethics Act (PLCEA) was enacted to implement Article 132(4) of the Constitution.<sup>53</sup> It is the primary legislation governing the implementation of the public right of access to public leaders asset declarations for both Tanzania Mainland as well as Zanzibar for public officials working under the Union government.<sup>54</sup> The officers required to declare assets under the PLCEA include those in senior leadership position across executive, judiciary, and legislative branches.<sup>55</sup> It encompasses officials with political, administrative, managerial, and supervisory powers or officials with influential positions for controlling substantial state

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<sup>42</sup> Cap.47 R.E.2002.

<sup>43</sup> Cap.298 R.E. 2019.

<sup>44</sup> Act No. 6 of 2016.

<sup>45</sup> Act No. 11 of 2022.

<sup>46</sup> Id (n35) Art.18. Especially, the provisions of Article 19 of the UDHR, Article 19 of ICCPR and Article 9 of ACHPR.

<sup>47</sup> Id (n35) Art 18 (1) (a) & (c).

<sup>48</sup> Id (n35) Art 27.

<sup>49</sup> Id (n35) Arts 132 (4), 132(5) (a) and (b), Art 70(1), Art. 70 (1) and (2), Article 71 (g), Art. 84 (5) (6) of the Constitution

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<sup>50</sup> Id (n35) Art.132 (4), (5) (b).

<sup>51</sup> Id (n35) Arts 70 & 84(5).

<sup>52</sup> Id (n35) Art 132(6).

<sup>53</sup> Id (n36).

<sup>54</sup> Id (n36) s3.

<sup>55</sup> Id (n36) s 4.

resources including the President.<sup>56</sup> The president is empowered to modify the categories of officers required to make asset declaration and periodically update ethical requirements.<sup>57</sup>

The PLCEA establishes clear obligations for public leaders to arrange their official and private affairs in a manner that is subject to public scrutiny.<sup>58</sup> Accordingly, it requires elected and appointed public leaders to regularly declare their personal assets, liabilities, and those of their spouses or minor children.<sup>59</sup> To ensure accurate declarations and prevent falsehood, the PLCEA criminalizes the act of making false asset declarations.<sup>60</sup> It also establishes the Ethics Secretariat pursuant to Article 132 of the Constitution and mandates it to oversee the enforcement of the public leadership ethics in Tanzania.<sup>61</sup>

The Ethics Secretariat is the primary custodian of public leaders' asset declarations with significant investigative powers including power to investigate public leaders' bank accounts; to conduct physical verification of assets; to provide advice; and grant public access to asset declarations. The Secretariat also conduct awareness campaigns and receive

anonymous public allegations about ethical breaches.<sup>62</sup> It is also granted immunity against civil and criminal liability for actions taken in good faith.<sup>63</sup>

The responsibility of staffing the Ethics Secretariat and administering oath of secrecy to the personnel of the secretariat is vested in the President.<sup>64</sup> However, the Act does not define the number of the required staff and does not specify the required skills and competencies, except for the Ethics commissioner.<sup>65</sup>

Apart from the Ethics commissioner' office, the PLCEA establishes the Ethics Tribunal, mandated to investigate potential violations of the Leadership Code of Ethics; require public leaders to provide public explanations about their conduct or property; and directly offer advisory services to the President regarding ethical matters.<sup>66</sup> The Ethics Tribunal acts as a vital check on operations of the Ethics Secretariat.<sup>67</sup> Nonetheless, its impartiality and autonomy may be easily compromised because of the undefined security of tenure of its members; the advisory role of Ethics Commissioner in appointing two-thirds of the tribunal members; and functioning under the Secretariat which handles staff hiring, budget allocation, and submitting its reports to the Commissioner.<sup>68</sup>

The PLCEA imposes a duty on the Ethics Commissioner to ensure all asset declarations

<sup>56</sup> Id (n36) s 4 (1) (i-xxvii).

<sup>57</sup> Id (n36) ss4 (2); 6 & 7.). For instance, see the Public Leadership Code of Ethics (Variation of Lists of Public Leaders), Government Notice No. 209 published on 22nd July, 2005 the Public Leadership Code of Ethics (Additional List of Public Leaders) Notice, 2013 or Sheria ya Maadili ya Viongozi wa Umma (Nyongeza ya Orodha ya Viongozi wa Umma) Tangazo la Serikali Na. 260 la mwaka 2013 also the Public Leadership Code of Ethics (Change of List of Public Leaders) Notice, 2023 also Mandara, F.A (2006), ‘the role of the Ethics Secretariat and its complaints handling Mechanism in ensuring efficient and Effective Public Service Delivery ‘Paper presented at the Brainstorming Meeting of Senior Officers of Good Governance Institutions held on 23rd - 25th January, 2006, Golden Tulip pp.6-7.

<sup>58</sup> Id (n36) s 6.

<sup>59</sup> Id (n36) ss 9; 11, 19(2) (d) & 23.

<sup>60</sup> Id (n36) s 30(2).

<sup>61</sup> Id (n36) s 19(1).

<sup>62</sup> Id (n36) ss19 (1); 19 (2) (a), (d), (e); (3) (a-b), (f) & s 23.

<sup>63</sup> Id (36) s20.

<sup>64</sup> Id (n36) s 19(7).

<sup>65</sup> Id (n36) s 22.

<sup>66</sup> Id (n36) ss25 & 29.

<sup>67</sup> The role of the Ethics Tribunal was manifested in Andrew Chenge v. the Public Leaders Ethics Secretariat, Public Leaders 'Ethics Tribunal and the Attorney General, High Court of Tanzania, Misc. Civil Cause No. 18 of 2015 (unreported).

<sup>68</sup> Id (n36) ss23 (1); 25 (6) (8) & 29.

by public leaders are properly recorded and maintained in the register of public leaders' interests, assets, and liabilities.<sup>69</sup> It further requires the register to be maintained in a Minister-approved format and be made accessible for public inspection at reasonable times.<sup>70</sup> Accordingly, the Minister is permitted to establish and publish formal procedures for public inspection of the register.<sup>71</sup> It is in exercise of this powers that the Minister promulgated the Public Leadership Code of Ethics (Declaration of Interests, Assets, and Liabilities) Regulations, 1996 (the Regulations).<sup>72</sup>

The Regulations impose specific conditions for public inspection of the leaders' asset declarations register.<sup>73</sup> Such conditions include the requirement of individuals to lodge legitimate complaints, obtain the Commissioner's approval, and pay a nominal inspection fee of one thousand shillings.<sup>74</sup> These conditions also provide important safeguards against misuse of information including fines not exceeding ten thousand shillings and imprisonment for terms not exceeding two years.<sup>75</sup> Moreover, the Commissioner may refuse to grant permission for inspection or may require the complainant to furnish him more with information relating to the complaint if upon his assessment he is dissatisfied with the genuineness or the intention of the complaint.<sup>76</sup>

The PLCEA has undergone consistent amendments from 2001 to 2023 to progressively strengthen the public's access to

asset declarations by creating a more comprehensive transparency framework. The key improvements made via the said amendments include provisions for anonymous reporting, penalties for false declarations, conflict of interest management mechanisms, and nationwide ethics education programs.<sup>77</sup> These changes expanded accountability by broadening the list of public leaders required to declare assets while enhancing the Ethics Secretariat's investigative powers. There are several other legislations that support the PLCEA in the implementation of public right of access to leaders' asset declarations as briefly analysed hereinafter.

### **2.3.3. *The Code of Conduct for Local (District) Councils***

The Code of Conduct for Local (District) Councils, 2000 applies to public officers in the local government authorities in Mainland Tanzania.<sup>78</sup> The Code requires council members who are public leaders under section 4 of the PLCEA to declare their assets and liabilities including those of their spouses and minor children and submit them to the District Executive Directors. It further requires the declarations to be recorded in the Register of

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<sup>69</sup>Id (n36) s23 (1) read together with Regulation 2 and 5 of the Public Leadership Code of Ethics (Declaration of Interest, Assets, and Liabilities) Regulation, 1996.

<sup>70</sup> Id (n36) s23 (2).

<sup>71</sup> Id (n36) ss 23(3) &34(2) (a-b)

<sup>72</sup> G.N.No.108 of 1996.

<sup>73</sup>Ibid, r 6 & 7.

<sup>74</sup> Ibid, r6 (a-c).

<sup>75</sup> Ibid, r7 (3).

<sup>76</sup> Ibid, r6 (2).

<sup>77</sup>See the Public Leadership Code of Ethics (Amendment) Act No. 5 of 2001; the Written Laws (Miscellaneous Amendments) Act, (No.4 of 2016); the Interpretation of Laws (The Rectification of Printing Errors) (The Public Leadership Code of Ethics Act (Revised Edition of 2020), 2021, G.N.No. 336 of 2021; the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2022; The Public Leadership Code of Ethics (Amendment) Act No. 5 of 2001, s 2; the Public Leadership Code of Ethics (Variation of Lists of Public Leaders), G.N.No. 209 of 2005; the Public Leadership Code of Ethics (Additional List of Public Leaders) G.N.No. 260 of 2013;The Written Laws (Miscellaneous Amendments) Act, No. 4 of 2016 ss 61, 62, 65, 66, 67, 69, 70, 74; the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2022; and the Public Leadership Code of Ethics (Change of List of Public Leaders) Notice 2023, G.N.No. 856 of 2023.

<sup>78</sup> G. N. No. 280 of 2000.

Council Members' Assets and Interests and be maintained by the Council executive Directors.<sup>79</sup> Additionally, it gives the residents of the specific council the right to access this register upon requests in line with the PLCEA provisions.<sup>80</sup> The other important domestic instrument is Code of Ethics and Conduct for Public Service analyzed in the next item.

#### **2.3.4. *The Code of Ethics and Conduct for Public Service***

The Code of Ethics and Conduct for Public Service (CECPS) applies to all public servants employed or performing public duties in provision of public service as per the Public Service Act including public leaders.<sup>81</sup> The CECPS requires any public servant to declare his assets and that of his spouse and minor children upon demand by his employer.<sup>82</sup> Yet, the Code does not specify the reasons for such requirements and the methods for accessing them. This suggests that this requirement is more of formality than a genuine accountability mechanism. Such shortcomings may cause inconsistencies in the implementation and reduce the overall effectiveness of the code.

#### **2.3.5. *The Prevention and Combating of Corruption Act***

The Prevention and Combating of Corruption Act (PCCA) establishes the Prevention and Combating of Corruption Bureau (PCCB) with the mandates to fight corruption in Tanzania, through law enforcement, prevention and public education.<sup>83</sup> The PCCA empowers officers of the PCCB to demand comprehensive asset or property declarations from public officials through written notices.

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<sup>79</sup> Ibid, s 20(1) & (2).

<sup>80</sup> Ibid, s 20 (3).

<sup>81</sup> Id (n39).

<sup>82</sup> Id (n39) r 5 (e).

<sup>83</sup> Id (n40) ss 5-8.

The respective officials are obligated to provide a detailed and truthful account of all properties they or their agents possess or have possessed during their tenure in public office, including the source and manner of acquisition.

The PCCA establishes a strict compliance mechanism with significant legal consequences including a fine of up to five million shillings, imprisonment for up to three years, or both.<sup>84</sup> It further criminalizes the possession of unexplained wealth among public officials.<sup>85</sup> This legislation serves as a potent deterrent law against corruption by compelling public officials to account for their financial status and creating a legal mechanism to challenge unexplained wealth accumulation and thus promoting transparency, accountability, and integrity in public service. The PCCA does not have a specific provision for public right of access to asset declarations made by public officials but underscores the importance of asset declarations and the public right of access to declarations in supporting anti-corruption measures, transparency and accountability of public leaders.

#### **2.3.6. *Zanzibar Public Leaders' Code of Ethics Act***

The Zanzibar Public Leaders Code of Ethics Act (ZPLCEA) applies to all public leaders working under the Revolutionary Government of Zanzibar (RGZ).<sup>86</sup> The oversight of its implementation is done by the Zanzibar Public Leaders Code of Ethics Commission (ZPLCEC) which started its operation in 2016.<sup>87</sup> By virtue of Section 4 (ii) (v) of the PLCEA and Section 4 of the ZPLCEA, the

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<sup>84</sup> Ibid, ss6 (1) & (3).

<sup>85</sup> Ibid, s27.

<sup>86</sup> Id (n41).

<sup>87</sup> Ibid, s2. See also Zanzibar Leaders' Ethics Commission (2016), Ripoti ya Sita ya Utekelezaji wa Kazi za Tume ya Maadili Zanzibar kwa mwaka 2021/2022. p. 1

President of the Revolutionary government of Zanzibar and Second Vice President of Zanzibar are required to submit asset declarations to both the Ethics Secretariat and ZPLCEC without specifying precedence in conflicting situations.<sup>88</sup>

The ZPLCEA requires asset declarations from all public leaders under the Revolutionary Government of Zanzibar. Unlike the PLCEA, ZPLCEA treats the information confidential except with the court order or with ministerial consent.<sup>89</sup> The position of the law on access to declarations, therefore, differs between ZPLCEA and the PLCEA. Whereas PLCEA guarantees the public the right to inspect the Registers, ZPLCEA does not provide such rights to the public save with the court order or with ministerial consent.

### **2.3.7. *The National Security Act***

The National Security Act grants absolute discretion to the government to define what to be disclosed or withheld from access by members of the public, hence, restricting the circulation of information which is in the custody of the State. This makes it a criminal offence to investigate, obtain, possess, pass on or publish any document or information which the government considers to be classified, confidential, secret or top secret. The Act imposes severe penalties up to twenty years imprisonment for violations of these provisions.<sup>90</sup> The Act further prioritizes national security over public disclosure.<sup>91</sup>

The broad definition of classified information can lead to abuse, inconsistencies, ambiguity and uneven interpretation or application as it was held in *Republic versus Adam*

<sup>88</sup> Id (n41) ss 4 & 15.

<sup>89</sup> Ibid, s22.

<sup>90</sup> Id (n42) ss 2, 4, 5 & 6.

<sup>91</sup> Jesse, J.C., The Right of Access to Information as a Human Right: Tanzanian Perspective, 2011 (3) 1 *the Law Reformer Journal* 16.

*Mwaibabile*.<sup>92</sup> The Appellant was sentenced to one year in jail by the District Court in Songea for possessing a 'classified information' relating to national security. On appeal, it was revealed that nothing in the letter was related to national security as was claimed, because the so-called 'classified document' was the letter written to the appellant to deny him business license. This case is a clear example of how the broad definition of 'classified information' creates uncertainty and fear for public entities to disclose information under their custody.

### **2.3.8. *The Public Service Act***

The Public Service Act prohibits public service employees from disclosing information obtained through their duties without written permission from the President.<sup>93</sup> The Act makes it an offence punishable by imprisonment of a term up to 20 years for individuals to divulge or receive such information.<sup>94</sup> Consequently, this law fosters fear and caution among public employees, causing them to hesitate or withhold information to avoid potential legal or criminal repercussions.

### **2.3.9. *The Access to Information Act***

The Access to Information Act governs public access to information pursuant to Article 18 of the Constitution.<sup>95</sup> Section 3 defines categories of information accessible under the provision of this law. Section 12 of the Act allows information holders some flexibility by stating that they can choose to disclose documents or information beyond what is legally required, as long as they have the discretion or are compelled by law to do so. However, section

<sup>92</sup> *R v Adam Mwaibabile*, Criminal Appeal No.1 of 1997, High Court of Tanzania (unreported).

<sup>93</sup> Id (n43) s18 ready together with s 6 of the National Security Act.

<sup>94</sup> Ibid

<sup>95</sup> Id (n44) ss 4, 17 & 24.

6(2) of the Act outlines several broadly worded exemptions authorizing withholding of the information from public access. While such exemptions can serve legitimate purposes, they are open to multiple interpretation because of being too broadly stated.

### **2.3.10. The Personal Data Protection Act**

The Persona Data Protection Act (PDPA)<sup>96</sup> was enacted in 2022 as the principal legislation regulating the collection, processing, disclosure, use and exchange of personal data. The purpose was to safeguard individuals' right to privacy guaranteed under Article 16 of the Constitution. The Act identifies sensitive personal data to include information about criminal records, financial transactions and other sensitive details about personal information that the laws of Tanzania consider them presenting a major risk to the right or interest of the data subject. It imposes strict security measures on public institutions to ensure that the personal data is protected and places several restrictions on accessing, disclosing and using personal data.<sup>97</sup> It further empowers individuals with control over their personal data to access, update, and be informed about its use. It further gives an individual with control of personal data right to give informed consent before information collection or processing and the ability to request suspension or stop processing such data if he believes it will cause significant damage.<sup>98</sup>

### **2.3.11. The Basic Rights and Duties Enforcement Act**

The Basic Rights and Duties Enforcement Act (BRADEA) was enacted in 1994, pursuant to Article 30(3) of the Constitution of the United

Republic of Tanzania, to provide for procedures for enforcement of the basic rights and duties provided under Article 12 to 29 of the Constitution.<sup>99</sup> It establishes mechanisms for individuals and organizations to petition the High Court for remedies against actual or perceived violation of the constitutional basic rights and duties under sections 4, 5 and 6 (a-f) and the Rule 4 of the Basic Rights and Duties Enforcement (Practice and Procedure) Rules, 2014.<sup>100</sup> This Act is very crucial in the enforcement of the public right of access to public leaders' asset declarations. Although this right is not explicitly mentioned in the Constitution as noted under item 4.3.1 above, it is implied under the right to information and in principles of transparency, public participation, and the duty to protect the natural resources of the United Republic.

The provisions of this Act were invoked in *the National Legal Assistance Organization and Others versus the Attorney General v. AG and the Public Leaders' Ethics Secretariat* where the petitioners challenge the constitutionality of Regulation 6 and 7 of the Public Leadership Code of Ethics (Declaration of Interests, Assets, and Liabilities) Regulation of 1996, made under Section 23(3) of the Public Leadership Code of Ethics Act, 1995 (Cap. 398).<sup>101</sup> However, at the time of conducting this study, the case was yet to be determined as from 2008. This delay in case determination reflects the argument by Justice Robert Makaramba, that the enforcement of human right in Tanzania is more complex and burdensome than executing murder cases.<sup>102</sup> Having examined the legal framework of public right of access to public leader's asset

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<sup>96</sup> Id (n45).

<sup>97</sup> Ibid, ss22-30.

<sup>98</sup> Ibid, ss 33& 34.

<sup>100</sup> G.N. No. 304 of 2014.

<sup>101</sup> Miscellaneous Civil Cause No. 28 of 2008, High Court of Tanzania (unreported).

<sup>102</sup> Makaramba, R.V., 'Good Governance and Rule of Law in Tanzania' (Dar Es Salaam: Inaugural Tanzanian Biennial Development Forum, 24<sup>th</sup> – 25<sup>th</sup> April 2003)19.

declaration above, the next item lands on discussion of the key findings based on the legal analysis above.

### **3. FINDINGS AND DISCUSSION**

As noted in the introduction part, this article focuses on the analysis of the legal framework of public right of access to leaders' asset declarations in Tanzania. The objective is to find out how this legal framework supports the effective implementation of the public right of access to leaders' asset declarations in Tanzania. The findings have depicted that the existing legal framework does not effectively support the implementation of public right of access to leaders' asset declarations because of several weaknesses discussed in the section bellow:

#### **3.1. Lack of Clarity on the Scope of Application of the Right**

One of the noted weaknesses of the existing legal framework of public right of access to leaders' asset declarations in Tanzania is that the law does not specify the scope of application of public right of access to asset declarations. Regulation, 6 (1) (a) guarantees the right to inspect leaders' asset registers to 'any person'. The word "any person" encompasses both natural individuals and legal entities.<sup>103</sup> Likewise, Article 18 of the Constitution vests in every person the right to access, seek and receive information which means both natural and legal persons. These provisions create confusion as it ensued in 2008 when four political parties: Tanzania Labour Party (TLP); Chama cha Demokrasia na Maendeleo (CHADEMA); the National Convention for Construction Reforms (NCCR); and the Civic United Front (CUF) sought access to asset declarations of specific Members of Parliament and other senior

government officers involved in corruption scandals and illicit enrichment.<sup>104</sup> The four political parties were denied access to the respective officers' declarations by the Ethics Commissioner arguing that only individuals (natural persons could lodge complaints seeking access and not organizations or legal persons.<sup>105</sup>

Moreover, Regulation 6(1) (a) does not clarify whether the right to inspect leaders' asset registers is restricted to Tanzanian citizens or extends to both citizens and non-citizens. This ambiguity is also notable under Article 18 of the Constitution, which guarantees the right to information to all persons, and this implicitly includes non-citizens of Tanzania, as opposed to section 4(a) of the Access to Information Act which limits access to information held by public entities to Tanzanian citizens only.

Lack of clarity on who can access information domestically limits the potential for international cooperation which is crucial for effective combatting of corruption as envisaged by the UNCAC and AUCPCC. The authors argue that the right of public access to asset declarations should extend to all individuals present within the country's territory, regardless of their citizenship or residency status. This is crucial in combating transnational corruption and other financial

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<sup>104</sup> This Day Reporter, 'Opposition leaders hit a brick wall at the Ethics Secretariat offices in the City, tried to Peruse the Assets Declarations' (This Day Reporter, (27<sup>th</sup> April 2008)1; Lamtey, G., 'Alliance of Political Party leaders in Tanzania Denied Access to Leaders' Asset Declarations' (the Guardian, 26<sup>th</sup> April, 2008)2.

<sup>105</sup> Hansard, 'Debate on Proposed Budget for the President's Office (Good Governance) for the Financial Year 2008/09' (June 30<sup>th</sup>, 2008)77; Daily News, 'Asset Declaration of Public Leaders Need Public Scrutiny' (the Daily News, 1<sup>st</sup> July 2008)1; & Lamtey, G., 'Alliance of Political Party leaders in Tanzania Denied Access to Leaders' Asset Declarations' (the Guardian, 26<sup>th</sup> April 2008).

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<sup>103</sup> The Interpretation of the Laws Act, Cap. 1, R.E. 2020, s.4.

crimes as required by international instruments and best practices.<sup>106</sup>

### 3.2. Undefined Criteria of what Amounts to 'Relevant,' 'genuine,' and 'good faith'

Regulation 6 (1) (b) of the PLCEA Regulation requires the complaint lodged by individuals wishing to inspect leaders' asset registers to be relevant, genuine, and made in good faith.<sup>107</sup> The Commissioner is given discretionary power to determine whether the complaint is genuine, relevant and made in good faith. However, the regulations do not stipulate any measurable or objective criteria and procedural standards to guide the Ethics Commissioner in determining genuineness, relevancy and the applicants' good faith. This permits the Ethics Commissioner to assess the lodged complaints based on his personal judgment, experience or opinion due to absence of statutory standards.

Reliance on the Commissioner's discretionary powers makes it vulnerable to arbitrary decision-making and potential for abuse. This can disadvantage complainants or individuals as it was observed in *Tito Magoti v. Attorney General*.<sup>108</sup> The High Court of Tanzania emphasized that regulatory provisions must be drafted with precision, clarity, and specificity to prevent interpretative ambiguities that might compromise the law's intended protective mechanisms and undermine legal predictability.

Furthermore, the Commissioner's discretionary powers to permit or deny public inspection of the asset declarations register based on his assessment and satisfaction on the genuineness or otherwise of the intention of the complainant under regulation 6 (2) of the PLCEA Regulations 1996 are too broad and unchecked. The Regulations do not provide clear parameters for what constitutes a valid or invalid complaint. This omission gives the Ethics Commissioner unfettered discretionary power to determine complaint validity without established rules, procedures, or legal principles hence creating legal uncertainty and procedural confusion.<sup>109</sup>

The Commissioner may not always possess constant wisdom or reasonableness. This discourages individuals from exercising their right to lodge complaints to inspect public leaders' asset registers. It also undermines the accountability theory underpinning asset declarations by creating an asymmetrical power relationship where the Commissioner becomes an unaccountable gatekeeper of information meant to ensure accountability of public leaders. It subverts the principal-agent relationship central to accountability theory, where citizens (principals) must have reliable access to information about their representatives (agents) to evaluate their conduct.<sup>110</sup>

Moreover, the Commissioner's decision to permit or refuse register inspection is unilateral and is not amenable to giving reasons. There is no legal requirement to consult affected leaders or provide them with opportunities to defend against allegations. This framework directly conflicts with Tanzania's constitutional protections

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<sup>106</sup> Berger. T., *Getting the Full Picture on Public Officials: A How-To Guide for Effective Financial Disclosure*, (Washington, DC: World Bank 2017)98-102

<sup>107</sup>The Public Leadership Code of Ethics (Declarations of Interests, Assets and Liabilities) Regulation of 1996, G.N. No. 108 of 1996.

<sup>108</sup>*Tito Magoti v AG*, Miscellaneous Civil Cause No. 18 of 2023, High Court of the United Republic of Tanzania Main Registry At Dar es Salaam (unreported).

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<sup>109</sup> Mashamba, et.al., *When the Operation of Law Enhances Corruption in Tanzania: An Enigma in a Legal Regime Needing Reforms* (National Printing Company 2004) 64.

<sup>110</sup> *Ibid*.

established in Articles 13(6) (a) and 13(1) (b) regarding due process and presumption of innocence as it was held in *Andrew John Chenge v Tanzania Public Leaders Ethics Secretariat*.<sup>111</sup>

The Commissioner's lack of obligation to provide reasons for denying access to the register significantly worsens the situation as well noted by Galligan, who stated that, giving reasons is crucial in controlling administrative discretion.<sup>112</sup> Lack of the requirement to provide reasons for denying public access to the register in Tanzania, not only falls short of regional standards but also contradicts Tanzania's well established precedents as demonstrated by *Abdullah Juma v Salum Athumani*,<sup>113</sup> and *TANELEC Limited v the Commissioner General*<sup>114</sup> administrative bodies must justify their decisions especially when affecting individual rights.

Besides all, the PLCEA does not establish explicit appeal mechanisms for individuals aggrieved by the Commissioners' decisions. Lack of appeal mechanism under the PLCEA creates significant risks of unchecked decisions leaving individuals vulnerable to arbitrary or subjective interpretations by Ethics Commissioners.

The data displayed in findings in Table 1.0 below reveal a pattern of rejected complaints based on the provisions of Regulation 6 (1) (b)

of the PLCEA that vests in the Ethics Commissioner excessive discretionary power.

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<sup>111</sup> *Andrew Chenge v. the Public Leaders Ethics Secretariat, Public Leaders' Ethics Tribunal and the Attorney General*, Misc. Civil Cause No. 18 of 2015 , High Court of Tanzania (unreported).

<sup>112</sup> Mensar, Legal Control of Discretionary Powers in Ghana: Lessons From English Administrative Law Theory (1998) 14(2) *Afrika Focus* 119.

<sup>113</sup> *Abdullah Juma v Salum Athumani* [1986] TLR 240.

<sup>114</sup> *TANELEC Limited v The Commissioner General, Tanzania Revenue Authority*, Civil Appeal No. 20 of 2018, High Court of the United Republic of Tanzania (unreported).

**Table 1: Number of Public Requests (2003- 2020)**

Number of requests lodged	Requester type	Subject of Request	Number of the request succeeded	Reason for not permitted
1	Media House	Prime Minister	Not succeeded	Not relevant
2	Ordinary citizen	District Executive Director (DED)	Not succeeded	There was no response from ES
3	Coalition of Political Parties in Tanzania (4)	(11), Senior Public leaders including (6) Members of the Parliament, (1) Permanent Secretary and 4 others	Not succeeded	Not Relevant and not made in good faith
4	Coalition of Political Parties in Tanzania (4)	Senior retired leader	Not succeeded	Not Relevant and not genuine
5	Coalition of Political Parties in Tanzania (4)	Specified Members of Parliament	Not succeeded	Not Relevant and not made in good faith
6	Ordinary citizen of Tanzania	Member of Parliament	Not succeeded	Not relevant
7	An ordinary person from Agenda Participation 2000	Member of Parliament	Not succeeded	There was no response from Secretariat
8	Media House in Tanzania	To access the Declarations of all Members of the Public submitted from (2010-2015) to enhance accountability	Not succeeded	Not relevant and not genuine
9	Ordinary citizen	District Commissioner	Not succeeded	Not relevant
10	Ordinary citizen	Regional Commissioner	Not succeeded	Not relevant
11	Ordinary citizen	Member of Parliament	Not succeeded	Not relevant
12	Ordinary citizen, the spouse of a deceased retired leader, and was interested to know his late husband's possessions for estate administration purposes.	Retired deceased Assistant Commissioner of Police	Not succeeded	Not comply with the PLCEA conditions
14	Ordinary citizen resident of Morogoro	Allegation of illicit enrichment and false declaration against Member of Parliament	Permitted to Access the declarations on 11th March, 2020	Suceded

**Source:** Multiple Reports, including the Government and Ethics Secretariat reports (1996-2020)

Table 1 above presents a summary of inspection requests received by the secretariat from 2003 to 2020. The Ethics Secretariat

received a total of 93 requests from public institutions and ordinary citizens over 20 years. Out of the 93 requests received, only 14 requests came from members of the public and

out of the said 14 requests, only 1 request was successful. The rest of the requests from the public were denied on grounds of being irrelevant, not genuine or not made on good faith based on application of Regulation 6(1)(a) and (b) of the PLCEA Regulations. This suggests that the regulations are being used inappropriately to restrict public access to asset declarations that should have been accessible under a proper interpretation of the regulations.

### 3.3. Procedural Gaps

The PLCEA lacks clear guidelines for lodging complaints. It does not specify how complaints should be submitted either in writing, orally, electronically, physically or by phone. There is no standardized format for submission, which causes procedural uncertainty and confusion and inconsistencies in complaints handling and processing. The procedural barriers and regulatory gaps ensued are evident in *Rev. Christopher Mtikila versus Frederick Sumaye* (the then Prime Minister) of the United Republic of Tanzania (2002-2004).

Rev Christopher Mtikila alleged the Prime Minister of illicit enrichment. He followed a two-step approach: he publicly disclosed the allegations on September 27, 2002, in Dar es Salaam and filed these complaints with the Ethics Commissioner requesting access to the Prime Ministers asset declarations. The Ethics Commissioner denied him access by citing lack of complaint as the basis for rejection.<sup>115</sup> This denial raises complex legal questions about the criteria for a valid complaint and creates an extra-legal barrier for public right of access to public leaders' asset declarations.

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<sup>115</sup>Tanzania Affairs, 'Prevention of Corruption' (Tanzania Affairs, 1<sup>st</sup> September 2003)1; the Guardian, 'MP Tired of Endless Corruption literature' (The Guardian, 22<sup>nd</sup> February 2003)1.

Moreover, the law does not state the permissible methods for inspecting the register. Section 23(2) of the PLCEA and Regulation 6(1) of the PLCEA Regulations only mention 'inspection' but do not specify how it can be implemented whether by accessing certified copies, duplicates, photocopies, notes, printed forms or other formats. Even the time limit for processing complaints is not provided. The absence of time limit for processing complaints can cause significant delays and uncertainty for applicants as it occurred in Uganda in *Edward Ronald Setenze Sekyewa v. Attorney General of Uganda*<sup>116</sup> in which the petitioners request was delayed and neglected for 11 years without any response from the Inspectorate General of Government (IGG).<sup>117</sup> This may discourage citizens from making complaints hence limiting the implementation of the public right of access to public leaders asset declaration.

### 3.4. Restricted Application of the Right

Tanzania employs a complaint-based access approach which restricts the exercise of the right to access public leaders' asset declaration to a few individuals who can successfully lodge genuine and relevant complaints.<sup>118</sup> The provisions of Regulation 6 (1) (a) of the PLCEA Regulation requires individuals to lodge with the Ethics Commissioner a formal complaint which must be relevant, genuine, and made good faith. Critics argue that this requirement creates unequal access to asset

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<sup>116</sup> *Edward Ronald Senteze Sekyewa T/A HUB for Investigative Media v Attorney General of Uganda*, Miscellaneous Cause No. 354 of 2013.

<sup>117</sup>Ibid.

<sup>118</sup>Mandara, F.A., 'The role of the Ethics Secretariat and its complaints handling Mechanism in ensuring efficient and Effective Public Service Delivery' (Brainstorming Meeting of Senior Officers of Good Governance Institutions, 23<sup>rd</sup> -25<sup>th</sup> January 2006)4.

declarations as not all citizens can afford to lodge such complaints.<sup>119</sup>

The law creates an impossible prerequisite that one must allege wrongdoing before being permitted to access the very information needed to determine if wrongdoing exists.<sup>120</sup> One of the members of parliament for Rombo Constituency once remarked that the legal framework inappropriately transfers the responsibility of the ethics enforcement from the Ethics Secretariat to the general public thereby creating a mechanism that inadvertently shields public leaders from proper scrutiny and accountability.<sup>121</sup>

A practical example of the limitations and inequitable application of the right of access to public leaders' declarations was the case of Global Publishers & General Enterprises Limited. Global Publishers & General Enterprises Limited is a registered private company dealing with publishing of weekly newspapers in Tanzania.<sup>122</sup> The Company sought to access asset declarations of Members of Parliament (MPs) for the 2010-2015 period, not due to specific grievances against individual MPs, but for broader accountability purposes. The Company argued that MPs as elected representatives are accountable to the people and, therefore, their asset declarations should be accessible to ensure transparent and honest conduct in office. This request was summarily rejected for want of formal

complaint under Regulation 6(1) (a) of the PLCEA Regulations, 1996.<sup>123</sup>

### 3.5. Presence of Contradictory Domestic Legislation

It has been noted in the legal analysis above that there are several legislations which are either contradictory or have loopholes that, if applied, may defeat the purpose of asset declaration and the public right of access to leaders' asset declarations. For instance, the ZPLCEA treats the declared information as confidential, except with the court order or with ministerial consent. This position differs from the PLCEA. The divergent frameworks within the same country may create legal confusion and jurisdictional challenges due to lack of clarity on precedence between ZPLCEA and the PLCEA where some individuals fall under both legislations. Furthermore, the National Security Act grants absolute discretion to the government to define what should be disclosed or withheld from access by members of the public and prioritizes national security over public disclosure. This restricts the circulation of information in the custody of the State. The Public Service Act prohibits public service employees from disclosing information obtained through their duties without written permission from the President. The Act makes it an offence punishable by imprisonment of a term up to 20 years for individuals to divulge or receive such information. This law fosters fear and caution among public employees, causing them to hesitate or withhold information to avoid potential legal or criminal repercussions. Likewise, the Access to Information Act and the Personal Data

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<sup>119</sup>Jesse, J.C., The Right of Access to Information as a Human Right: Tanzanian Perspective (2011)3(1) *the Law Reformer Journal* 18.

<sup>120</sup>*Id (n125).*

<sup>121</sup>Mwananchi, 'Makonda Kuchunguzwa na Sekretarieti ya Maadili ya Viongozi wa Umma, Endapo Malalamiko yatapelekwa Sekretarieti' (Mwananchi 17<sup>th</sup> February 2017)1.

<sup>122</sup> <https://globalpublishers.co.tz/about-us/accessible> accessed 23 May 2023.

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<sup>123</sup> Global Publishers, 'the Global publisher yakataliwa maombi ya kukagua Matamko' Global Publishers, (18<sup>th</sup> December 2015)1; the Guardian, 'The media Company Denial of Access to Politicians Asset Declarations Raise Public debate and query on accountability in Tanzania' (The Guardian, 18<sup>th</sup> December 2015)1.

Protection Act. Whereas the former Act contains broad exceptions potential for abuse to withhold information and restricts public right of access to leaders' assets declarations, the latter Act contains broad security measures on personal data which may be misused and easily be invoked to withhold information and restrict public right of access to public leaders' assets declarations.

#### 4. CONCLUSION

This paper examined the legal framework governing public right of access to public leaders' asset declarations in Tanzania. An attempt has been made to analyse the provisions of international and regional legal instruments as well as the municipal legal framework. It has been noted in this paper that besides the international and regional instruments that lay down the standards for national frameworks state parties, the Constitution of the United Republic of Tanzania stipulates the right to information and the duty for public leaders to make asset declarations. The constitution establishes the Public Leaders' Ethics Secretariat and the Ethics Commissioner to promote and enforce the public leadership ethics in Tanzania. Besides the Constitution, the PLCEA and its regulations provide for the public right of access to asset declarations and the procedures for accessing the same. Nonetheless, it has been noted in this paper that the law does not define with clarity the scope of application of the public right of access to public leaders' asset declarations. The law does not set criteria to determine the relevance and genuineness of complaint or good faith of the complainant. It has further been noted that the law contains some procedural gaps and vests in the Ethics Commissioner too much discretionary powers to allow or disallow individuals to access public leaders' assets declarations. Moreover, there are several other legislations which seem to be inconsistent with the public right of

access to public leaders' asset declarations. Unless the Government undertakes a comprehensive legal reform to address these weaknesses, ineffective implementation of public right of access to public leaders' asset declarations in Tanzania shall remain a notable feature.

#### 5. RECOMMENDATIONS

The authors recommend that the Government reviews the existing legal framework for the public right of access to leaders' asset declarations as follows:

- i. To clarify whether the right to inspect leaders' asset registers is restricted to natural persons only or also extends to legal persons, and to extend the public right of access to leaders' asset declarations to all persons present within the country's territory, regardless of their citizenship or residency status. This will foster international cooperation in combating corruption as required by the UNCAC and AUCPCC.
- ii. To narrow down the discretionary and unchecked powers of the Ethics Commissioner in granting or refusing access to leaders' asset declarations by defining with precision the criteria for the Commissioner to determine the relevance, genuineness, and good faith of the applicants when lodging complaints.
- iii. To provide clear guidelines and standardized procedures for lodging complaints and inspecting the register. The guidelines should specify the manner complaints should be submitted, either in writing, orally, electronically, physically, or by phone; how inspection of the register should be conducted, whether by accessing

certified copies, duplicates, photocopies, notes, printed forms, or other formats; and the time limit for processing complaints.

- iv. To remove the requirement that one must allege wrongdoing before being permitted to access the leaders' asset declarations.
- v. To harmonize all legislations that are contradictory or contain loopholes, which, if applied, may defeat the purpose of asset declaration and the public right of access to leaders' asset declarations in Tanzania.