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EDITORIAL

On behalf of the Editorial Board of the *African Journal of Law and Practice,* I am delighted to invite you to explore the articles presented in this comprehensive issue. The journal customarily publishes two issues each year, in January and December. This issue contains the following five articles and one book review.

Articles

1. Navigating the Arm's Length Principle: Bridging the Gap Between Transfer Pricing and Customs Valuation in the East African Community
2. Transparency and Accountability in Tanzanian Petroleum Industry: The Role of Institutions and Challenges Associated.
3. Judicial Responses to Climate Change in Tanzania: Has the Paris Agreement Sparked Emerging Jurisprudence?
4. The Legal Complexities of the Relief in Division of Matrimonial Real Property upon Divorce in Mainland Tanzania: Lessons from Kenya
5. Regulatory Oversight of FinTech in the Era of Artificial Intelligence: Assessing Consumer

Book Review

The Internet, Development, Human Rights and the Law in Africa, edited by Danwood M. Chirwa and Caroline B. Ncube, Routledge, 2023, 4 Park Square, Milton Park, Abingdon, Oxon OX14 4RN, 250 pp., US$ 192.00 (hardcover), ISBN 978-1-032- 31072-5.

On behalf of the Editorial Board, I would like to express our heartfelt appreciation to the authors, reviewers, and content and language editors for making this special issue a reality.

Prof. Alex Boniface Makulilo

Chief Editor African Journal of Law and Practice

TABLE OF CONTENTS

ARTICLES
Tanzania's Personal Data Protection Act: A Harbinger for the Realisation of the Right to Privacy?

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Abstract
Protecting privacy is critically important, as it is a fundamental part of personal freedom and dignity. In an era marked by increasing digital connectivity, safeguarding this right has become even more crucial. Although Tanzania has enshrined the right to privacy in its Constitution for many years, it did not have a data protection law until 2022. This article examines whether the Personal Data Protection Act (PDPA) effectively promotes the realization of the right to privacy. Using a doctrinal legal research approach, it evaluates the PDPA's effectiveness against internationally recognised data protection standards, with a focus on principles, rights, and limitations. The evaluation reveals that while the PDPA represents a significant advancement in safeguarding the right to privacy, it also has the potential to undermine it. This is because it incorporates fundamental principles and rights related to personal data, alongside vague limitations that could compromise the right to privacy. Consequently, the PDPA appears to grant the right to privacy on one hand, while taking it away with the other. Therefore, this paper recommends amending the PDPA to enhance its role in safeguarding the right to privacy in Tanzania.

Keywords: *Data processing, data protection, personal data, principles of data protection, right to privacy.*

1.0 Introduction

Privacy is not a new concept. According to Rengel, the idea is as old as human civilization.[1] The right to privacy is a fundamental human right, universally recognised as essential to upholding human dignity and promoting individual autonomy. Privacy refers to the establishment of a personal space for individuals, often described as the right to be left

1 A. Rengel, 'Privacy as an International Human Right and The Right to Obscurity in Cyberspace,' *Groningen Journal of International Law*, Volume 2, No. 2, 2014 (33 – 54), p 37.

alone.[2] It is indispensable for the enjoyment of human dignity.[3] Privacy is closely connected with meaningful personal autonomy. As such, its infringement threatens the enjoyment of other rights, such as freedom of movement, association, and religion.[4] Although many states have committed to respecting the right to privacy by ratifying relevant instruments, they sometimes act inconsistently with this right by employing technologies that infringe upon it.[5]

With the advent of the digital age, the need for robust data protection laws has become paramount. In Tanzania, enacting the Personal Data Protection Act (PDPA) marks an essential step in safeguarding personal data and, by extension, the right to privacy. This article explores whether the PDPA effectively contributes to realizing the right to privacy in Tanzania. Following this introduction, the paper examines privacy law at the international, regional, and domestic levels. Subsequently, it provides an overview of the PDPA before analysing whether it signifies an important step towards the realization of the right in question. The article concludes with final thoughts and some suggestions for future directions.

2.0 Legal framework on the right to privacy

This part discusses the law pertaining to privacy. It begins by examining the framework at the global level, followed by the regional level, with a special focus on Africa, and concludes with an analysis of the law in Tanzania.

2.1 International legal framework

A variety of international human rights instruments safeguard the right to privacy, including the International Covenant on Civil and Political Rights (ICCPR) of 1966. ICCPR prohibits arbitrary or unlawful intrusions into a person's privacy, family, home, or correspondence and unauthorized assaults on an individual's reputation.[6] In clarifying the extent of this right, the United Nations (UN) Human Rights Committee emphasizes that privacy must be protected against any unlawful or

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2 *Justice K.S. Puttaswamy (Retd.) and another v Union of India and Others* [2018] AIR SC (SUPP) 1841, para 287, p 356.
3 *Ibid*, p 356.
4 See J.A. Cannataci, 'Right to Privacy: Report of the Special Rapporteur on the Right to Privacy,' A/HRC/40/63, 2019, para 4, p 3.
5 *Ibid*, pp 3 & 4.
6 Art, 17 (1).

arbitrary intrusions and assaults by state authorities and legal and natural persons.[7] The term 'unlawful' implies that interference is allowed under certain circumstances as defined by law, but it is still subject to the provisions, aims, and principles of ICCPR.[8]

Arbitrary interference with privacy can include situations where this interference is sanctioned by law.[9] As such, even if interference is legally permitted, it must not violate the essence of the right protected under ICCPR and must always be reasonable in the specific context.[10] It is also noteworthy that even where a law provides for interference that conforms with ICCPR, it must clearly define the situations in which such interference is permitted.[11] This requirement is essential as it aims to prevent abuse of the limitation, thus unjustifiably infringing on the right to privacy.

Protecting the right to privacy also implies that 'integrity and confidentiality' of correspondence must be protected as a matter of law and fact.[12] As such, compliance with Article 17 of ICCPR also requires prohibiting any form of interception of communication and surveillance.[13] For example, if a letter is written by A to B, it should reach A without being opened, read, or intercepted. Furthermore, home search should only be permitted if necessary for evidence collection and if it does not amount to harassment.[14] Also, considering the dignity of the person being searched, it should only be undertaken by persons of the same sex.[15]

Like other human rights, the right to privacy entails a corresponding duty to protect. In this regard, ICCPR requires state parties to establish legal safeguards against unacceptable violations of the right.[16] This includes not only enacting comprehensive data protection laws but also ensuring

7 Human Rights Committee, General Comment 16: The Right to Respect Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, HRI/GEN/1/Rev.1 para 1.
8 *Ibid*, para 3.
9 *Ibid*, para 4.
10 *Ibid*.
11 Human Rights Committee, General Comment 16 (note 7), para 8.
12 *Ibid*, para 8.
13 *Ibid*. See also G. Rona & L. Aarons, 'State Responsibility to Respect, Protect and Fulfil Human Rights Obligations in Cyberspace,' *Journal of National Security Law & Policy*, Volume 8, No. 3, 2016 (503 – 530), pp. 511 – 512.
14 Human Rights Committee, General Comment 16 (note 7), para 8.
15 *Ibid*.
16 Art 17 (2).

that accessible and effective remedies are available for individuals whose privacy rights have been violated.[17] The legal protection of personal privacy is critically important, as breaches can have significant repercussions, including damage to an individual's reputation, emotional distress, and potentially even harm to their personal and professional relationships. Therefore, it is essential for governments to prioritize these safeguards to uphold dignity and integrity in an increasingly interconnected world.

Universal Declaration of Human Rights (UDHR) of 1948 is another international instrument that guarantees the right to privacy. Like ICCPR, UDHR prohibits arbitrary interference with one's privacy, family, home, or correspondence.[18] It also prohibits any attack on a person's honour and reputation and requires states to enact a law protecting individuals' privacy from such attacks.[19]

Other international instruments that guarantee the right to privacy include the Convention on the Rights of the Child (CRC) of 1989 and the International Convention on the Protection of All Migrant Workers and Members of Their Families (Convention on Migrant Workers) of 1990.[20] It is also worth noting that CRC and the Convention on Migrant Workers protect the right to privacy in terms similar to those employed by ICCPR and UDHR.

2.2 The right to privacy under regional human rights frameworks

2.2.1 The African human rights system

Two instruments within the African human rights system explicitly guarantee the right to privacy, namely the African Charter on the Rights and Welfare of the Child (African Children's Charter) of 1990 and the African Union (AU) Convention on Cyber Security and Personal Data Protection (AU Data Protection Convention) of 2014. According to the African Children's Charter, children have the right to privacy in their family life, at home, and in their correspondence.[21] It is essential to underscore that the African Children's Charter generally affords

17 Human Rights Committee, General Comment 16 (note 7), para 11.
18 Art 12.
19 *Ibid*.
20 Art 14.
21 Art 10.

protection similar to that accorded by the UDHR and ICCPR. However, in addition to such protection, it understandably includes a provision allowing parents or guardians to oversee their children's conduct reasonably.[22]

The oversight by parents or guardians is significant because they have a legal obligation to uphold and ensure the development of their children. Given this, it is essential to grant parents and guardians the right to exercise reasonable supervision over their children's conduct. Without this oversight, parents and guardians will likely lose control of their children, failing to effectively discharge their obligation to raise and guide them in the right direction. It is essential to acknowledge that the supervision required in the context of child welfare is not merely a blanket standard, but rather one that must be deemed 'reasonable'. The determination of what constitutes reasonable behaviour can vary based on numerous factors, including the child's age, maturity, and the particular context in which actions are taken. Furthermore, it is crucial to understand that the African Children's Charter does not grant parents or guardians the authority to violate children's rights to privacy. This underscores the importance of respecting children's autonomy and ensuring that their rights are upheld, even while they are under parental or guardian supervision.

Insofar as the AU Data Protection Convention is concerned, the right to privacy is addressed under chapter two of this instrument. In this regard, states commit to establishing a strong legal framework for fundamental rights and freedoms, including penalizing privacy violators while ensuring the free flow of personal data.[23] States are also required to establish a framework that considers the fundamental freedoms and rights of both legal and natural persons.[24]

The AU Data Protection Convention plays a vital role in enhancing data protection across Africa, representing a significant advancement in the ongoing efforts to uphold privacy rights within the regional human rights framework. By establishing clear standards and guidelines, this instrument aims to address the growing concerns surrounding personal

22 Art 20.
23 Art 8 (1).
24 Art 8 (2).

data security, enabling individuals to safeguard their personal information against misuse and unauthorized access. Furthermore, it underscores the commitment of African nations to align with global privacy standards while fostering a culture of respect for human rights in the digital age, ultimately contributing to the protection of personal dignity and autonomy in an increasingly interconnected world.

It is worth noting that the African Charter on Human and Peoples' Rights (African Charter) of 1981, which serves as Africa's primary human rights framework, lacks an explicit provision for the protection of the right to privacy. In this context, Singh and Power argue that the omission of the right to privacy in the African Charter suggests that, prior to the digital age and the subsequent rise in privacy infringements, both online and offline, the internationally recognised right to privacy held minimal, if any, importance within the African human rights system.[25] In this context, Makulilo argues that the concept of privacy is a Western construct that has undergone significant evolution over time.[26]

The absence of a standalone provision in the African Charter for protecting the right to privacy makes it challenging, but not impossible, to protect this right in Africa. As previously mentioned, a link exists between the right to privacy and other fundamental rights. This connection enables the right to privacy to be derived from related rights. Notably, the right to life and human dignity, specifically safeguarded in the African Charter, serves as the primary foundation for inferring the right to privacy.[27] Consequently, one can argue that any unlawful or arbitrary breach of an individual's privacy constitutes a violation of their personal life and integrity. This perspective highlights the fundamental importance of privacy as a crucial component of personal dignity and autonomy within contemporary societal frameworks.[28]

25 A. Singh & M. Power, 'The Privacy Awakening: The Urgent Need to Harmonise the Right to Privacy in Africa,' *African Human Rights Yearbook*, Volume, 3, 2019 (202 – 220), pp. 202-203.
26 A. B. Makulilo, 'Data Privacy in Africa: Taking Stock of its Development after two Decades,' in L. A. Abdulrauf & H. Dube (eds), Data Privacy Law in Africa: Emerging Perspectives, 2024, pp. 41–77, 41. Also, see generally P. Boshe, 'A Quest for an African Concept of Privacy,' in L. A. Abdulrauf & H. Dube (eds.), Data Privacy Law in Africa: Emerging Perspectives (2024), pp. 13–40.
27 See art 4.
28 For more details, see generally A. Mavedzenge, 'The Right to Privacy v National Security in Africa: Towards a Legislative Framework Which Guarantees Proportionality in Communications Surveillance,' *African Journal of Legal Studies*, Volume 12, No. 3-4, 2020 (360-390).

2.1.1 Right to privacy under other regional human rights systems

The right to privacy is also safeguarded in other regional human rights frameworks. For instance, the European Convention on Human Rights of 1950 protects individuals' privacy and prohibits any unjustified interference with this right by public authorities.[29] It states further that the circumstances under which interferences may be allowed must not only be provided by law but also be necessary in a democratic society in the interest of national security, public safety, or economic well-being of a country, or those aimed at preventing crimes, protecting health and morals, or protecting the rights and freedoms of others.[30] The right is also well entrenched in the American Convention on Human Rights of 1969, whose wording is in *pari materia* with that of ICCPR and UDHR.[31] Other instruments at the regional level include the Arab Charter on Human Rights of 2004,[32] and the Human Rights Declaration of the Association of Southeast Asian Nations of 2012.[33]

The presence of various instruments protecting the right to privacy highlights the inherent significance of this fundamental right. This essential protection, recognized by numerous domestic constitutions, aims to empower individuals with control over their personal information and private lives. These measures emphasize privacy as a cornerstone of individual autonomy and dignity. Additionally, they reflect a commitment to personal freedoms while acknowledging the evolving challenges posed by technology and globalization in preserving the sanctity of personal privacy.

3.0 Legal protection of the right to privacy in Tanzania

3.1 Constitutional protection

In Tanzania, the right to privacy is firmly established in the Constitution of the United Republic of Tanzania of 1977, hereinafter referred to as the Constitution. Specifically, the Constitution provides that everyone is entitled to respect and protection regarding their person, the privacy of their person, family, and matrimonial life.[34] The Constitution also

29 Art 8(1).
30 Art 8(2).
31 See art 11.
32 Arts 16 & 21.
33 Art 21.
34 Art 16.

guarantees everyone the right to protect their residence and private communications.[35] To ensure this right is realized, the Constitution requires authorities to establish a legal framework for the circumstances and procedures under which the right to privacy can be interfered without prejudicing it.[36] This right was recently reaffirmed by the High Court of Tanzania, which stated clearly that the Constitution and various key international human rights instruments, including the ICCPR, unequivocally protect it.[37]

3.2 Statutory protection

The central law regulating data protection in Tanzania is the PDPA.[38] Before 2022, the country lacked a specific law on personal data protection, despite the right to privacy having been enshrined in the Constitution for almost four decades. As such, the enactment of the PDPA brought into operation the constitutional provision on the right to privacy.[39] It came into operation in 2023 upon the publication of a government notice by the minister responsible for the matter. The PDPA's enactment and entry into effect marked a remarkable milestone in enforcing the right to privacy and personal security as enshrined in the Constitution. The PDPA is a crucial embodiment of Article 16 of the Constitution, which intensifies its principles and guarantees their practical application.

3.2.1 An overview of the PDPA

The PDPA has 65 sections divided into nine parts. The first part outlines preliminary provisions, including the definition of key terms, objectives, and principles of personal data protection. It has five goals, which include regulating the protection of individuals' privacy, establishing mechanisms for protecting personal data, and providing remedies in the event of a violation.[40] It also enshrines principles that should govern the collection and processing of data.[41] Such principles include ensuring that data is collected and processed for explicit, specified, and legitimate purposes, in accordance with a data subject's rights.

35 *Ibid*.
36 Art 16 (2).
37 See *Tito Magoti v Honourable Attorney General*, miscellaneous civil cause no. 18 of 2023, available at https://tanzlii.org/akn/tz/judgment/tzhc/2024/1939/eng@2024-05-08 (last accessed 12 March 2025).
38 Chapter 44 of the laws of Tanzania.
39 The High Court also acknowledged this fact in Magoti's case (note 37).
40 Sec 4.
41 Sec 5.

The second part establishes the Personal Data Protection Commission (PDPC) as the primary authority responsible for supervising the implementation of the PDPA.[42] The PDPC is mandated, among other things, to ensure compliance with the provisions of the PDPA, handle complaints relating to alleged violations of personal data protection and the privacy of individuals, and investigate and take measures against any matter that it considers affects personal data protection and violates privacy.[43] The PDPC is overseen by a Board established to ensure it performs its functions as required by law.[44] It was officially launched by the President of the United Republic of Tanzania in April 2024.[45] In her address, the President noted that the commencement of the PDPC was a significant milestone for personal data protection and emphasized the importance of strict regulations in this area.[46] Launching the PDPC, the central body responsible for implementing the PDPA, was a significant step toward realising the right to privacy and personal security in Tanzania. The third part sets requirements for the registration of all data controllers and processors[47] as a prerequisite for collecting and processing personal data.[48] In this respect, the PDPC is mandated with the power to administer registration and deregistration of all data controllers and processors.[49] It is an offence for anyone to supply false or misleading information during the registration or renewal application.[50] Any decision the PDPC makes regarding registration can be appealed to the minister responsible for communication.[51]

Part four of the PDPA deals with collecting, using, disclosing, and retaining personal data. In this respect, it sets the threshold requirements for personal data collectors, including the lawfulness of the collection purpose, necessity, and the incidental or direct relationship between the

42 Sec 6 (1).
43 Sec 7.
44 Secs 8 & 9.
45 J. Mosenda, 'Tanzania launches commission to oversee personal data protection,' (4 April 2024) The Citizen (online), available at https://www.thecitizen.co.tz/tanzania/news/national/tanzania-launches-commission-to-oversee-personal-data-protection-4577912, (last accessed 11 April 2025).
46 *Ibid*.
47 A Data controller is anyone who determines the purposes and means of processing personal data, whether in isolation or jointly, and a data processor is anyone authorized to process personal data for and on behalf of the controller, save for those under the direct authority of the controller (See sec 3 of the PDPA).
48 Sec 14.
49 Secs 14, 15 & 18.
50 Sec 19.
51 Sec 20.

data collected and the lawful purpose.[52] Additionally, it prohibits the collection of data through unlawful means.[53] It also requires the data collector to comply with specific procedures before collecting any data and provides exceptions under which these procedures may be waived.[54] It also imposes certain restrictions on a data collector who has obtained data from a data subject. These restrictions include using collected data for the intended purpose and restrictions on disclosure.[55]

Part five contains provisions on transboundary data flow. In this regard, the PDPA empowers the PDPC to restrain data transfer from Tanzania to another country.[56] Generally, the PDPA permits data transfer to a country with an adequate legal framework for data protection, provided two conditions are met.[57] The first condition is that the data recipient must demonstrate that the requested data is essential for carrying out a task that serves the public interest or fulfils a lawful function of the data collector.[58] The second condition is that the recipient must establish the necessity of the data transfer, provided there are no grounds to believe that such transfer or data processing could be detrimental to the data subject.[59] It is worth noting that the PDPA also allows the transfer of personal data to a jurisdiction without an effective data protection law as long as an undertaking is made to ensure the protection of such data and its processing by the authorized controller.[60] The law provides for factors to be considered in determining the adequacy level of the protection to be afforded by the data recipient, including the country in question, the nature of the personal data, and the prevailing circumstances surrounding the transfer.[61] Furthermore, the PDPA empowers the respective minister, in consultation with the PDPC, to enact regulations specifying situations under which the transfer of personal data is not allowed.[62]

52 Sec 22 (2) (a) & (b).
53 Sec 22 (3).
54 Sec 23.
55 Secs 25 & 26.
56 Sec 31 (1).
57 Sec 31 (2).
58 Sec 31 (2) (a).
59 Sec 31 (2) (b).
60 Sec 32 (1).
61 Sec 32 (2) (a-f).
62 Sec 32 (3).

Consequently, the Personal Data Protection (Personal Data Collection and Processing) Regulations were promulgated, providing procedures for transferring data outside the jurisdiction, among other things.[63] It is interesting to note that the Regulations in question impose additional conditions for the transfer of data outside the country and empower the PDPC to refuse an application for data transfer where certain conditions are not met, including where it is not satisfied that there is adequate protection in the recipient country and on any other ground it deems fit for public interest.[64] When submitting an application for personal data transfer, the applicant must satisfy the PDPC that the recipient country has ratified an international instrument relating to personal data protection, that an agreement on personal data protection exists between Tanzania and a recipient country, or that a contractual agreement exists between the person requesting such data and the recipient of such data outside the country.[65]

Part six enshrines the rights of data subjects. It should be noted that the PDPA guarantees data subjects' rights to access, rectify, cancel, or oppose the processing of personal data, commonly referred to as the ARCO rights of data subjects.[66] In this vein, it, for example, gives data subjects the right to be informed about access to personal data, the right to be informed about the purpose for accessing personal data, the right to know recipients of accessed personal data, and the right to prevent access to personal data where such access might be injurious to the data subject.[67]

Furthermore, the PDPA explicitly states that the data subject can request the PDPC to delete personal data if it is inaccurate, known as the right to erasure. The right to have personal data protected, including the right to erasure, was upheld by the Court of Justice of the European Union, which, among other things, held that even search engine operators have

63 Government Notice No. 449c, published on 4 July 2023. See Regulations 20, 21, and 22.
64 Reg 22.
65 Sec 20 (3) (a-c).
66 See A. J. Carrillo & M. Jackson, 'Follow the Leader? A Comparative Law Study of the EU's General Data Protection Regulation's Impact in Latin America, *Vienna Journal on International Constitutional Law*, Volume 16, No. 177, 2022, p. 194 available at https://www.degruyter.com/document/doi/10.1515/icl-2021-0037/html, (last accessed 30 April 2025). See also D. J. Solove, 'The limitations of Privacy Rights,' *Notre Dame Law Review*, Volume 98, No. 3, 2023 (975 – 1036), p. 981.
67 For more on the rights, see Secs 33, 34, 35, 36, 37 and 38.

an obligation to comply with personal data protection requirements.[68] In this case, Mr Costeja González filed a complaint with the Spanish Data Protection Authority (AEPD), demanding the erasure of his personal information from a newspaper available online that was published in 1998. He also sought an order against Google Spain and Google Inc. for the removal or cancellation of his data from the search engine, so that it would not be included in the search results. While the complaint against the publisher of the information in the newspaper was dismissed on the grounds that the publication was legally justifiable, the complaint against Google was successful. Being discontented, Google challenged the decision before the Spanish High Court. The High Court sought a preliminary ruling from the Court of Justice of the European Union regarding the proper interpretation of the issue in the light of the European data protection rules. The Court, among other things, noted that personal data that was lawfully processed might later become unnecessary in the light of the purpose for which they were collected. In such a situation, the personal data in question should be erased from search results upon request by the data subject. This is what is referred to as the right to be forgotten. Although the decision has received several criticisms, it laid a critical foundation for the right to privacy.

It is also worth noting that the PDPA provides for the right to compensation in the event of damage incurred by a data subject due to a contravention of the law while accessing personal data.[69] Upon reviewing the provisions of the Act, it cannot be overstated that the rights enshrined in it align with the minimum threshold internationally accepted in terms of personal data protection, including the European Union (EU) General Data Protection Regulation, 2016 (GDPR).

The seventh part of the PDPA enshrines provisions on investigating complaints made to the PDPC regarding personal data violations. In this context, the PDPC holds the authority to launch investigations into suspected violations proactively whenever necessary.[70] When an investigation is deemed necessary, the PDPC is required to complete it within 90 days of receiving a complaint.[71] Considering the prevailing

68 *Google Spain SL & Google Inc. v Agencia Española de Protecccíón de Datos (AEPD) & Mario Costeja González,* Case C-131/12, 13 May 2014, ECLI:EU:C:2014:317.
69 Sec 50.
70 Sec 39 (2).
71 Sec 39 (3).

circumstances, the law permits an extension of up to 90 additional days.[72] This provision underscores the flexibility and understanding inherent in the legal framework, ensuring that all parties have the opportunity to navigate challenges effectively.

Furthermore, the PDPA makes it an offence to act in a way that obstructs the PDPC from carrying out its mandated functions.[73] The crimes include providing false or misleading information and obstructing the PDPC from exercising its powers.[74] In addition to offences, the PDPA empowers the PDPC to take administrative actions when it discovers violations. In this regard, it may issue an enforcement notice requiring correction of the breach, and if not complied with, it may impose penalties on the violator.[75] It is also allowed to order compensation for a person affected by a violation.[76] It is worth noting that the PDPC is empowered to review its decisions on its own initiative or upon application by an aggrieved person.[77] The application for review is made in a prescribed manner and must be made within 21 days.[78] The decision on the review application must be rendered within 14 days of receipt.[79]

The PDPA also establishes the crucial right to appeal to the High Court for individuals dissatisfied with the PDPC's decisions.[80] Like the application for review, the appeal should be lodged within 21 days of the decision.[81]This right of appeal serves as a fundamental safeguard, providing a structured and authoritative channel for individuals to seek justice and redress when they believe the PDPA has not adequately handled a complaint. By allowing for an oversight mechanism through the High Court, the PDPA promotes transparency and accountability within the PDPC's operations, empowering individuals to challenge decisions that may adversely affect their rights.

72 Sec 39 (4).
73 Sec 43.
74 Sec 43.
75 Sec 45, 46 & 47.
76 Sec 50.
77 Sec 48.
78 Reg 25 (1), Personal Data Protection (Complaints Settlement Procedures) Regulations, Government Notice No. 449B published on 4/7/2023.
79 *Ibid*, Reg. 25 (2).
80 Sec 49.
81 Re 26 of the Personal Data Protection (Complaints Settlement Procedures) Regulations.

Part eight includes provisions regarding finances. This section outlines, among other things, the sources of PDPC's funding, financial management practices, budget preparations, expenditures, and account auditing. The last part contains miscellaneous provisions. These provisions include exceptions under which personal data may be accessed without compliance with the PDPA. These exceptions include processing data for the data subject's personal use, where such access is necessary for national security, public interest, or the prevention of crimes, and where such access is required by law or a court order.[82] In addition to the exceptions stipulated expressly under the law, the respective minister can also prescribe other circumstances where compliance with the PDPA may be dispensed with.[83]

Apart from providing for exceptions, this part also establishes several offences concerning the breach of provisions of the PDPA. For instance, it is an offence for a data processor or controller to make an unlawful disclosure of personal data.[84] It is also an offence for any person to have unauthorized access to personal data kept by the data controller or processor, or for any person to offer for sale personal data unlawfully.[85] Interestingly, in instances where a company or corporation commits an offence, such a company and any of its officers who knowingly and intentionally are involved in committing the offence are held liable.[86] The law also requires any data controller to adopt a code of ethics or policy to govern the collection and processing of personal data.[87] The requirement to enact a code of ethics is also recognized under GDPR.[88]

3.2.2 How far does the PDPA promote the right to privacy in Tanzania?

It has already been indicated that the right to privacy is a fundamental human right enshrined in the Constitution of Tanzania and various international human rights instruments. A comprehensive guarantee of the right to privacy is essential for the enjoyment of both online and

82 Sec 58.
83 Sec 58(3).
84 Sec 60(1) & (2)
85 Sec 60(3) (4).
86 Sec 62.
87 Sec 65.
88 See Art 40.

offline human rights. Additionally, this right significantly impacts the exercise of other rights, including freedom of expression, assembly, and association. Consequently, violations of the right to privacy can hinder the enjoyment of these related rights, exacerbating issues of inequality and discrimination, among others.

However, since the right to privacy includes the right not to have one's personal data unlawfully revealed, a robust data protection legal framework is indispensable. In this regard, Solove argues that the right to privacy is fundamental to information privacy and data protection laws.[89] No wonder, for many years, the realization of the right to privacy in Tanzania remained a distant goal owing to the absence of statutory law on personal data protection.[90] That is why this paper contends that the enactment and implementation of the PDPA represent a significant step forward in fully realizing the right to privacy.

> This section evaluates how effectively the PDPA upholds the right to privacy within the country. This analysis examines the PDPA's key provisions, including those that establish principles and those that limit the right to privacy, to assess their alignment with internationally recognised standards and principles of data protection. By doing so, it can determine whether the PDPA fosters a robust framework for privacy protection that resonates with global norms.

3.2.2.1 Data Protection principles under the PDPA

This paper finds it pertinent to briefly underscore the key principles of personal data protection law to determine whether the PDPA supports the right to privacy. These principles are outlined in the EU GDPR, among other instruments. Although this instrument is not legally binding on Tanzania, it has exerted a significant influence on data protection worldwide. Even the High Court of Tanzania, in its decision on Tito Magoti's case, referred to the GDPR in relation to the international data protection regime.

89 D.J. Solove, 'The limitations of privacy rights,' (note 66), p. 977.
90 See U. John, 'Privacy-a Forgotten Right in Tanzania,' *Tanzania Lawyer*, Volume 1, No. 2, 2012, (72-114), pp 24 – 25.

The GDPR sets out seven fundamental principles to govern data processing. [91] The principles are lawfulness, fairness, and transparency; purpose limitation; data minimisation; accuracy; storage limitation; integrity and confidentiality; and accountability.[92] Lawfulness, fairness, and transparency require that the processing of personal data be conducted under a legal basis.[93] The fairness principle requires that personal data be processed fairly and not in a manner that is detrimental, misleading, or deceptive.[94] Transparency means that personal data should be processed in a clear and transparent manner.[95] Transparency also implies that data subjects should be informed about the processing of their data in a concise, easily accessible, and understandable manner.[96]

The principle of purpose limitation implies that the data processor must be clear about the purpose for collecting data from the outset and that the data must be used for that particular purpose.[97] Using data for any new purpose is only acceptable if it is in line with the original purpose, with the data subject's consent, or as required by law.[98] This requirement ensures transparency regarding the motives for collecting personal data and guarantees that its usage aligns with the reasonable expectations of the individuals involved.[99]

The data minimisation principle entails indicating the minimum amount of personal data needed to fulfil the processor's purpose and only holding such information.[100] This means the data processor cannot hold more data than is needed to achieve the intended purpose. For instance, if a company collects personal information relating to a particular creditor and gathers information on many creditors with similar names, but later it is

91 Art 5.
92See Data Protection Commission, "Quick Guide to the Principles of Data Protection" available at https://www.dataprotection.ie/sites/default/files/uploads/201911/Guidance%20on%20the%20Principles%20of%20Data%20Protection_Oct19.pdf (last accessed 29 April 20205).
93 *Ibid* p 2.
94 *Ibid.*
95 *Ibid.*
96 *Ibid*.
97 Information Commissioner's Office (ICO) (United Kingdom), 'Principle (b): Purpose limitation' available at https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-protection-principles/a-guide-to-the data-protection-principles/purpose-limitation/, (last accessed 30 April 2025).
98 *Ibid*.
99 *Ibid*.
100 ICO., 'Principle (c): Data Minimisation,' available at https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-protection-principles/a-guide-to-the-data-protection-principles/data-minimisation/ (last accessed 30 April 2025).

noted that other individuals are not connected to the debt, it is not supposed to process such information; instead, it should be deleted. Dealing with other irrelevant details would amount to processing excessive information, thereby contravening the principle of data minimisation.

The principle of data accuracy requires that personal data be accurate and, where appropriate, be kept up to date.[101] It also entails that personal data should not be incorrect or misleading. To avoid inaccuracy, the data processors must be transparent about what personal data they intend to share.[102] For example, if a person has moved from Mbeya to Dar es Salaam, it is inaccurate to say that they currently reside in Mbeya, but accurate to say that they once lived in Mbeya.

The storage limitation principle states that personal data should not be stored for an unnecessary period unless for a legitimate, specific, and explicit purpose.[103] This means that personal data should not be kept longer than necessary, even if such data was collected lawfully and for a legitimate purpose. The essence of this principle is to ensure that personal data that is no longer needed can be either erased or anonymized to prevent it from becoming outdated, which can lead to irrelevance, excessiveness, or even inaccuracy.[104]

The principle of integrity and confidentiality, also known as the security principle, entails establishing robust mechanisms to safeguard personal data from various threats.[105] This includes unlawful or unauthorized access, processing, and dissemination, as well as the risks of accidental damage, data loss, and other vulnerabilities associated with handling

101 Office of the Data Protection Commissioner (Kenya), 'Personal Data Protection Handbook,' p 6, available at https://www.odpc.go.ke/wp-content/uploads/2024/02/PERSONAL-DATA-PROTECTION-HANDBOOK.pdf (last accessed 30 April 2025).
102 ICO, 'Principle (d): Accuracy.' available at https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-protection-principles/a-guide-to-the-data-protection-principles/accuracy/ (last accessed 30 April 2025).
103 UN High-Level Committee on Management, 'Personal Data Protection and Privacy Principles,' available at https://indico.un.org/event/1013308/attachments/17363/50495/UN%20Principles%20on%20Personal%20Data%20Protection%20Privacy.pdf (last accessed 30 April 2025).
104 ICO, "Principle (e): Storage limitation". Available at https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-protection-principles/a-guide-to-the-data-protection-principles/storage-limitation/ (last accessed 30 April 2025).
105 UN High-Level Committee on Management, (note 103).

personal data. To uphold this principle, organizations must implement stringent access controls, encryption techniques, and regular audits to ensure data remains protected throughout its lifecycle.[106] Additionally, comprehensive training for personnel on data protection protocols is crucial to cultivate a culture of security awareness, thereby minimizing the potential for human error and enhancing the overall resilience against various data processing risks.[107]

Lastly, the principle of accountability necessitates the establishment of robust mechanisms designed to guarantee compliance with the previously outlined principles of personal data protection. This principle calls upon those individuals and organizations responsible for managing personal data to take full ownership and responsibility for their actions. This includes adhering to relevant legal frameworks and regulations, as well as ensuring transparent practices that uphold the integrity of personal data throughout its lifecycle. Accountability also involves implementing comprehensive policies and procedures that promote responsible data handling, conducting regular audits to assess conformity with data protection standards, and fostering a culture of employee awareness and responsibility. Additionally, this principle emphasizes the importance of timely reporting and addressing any data breaches or violations, ensuring stakeholders can trust that their personal information is safeguarded per established data protection norms.

As hinted above, the data protection principles are also outlined under the PDPA.[108] For example, regarding the principles of lawfulness, fairness, and transparency, it categorically obliges data controllers and processors to ensure that personal data is collected lawfully, fairly, and transparently.[109] The paper argues that the PDPA aligns with international principles and standards for personal data protection. This alignment marks a significant step forward in safeguarding the right to privacy, which is firmly established under the country's Constitution. The PDPA underscores the commitment to protecting individuals' personal information from misuse by adhering to these standards. This proactive approach demonstrates Tanzania's commitment to upholding human

106 *Ibid*.
107 *Ibid*.
108 See Sect 5.
109 Sect 5 (a).

rights and refining the legal framework surrounding privacy in the digital age.

3.2.2.2 Rights of data subjects under the PDPA

As underscored above, the PDPA enshrines several rights to which a data subject is entitled.[110] The fundamental rights associated with personal data protection include the right of access, which enables individuals to request access to the data being processed. Additionally, there is the right to prevent processing that could adversely affect the data subject. This is crucial in enabling individuals to halt activities that may lead to negative consequences in their personal or professional lives.

Another significant right is the right to restrict processing for direct marketing purposes, which enables individuals to opt out of having their data used in marketing campaigns or promotional activities without their explicit consent. Also, there is the right to rectification, which empowers data subjects to request corrections to any inaccurate or incomplete personal data, thereby safeguarding the accuracy of the information. Moreover, the PDPA incorporates the right to erasure, which allows individuals to request the deletion of their data under specific circumstances, such as when the data is no longer necessary for the purposes for which it was collected or if the individual withdraws consent.

Various personal data protection laws, such as the GDPR, enshrine these rights across jurisdictions. The rights seek to ensure that the processing of personal data is conducted in a manner that respects and upholds the fundamental rights of data subjects, particularly their right to privacy. By delineating these rights, the PDPA safeguards individuals against the misuse of their personal information and promotes greater transparency and accountability in data processing practices. Like the data protection principles, these rights are also fundamental in protecting individuals' right to privacy.

3.2.2.3 Restrictions on data subject rights under the PDPA

Like many other human rights, the right to privacy is not absolute. International human rights law acknowledges that this right may be

110 See Part VI.

restricted under specific conditions. However, unlike other provisions within ICCPR, Article 17 does not explicitly outline circumstances under which the right to privacy can be limited. However, as explained above, any limitations on this right must comply with the standards established by international human rights law.

It is also important to highlight that the provisions regarding the right to privacy discussed previously do not specify detailed exceptions under which this right may be limited. As noted earlier, the Human Rights Committee has clarified the scope of this right through its General Comment 16. In this context, it has been emphasized that unlawful interference does not merely encompass the prohibition of any form of interference not authorized by law; the law itself must also align with the provisions, aims, and objectives of ICCPR. Furthermore, even when the law permits interference, it may still be considered arbitrary if it contradicts the spirit of ICCPR.

In one of its resolutions, the Human Rights Council reiterated that any measures to limit the right to private life must comply with the principles of legality, necessity, and proportionality.[111] The principle of legality implies that any limitation to the right to privacy must be stipulated in law. The law must be sufficiently accessible, clear, and precise so that an individual may look to the law and ascertain who is authorized to conduct data surveillance and under what circumstances.[112] Insofar as necessity and proportionality principles are concerned, they require that the limitation of the right to privacy must not only be necessary for reaching a legitimate purpose but also be proportional to the purpose to be attained.[113]

111 Human Rights Council, 'the Right to Privacy in the Digital Age,' Resolution adopted by Human Rights Council on 26 September 2019, A/HRC/RES/42/15. The applicability of these principles in testing the validity of limitations to the right to privacy was also acknowledged by the High Court of Tanzania in Magoti's case (note 37).
112 Office of the United Nations High Commissioner for Human Rights (OHCHR), "The right to Privacy in the Digital Age," Report of OHCHR, para 23.
113 Human Rights Committee, General Comment No. 31 [80], 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, para 6. See also A. Rengel, 'Privacy as an International Human Right and the Right to Obscurity in Cyberspace,' (note 1), pp. 40 – 41; *Media Council of Tanzania, Legal and Human Rights Centre & Tanzania Human Rights Defenders Coalition v the Attorney General of the United Republic of Tanzania,* EACJ, reference no. 2 of 2017, para 60.

The Court of Appeal of Tanzania also alluded to the issue of appropriate rights limitation in *Julius Ishengoma Francis Ndyanabo v the Attorney General*.[114] In this case, the Court stated that any limitations of fundamental rights should not be arbitrary, unreasonable, or disproportionate.[115] As far as the right to privacy is concerned, it implies that any measure to limit the right must ensure that, apart from enacting a law to that effect, the limitation is justified by a legitimate aim, such as national security or public interest. The extent of the interference must also be commensurate with the purpose to be achieved.

The PDPA contains specific provisions that limit the right to privacy, a limitation not uncommon in many data protection laws. To determine whether the limitations contained therein align with international human rights law, one needs to assess the exceptions in light of the principles elucidated above. The PDPA provides seven instances under which personal data may be accessed and processed without compliance with the procedures outlined under the law.[116] These instances are: first; where the data subject does the processing for his/her personal use, second; where the processing is done in compliance with any law or court order, third; where the processing upholds national safety and security and public interest, fourth; where the processing aims at preventing or detecting crimes, fifth; where the processing aims at addressing the question of tax evasion, sixth; where the processing aims at investigation of misappropriation of public funds and lastly; where the processing aims at vetting for appointment to any public service position.

Upon careful examination of the above outlined restrictions, it becomes evident that most of them serve a legitimate and significant purpose within the framework of data protection. For instance, the allowance for the processing of personal data without adhering to established legal procedures when such processing is aimed at combating criminal activities represents a crucial objective aligned with public safety and welfare. These exceptions are designed to thwart unscrupulous individuals or entities from exploiting the law on personal data protection to evade taxes, perpetrate fraud, engage in other illicit activities, or

114 Civil Appeal No. 64 of 2021, Court of Appeal of Tanzania at Dar es Salaam, available at https://media.tanzlii.org/media/judgment/260483/source_file/julius-ishengoma-francis-ndyanabo-vs-the-attorney-general-2002-tzca-14-14-february-2002.pdf, (last accessed 13 April 2025).
115 *Ibid* p 127.
116 Sec 58

otherwise undermine public interests. They are not arbitrary; instead, they seek to strike a balance between safeguarding the individual right to privacy and ensuring the stability and security of society as a whole. The Indian Personal Data Protection Law, for example, explicitly provides for these types of exceptions, recognizing that there are circumstances in which the greater good necessitates a temporary relaxation of data protection norms.[117]

Despite including provisions that legitimately limit the right under study, the PDPA includes a concerning provision that ties the right to personal data protection to adherence to any existing law. This broad exception creates an environment that may facilitate the abuse of the right to privacy. The term 'any law' is quite vague, which raises important questions about whether it must align with the right to privacy. For instance, what if a law permits data processing without complying with the PDPA and disregards the right to personal data protection that is integral to privacy rights?

It is now broadly accepted that any restrictions on fundamental human rights should satisfy three key criteria: lawfulness, necessity, and proportionality. In this connection, the Supreme Court of India noted that any law infringing the right to privacy must withstand the touchstone of permissible restrictions on fundamental rights.**[118]** While it may be contended that this exception serves a legitimate purpose, its broad scope may be detrimental to the enjoyment of the fundamental right to privacy. In this regard, the Indian Supreme Court remarked that:

The whole object of guaranteed fundamental rights is to make those basic aspects of human freedom, embodied in fundamental rights, more secure than others not so selected. In thus recognizing and declaring certain basic aspects of rights as fundamental by the Constitution of the country, the purpose was to protect them against undue encroachments upon them by the legislative, or executive, and, sometimes even judicial for example Article 20) organs of the State. The encroachment must remain within permissible limits and must take place only in prescribed modes.[119]

117 Digital Personal Data Protection Act, No. 22 of 2023, See sec 17.
118 Justice K.S. Puttaswamy's case (note 2), para H, p 264.
119 *ADM Jabalpur v Shivakant Shukla* [1976] 2 SCC 521 para 183.

Furthermore, it is essential to recognize that even when the government enacts legislation driven by noble intentions, the legitimacy of such laws cannot be evaluated solely on their stated objectives or underlying motivations. Instead, a comprehensive assessment must take into account the tangible effects these laws have on the realization and enjoyment of fundamental rights. This involves examining both the direct and indirect consequences of the legislation on individuals' freedoms, access to justice, and overall well-being, thereby ensuring that the law promotes, rather than infringes upon, the core principles of human dignity and equality.

Given how the above limitation provision is couched, it can be effectively argued that it fails to meet the three-stage test. Moreover, the section mentions 'any law' without regard to its implications for the right to privacy. The provision could have been deemed legitimate had it been formulated with consideration for the necessity of upholding the right to privacy. To illustrate this point, one can refer to the provisions of the GDPR, which also permit the enactment of laws that may infringe upon the right to privacy. This is articulated in the following terms:

> …[p]rocessing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.[120]

Unlike the provision under the Tanzanian law, the above provision contains adequate safeguards to ensure it does not become subject to abuse. While the provision allows Member States to enact legislation that permits the processing of personal data without adhering to the principles enunciated in the GDPR, it obliges them to establish a law that meets the principles of legality, necessity, and proportionality. In this regard, it states categorically that such a law should not only be proportional to its objective, but also consider the essence of the right to privacy. Additionally, such a law requires appropriate mechanisms to ensure that the data subject's fundamental rights and interests are respected. These safeguards are essential as they seek to ensure that states do not use this

120 Art 9 (2) (d).

exception to trample upon an individual's right to privacy. The safeguards not only impose upon states the obligation to ensure exceptions are provided by law, but also ensure that such law does not negatively affect the essence of the right to privacy by listing requirements to be complied with.[121]

Along with GDPR provisions, South African data protection law specifies certain limitations that are clearly and justifiably outlined. In this context, it allows personal data to be processed without full compliance, as long as it is done in accordance with relevant provisions of the law protecting personal information.[122] It is important to emphasize that although this law authorizes the regulator to identify situations where personal data may be processed without following standard procedures, it also restricts such powers.[123] The Regulator must consider various factors when granting these exemptions, including public interests and scenarios that may benefit the public. Unlike provisions in Tanzania's PDPA, which provide an open limit on the right to personal data protection, the South African legal framework sets safeguards to prevent abuses that could undermine the fundamental right to privacy.

Additionally, Botswana's Data Protection Act stands out as a robust framework for safeguarding personal data while imposing essential limitations to balance individual rights and societal interests. This legislation explicitly stipulates that any law restricting rights and obligations related to personal data processing must be harmonized with the fundamental rights and freedoms recognised in a democratic society.[124] Furthermore, the Act stipulates that such restrictions must be both necessary and proportionate, ensuring that any limitations imposed are justified within the context of legitimate objectives.[125] These objectives include the protection of national security, the maintenance of public order and defence, as well as the advancement of the public interest and other specified categories that require careful

123 G.G. Fuster, 'Study on the Essence of the Fundamental Rights to Privacy and to Protection of Personal Data, (December 2022), pp 36 & 37, available at https://www.edps.europa.eu/system/files/2023-11/edps-vub study_on_the_essence_of_fundamental_rights_to_privacy_and_to_protection_of_personal_data_en.pdf (last accessed 13 September 2024).
122 The Protection of Personal Information Act, No. 4 of 2013, sec 36.
123 *Ibid*., sec 37.
124 The Data Protection Act, No. 18 of 2024, sec 50 (2).
125 *Ibid*.

consideration.[126] This careful delineation of limits not only reinforces the protection of individual privacy but also recognizes the need for certain exceptions that align with the overarching goals of societal welfare and safety. The Act's emphasis on necessity and proportionality serves to uphold democratic values while enabling the responsible management of personal data in various contexts.

Another concerning aspect of the PDPA is the provision that empowers the relevant minister to impose additional restrictions on the handling of personal data unilaterally. This clause signifies a considerable and far-reaching discretionary authority vested in the minister, which is strikingly devoid of clear guidelines or criteria regarding the rationale for these potential exemptions. There is a lack of clarity not only about the specific categories of personal data that may be subject to such exemptions but also regarding the duration for which these exemptions might remain in effect. This absence of defined parameters raises significant concerns about the potential for misuse of power and the implications it poses on the right to privacy. Without a transparent framework governing these restrictions, there is a risk of arbitrary decision-making that could undermine the fundamental principles of data protection.

This paper contends that the limitation clauses found in sections 58(2)(b) and 58(3) of the PDPA can significantly compromise the right to privacy. These provisions permit the enactment of laws that may overlook the right to privacy, effectively justifying unlawful intrusions that weaken the protections afforded to data subjects under both the Constitution and the PDPA. It can be argued that these clauses undermine the core principles and rights under the PDPA by allowing unjustifiable infringements on the rights it seeks to protect. In essence, while the PDPA grants specific rights, it also facilitates their infringement. The Court of Justice of the European Union has emphasized the necessity of considering the essence of a right when imposing limitations, acknowledging that while fundamental rights may be subject to restriction, such limitations must not distort the very nature of those rights.[127]

126 *Ibid*.
127 *Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft* Case 5/88 ECLI:EU:C: 1989:321, para 18.

It is worth underscoring that the validity of some provisions of the PDPA was, for the first time, put to the test by a human rights activist, Tito Magoti who filed a constitutional petition before the High Court of Tanzania challenging the constitutionality of sections 8 (1)(2)(3), 11(1), 14(5), 19, 20, 22 (3), 23(3)(c) (d)(e), 25(2)(e)(f), 26, 30(5), 31(2), 33(2) and 34.[128] In his petition, he contended that Sections 8(1), (2), and (3), which empower the President to appoint the chairperson and vice chairperson of the PDPC without specifying the required qualifications, violate the rights to equality and privacy, among others. The petitioner also argued that Section 11(1), which provides for the appointment of the General Director of the PDPC without a transparent procedure, infringes the rights to equality and privacy, among others. In addition, the petitioner alleged that section 14(5) which requires the PDPC to notify in writing and with reasons a data controller or processor whose application for registration has been refused, is against the constitutional right to fair trial and the right to be heard as it does not specify time within which an application should be rejected or registered as well as the time within which the applicant should be informed about rejection if any.

The other issue raised by the petitioner against the Act was that Section 19, which establishes offences relating to registration, such as furnishing false information, is unconstitutional for lacking *mens rea*. Equally, Section 20, which provides for an appeal to the minister was challenged because the PDPC falls under the ministry, as well as the fact that it does not provide an appeal procedure. Section 22(3), which prohibits a data controller from unlawfully collecting personal data, was also criticized for lacking clarity. Another provision that was challenged is section 23(3)(c), (d), and (e), which provide exceptions to the principle that personal data must be collected from the data subject, arguing that they are broader and more ambiguous.

The petitioner also challenged the provisions of sections 25(e) and (f), which allow a data controller to utilise data for purposes other than those intended, as violating the right to privacy. Furthermore, Section 26 was also impugned on the ground that it allows disclosure of personal data without any specific procedures. The provision of section 30(5), which allows for exceptions under which sensitive personal data may be processed, was also challenged for being overly broad, ambiguous, and

128 See Magoti's case (Note 37).

lacking prescribed procedures. Similar grounds were maintained against the provision of Section 33(2). Lastly, the petitioner alleged that Section 34(2), which permits the processing of harmful information, is couched in broader, ambiguous, and unclear terms, thereby infringing the right to privacy. Consequently, the petitioner requested that the Court declare the above provisions unconstitutional for violating the rights to equality and privacy, as well as personal security, among others, and expunge them from the PDPA.

In its detailed judgement rendered by the full bench on May 2024, the High Court only agreed with the petitioner in respect of sections 22(3) and 23(3)(c) & (e). In respect of section 22(3), the Court generally agreed with the petitioner that the provision is vague. In this regard, the Court noted that the section should have provided the so-called 'unlawful means' of collecting data, irrespective of the fact that the law cuts across all sectors, as well as changes in science and technology. The Court further argued that the provision is unclear, as it does not explain the implications of unlawful data processing, and therefore, it is open to abuse.[129]

Insofar as section 23(3)(c) & (e) is concerned, the Court also agreed with the petitioner's submissions that they are vague as they do not stipulate circumstances under which obtaining consent is impracticable or where such consent might prejudice the lawful purpose of data collection. The Court believed that the PDPA should have envisaged situations where obtaining consent would be impractical, as well as the so-called lawful purposes that might be prejudiced if the data subject were informed about the processing of their data. As such, the Court held that these exceptions fell short of the criteria for determining appropriateness of limitations to fundamental rights.[130] Consequently, the Court declared the provisions to be violative of the right to privacy and directed the government to amend them within a year; failure to do so will render them liable to be struck out from the PDPA. For the remaining impugned provisions, the Court declined to agree with the petitioner that they violate the Constitution.

It is essential to note, albeit briefly, that more than a year has passed since the High Court rendered its decision in Tito Magoti's case. However, the

129 See pp 17 &18 of the judgement.
130 See pp 20 & 21.

PDPA remains unamended, failing to adhere to the Court's directives. It is highly concerning that this delay undermines the rule of law and the integrity of judicial authority. It is anticipated that the government will soon take action to introduce the necessary amendments to the PDPA, in alignment with the Court's decision. A continued failure to implement these changes would not only reflect poorly on the government but could also be perceived as a blatant disregard for the judiciary, an unsettling prospect for a democratic society that champions the protection of fundamental human rights. Amending the PDPA in line with the High Court's decision would reinforce the government of Tanzania's commitment to upholding the principles of justice and accountability.

Based on the detailed analysis presented in this section, this paper takes the position that the of Tito Magoti, reveal a troubling lack of clarity and precision in their formulation. Moreover, the general limitation under the PDPA falls short of adhering to established international standards that govern the restriction of fundamental rights. This raises critical concerns about the efficacy of the PDPA in safeguarding individual privacy and highlights the necessity for a more robust framework that aligns with global best practices in human rights protection. The Court's decision in Tito Magoti's case underscores the urgent need for revisions to the PDPA to ensure that it does not inadvertently compromise the very right it aims to protect.

4.0 Conclusion and Way Forward

It cannot be denied that the enactment of the PDPA marks a significant milestone in Tanzania's legal framework for protecting the right to privacy. This legislation incorporates many essential principles and rights that align with international data protection standards, signaling a transformative era for privacy safeguarding in Tanzania, especially in our increasingly digital landscape. Notably, the PDPA introduces measures aimed at enhancing the right to privacy, including stipulating the necessity for consent before processing personal data and granting individuals the right to access their data. These provisions represent a significant step towards aligning Tanzania with global standards for personal data protection. They also demonstrate a commitment to safeguarding the right to privacy in an era when personal information is increasingly vulnerable to misuse and exploitation.

However, it is crucial also to underscore that the PDPA contains provisions that impose questionable restrictions on the fundamental right to privacy. These limitations, as previously articulated, create a precarious environment in which authorities may encroach upon personal data, thereby jeopardizing individuals' right to privacy and ultimately undermining the realization of this constitutionally protected right. This problematic scenario inherent in the PDPA poses a significant threat to the already vulnerable right to privacy in the context of increasing digitalization. Consequently, this paper asserts that the PDPA simultaneously confers the right to privacy while significantly undermining it. This duality could ultimately compromise, rather than enhance, the actual realization of the right to privacy within the country.

As a way forward, the PDPA should be amended in line with the High Court's decision in Tito Magoti's case. Furthermore, the PDPA should include a limitation clause that complies with internationally recognized standards for restricting fundamental rights. Additionally, to ensure the practical realization of the right to privacy in Tanzania, simply enacting a proper law will not suffice. Therefore, it is vital to have a strong political will that will ultimately lead to the effective implementation of the PDPA. To this end, empowering the PDPC with the necessary resources and authority to enforce the law effectively, as well as conducting public awareness campaigns to inform individuals and organisations of their rights and responsibilities under the PDPA, can play a pivotal role. Moreover, regular reviews and updates of the PDPA are necessary to address emerging challenges and incorporate best practices from around the world. By taking these steps, Tanzania can genuinely uphold and reinforce the right to privacy for all.

PDPA imposes significant limitations that have the potential to undermine the right to privacy substantially. These limitations, as also exemplified by the High Court's decision in the case

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Legal Guarantees for the Establishment and Functionality of Ombudsman Institution: A Case for the Insurance Ombudsman Service of Tanzania

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Abstract
The concept of Ombudsman represents an institution or a person appointed to receive and investigate complaints against maladministration by public servants and resolve disputes amicably between consumers and service providers. This article aims to expound its basic legal guarantees for the establishment and functionality of the Ombudsman institution in line with the fundamental elements of independence, accountability, fairness and effectiveness. Employing doctrinal research approaches and reviewing ombudsman instruments and literature and case laws from other jurisdictions, it identifies legal personality status, independent resources and sustenance structures as well as procedural and substantive terms of reference as cumulative keys in guaranteeing the functionality of the ombudsman institution. In that view, it shows that the Tanzanian Insurance Ombudsman Service legislative framework does not reflect these key guarantees for its functionality. It ultimately recommends legislative and institutional improvement to entrench those legal guarantees and thereby enhance independence, accountability, fairness and effectiveness in the functionality of the insurance ombudsman service.

Keywords: *Ombudsman, legal guarantees, independence, Accountability, Fairness*

1.0 Introduction

The challenges that faced insurance consumers in Tanzania included cumbersome claims procedures, unawareness of the rights and obligations leading to denial of insurance compensation, costly court processes, coupled with delays and technicalities. In such circumstances, an alternative scheme for resolving disputes in a more cost-effective, accessible, and expeditious manner became inevitable. In the year 2009, through the Insurance Act, Tanzania introduced the insurance ombudsman service (the service).[1] This is an institution for resolving insurance disputes between the insurance companies and insurance service consumers. The law states that the service shall be constituted of

[1] The Insurance Act, Cap.394, Act No.9 of 2009 S.122(1).

the insurance ombudsman appointed by the minister and the staff employed by the insurance regulatory authority (the Authority).[1] It also provides that the ombudsman's power of award is limited to 15 million for direct losses and its funds are those appropriated by the parliament to the Authority. The law *inter alia,* creates a fused relationship between the Authority and the Service, thereby impairing the latter's independence, fairness, accountability, and effectiveness.

This article explores basic legal guarantees for the establishment and operationalization of the ombudsman institution by making reference to various jurisdictions where this institution is established and developed. The objective is to assess the legislative framework of the insurance ombudsman service to establish lessons for Tanzania in the establishment and operationalization of Ombudsman institutions. Through the scrutiny of such jurisdiction, it is argued that the Tanzanian legislative and institutional frameworks are short of the basic legal guarantees that support the effective operationalization of the insurance ombudsman service. Accordingly, a case for the legislative review to fully incorporate the basic guarantees is made.

The term "ombudsman" is Swedish, with its origin in 1806. In Sweden, it is deemed proper to appoint a "*justitieombudsman*" (civil affairs procurator or a citizens' defender) to receive complaints from the public on allegations of maladministration by public servants.[2] It is defined as "*An official appointed to receive, investigate, and report on private citizens' complaints about the government…A similar appointee in a nongovernmental organization (such as a company or university.*[3] It has also been described as an office constitutionally or legislatively established and manned by an independent, high-level public official accountable to the legislative body. It receives complaints from dissatisfied persons against government agencies, officials, and employees. Also, it may act on its own motion to do so and is empowered to investigate, recommend corrective action, and issue reports.[4] The key

1 Ibid. S.122(2).

2 S. Rudholm, "The chancellor of justice", in D. C. Rowat (ed.), *The ombudsman: Citizen's defender*, London, George Allen & Unwin, 1968, pp. 17-21. See also British Columbia Development Corporation v. Friedmann (Ombudsman), [1984] 2 S.C.R. 447.

3 B. Garner, *Black's Law Dictionary* (8th ed.) Thomson West,2004, 3451.

4 International Bar Association, *The Ombudsman Committee of the International Bar Association Resolution*, Vancouver: International Bar Association, 1974.

attributes of this Swedish model that make it suitable for Tanzania are that it emphasises independence, impartiality, accountability, transparency, and accessibility of a third-party neutral institution operating outside the court system to handle complaints and resolve disputes. It is established to offer an informal and cost-effective alternative to judicial structures, hence its suitability for adoption.

Independence is a tangential factor as it enables the ombudsman to operate impartially, thereby enhancing public trust. As for accountability and transparency, they apply to ensure that the ombudsman has systems and structures that enable it to account to the public through reports on its performance, both financially and operationally. Therefore, effective discharge of its mandate depends on the cumulative application of attributes.

2.0 Legal Framework of the Tanzania Insurance Ombudsman Service

At the head of the framework is the Constitution of the United Republic of 1977 as amended from time to time. It indirectly recognises the Insurance Ombudsman service in the category of other agencies for the administration of justice.[5] The requirement to promote and enhance dispute resolution among people involved in the dispute.[6] and dispense justice without due regard to technicalities.[7]Encouraging parties for amicable dispute resolution also implies that courts can take cognizance of other state agencies that apply the ADR mechanism in the dispute resolution.

The Service's establishment and operationalisation are governed by the Insurance Act, Cap. 394 and the Insurance Ombudsman Regulations. Within this Act, the framework is comprised of parts I, II, 1X and XI, which are in respect of preliminary provisions, administrative provisions, establishment of the Service and insurance appeals tribunal and general provisions respectively as they relate to the establishment, The objectives of these provisions are to provide for establishment of the office, its compositions functions and powers, decision of the ombudsman, procedural aspects and related matters.

5 The Constitution of United Republic of Tanzania, 1977, Cap. 2 [R.E 2002]. Art.13(3).
6 The Constitution of the United Republic of Tanzania, Art.107A (2) (d).
7 Id. Art. 107A(2)(e).

An examination of the framework reveals that it suffers from various shortcomings. For the purposes of the present discourse, a general highlight is made. These include the undefined legal personality of the ombudsman, unclear and limited jurisdiction, lack of definition of the terms complaint and dispute, creation of dual staff functionality without the ombudsman's recruitment mandate, lack of independent financial provision for the Service and streamlined procedural terms of reference. Generally, there is a lack of basic legal guarantees that enhance the implementation of its fundamental elements, which justify its identity and existential legitimacy. This article maintains that these legislative defects have a negative bearing on the institutional independence, accountability, fairness, transparency, and effectiveness of the insurance ombudsman service.

3.0 The Basic Legal Guarantees for the Functionality of the Ombudsman Institution

The field of ombudsmen schemes has received both practical and academic attention, albeit the majority from foreign writers. Most of the literature and instruments on the subject, however, focus on the establishment and operationalization of an ombudsman institution. The emphasis tilts on the attainment and implementation of the fundamental elements of an ombudsman, namely independence, fairness, accountability, transparency, and effectiveness. For instance, Gottehrer terms these elements as the essential attributes that are *sine qua non* for effective operation of the ombudsman and, secondly, the "irreducible minimums" that enhance proper functioning of the ombudsman as an ombudsman scheme properly so called, thereby justifying its existential legitimacy.[8] These elements are said to manifest through, *inter alia*, legislative enactments prescribing the legal status of the institution, a transparent appointment of an Ombudsman with secured tenure, clear restrictions on conflict of interests, independent and adequate sources of funding, governance structures and resources.[9] In South Africa and Ireland, they are exhibited through the National Financial Ombudsman and the Financial Services and Pensions Ombudsman, respectively, being legal entities with independent sources of funds, which enhances their

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8 Gottehrer, D.M., & Dean, G.M, "Fundamental Elements of An Effective Ombudsman Institution",2009, p.9, available at <https ://www. theioi. org/ downloads/934ch/ Stockholm%20 Conference_15.%20 Plenary%20 Session%20II_Dear% 20Gottehrer.pdf> (accessed 11 May 2023).

9 Kucsko-S., The Legal Structures of Ombudsman-Institutions in Europe-Legal Comparative Analysis, in Kucsko-Stadlmayer (ed.), European Ombudsman-Institutions (2008), 1.

accessibility and maintains independent financial, human, and capital resources and governance boards.[10] As a result, institutional independence, accountability, accessibility, and effectiveness are enhanced.

Such literature notwithstanding, there is a void with regard to the basic legal guarantees that enhance the attainment and manifestation of such fundamental elements in any ombudsman institution. The materials, including books, articles, and reviews, do not present in an organized fashion the basic legal guarantees for the functionality of an ombudsman institution. This article, through a comparative analysis of existing frameworks and a review of cases, seeks to identify and present such basic guarantees that enhance the attainment and implementation of the fundamental elements.

The Ombudsman institution can be categorised depending on the nature of its establishment and functions. However, the major categories fall into either the ombudsman for the public sector or the ombudsman for the private sector. While the former is established for receiving and resolving public grievances by the members of the public against public servants, the latter are established for resolving disputes between service providers and consumers of a particular industry in the private sector.[11] All these have varied conceptual and structural features in terms of establishment, their identity, the appointment of the ombudsman, powers and functions.

Despite the variations in categorization, structure and conceptual features, there are fundamental elements which are deemed irreducible minimums for any institution to be designated as an Ombudsman.[12] These include independence for the guarantee of impartiality, clarity of powers and scope, accessibility, transparency and accountability, effectiveness, and fairness.[13] They are deemed as core fundamentals for the establishment

[10] National Financial Ombud Scheme South Africa, *Memorandum of Incorporation, Clause 9 and Financial Services and Pensions Ombudsman Act, 2017, S.37(1).*

[11] Example the Directorate of Ombudsman affairs of Uganda, the Commission on Administration and Justice of Kenya and the Insurance Ombudsman Service of Tanzania respectively.

[12] D.M Gottehrer, & G.M Dean, 'Fundamental Elements of An Effective Ombudsman Institution',2009, .9, available at <https ://www. theioi.org/ downloads/934ch/ Stockholm%20 Conference_15.%20 Plenary%20 Session% 20II_Dear% 20GottehAderickson H. Njunwa rer.pdf> (last accessed 11 May 2023).

[13] INFO Network, 'Effective approaches to fundamental principles',2014,1. Available at https://www. Network f so. org › resources › INFO-NETWORK, (last accessed 22 February 2023).

and operationalization of an ombudsman institution. Arguably, these elements are crucial for determining the propriety or otherwise of an ombudsman institution in its design, purpose, and functions. This is because, for instance, while independence is core to the impartiality and fairness of the decisions, accountability, transparency, and effectiveness build the public trust and enhance the ombudsman's existential legitimacy. In order for these elements to be practically realized, there are basic legal guarantees that must be in place for the established ombudsman institution or must be legislatively catered for in the planning and designing for its establishment. In practice, they appear more of a centre pole whereupon the ombudsman's institutional functionality is hinged.

The implementation of the ombudsman's fundamental elements into their practicality requires some factors and common denominators that must be entrenched within the legislative framework of an ombudsman institution. As posed earlier, the literature available does not depict in clear terms such common denominators. This article, through a thorough analysis of other jurisdictions with established and operational ombudsmen institutions that reflect the basic legal guarantees, including South Africa, Cyprus, New Zealand, and India, and other similar institutions, organizes and presents the legal guarantees that ensure the ombudsman institution delivers on its statutory mandate independently, fairly, accountably, and effectively, thereby promoting and maintaining its existential legitimacy.

It is the view of this article that where any of the fundamental elements, such as independence, are lacking in an institution, it cannot be fit for designation as an ombudsman. Thusly, inappropriate description of bodies that do not follow the established paradigm as Ombudsman offices puts the public's respect for the independence, integrity, and impartiality of Ombudsman offices in jeopardy[14]. Therefore, whether it is a public sector ombudsman or a private sector ombudsman, it must be created and operationalized on the footing of such fundamental elements, which can only be realized by being legislatively guaranteed through the basic legal guarantees. This is due to the underlying role played by the ombudsman

[14] ANZOA Executive Committee, 'Essential Criteria for Describing a Body as an Ombudsman' Endorsed on 5 February 2020,1. Available at https://www.ombudsman.gov.au › assets › pdf_file (last accessed 14 May 2024).
ANZOA is the professional Association of Ombudsman in Australia and New Zealand. It does not resolve complaints but rather its members.

institution in social, economic, and political spheres for consumer protection, particularly through providing easy, cost-free access to justice and awareness of rights and obligations as consumers, promotion of the rule of law, and democratic governance. In this regard, the fundamental elements operate cumulatively in such a way that, where independence is lacking, it bears negatively on the rest of the elements and ultimately the effectiveness of the institution will be impaired. For instance, in the Philippines, an Ombudsman is said to have been impeached on grounds of lack of public trust for being partial in corruption investigations against the president.[15] The subsequent part expounds on the basic legal guarantees while critically analysing the Tanzanian legislative framework on the establishment and operationalization of the insurance ombudsman service.

As stated at the outset, upon extensive study of literature, legislative documents and case laws as discussed herein, this article identifies and puts forward four basic legal guarantees for the functionality of the ombudsman institution, namely, legal personality status, independent resources and sustenance structures, independent governance structure, and terms of reference usually contained in the governing rules.[16] Briefly, legal personality for an organization entails its identity that guarantees the exercise of rights and powers as enablers for the discharge of its mandate. Resources entail both human and capital, including equipment, tools, and infrastructure that enable its effective operations. Adequate funding enhances the possibility of maintaining independent resources, which in turn ensures the operational independence of the institution. Governance structure entails the existence of an oversight body for purposes of enhancing accountability, independence and effectiveness. The terms of reference entail substantive and procedural rules that govern the operations of the office. In this part, a description of those guarantees is made, with focus on the private sector ombudsman or industry-based dispute resolution scheme. It should be borne in mind that these are common to any ombudsman institution worth the designation.

15 Ma. Merceditas N. Gutierrez Petitioner, vs. The House of Representatives Committee on Justice and Others, [G.R. No. 193459, March 08, 2011] available at https://elibrary. judiciary. gov. ph/ the bookshelf /showdocs/1/60572 (accessed 12 July 2025).

16 T. Robert, *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication*, Oxford & Portland, Oregon 2011, 52.

3.1 Legal Personality Status

Legal personality refers to a particular approach by which a law establishes or acknowledges entities to which it grants certain powers and capabilities[17]. It generally recognizes two categories of persons, namely natural and artificial. The former is limited to humans alone, whereas the latter generally refers to any non-human entity that has been recognized by the law as having obligations and rights. As such, an organization is one of the most well-known artificial individuals with legal personality status. This concept was elaborated by the House of Lords in the famous case of *Salomon v. A. Salomon & Co. Ltd.*[18] From the court's conclusion, the firm becomes a person at law, autonomous and separate from its members upon compliance with the Companies Act's requirements. Although states, companies, and organizations do not have the same rights as individuals, they are nonetheless considered as such[19]. Applied in the concept of Ombudsman, this case bears on the need to ensure that the ombudsman institution should be financially, administratively, and operationally detached from the establishers in order to allow it to exercise its mandate without due regard or influence by the interests of those who either established or contribute to its funding.

Jurisprudentially, the legal personality accords powers and capabilities to an entity to exercise its rights and obligations for the attainment of the objectives of its establishment. Therefore, the wording of a statute or any instrument with regard to the nature of the institution being established is crucial in determining the legal status of that particular institution. This is exemplified by the Memorandum of Incorporation of the newly established National Financial Ombudsman Scheme of South Africa, which categorically states that it has legal powers and capacity of an individual for the purposes of carrying out its objectives.[20] Through legal status, the institution has clearly established its independent structures and exercises its rights and powers, including hiring, executing contracts, and having an independent governance board. Also, the Cyprus law establishing the financial ombudsman categorically provides for the establishment of a legal person in the name of a single agency for the out-

17 G.W. Paton and D. P. Derham (4th ed) *A Textbook of Jurisprudence*, 1972, 393, referred in B. Garner, (note3)3623.
18 *Salomon v. A. Salomon & Co. Ltd.* [1897]AC 22.
19 PJ. Fitzgerald, *Salmond on Jurisprudence*, Rep.2002, (12th ed)1970, pp. 296–310.
20 National Financial Ombud Scheme South Africa, *Memorandum of Incorporation*, *Art.6.1*.

of-court settlement of financial disputes.[21] This is reflected further in the charter of the board for the then Banking Ombudsman Scheme of South Africa, which expressly stated that the ombudsman scheme established is independent of the participants that fund its operations and further that its independence is reinforced by its status as a legal entity by virtue of its incorporation.[22] Generally, the establishing instrument must clearly stipulate the institution as being a legal entity independent from its funders or establishers.

Therefore, in order for the ombudsman to function properly as such, it must statutorily assume a legal personality in order to guarantee its institutional independence and effectiveness. Institutional independence is described by the American Bar Association as the ombudsman being and appearing to be free from any interference when legitimately performing its duties, free from control, limitations, or retaliatory penalties by the appointing entities or persons.[23] Such standards of independence are attainable where and only if the particular office is legally capable of asserting its mandate or vindicating its cause. This is why the said standards by the American Bar Association, *inter alia*, require that legislative enactment should clearly empower the ombudsman to commence a court action for enforcing its authority as defined by its establishing charter, legislation, or those standards.[24]

However, unlike the context articulated by the American bar standards, neither the Constitution of the United Republic of Tanzania nor the Insurance Act categorically stipulates the legal status of the Insurance Ombudsman service. To start with the Constitution, there is nothing therein to indicate bodies such as the Insurance Ombudsman Service, save for the powers of the President to establish and disestablish any office for the function of the executive, and the establishment of the Commission for Good Governance and Human Rights[25]. Haphazardly, one can gather

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21 Republic of Cyprus, *The Law Relating to The Establishment and Operation of a Single Agency for the Out of Court Settlement of Disputes of Financial Nature (Financial Ombudsman) of 2010, Section. 3(1)*. Available at <http//: www.financialombudsman.gov.cy> (Last accessed 23 November 2023).

22 New Zealand Banking Ombudsman Scheme, *Board Charter, paragraph 2*. Available at <https:// bankomb.org. nz/ about -us/our-board/board-charter > (Last accessed 16 November 2022).

23 The American Bar Association, 'Resolution on the revised Standards for Establishment and Operation of the Ombuds Office', 2004, 10.

24 New Zealand Banking Ombudsman Scheme, Board Charter, (n19), 2 paragraph 8.

25 The Constitution of the United Republic of Tanzania, 1977 as amended, Articles 36 and 129(1) respectively.

the ombudsman institutions from either the provisions that require equality before the law or those that enjoin the court to dispense justice without due regard to technicalities.[26]This calls upon the recognition of other institutions established for the purposes of dispensing justice out of court, which are accessible even to economically impecunious persons, to ensure equality of access to justice. Without a clear stipulation on legal personality, the insurance ombudsman service is bound, as it is, to operate in the shadows as a unit within the insurance regulatory authority, which in turn impairs the institutional independence, impartiality, and effectiveness.

Generally, institutional accessibility is hampered by the fact that complainants are unaware of the existence of the ombudsman service as an independent institution separate from the regulatory authority. To exemplify this anomaly, there are instances where, due to staff dual functionality, a staff member working for the insurance regulatory authority in the legal enforcement directorate was assigned duties to the insurance ombudsman to resolve disputes that she had previously been engaged with in the capacity of legal enforcement.[27] This situation and the like are a result of a lack of clarity on the legal status of the ombudsman, which denies the head of the Service to, inter alia, hire staff and highly impairs both individual and institutional impartiality.

3.2 Provision for Independent Resources and Sustenance Structures

The term "resource" is described as traditionally being tangible and intangible products of biological, ecological, or geological processes [28]. The concept is used to define the sources of human satisfaction, affluence, or strength [29]This entails labour, skills, financial capital, and assets. Generally, resources are an enabling factor for any human attempts to satisfy wants and needs, both physically and mentally, for sustainable development.

Resources and structures in the context of this article can be categorized as human resources, financial resources, and capital assets in the nature of tools, equipment, facilities, and infrastructure. This article posits that the

26 Ibid. *Article 107A (2) (d).*
27 S(Complainant) vs. MIC (An Insurance Company) Complaint No. TIO/MIL/518/2019.
28 D. Gregory, et.al *The Dictionary of Human Geography*, (5th ed)., Wiley-Blackwell, 2009, 648.
29 Ibid.

absence of independent resources hampers the ability of the ombudsman to function effectively and independently, in that the resource allocation does not always cater to the special and different needs of the ombudsman institution. Also, dual functionality of staff may lead to impaired impartiality and independence, and their consistency in service provision. In the subsequent part, the article attempts a description of the resources in relation to the establishment and operationalization of the Ombudsman institution, and looking at the legislative framework of the insurance ombudsman service in Tanzania, it eventually concludes that the legislative framework of the Service does not guarantee the existence of independent resources and structures for the sustainability of the office.

3.2.1 Provision for Human Resources

Fundamentally, within human resources is an intangible resource known as skills, which is the potential in man's mastery of nature for purposes of fulfilling his life needs. Human resources refer to humans as living beings capable of planning and executing tasks to achieve desired results, be they communal or individual. The fundamental standard for the establishment of an ombudsman requires that the institution of an ombudsman should have its own human resources and should avoid the use of seconded staff[30]. Seconded staff may be engaged to perform special tasks within a specified time, but not to be engaged to perform the daily and core business of an institution indefinitely. This tenet is also reflected in the Tanzanian Public Service Act. This law categorically provides that every head of a public service office is the authority in respect of appointment, confirmation, promotion, and discipline of public servants other than those appointed by the President.[31] This clearly depicts the importance of an institution in public service having its own resources. It is through this element that a particular head of the public office and the office itself are capable of pursuing result-oriented management, open performance review and appraisal systems, and overseeing and ensuring the career development of employees.[32]

In Tanzania, the Insurance Act, which establishes the insurance ombudsman service, is to the effect that the ombudsman service is comprised of the insurance ombudsman appointed by the minister and

[30] INFO Network, 'Guide to Setting Up a Financial Service Ombudsman', 2018, 46. Available at https://www. networkfso. org/ resources /Guide-to-setting-up-a%20financial-services-ombudsman-scheme_ INFO – Network _ March 2018. pdf (Last accessed 16 September 2024).

[31] *The Public Service Act, Cap. 298 R.E 2019 S. 6(1)(b).*

[32] *The Public Service Act, (n27) S.6(1) (c).*

other staff employed by the Authority.[33] In this regard, the staff that works in the insurance ombudsman office are all, by virtue of their employment status, employees of the Tanzania Insurance Regulatory Authority, with the exception of the insurance ombudsman, who is a ministerial appointee.[34] Apparently, on account of this legal provision, the Ombudsman's mandate as the head of office to recruit and maintain independent staff who are of the calibre and skills desired for the performance of the duties of the insurance Ombudsman service is diminished. That apart, it enhances uncertainties and lack of consistency of employees' performance of their work as they are not within the mandate of the Insurance Ombudsman but under the management of the Commissioner of Insurance in terms of that legal provision.

Clearly, the mandate of the Ombudsman to hire independent staff is curtailed and thus should depend on the staff of the Insurance Regulatory Authority, who are potentially hired and oriented to enforce regulatory laws and not the resolution of disputes. This clearly is contrary to such tenets entrenched in the Public Service Act and hence a defeat to the operational independence of the Ombudsman institution. Staff dual roles in both regulatory authority and the Service may result in potential conflict of interest as well as inefficient performance of duties. A vivid example where such scenarios are avoided by having the head of an ombudsman as an appointing authority through established employment systems is the Financial Services and Pensions Ombudsman of Ireland.[35]

This article argues that what enhances the effective operationalization of the ombudsman institution with regard to human resources includes their criteria of appointment, their remuneration, and their tenure, as well as the technical competencies and capabilities to perform assigned duties dictated by the legal system in a particular jurisdiction. These, arguably, are within the confines of the ombudsman office and the head of that office. He is statutorily supposed to determine and oversee the recruitment process in order to ensure that credible and capable human resources are recruited and retained. Therefore, predating the ombudsman's human resources to the insurance regulatory authority potentially maims the ombudsman institution and may potentially disable

33 *The Insurance Act, (n6) S.122(2).*
34 *Ibid. S.122(2).*
35 *The Financial Services and Pensions Ombudsman Act, 2017, S.15(1).*

it from fully fledged independent, accountable, and effective operational and functional status. As a result, public trust in the institution is impaired because it no longer appears independent due to staff's mixed roles of regulation and dispute resolution at the same time, as alluded to earlier. Thusly, the ability of the staff to deliver impartially, independently, consistently and timely on their function is hampered due to the possibility of being either reassigned or relocated or given additional regulatory duties apart from insurance disputes.

3.2.2 Financial Provisions

In order to function effectively, the ombudsman office must be adequately financially resourced.[36]Through a legislative provision, it should have its own funds and sources thereof independent of governments or other executive agencies in order to enable it to operate without financial control.[37] It is said that the ombudsman scheme should have and control of its own budget in order to attain its objectives, including ensuring its accessibility to complainants, sufficient money, and adequate cash flow, as well as maintaining prudent reserves.[38] Arguably, the ombudsman as an institution can only undertake effective planning and control of its budget where it has independent sources of funds as well as its own funds. The dire implication of a lack of independent sources of funds includes limited budgetary allocation and failure to deliver timely on complaint resolution, particularly conducting circuit sessions for complaint handling and awareness creation upcountry. The opposite thereto is that, with adequate funding, the ombudsman institution is capable of maintaining adequate resources, thereby putting in place structures and systems that enable it to deliver on its mandate in a timely and effective manner, a fact which in turn enhances consumer trust in the ombudsman.

Accordingly, an instrument establishing the ombudsman institution should provide for its funding and sources of such funds. The standards are to the effect that the funding of the ombudsman should be separate from the funding of either the appointing authority or the establishing

36 The United Nations, 'Principles related to the Status of National Human Rights Institutions' Ibid. paragraph. 3. See also the Venice Commission, 'Principles on the Protection and Promotion of the Ombudsman Institution' (Venice Principles),2019, Principle 21.

37 Ibid.

38 INFO Network, Ibid. 98.

entity so as to guarantee its financial independence.[39]Financial independence entails the ability to undertake planning and budgeting for its activities without control of another entity and without fear of budget cuts or denial of funds due to retaliatory reasons by the entities under the ombudsman's jurisdiction or within the executive.[40]

It also entails the availability of funds within reach of the ombudsman to enable the office to cater to all of its planned activities. Therefore, some jurisdictions and industries have devised reliable ways of funding the ombudsman office. For instance, the sources of funds for the National Financial Ombudsman South Africa are the industry levies from members of the scheme and prorate case fees for every dispute filed against a particular member.[41] Generally, the financial independence of an ombudsman institution is pivotal to other categories of institutional independence, namely, administrative and operational independence.

Essentially, the legitimacy and the cost-benefit of the ombudsman lie in its ability to resolve complaints and disputes amicably, expeditiously, and cost-effectively, thereby promoting harmonious business relationships and steady operation as potential catalysts to productivity.[42] With independent sources of funds, the ombudsman institution is enabled to plan and execute its programs aimed at consumer awareness and capacity building, as well as ensuring consumer-centric service provision. These altogether enhance operational capacity in complaints and dispute resolution, which in turn builds consumer confidence in the ombudsman system. This view serves as a basis for ensuring statutorily that the ombudsman office has its own reliable financial resources and is capable of planning activities. For instance, in Ireland, as it is in South Africa, through statutory provisions, an industry levy is prescribed for each industry member as a contribution to the funding of the ombudsman

39 Ibid.

40 Ibid.

41 National Financial Ombudsman South Africa, Memorandum of Incorporation, Clause 10.2.5.15. A Similar arrangement exists in India under the *Insurance Ombudsman Rules,2017 Rule.12(2)* to the effect that the funds for the salaries and other administrative expenses of the Ombudsman are born by the Life Insurance Council and General Insurance Council, on advisement of the Council for Insurance Ombudsmen.

42 Parliament of Tanzania, 'Hansard of the proceedings at the 45th session of the 15th Parliamentary meeting held on 13th June,2019, pp.139-40.

office.[43] This creates a stable flow of funds, thereby enabling it to function effectively and independently.

In the Tanzanian legislative context, the law provides that the funds of the ombudsman are the funds appropriated by the parliament to the Authority.[44] This directly implies that the insurance ombudsman service does not have independent sources of funds, and therefore, it does not have its own independent funds to enable it to function as an independent institution in the discharge of its mandate. As such, the law does not depict the guarantee of independent funds and the source thereof for the insurance ombudsman service. In this stance, the full and proper control of the ombudsman service over the financial resources cannot be guaranteed, thereby maiming its independent, accountable, and effective operationalization as argued hereinbefore.

3.2.3 Provision for Facilities, Tools and Equipment

For the purposes of maintaining institutional independence of an ombudsman institution, there should be the creation of separate and independent sustenance structures through legislative provisions. The legislative instrument intrinsically guarantees that ombudsman offices are separate from a regulator, industry entities, or consumer body, with adequate facilities, tools, and equipment.[45] These include mediation and conciliation rooms conducive to holding meetings in reconciliation and mediation.[46] Such rooms must be well ventilated, soundproof, and spacious to allow mobility in the sitting arrangement. Also, it should have adequate chairs, tables, and cabinets for the purpose of keeping case files in a secure and confidential manner. The office should have enough well-functioning equipment, including computers, laptops, and internet facilities, which enable business automation.

The facilities include infrastructure, namely adequate number of offices and allied accessories. A review of literature and establishing instruments shows that the ombudsman offices should be established at places where they can be easily accessible. In Pakistan, for instance, the Ombudsman is mandated to authorize provincial functionaries, including public servants

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43 Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2025, Statutory Instrument No. 133 of 2025.

44 *The Insurance Act, (n6) S. 125.*

45 INFO Network, ibid, 52.

46 R.K, Chopra & G. Priyanka, *Office Management*, (17th ed)., Himalaya Publishing House, 2015, 10-11.

or agents in such regions, to perform the roles of the Tax Ombudsman.[47] Likewise, in India, the ombudsmen's offices are established in every region, and the ombudsman may hold sittings at various places within his area of jurisdiction in order to expedite the disposal of complaints.[48]

Infrastructural facilities also include the office website, which is one of the essential communication tools for the Ombudsman institution.[49] The website must be clear with complete information to the public on the institution and its mandate, as well as its accessibility.[50] Through the website, community members should be able to lodge complaints and find sufficient assistance in accessing the services.[51] Facilities and equipment are key in enhancing accessibility, accountability, and transparency of the Ombudsman institution, as they enable access by the public to various information regarding the institution.

In Tanzania, the legislative provisions on the funds and composition of the Service curtail the creation and maintenance of independent structures such as tools, facilities, and adequate offices. This is due to the fact that the resource needs are determined subject to the budgetary approvals and considerations by the Authority, whose head remains the accounting officer of the funds in the absence of such a clear legislative stipulation. In that accord, it is apparent that budgetary considerations for the procurement of the Service's equipment and facilities are centralized in that it must go through the Authority. This is accounted for by the absence of legislative clarity of the Ombudsman's mandate and scope as the head of the institution, and the rights and obligations of the institution itself.

3.3 Provision for Independent Governance Board

This is an upper management strategic machinery that acts as an oversight mechanism over the functions and performance of the institution.**[52]** It is generally established for the effective discharge of the mandate while upholding the independence of the ombudsman.[53] A review of literature

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47 *The Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000, Section 21.*
48 In India, under the *Insurance Ombudsman Rules, 2017, Rule.11(1)*.
49 INFO Network, ibid., 67.
50 Ibid.
51 Ibid.
52 T. Robert, *Ibid.*
53 INFO Network, ibid. 85.

and legislative documents shows that these bodies are referred to as councils or boards, and their formation depends on the type of ombudsman office.[54] Its composition includes professionals from the particular industry, provided they are not barred by conflict of interest, and further, in terms of the law, they are not conflicted through either shareholding in an industry member company. They are usually in an odd number of at least 5, not exceeding 7 or 9.

A board or council that is independent from the ombudsman scheme's administration is one of the potential legal guarantees that must be legislatively established for the effective operationalization of the ombudsman office. It performs various administrative and oversight roles, including assisting in maintaining the ombudsman's independence; ensuring the ombudsman scheme has the resources to carry out its duties; supervising the ombudsman's efficacy and efficiency; and providing advice to the ombudsman regarding the institution's strategic direction.[55]

In Tanzania, the National Insurance Board (the NIB), which is established under the Insurance Act, is an oversight body of the Insurance Regulatory Authority.[56] Presumptively, it is supposed to play the advisory and oversight role for the insurance ombudsman service as well. This, arguably, does not augur well with the established norm among the insurance ombudsmen institutions and legislative enactments or instruments establishing them, which largely support the existence of independent oversight organs as described hereinabove. Thusly, its functions and roles in respect of the Service is limited as demonstrated hereunder.

The NIB by virtue of the law, is established as an oversight organ of the Authority, which is entrusted with the supervision and regulation of the insurance industry while enforcing the law. This is diametrically opposite to the Service's mandate of resolving insurance disputes between

54 In India, the Council for Insurance Ombudsman established under the Insurance Ombudsman Rules, 2017, Rule 5(1); in South Africa, it is referred as a Board under the National Financial Ombud Scheme (NFO) Memorandum of Incorporation, Article 9.

55 D. Thomas, and F. Frizon, 'Europe-Resolving disputes between consumers and financial businesses (Vol.1 of 2) *a practical guide based on experience in western Europe (English).* Washington, DC: World Bank., 2012, p.36. Available at https://documents.worldbank.org/en/publication/documents-reports/ document detail/ 16979 146823 309 1885/ a-practical-guide- based-on-experience-in-western-europe.(Last accessed 10 January 2025).

56 *The Insurance Act, (n6) S.14.*

insurance registrants and consumers, as well as beneficiaries, fairly and equitably. The statutory roles performed by each in the discharge of their respective mandate are fundamentally different in that, whereas the regulator performs and makes administrative decisions in the regulation and supervision of the insurance industry, the insurance ombudsman performs the roles of dispute resolution and potentially may issue a determinative order.

It is argued that the mix of the roles for the oversight board may lead to divided attention as well as a lack of actual oversight and ultimately impair the independence of the Service as an institution. Flowing from the Insurance Act, which prescribes the roles of the Board of ensuring the Authority performs its functions competently, and given the fact that the "Insurance Regulatory Authority does not include the "Insurance Ombudsman Service," it becomes apparent that the latter does not have an independent board to perform oversight functions crucial in preserving its independence and securing its operational efficacy. Apparently, therefore, there is a potential for conflict of interest for the board members when it comes to performing their oversight roles over the regulatory authority and at the same time the insurance ombudsman service. For instance, the board's objectivity may be impaired where it is required to advise the Authority on an enforcement matter referred to it by the Insurance Ombudsman service.

This article posits further that the functions of the board for the Service cannot be discharged effectively and fully where the same are made adjunct or addendum to the principal duties of supervising the Authority, as is the case in Tanzania. Arguably, the NIB's function in respect of the Service is drawn from the general mandate of the minister to make regulations in respect of all matters pertaining to the Insurance Act.[57] Nevertheless, it does not suffice in this thread, as the law limits the minister's powers to make regulations in relation to the Service in respect of procedures for hearing the Complaints.[58]As a result, this legal setup, which compels a mix of roles for the NIB, may lead to various challenges, including violation of governance norms, diminished accountability, operational inefficiency, and a diluted focus of the board.

[57] Ibid. *S.167.*
[58] Ibid. *S.124(4).*

Apart from such challenges, the governance structure for the insurance ombudsman service puts the institutional status before the public at jeopardy since it is viewed as part and parcel of the Authority. This, in turn, has a negative bearing on the institutional independence and its appearance as such, leading ultimately to loss of public confidence generally and consumer confidence in its ability to discharge its mandate fairly, impartially, and independently.

3.4 Provision for Substantive and Procedural Terms of Reference

The substantive and procedural terms of reference in this context refer to a set of rules and principles expressed in the form of principal legislation, regulations, rules, guidelines, charters, or bylaws that prescribe the ombudsman's operational guidelines. These terms prescribes important operationalization aspects including jurisdiction in terms of eligible complaints, eligible complainants, eligible pecuniary values, time limitations, and other processes; principles guiding operations, namely informality, confidentiality, equity, and cost-effectiveness; duties and powers of the Ombudsman; complaint handling and dispute resolution procedures, including manner of filing a complaint, modes of resolution, hearing, and appeals and enforcement of decisions or recommendations.

The terms of reference in those aspects depend on the nature of the particular ombudsman institution. In the context of this article, referring to the private sector ombudsman, such matters are provided for either in the establishing legislation or in a separate instrument like rules, regulations, or guidelines. They must be coherently and categorically stipulated in order to define the scope of the mandate of the ombudsman institution while ensuring predictability of the procedures and the outcome, and ensuring the complaint and dispute are ultimately resolved. In the Tanzanian context, it can be fairly said that the terms of reference, despite being described partly in the Insurance Act and in the Insurance Ombudsman regulations, suffer from a lack of clarity, coherence, and completeness. The subsequent part describes the components of the basic guarantees with respect to the terms of reference.

3.4.1 Jurisdiction

The standards for the establishment and operationalization require that the jurisdiction of the ombudsman should be clearly stipulated in the law in order to ensure the exercise of the mandate effectively and legitimately.[59] The term "jurisdiction" entails the extent to which the ombudsman can intervene in a particular complaint and dispute, and as such, it prescribes the criteria within which the ombudsman can and cannot act over a particular complaint. These prescriptions relate to the eligible complainants and eligible complaints in terms of the pecuniary values of the subject matter, the time within which it is instituted since its occurrence, the territorial scope of the exercise of the function, and the eligible respondents.

In the description of these criteria for jurisdiction, the article draws from various jurisdictions and ombudsman institutions, including the then Ombudsmen for short-term insurance of South Africa, the Ombudsman for long-term insurance of South Africa (now part of the National Financial Ombudsman), and the Insurance Ombudsman of India. The former were private sector ombudsmen established by the insurance industry members.[60]The Insurance Ombudsman of India, on the other hand, although established by the government, serves the insurance industry, which comprises both private companies and government companies[61]. As such, the standards applicable in these institutions can be more befitting in the context of this discussion, particularly in drawing inference as to the basic guarantee for the functionality of the ombudsman institution.

i) Eligible Complainants and Eligible Complaints

With regard to eligible complainants, the terms of reference of the ombudsman for short-term insurance in South Africa provided that the ombudsman resolves disputes between insurers and policyholders where such disputes fall within his jurisdiction.[62] This eligibility criterion for the complainant was maintained by the National Financial Ombud Scheme of South Africa.**[63]** Therefore, an eligible complainant must be a policyholder who is in disagreement with the insurer with regard to various matters, as deemed eligible complaints or disputes. Similarly, the eligible

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[59] T. Buck., et.al. *The Ombudsman Enterprise and Administrative Justice*, Ashgate, England, 2011, 234.

[60] They are part of the Ombudsman scheme organized and established by members of the insurance industry as not- for-profit Companies and recognized under the *Financial Service Regulation Act, 2017*.

[61] The rules are promulgated by the central government through the Insurance Regulatory and Development Authority and the Ministry of Finance is a member in the Insurance Ombudsman Council.

[62] *Terms of Reference of the Ombudsman for Short Term Insurance, paragraph 1.1.1.*

[63] *National Financial Ombud Scheme (NFO) Rules, 2024, Rule 2(a) and (c).*

complainants for the Ombudsman for long-term insurance are policyholders of life insurance who are in disagreement with the insurers.[64]

The insurance ombudsman rules of India provide that the rules are applicable to all complaints against insurance companies and their intermediaries filed by the policyholders. Therefore, the primary eligibility criteria for insurance complaints and disputes are that the complainant must be a policyholder.[65] Where this criterion is not met, a complaint will be rejected as being non-entertainable. In India, it is reported that complaints were rejected as non-entertainable for inter alia being out of pecuniary jurisdiction, and not having been referred to the respective insurers.[66]

Apparently, the requirement that eligible complainants should be policyholders stems from the privity of contract principle, which dictates that only parties to the contract can sue and be sued on the said contract. In this regard, a third party to the contract of insurance will be ineligible to bring a dispute directly against the insurer since he or she is not privy to the insurance contract.[67] This, however, in the context of alternative dispute resolution, arguably can be said to be a constraint position. Thus, for the purposes of facilitating amicable resolution of a dispute, it is essentially right for any person with a grievance against the insurer or related to insurance business to be eligible to file the same at the insurance ombudsman service.

In the Tanzanian context, the legislation provides that all persons with a disagreement with an insurance business registered in Tanzania are eligible as complainants.[68] In this accord, even third parties not privy to an insurance contract are eligible complainants. This, however, presents a hurdle to the complainant, especially where issues of the validity of an insurance contract arise, including instances where the premium for a

64 *Ombudsman for Long Term Insurance Rules, Rule.2.1.*
65 *The Insurance Ombudsman Rules, 2017, Rule.2.*
66 Council of Insurance Ombudsman, Annual Report, 2023-2024, pp 69-70 available at https://www.cioins.co. in/Annual Reports (last accessed 6 May 2025).
67 *Metropolitan Tanzania Insurance Co. Ltd vs Frank Hamadi Pilla* (Civil Appeal 191 of 2018) [2019] TZCA 281 and *SAS Logistics Limited vs Yahaya Ali Amour & 2 Others* (Civil Appeal No. 5598 of 2024) [2024] TZHC 7991
68 The Insurance (n6) *S.123.*read in tandem with the Insurance Ombudsman Regulations, (n8) Regulation 3.

particular policy was not paid by the insured. A guide indicating procedures for third-party claims for the purposes of establishing the validity of cover could mitigate such hurdles.

ii) Pecuniary Jurisdiction

With regard to the pecuniary value of the subject matter, most of the private sector ombudsmen prescribe the amount the ombudsman can admit for determination and finally issue decisions to the parties depending on the nature of the services for which it is established. For instance, the Insurance Ombudsman of India accepts complaints whose monetary value is not more than 30 Lakhs of Rupees.[69] As for the Ombudsman for Long-Term Insurance of South Africa, the Ombudsman could award only up to 50,000 rands as compensation with regard to material distress or inconvenience suffered by the complainant as a result of poor service or incompetence by the insurer.[70]

However, for the public service ombudsman that deals with complaints of service, maladministration, or procedural nature against the public servants, the limitation is in relation to the subjects of investigations, namely the institutions, as well as the subject matter that can be complained against.[71] Therefore, the ombudsman's limitations in this regard are determined by particular subject matter and its eligible institutions, which are in the ambit of its mandate. In all respects, what guarantees the proper operationalization of the Ombudsman is clarity in terms of the pecuniary scope and mandate of the Ombudsman.

A scrutiny of the law establishing and operationalizing the Service in Tanzania shows that the desired clarity in terms of jurisdiction is amiss. It states that the insurance ombudsman can grant an award to the complainant for direct losses and damages suffered up to 15 million. On the other hand, the Insurance Ombudsman Regulations limit the pecuniary powers of the ombudsman to 40 million in terms of the value of the complaint that can be admitted by the Service. The High Court of Tanzania, noting this confusion, explained that the subsidiary legislation is of no effect with regard to the pecuniary jurisdiction of the Service.[72]

69 Conditions for filing a Complaint with the Insurance Ombudsman of India, available at <https://www. cioins. co. in/>(Last accessed 26 October 2023).

70 *Ombudsman for Long Term Insurance Rules, Rule.3.2.5.*

71 *Republic of Botswana Ombudsman Act, 1997*, *S. 4.*

72 First *Assurance Co. Ltd* vs *Tanzania Insurance Ombudsman & Others* (Misc. Civil Cause 26 of 2020) [2020] TZHC 3360 (22 October 2020).

Apart from such a contradiction, the principal legislation in pronouncing the limitation in monetary value of the award implies that the Ombudsman cannot admit complaints whose value is more than the said limit. This connotation in itself is inhibitory in nature, as it tends to exclude complaints from being admitted for purposes of amicable resolution. This obviously does not meet the basic legal guarantee of the clarity sufficiently required in prescribing the scope and mandate of the Ombudsman institution for its effective operationalization

iii) Territorial Jurisdiction

Territorially, whereas other ombudsmen are established with a wide range of coverage, say throughout a particular country[73]Others exercise their jurisdiction within a particular locality where they are established.[74] Therefore, the territorial limitation depends on the nature of the ombudsman office as well as the establishing statute. For instance, most of the public sector ombudsmen have territorial jurisdiction within the area of their establishment.

The Service's territorial jurisdiction extends over the whole of the United Republic of Tanzania. This is clearly evident from the law, which prescribes the scope of its applicability to extend to the Republic of Tanzania, Zanzibar.[75] This notwithstanding, this article argues that in order to ensure its accessibility, the law should prescribe clearly with regard to the services on the part of the islands of Zanzibar, including providing for establishing an office thereof and its head as deputy ombudsman.

iv) Subject Matter Jurisdiction

With regard to subject matter limitations, the ombudsman's jurisdiction may or may not be limited depending on the nature and purpose of its establishment. However, the standards are to the effect that the limits and scope of the ombudsman in terms of eligible subject matter should be clearly spelled out for the purposes of ensuring certainty on its mandate.

The Ombudsman for Long Term Insurance, the Ombudsman for short term insurance of South Africa operates throughout the Country. See the Ombudsman for Long term insurance, 'Insurance Ombudsman 2022 Annual Report' p.18 depicting the geographical distribution of complainant being across the entire South Africa.

74 India, *Insurance Ombudsman Rules,2017 r. 11(1), (2) and (3)* to the effect that the territorial jurisdiction of the Ombudsman is specified from time to time by the Council and may exercise jurisdiction only within the territory where it is established.

75 *The Insurance Act, (n6) S.2(1).*

The Tanzania Insurance Act substantially meets this criterion, as it categorically prescribes matters that cannot be entertained by the Service.[76] The propriety or otherwise of this provision, nevertheless, in terms of the general context of the insurance law and the objectives of establishing the Service, is questionable. This is because it has a tendency to limit accessibility of the Service as an alternative dispute resolution mechanism in resolving insurance disputes. Persons involved in such disputes over non-entertainable matters are denied the benefits of resolving such disputes at the Service, including low costs and less time.

3.4.2 Provision for Principles Governing Performance of Functions

Apart from the fundamental principles for operationalization of the ombudsman institution, there are governing principles that guide the day-to-day operations in the discharge of the mandate of the ombudsman. These include the principles of informality, equity, and confidentiality.[77] The International Ombudsman Association has derived these principles, *inter alia,* from its Code of Ethics, which sets the principles that guide the general conduct of the Ombudsman institution in the performance of its functions. They are vital in ensuring that the staff in the ombudsman institution adheres to set standards of practice in order to maintain its status as an ombudsman and hence maintain its identity and legitimacy in the eyes of the public.

The principle of informality is to the effect that the Ombudsman institution adopts informal, cost-effective, and less technical rules of procedure for handling complaints.[78] In the context of dispute resolution, it entails the adoption of procedures that are outside the normal legal rules of dispute resolution. It allows off-the-record engagements with the neutral party to gain each party’s perspective, understand their interests, and explore options without focusing on a win-lose stance.[79] Informality is encouraged in dispute resolution for its essential characteristic of enabling parties to iron out their differences and explore early solutions to their disputes in a more relaxed and casual conversation manner without

[76] Ibid. *S.23(a) (i-vii).*
[77] The International Ombudsman Association, ‘Standards of Practice’. Available at http: //www. Ombuds association. org (Last accessed 22 May 2022).
[78] The American Bar Association, (Note20) pp.7 and 17.
[79] Lara K.D. ‘Informality: the hidden treasure in conflict resolution: A reflection on the principle of informality from an ombudsman’s’ perspective’, in UNtoday, (Official Magazine of the International civil servants) 1 March,2023. Available at https://untoday.org/resolving-conflict-through-the-secret-weapon-of-informality/ (Last accessed 22 May 2023).

engaging in legal tussles. To this end, in resolution of the disputes, the Ombudsman will not be bound by the rules of evidence, and further, they are empowered to adopt their own rules of procedure required for the discharge of their mandate.

The law in Tanzania mentions the principle of informality as one of the guiding principles of the insurance ombudsman in the discharge of the duties.[80] However, it is yet to be implemented in the proceedings since the regulations that govern the procedures do not clearly put out how informality needs to be put into practice. In an actual sense, the insurance ombudsman regulation stipulates that the insurance ombudsman, in the performance of his function, shall adopt, among others, informal procedures.[81] That notwithstanding, the regulations prescribe the procedures for filing as well as the resolution of the disputes as mandated in terms of the principal legislation. It is argued that where informality is to be adopted, the insurance ombudsman office should be accorded residual power by virtue of legislation to adopt any means of resolving a particular dispute that may be deemed appropriate in the circumstances of the dispute.

As for confidentiality, it is an important aspect in the operations of the ombudsman institution due to the crucial role it plays. It encourages reluctant complainants to fully disclose and have open communication between the parties, and it ensures protection against reprisals from any person or authority.[82]The principle is to the effect that the ombudsman and the staff cannot be compelled to testify in respect of matters they gained knowledge of during the resolution of a particular dispute.[83] It covers the nondisclosure by the Ombudsman of the source of information and the information received. Therefore, the legislation should prohibit compelling the ombudsman to disclose, even by way of testimony, any matter received or gathered during the handling of a complaint.[84] Exceptions to this restriction exist, including where such disclosure is required by law or where necessary to prevent the commission of a crime.

80 *Insurance Ombudsman Regulations, (n8) Regulation.4(b).*
81 Ibid.
82 Lara, K.D, Informality: the hidden treasure in conflict resolution: A reflection on the principle of informality from an ombudsman's' perspective (Note 71) 14.
83 Ibid. 15.
84 D. Thomas, and F. Frizon,. Europe-Resolving disputes between consumers and financial businesses (Note48).

In Tanzania, the law, particularly the Ombudsman regulations, includes the requirement to maintain confidentiality as one of the principles to be observed by the ombudsman when performing his function.[85] It, however, stipulates maintaining confidentiality insofar as it is feasible to do so, without mentioning any circumstances where this may not be feasible. It thus makes confidentiality a matter of discretion to the ombudsman and his staff. This in itself may erode the concept of confidentiality and hence lower the confidence of the public in the insurance ombudsman service as an institution.

With regard to the principle of "equity," the term is used to describe a jurisprudential branch whereby the courts would, as an alternative to strict common law, endeavour to determine what is fair in the circumstances of the matter instead of strict precedents. This principle would also apply where the law is inadequate.[86] It refers to justice and fairness.[87] It can be more described by its derivative adjective of "equitable," which refers to fair, impartial, and just; for instance, "equitable distribution" means the distribution of property fairly and not necessarily equally amongst the interested parties.[88] The Black's Law Dictionary sheds light on the term. It defines it as fairness, impartiality, and even-handed dealing.[89]

This principle is grounded on the tenets of natural justice and procedural fairness, which are at the core of Ombudsman decision-making. It requires that in the dispensation of justice and handling of complaints and disputes, the Ombudsman should strive to do or decide that which it considers fair and just in the circumstances of a particular complaint without strict regard to the spirit of the law. For example, the Irish High Court[90] commenting on the wider discretion of the financial service and pensions ombudsman conferred on grounds of equity[91], observed that "the mere absence of a breach of law does not immunize a financial services provider from a finding of unreasonable and improper conduct under s. 60(2)(b) and (g)." This implies that the principle involves going beyond

85 *Insurance Ombudsman Regulations, (n8) Regulation 4*.
86 A.H, Blackwell, *The Essential Law Dictionary*, Sphinx Publishing, 2008,166.
87 Ibid.
88 Ibid.
89 B. Garner, (Note3), 206.
90 Justice Hyland J. in *Danske Bank A/S v. FSPO & Another*. [2021] IEHC 116.
91 Republic of Ireland, the *Financial Services and Pensions Ombudsman Act, 2017, S.60 (2) (b) and (g).*

what is prescribed in the letter of the law in order to do justice in the circumstances of the case.

Therefore, it should be provided for in the legislative documents of the ombudsman institutions in order to ensure that its application is not contested by the service providers or the complainants. In South Africa, for instance, by virtue of the law, the ombudsman scheme is required to have rules that require the application of equity where appropriate as one of the conditions for its recognition and approval by the Ombuds Council[92]. This is due to the fact that service providers, in most instances, would seek to avoid liability on a lack of apprehension of the principle of equity where there is no breach of the terms of the contract and, as such, would seek to challenge the decision or recommendation of the Ombudsman[93]. It is for this reason that the rules of the Ombudsman for Long-Term Insurance of South Africa, which are in pari materia with the Insurance Ombudsman Regulation of Tanzania, require the Ombudsman, when discharging the mandate, to give due weight to consideration of equity[94]. In one of the recent complaints involving the undervalued sale of a mortgaged house by the Bank, the ombudsman applying the principle of equity found the sale to have been below the market value and recommended the write-off of the remaining balance of the loan.[95]

Apart from those principles, in order to ensure adherence thereto, the Ombudsman office staff's general conduct in the performance of their duty should be guided by a set of codes of ethics and conduct. It guides staff conduct to ensure that important aspects such as integrity, honesty, competence, and professionalism are maintained. The Bangalore Principles of Judicial Conduct[96] serve as a benchmark in developing such codes to ensure that the conduct of the personnel befits the institution of the administration of justice. These are instrumental in ensuring internal compliance with various legal standards in the discharge of the mandate and operational efficiency.

92 The *Financial Sector Regulation Act, 2017, S.196(3)(b)(vii)*.
93 Ombudsman for Long Term Insurance, 'Annual Report', 2012, p.24.
94 *Ombudsman for Long Term Insurance Rules, rr.1.2.4 and 1.2.7.*
95 Available at https://www.moonstone.co.za/when-banks-get-it-wrong-ombud-cases-reveal-costly-mistakes(last accessed 9 July 2025)
96 Bangalore Principles of Judicial Conduct, 2002. Available at <https:// www.unodc. org/pdf/crime/ corruption/ judicial_group/Bangalore_principles.pdf> (Last accessed 12 September,2021).

The Insurance Ombudsman Regulations of Tanzania provide that the staff, as well as the Registrar of Complaints, must abide by the code of conduct that is prescribed therein.[97] However, despite such mention, that particular schedule is non-existent therein. This leaves it in the confines of the Ombudsman to determine the code, albeit unwritten. It is argued that even if the code was in existence, the current legal setup in terms of the composition of the Service would still make its enforcement a hurdle to the Ombudsman since all employees belong to the Authority.

3.4.3 Complaints Handling and Dispute Resolution Procedure

The rules of procedure for the ombudsman institutions are contained in the documents showing the steps and procedures in handling the complaint and resolving a dispute. They entail procedural aspects of complaint handling from lodging the complaint to the conclusion. For a private sector ombudsman with a mandate to resolve disputes, these rules entail the procedure of filing a complaint or a dispute, including the manner in which it should be filed, investigation and determination, hearing procedure, review, appeal, and enforcement of the decision. The essence of procedural rules is to guide the conduct and practice, enhance predictability and assessment of the effectiveness of the ombudsman in access to justice in line with the constitution or establishing legislation.

In this regard, the Service draws its terms of reference in respect of complaint-handling procedures from the Insurance Ombudsman regulations. However, as it will be shown, there is a want of clarity and comprehensiveness of the said regulations, which in turn leads to a practical challenge in the aspects of conduct and practice. The decision of the High Court exemplifies the confusion that emanates from a lack of clarity of the regulations, particularly with regard to the status of the decision of the insurance ombudsman and remedial processes thereafter.[98] In that case, the High Court agreed to the argument that the available remedy where a claimant is dissatisfied with the decision of the ombudsman is to challenge the same by way of reference. In an actual sense, what the High Court refers to as a decision of the ombudsman was a reconciliation agreement between the parties. Also, the Court's conclusion was devoid of the fact that the decision, if at all, is made by the ombudsman, and does not bind the complainant. He can opt to

[97] The Insurance Ombudsman Regulations, (n8) Regulation 10.

[98] *Britam Insurance Company Limited vs. Francis H. Samba &Another, [2022] TZHC 14165.*

abandon the proceedings and file the suit afresh in Court. The subsequent part shows the scope of this basic legal guarantee for the operationalization of the ombudsman institution.

3.4.3.1 Manner of Filing a Complaint

The procedural terms of reference for the ombudsman institution must prescribe the ways in which a complaint may be filed. The standards require that, for enhancing accessibility, the rules should provide simplified and cost-effective ways of filing a complaint, and the same should be well communicated and known by the users. To that end, for instance, the rules of procedure provide that a complaint may be made in writing or orally, and it can be filed physically through a known postal address or by delivery at the Ombudsman office or by electronic means such as online filing and emails.[99]

This mode of filing the complaint is also reflected in the insurance ombudsman regulations of Tanzania. Despite its being scanty as to guiding the complainant in this respect, the regulations at least show the mode of filing the complaint. Nevertheless, it does not go further to prescribe the standards of the documents to be filed, and the regulations do not mention the requirement for the insurers to make the existence of the ombudsman known to the unsatisfied customers for the purposes of filing the disputes and thereby enhancing the accessibility of the insurance ombudsman service. This continuously presents a hurdle to complainants who wish to file their complaints, as they are forced to seek legal services at a fee.

Enhancement of accessibility through mandatory dissemination of information for the insurers about the ombudsman has been a regulatory norm in jurisdictions such as South Africa. Without such a requirement and given the scarce financial resources for the ombudsman to engage in a countrywide awareness program, its accessibility is highly hampered. Regulatory intervention through the requirement for the insertion of essential information about the ombudsman in the insurance contract would be instrumental in communicating the existence and accessibility of the Service.

[99] In South Africa, under the Ombudsman for *Long Term Insurance Rules, rule.3.1*; and in India under the Insurance *Ombudsman Rules, rule.14(1) and (2).*

3.4.3.2 Settling a Complaint or Dispute

The procedural terms of reference entail a guide as to how the complaint or dispute will be settled. These include issues pertaining to methods of resolution, namely mediation, conciliation, hearing, determination, recommendations, appeals, and reviews. It also entails ways of enforcing the decisions or recommendations of the ombudsman. The insurance ombudsman regulations, which guide the conduct and mode of resolving complaints by the insurance ombudsman service, suffer from a lack of an explicit manner of settling the disputes. This shortfall is demonstrated in the subsequent part through exposition of the scope of this basic legal guarantee for operationalization of an ombudsman institution.

3.4.3.3 Methods and Procedures

Essentially, the ombudsman, as an alternative to court litigation, employs the conventional ADR methods of reconciliation, mediation, negotiation, determination, arbitration, and neutral evaluation.[100] The rules of procedure also provide for a hearing of the parties in case of evidential issues that require a hearing. In all material respects, the rules should provide a streamlined procedure on stages and the modality of conducting the hearing, including the appearance of parties and the right of representation. Under the insurance ombudsman regulations of Tanzania, the methods of resolving disputes or handling complaints are namely mediation, reconciliation, and arbitration.[101] These ADR methods entail different procedural aspects from commencement to finalization of each process. The regulations do not contain a detailed guide as to the approach in the application of each, namely, when and how to resolve a particular complaint by reconciliation, mediation, and arbitration. In South Africa and India, informal mediation is prescribed as the first step, escalating to recommendation and Award, which are adjudicative in nature.[102]

That apart, these methods rest upon the principle of party autonomy as well as voluntariness, which altogether entails the agreement of parties to submit to the particular forum or method of resolving the dispute between them. In this accord, it is argued that the regulations fall short of

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[100] M. Hertog, and R. Kirkham., *Research Handbook on Ombudsman*, Cheltenham, UK, Edward Elga, 2018, 21.

[101] *Insurance Ombudsman Regulations, (n8) Regulation 6(2) (c).*

[102] National Financial Ombud Scheme South Africa, Rules, r.7 and 8; N VijayaLaxmi vs. Insurance Regulatory and Development Authority of India and others, W.P.No.45471 of 2022.

guidelines as to at what stage of the dispute and in what manner a particular method should be adopted. That notwithstanding, the regulations also prescribe a hearing despite the prescription of mediation and reconciliation, methods that are essentially negotiation-oriented with the assistance of a neutral third party.

3.4.3.4 Reviews and Appeals

The right to a review of the decision and appeal available to the parties to a dispute is grounded on the principles of natural justice, particularly the right to be heard, which is also a constitutional right of any subject of the law. In the same vein, and on the footing of the procedural justice theories, the terms of reference for the ombudsman should provide for the right of review and appeal. This is essentially so important because the ombudsman enjoys wide discretion in the name of the principle of equity in the process of handling complaints and resolving disputes.[103] Expounding the principles of equity, the Irish High Court observed that the ombudsman is mandated to operate in ways that are different from the court, whereby he can reach conclusions that are not open to the court and fashion remedies that are otherwise not available in courts of law. These, according to the Court, include findings of impropriety or lack of clarity not amounting to a breach of rights but which call for remedies such as directing a change in practice or payment of compensation.

On that footing, it is only fair that the legislative provisions and rules of procedure, as well as guidelines, should provide for the right of appeal to the dissatisfied parties and enable the process or determination to be reviewed as a safeguard against serious error amounting to injustice. Essentially, the existence of a right of appeal to the High Court represents an important safeguard against serious error, although it cannot be regarded as a *de novo* appeal.[104]

To this end, the ombudsman institution may establish internal mechanisms of reviews and appeals to serve the unsatisfied parties. For instance, the South African National Financial Ombud Scheme has its established Appeal Tribunal[105]. Also, others have established appeal mechanisms externally, which operate independently. An example of this

[103] *O'Brien v. Financial Service Ombudsman* [2014] IEHC 111 as quoted in *KBC Ireland PLC v. Financial Services and Pensions Ombudsman*, [2023] IEHC 234, p.14.
[104] *Molyneaux v. FSPO* [2021] IEHC 668.
[105] *National Financial Ombuds Schem South Africa, Rule 10.*

is the Irish Financial Services and Pensions Ombudsman, whereby an aggrieved party to the dispute has a right of appeal to the High Court.[106] Internally, the appellate tribunals are constituted within the Ombudsman system, whereby a party aggrieved will lodge an appeal to the Ombudsman appeal tribunal upon obtaining leave from the Tribunal.[107] On the other hand, externally, an aggrieved party to a complaint may file an appeal to the High Court.[108]

The grounds of appeal sufficient to invoke the powers of the court or appellate body are that such body or court should be satisfied that the adjudicative process, taken as a whole, was vitiated by a serious and significant error or a series of such errors.[109] Therefore, the burden of proof will always lie on the appellant to establish that the decision so made is vitiated or tainted by such errors. These matters altogether are matters that should be within the legislative purview of an ombudsman institution to guarantee the exercise of the fundamental right of accessing review and appeal.

Neither the principal legislation nor the insurance ombudsman regulation of Tanzania provides for reviews or appeals for an aggrieved party to an insurance dispute. Instead, the only remedy, which nevertheless is unilateral, is reference to the High Court, which is only available to unsatisfied complainants. In one of the complaints cited earlier, the complainant's claim was declined after unilaterally being reviewed, whereby a determination order previously issued against the insurer was rescinded without giving the claimant an opportunity to present his side of the story on the purported new evidence.[110] The apparent plight of the claimant is that he was left without a remedy thereto except the said reference. Due to the absence of review and appeals mechanisms, reopening the matters to the disadvantage of a complainant, even at the regulatory level, in seeking to comply with the law before taking regulatory action against non-compliance, is evident. In that regard, the guarantee to the operationalization of the insurance ombudsman service as a justice administration body that operates on the principle of fairness,

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106 *Financial Services and Pensions Ombudsman Act, (n83) S.64.*

107 *The National Financial Ombuds Scheme South Africa, Rule 10.2.*

108 *Financial Service and Pensions Ombudsman Act, (n83) S.64.* See also the case of *Llyod's Insurance Company S.A. v. The Financial Services & Pensions Ombudsman & Anor* [2022] IEHC 290.

109 *KBC Ireland PLC v. Financial Services and Pensions Ombudsman*, [2023] IEHC 234.

110 S (Insured) vs. MIC (Note 26).

among others, is impaired due to the absence of such levels of access to justice on an equal footing to all parties.

3.4.3.5 Manner of Enforcing the Decisions or Recommendations

The standards of practice of the ombudsman are to the effect that the ombudsman has no formal policy-making, enforcement, or disciplinary roles except for those internally designed within the Ombudsman program.[111] In that regard, the Ombudsman, upon concluding an investigation with respect to a complaint, makes a report containing recommendations to the particular government department or organization complained against. Also, he may submit a particular report to the appointing authority or a legislative body for purposes of taking necessary measures where the recommendations are not implemented by the particular respondent to the complaint.[112] In enforcement, the Ombudsman is also empowered to publish the findings and the fact that a particular organization has refused to implement the recommendations. However, in all instances, the ombudsman is required to also present the explanations, if any, made by the particular organization that was complained against.

Given the extension of the roles to industry-based dispute resolution, the ombudsman is empowered to make decisions that bind the service provider.[113] Apparently, compliance with the decision of the Ombudsman on the part of the service provider is mandatory as part of their regulatory compliance with the service provision standards. Therefore, a non-compliant service provider risks facing regulatory actions as well as being published by the ombudsman and hence reputational risk to the consumers.

The principal legislation establishing the Service does not contain any provision with regard to enforcement or compliance with the ombudsman's decision. Instead, it provides for the power of the minister to make regulations in respect of the procedures for the hearing of the complaints. The insurance ombudsman regulations likewise do not empower the insurance ombudsman to execute or enforce his decision.

[111] International Ombudsman Association, 'Standards of Practice', (Note69), paragraph 2.4.

[112] D.M Gottehrer, & G.M Dean, 'Fundamental Elements of an Effective Ombudsman Institution' (Note 9), 25.

[113] *India Insurance Ombudsman Rules, rule.17 (8)* and the *then Insurance Ombudsman for long term insurance Rules, 1998, rule 3(5).*

Instead, it empowers the Commissioner of Insurance to enforce the said decision.[114] That provision notwithstanding, there is no clear procedure in the regulations to guide the Commissioner of Insurance in the enforcement of the decisions made by the Insurance Ombudsman, apart from prescribing the action that can be taken by the commissioner against a non-compliant insurer.

As a result, the noncompliance by the insurer is regarded as a regulatory breach that calls for the invocation of the commissioners' powers to impose penalties and other regulatory actions. Such actions are subject to insurance regulatory internal procedures, which entail submission of the matter to the enforcement committee and rehearing of the concerned parties, which in this case are the insurance ombudsman and the concerned insurer.[115]

This article argues that the legislative setup with regard to the enforcement of the ombudsman's decision does not enhance clarity and finality of dispute resolution through the insurance ombudsman service. Arguably, since the insurance ombudsman is potentially an ADR institution that operates informally, it is not expected to issue judgments. However, that notwithstanding, the enforcement powers bestowed upon the Commissioner of Insurance could be exercised better by the insurance ombudsman service in order to ensure finality of the process without further use of time and resources of the parties in a regulatory enforcement wrangle. For instance, in Ireland, the decision of the ombudsman is enforceable through the Circuit Court upon either application of the ombudsman or a party in whose favour the decision was made against the party who refuses to comply.[116]

4.0 Conclusion and Recommendations

4.1 Conclusion

The Service in Tanzania is pivotal in access to justice, as it provides an alternative mechanism to court litigation in insurance disputes, fostering expeditious, fair, and less costly means of resolving insurance disputes. Therefore, the move to establish it is commendable. It conforms to the international norms in consumer protection as recognized by the

114 *Insurance Ombudsman Regulations, (n8) regulation 22.*
115 For instance, in a complaint between *LF(Complainant) and FA(Insurer), Complaint No.TIO/FAC/877/44/2021*
116 *Financial Services and Pensions Ombudsman Act (n83) S.65(1).*

International Association of Insurance Supervisors, which, in its insurance core principles, emphasizes the need to have in place insurance claims dispute resolution procedures that adopt a balanced and impartial approach.[117]

4.2 Recommendations

Despite the efforts, much needs to be done with respect to the insurance ombudsman service in order to guarantee its independence, promote its accountability and fairness, and enhance its effectiveness. This requires an overhaul of the legal framework with regard to the insurance ombudsman service in order to guarantee the basic legal guarantees as identified in this article. This will ultimately enhance institutional reforms of the insurance ombudsman service in order to enhance its existential legitimacy and effectiveness.

Accordingly, the law should be amended, particularly in section 122 by categorically stating the legal personality status of the insurance ombudsman service so as to promote its independence both operationally and functionally. In this regard, the Ombudsman will be able to exercise rights such as hiring staff and determining their qualifications. Along with the legal personality, the same provision should be amended in order to guarantee the availability of independent resources, such as human resources, and do away with the current dual functionality of staff that erodes the functional independence of the ombudsman institution.

In complementing the independence aspect, the Insurance Act should also be amended in section 125 in order to guarantee its own financial resources to the insurance ombudsman service. Thusly, the law should provide for the independent sources of funds, such as industry levies or contributions, donations, and other subsidies. In South Africa, the source of funds is the insurance industry members' contributions per year, as well as donations from well-wishers. This can be adopted in Tanzania by prescribing a special amount of premium levy chargeable from the insurers from the gross written premium to ensure that the insurance ombudsman service is adequately financed and capable of controlling its own budget. With independent financial resources, the effective discharge

[117] International Association of Insurance Supervisors, 'Insurance Core Principles and Common Framework for the Supervision of Internationally Active Insurance Groups', 2019, ICP 19.10.10.

of the mandate will be enhanced because the budgetary constraints arising from shared resources with the regulatory authority will be mitigated.

That apart, section 124 of the Act, which sets jurisdictional limits in terms of pecuniary powers of the insurance ombudsman service and the subject matters eligible for admission and determination by the ombudsman, should be amended to provide for an inclusive jurisdiction for purposes of alternative dispute resolution of all insurance disputes. This will expand the accessibility of the insurance ombudsman service and reduce the costs of access to justice to the disputants in line with the tenets of alternative dispute resolution.

The governance structure of the insurance ombudsman service should be improved by amending the Insurance Act to add powers to the insurance ombudsman service for recruiting and retaining staff. This will do away with staff dual functionality and ensure their performance efficiency and independence. The Ombudsman will be able to recruit staff through set criteria and standards and will be able to monitor their performance without the possibility of interruption through reassignment of duties and or relocation of workstation. In this line, amendments should include the establishment of the Ombudsman Council or Board for ensuring there is a governance structure that supports the sustainability and functionality of the insurance ombudsman service as an independent institution. It will oversee and guide the ombudsman service in the discharge of its mandate and for the purposes of improving efficiency through ensuring capacity development and monitoring staff and institutional performance.

That apart, the procedural terms of reference contained in the insurance ombudsman regulations should be amended first to be streamlined and secondly to clearly stipulate the important aspects of procedural conduct in terms of reconciliation, mediation, and arbitration. Streamline regulations will enhance ease of procedural conduct and process predictability and ultimately enable attainment of an equitable end result of the dispute resolution process. Accordingly, the regulations should include the right to appeal and review to ensure full access to justice by the disputants.

In this accord, internal review and external appellate mechanisms should be prescribed through the regulations to guarantee the fairness of the Service as a cornerstone of justice. In line with this, the regulations should be amended to allow enforcement of the ombudsman's decision by the Service rather than the Authority. This can be achieved by according the decisions of the Ombudsman a status akin to High Court decisions and thus executable in the same manner as judgments. This will ensure predictability of the procedure and finality of the process without necessarily mixing up regulatory and dispute resolution functions through the enforcement window. It will also enable parties to realise the fruits of the decisions in a timely manner and without further costs or hurdles.

Alternatively, the principal Act should be amended to include the procedures for dealing with non-compliance with the ombudsman's decision by the insurance registrants in order to separate such a process from regulatory actions. Generally, there is a need to align the law with basic legal guarantees in order to ensure that the insurance ombudsman service delivers to its maximum.

In order to affect the above recommendation in a meaningful and comprehensive way, stakeholders' participation is key. These include insurers and allied service providers, the insured, as well as the general public, constituting potential consumers and or beneficiaries of the insurance services. Accordingly, further studies should be conducted on the role of and effective mechanisms of stakeholder engagement in the design and establishment of an effective ombudsman institution.

It should be noted, however, that the factors put forward and discussed in this article as basic legal guarantees are not exhaustive but rather a depiction of the commonality of the basic features found in literature and legislation establishing ombudsmen institutions. They serve as a basis for further study and evaluation for the purposes of ensuring effective and efficient deployment of the Ombudsman institution.

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Are Universities Compliant? A Study of Tanzania's Person al Data Protection Act in Higher Learning Institutions

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Abstract
In November 2022, the United Republic of Tanzania enacted the Personal Data Protection Law (PDPA). It established a comprehensive framework for the processing of personal data. The Act has a significant impact on higher learning institutions, which are custodians of vast amounts of personal data from students, staff, and other stakeholders. The law designates the institutions as data controllers and processors, and they are obligated to process personal data in accordance with the provisions of the Act. This article examines the compliance of higher learning institutions with the Act. Employing a doctrinal legal research approach, the article assesses Universities' compliance with the PDPA and its regulations. The findings indicate that, although the PDPA has been in place for more than two years, the compliance rate remains extremely low among higher learning institutions. This is due to a lack of data protection policies in universities and awareness training, as well as the absence of data protection officers. The article recommends that Universities appoint data protection officers and register with the Data Protection Commissioner as data controllers, which demonstrates compliance. In addition, the universities must ensure that personal data is processed in accordance with the Act and that their data protection policies and procedures are regularly updated to maintain ongoing compliance.

Keywords*: Compliance, Personal Data Protection Law, Higher Learning Institutions, Tanzania, Data Controller.*

1.0 Introduction

Over the past decade, the rapid advancement of digitalisation has significantly increased the generation and collection of personal data across various sectors, including financial institutions, telecommunications, healthcare, insurance, and education, among others. [1] This development underscored the need for a global legal framework to

[1] R. Mekovec, & D. Peras, 'Implementation of the General Data Protection Regulation: Case of Higher Education Institution,' *International Journal of e-Education, e-Business, e-Management and e-Learning*, Vol. 10 No. 1,2020, (104-112), p 105.

safeguard personal data. In addressing this need, the United Republic of Tanzania introduced its first Personal Data Protection Act (PDPA) in November 2022, which took effect in May 2023. On the one hand, the PDPA establishes rules for the collection, processing, and use of personal data within the United Republic of Tanzania. On the other hand, it establishes supervisory authority, with the Personal Data Protection Commission (PDPC) being responsible for enforcing the PDPA. The Act largely mirrors the European Union's General Data Protection Regulation (GDPR) of 2016. Since the PDPA came into effect, companies and institutions were required to revise and enact new policies not only to meet the explicit requirements of the PDPA but also to ensure the tangible proof of compliance for the supervisory authority. The PDPA also introduces striking changes in personal data processing and establishes new obligations for data controllers and processors.

Two years have passed since the law came into force, but little is known about its compliance. Two reasons may cause this. First, no compliance report has been issued by the PDPC, as it is done in other East African countries such as Kenya, where the PDPC shares those reports on its website, on the X platform, and on different social media platforms. Second, there is limited research on the country's compliance with data protection laws. This article aims to identify the changes and explore their practical relevance by examining the compliance of four Tanzanian Higher Learning Institutions (HLIs). These are University of Dar Es salaam (UDSM), Sokoine University of Agriculture (SUA), the Open University of Tanzania (OUT) and Tumaini University Makumira (TUMA).

This article's analysis is necessary for three reasons. First, it provides a thorough and comprehensive summary of the compliance trend from the selected higher learning institutions (HLIs). The primary objective is to assess the compliance rate of these institutions and determine whether it falls within the expected range, as per the provisions of the PDPA. The article highlights the importance of protecting personal information and the identity measures HLIs can take to improve compliance with regulations and enhance data protection and privacy. Second, the compliance trend in Tanzanian universities has implications for how other higher learning institutions in Africa can improve compliance with personal data protection regulations in their jurisdictions. The third reason is to help HLIs raise awareness of the PDPA. The article begins with an introduction, followed by an analysis of personal data processing in HLIs. The text outlines the scope and applicability of the PDPA within higher learning institutions, followed by an analysis of the compliance status of selected HLIs. The article concludes with concluding remarks and recommendations for future directions.

2.0 Processing of Personal Data in Higher Learning Institutions

Currently, Tanzania has a total of 50 approved higher learning institutions (HLIs).[1] The institutions registered approximately 588,554 students and 8,625 academic staff in 2023, and the number is increasing.[2] Due to their digital transformation across various scholarly activities, HLIs have experienced accelerated development in the collection and processing of personal data. All aspects of institutional operations, from staff hiring and research administration to student admissions and alumni involvement, now depend on the processing of personal data. Data-driven administration has grown rapidly as a result of the increasing use of electronic technologies, including learning management systems (LMS), student information systems (SIS), and digital testing platforms. There are significant ethical and legal concerns since the quick growth of data-driven administration has not been accompanied by comparable data security safeguards.[3] This case study demonstrates that HLIs have become vast repositories of personal data in digital format.[4] The data-driven environment has created both opportunities and challenges in protecting individual data.[5]

The academic lifecycle of Tanzanian HLIs encompasses personal data processing at every stage. The admission procedure requires students to

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[1] Tanzania Commission for Universities, 'University Institutions Approved to Operate in Tanzania as of March 1, 2025,' available at: https://tcu.go.tz/sites/default/files/file_uploads/documents2024-03/LIST%20OF%20UNIVERSITY%20INSTITUIONS%20IN%20TANZANIA%20AS%20OF%MARCH%2001-2025.pdf (last accessed 30th June 2025).

[2] Tanzania Commission for Universities: 'VITALSTATS on University Education in Tanzania of 2023,' available at https://www.tcu.go.tz. (Last accessed 3rd July 2025).

[3] D.Junkai and Q. Xiaoyan, 'Legal Challenges in Protecting Personal Information in Big Data Environments,' Available at: https://ssrn.com/abstract=5166908 or http://dx.doi.org/10.2139/ssrn.5166908 (Last accesed 30th June 2025).

[4] N. McKelvey, 'Data Protection Issues in Higher Education with Technological advancements,' *International Journal of Evaluation and Research in Education* (IJERE), Vol. 3, No.3, 2014 (133-141) p. 137.

[5] F. Schäfer, H. Gebauer, C. Gröger, O. Gassmann, & F. Wortmann, 'Data-driven Business and Data Privacy: Challenges and Measures for Product-based Companies,' *Business Horizons Journal*, Vol. 66, No. 4, 2023 (493-504) p 495.

provide personal information, including their names, national identification numbers, educational history, health information, and biometric data such as fingerprints and passport photographs. The institutions save student data sets for academic performance records, disciplinary files, financial records, and participation logs post-enrolment. Institutional personnel data encompasses employment contracts, payroll information, medical insurance documentation, and performance evaluation outcomes. Further, Universities conduct personal data processing for research purposes in the social sciences, public health, and education sectors. Identifiable data gathering from study participants often transpires without effective anonymisation techniques and insufficient consent protocols.[6] The establishment of digital libraries and online educational platforms has also initiated novel data collection techniques that analyse user behaviour and assess students' learning advancement.[7]

The comprehensive processing environment of Tanzanian HLIs functions within a regulatory framework that has recently begun to recognise data protection as a legal obligation. The PDPA instituted a significant legislative framework to govern the acquisition, storage, and utilisation of personal data in both public and commercial entities. The Act provides a comprehensive definition of personal data and outlines essential principles, including legality, fairness, transparency, purpose limitation, data minimisation, and accountability.[8] These principles are particularly significant in HLIs. As Tanzanian HLIs process large volumes of personal data in pursuit of legitimate educational and administrative objectives, there is a pressing need for these institutions to align their practices with national data protection laws.

Section 3 of the PDPA defines a data controller as an individual, legal entity, or public authority that independently or collaboratively establishes the objectives and methods for processing personal data. Moreover, according to the objectives and principles outlined in the

[6] V. Rupp, and M. Grafenstein, 'Clarifying "Personal Data" and the Role of Anonymisation in Data Protection Law: Including and excluding data from the scope of the GDPR (more clearly) through refining the concept of data protection,' *Computer Law & Security Review*, Vol. 52, No.1, 2024, 105932, availabe at, https://doi.org/10.1016/j.clsr.2023.105932.

[7] A. Haleem, M. Javaid, M. Qadri, R. Suman, 'Understanding the Role of Digital Technologies in Education: A review,' *Sustainable Operations and Computers Journal,* Volume 3, 2022, (275-285,) p 276.

[8] *The Personal Data Protection Act, 2022, S 4.*

PDPA, the term' data controller' refers to an individual, legal entity, or public authority, including their representative. Similarly, the same section defines the data processor as a legal, natural person, or public body that processes personal data on behalf of the controller. From the perspective of the above section, HLIs are considered both data controllers and data processors. This is because they determine the purpose and means of processing personal data of their clients and become subject to the PDPA. Therefore, it implies that compliance with PDPA is not only ethical but a legal requirement for HLIs.

3.0 Scope and Application of the PDPA and its applicability to Higher Learning Institutions

The PDPA regulates not only the processing of personal data by both public and private institutions but also governs automated and non-automated processing of personal data in Tanzania. However, the Act only permits the processing of personal data belonging to a living natural person, also known as a data subject. It does not extend to a juristic person. The Act applies to the processing of personal information carried out by a data processor or controller residing in the country or in a place where Tanzanian law is applicable in accordance with international law.[9] Similarly, it applies to controllers or processors residing outside Tanzania if the processing takes place in the country, but not for the purpose of merely transiting personal data through Tanzania to another country.[10] However, the requirement that data processing occurs within the country to trigger extraterritorial applicability limits the scope of PDPA compared to regulations like the GDPR.

The PDPC established by the Act is a body corporate.[11] Its functions include, among other things, monitoring compliance with the PDPA by data controllers and processors. To fulfil the above obligation, the PDPC is required to register data controllers and processors in the country.[12] It also has the power to receive, investigate, and deal with complaints about alleged personal data breaches.

[9] The Personal Data Protection Act, (n 9) s 22.
[10] Ibid.
[11] The Personal Data Protection Act, (n 10) s 6.
[12] The Personal Data Protection Act, (n 12) s 7.

The PDPA outlines specific situations where it is not applicable, as per section 58(2). These entail instances where personal data is processed for personal or domestic purposes, in compliance with legal requirements or court orders, and to ensure national security, public safety, and the public interest. The exemptions also cover purposes such as crime prevention or detection, preventing tax evasion, investigating the embezzlement of public funds, and conducting background checks for appointments to public service positions. Furthermore, Section 58(3) grants the Minister responsible for Information, Communications and Information Technology extensive powers to expand the scope of exemptions. Ministerial oversight is required for overall policy direction; however, the concentration of such broad powers within a single executive office, without sufficient institutional balances, raises legal and constitutional concerns about potential abuse. The powers in question pose a genuine risk of unlawful or arbitrary usage. The exercise of ministerial discretion may jeopardise both data subjects' rights and regulatory neutrality.

The PDPA is based on eight core principles for data processing, which are crucial and significant in HLIs. Section 5 of the PDPA provides the principles, and the responsible Minister formulates various regulations to complement them. These regulations include the Data Protection (Personal Data Collection and Processing) Regulation[13] and the Personal Data (Complaints Settlement Procedures) Regulation 2023.[14] Together, these regulations play a critical role in clarifying and operationalising the core data protection principles set out in the Act. Generally, the practical application of data processing principles depends significantly on the interpretive guidance provided in the regulations.

The first principle requires that personal data be processed legally, fairly, and transparently. The criteria for fairness are provided under Regulation 25 of the Personal Data Collection Regulation. Fair collection presupposes that the data subjects have been notified of the intention and purposes of collecting their personal data and have given their consent. Lawfulness entails adhering to the conditions provided under section

[13] The Data Protection (Personal Data Collection and Processing) Regulation, 2023. Available at http://www.mawasiliano.go.tz/uploads/documents/sw-1691159153-GN%20NO.%20449C%20OF%202023.pdf.
[14] The Personal Data (Complaints Settlement Procedures) Regulation, 2023. Available at https://www.mawasiliano.go.tz/uploads/documents/sw-1691159153-GN%20NO.%20449C%20OF%202023.pdf.

22(2), which requires a legitimate purpose of collection and showing that the collection was necessary in relation to the purpose. The principle is to the effect that HLIS must process personal data lawfully and transparently while ensuring fairness in every aspect of data processing.

The second principle is that personal data should be collected for explicit, specified, and legitimate purposes and not processed further in a manner incompatible with the original purposes. Section 25 of the Act, which provides for purpose limitation with certain exceptions, explains the principle as an obligation to the data controller. Furthermore, Regulation 26 of the Personal Data Collection Regulation clarifies that before collecting data, the controller must specify the purpose and identify the legitimate reasons for collecting the data. The principle requires HLIs to collect personal data for specific, explicit, legitimate purposes and limit data usage solely for the purpose for which it was collected.

The third principle states that personal data should be relevant, adequate, and limited to what is necessary in relation to the purposes for which it is processed. Regulation 28 elaborates on this principle, requiring data controllers to avoid processing personal data in bulk. In implementing this principle, they should only process personal data that is relevant to the purpose. This implies that HLIs are obligated to minimise and limit the amount of personal information collected to only what is necessary for intended purposes.

The fourth principle is that personal data should be accurate and, if necessary, kept up to date. Section 24 of the PDPA provides this principle as an obligation to the data controller. It requires HLIs to ensure that personal data in their custody is accurate, complete, relevant, and not misleading, in accordance with its purpose. Regulation 29 requires the data controller, during processing, to verify the accuracy of the data with the data subject before and at various stages of processing. The HLIs are obliged to update personal data as necessary for the purpose and to erase or rectify any inaccurate personal data without delay. Similarly, the controller is required to utilise technological and design features to minimise inaccuracy.

Storage limitation is the fifth principle, also known as data retention. It requires the controller, when processing personal data, not to retain personal information longer than necessary for the purpose. Section 28 of the PDPA requires personal data to be retained for a period specified in the relevant laws or regulations. However, the same section allows the minister responsible by regulation to prescribe the retention and disposal period in accordance with the purpose of retention. Moreover, Regulation 30 stipulates that the data controller is responsible for ensuring that they have clear internal procedures for deleting and destroying personal data. According to the provisions above, HLIs should be able to determine the nature and duration of storage of personal data which are necessary for the intended purposes, promoting responsible data management.

The sixth principle is that personal data should be processed in accordance with the rights of the data subject, as provided in the PDPA. It entails securely processing personal data to protect the rights and privacy of individuals while preventing the accidental loss or destruction of the same. Read this principle in conjunction with part VI of the PDPA, which outlines the rights of the data subject. The data subject is entitled to access their personal data and information regarding the processing's purposes, categories of personal data, recipients to whom the data is disclosed, and the duration of storage, as indicated by these provisions. Additionally, they are entitled to request rectification or erasure of their personal data or to restrict its processing. Additionally, they must be informed about automated decision-making, its underlying logic, and the potential repercussions of such processing. The data user's right to receive and freely transmit the personal data they have provided to a controller should be guaranteed. The data must be presented in a format that is machine-readable, commonly used, and structured. To comply with this principle, HLIs must specify the forms in which data subjects may request the exercise of their rights to fulfil those rights. Furthermore, it is necessary to establish procedures that outline the process for resolving requests from data subjects.

The right to access, as provided under Section 33, is a critical principle. It is the basis for exercising other rights, such as rectification, blocking, erasure, and destruction of personal data. Moreover, according to Regulation 31, this principle requires HLIs to grant the data subject an autonomous right and freedom to control their personal data, enabling them to communicate and exercise their rights. Additionally, the controller is required to incorporate human intervention to minimise biases that the automated decision-making process may introduce.

Security is the seventh principle. It advocates for the use of appropriate technical and organisational measures to ensure the security of personal data against unauthorised or unlawful processing, destruction, or damage. Section 27 of the PDPA outlines detailed provisions for this principle. Regulation 27 states that this principle requires the controller to have effective methods for managing information security policies and to handle data processing that can adapt to changes, legal requirements, incidents, and cyberattacks. It also ensures that only authorised personnel can access the personal data they need for their tasks and that the transfer of personal data is protected from unauthorised access. Additionally, it is necessary to ensure that only authorised personnel have access to the personal data required for their processing tasks and that the transfer of personal data is secured against unauthorised access. This duty is also an obligation to HLIs.

The eighth principle is the international transfer of personal data. It states that personal data should not be transmitted to another country unless the target country provides adequate protection. This section should be read in conjunction with PDPA Part V, which outlines the international data transfer criteria. Regulation 22 establishes international criteria for the transmission of personal data. HLIs transfer data internationally through academic collaboration, international student recruitment, research partnerships, cloud computing, and digital education platforms. Section 45 of the PDPA prohibits data controllers and processors, including HLIs, from transferring personal data outside Tanzania without observing certain prescribed circumstances.

HLIs have major operational issues due to this principle. Foreign service providers of cloud-based platforms are essential for managing student information systems, virtual learning environments (e.g., Moodle or Google Classroom), and research data. Personal data, including names, academic records, contact information, and biometric or health data, is transferred to servers outside Tanzania. These transfers without PDPA compliance will result in administrative or judicial penalties for institutions. HLIs also collaborate with international institutions and funding agencies to provide sensitive data, including survey results, patient information, and socioeconomic profiles. Tanzanian law requires data-sharing agreements to protect transferred data. Failure to follow these procedures constitutes a violation of data protection and ethical research protocols. International student data handling is also a major issue. Higher education institutions, foreign embassies, credential evaluation bodies, and scholarship givers need approval to transfer data. According to PDPA criteria, data transfer consent must be informed, freely granted, and revocable. Many institutions fail to implement these principles.

4.0 HLI's Compliance obligations stipulated under the PDPA

The PDPA establishes various compliance standards that HLIs must adhere to, given their roles as data controllers and data processors. The PDPA compliance requirements enable HLIs to meet legal obligations while protecting individuals' privacy rights. The appointment of a Data Protection Officer (DPO) is a crucial requirement under the PDPA for institutions. Section 34 of the PDPA delineates this requirement. The PDPA mandates that HLIs appoint a qualified DPO responsible for ensuring compliance with data protection regulations, conducting regular audits, advising on processing activities, and maintaining communication with the PDPC.

The PDPA mandates that all HILs adhere to the compliance requirements outlined in Section 65. The provision requires each data controller to establish and enforce a code of ethics or a personal data protection policy. All HLIs are necessary to establish a comprehensive data protection policy that adheres to the principles of the Act and aligns with their operational data handling procedures. Policies must be comprehensive, readily accessible, and subject to regular updates to ensure alignment with changes in legal standards, technological advancements, and operational procedures. The policy should encompass all aspects of personal data processing activities, including collection, storage, sharing, and retention.

Individuals have the right to access their personal data, request corrections and deletions, and object to data processing, as specified in Section 27 of the PDPA. All institutions are required to adhere to this rule as a mandatory compliance obligation. HLIs must implement transparent procedures that enable individuals to exercise their rights effectively. The establishment of comprehensive data protection policies, mechanisms for digital rights compliance, the publication of privacy notices, and the creation of a dedicated privacy contact point are essential for meeting this requirement.

Many HLIs utilise cloud services for data storage and employ third-party systems for managing student records and conducting research analytics. Section 35 of the PDPA requires institutions to secure written data processing agreements from their processors, thereby enforcing compliance with the PDPA. Contracts must delineate data processing boundaries, outline data protection responsibilities, and define liability terms to mitigate unauthorised data breaches.

According to Section 32, HLIs are required to establish appropriate technical and organisational measures to protect personal data from unauthorised access, destruction, and unlawful disclosure. Minimum protection requirements encompass encryption methods, authentication systems, firewalls, backup procedures, and record-keeping logs. Institutions must conduct regular vulnerability assessments to remain responsive to emerging cybersecurity threats.

According to Section 33, the Data Protection Commission and affected individuals must be notified of breaches that jeopardise data subject rights within a 72-hour period. The establishment of effective internal reporting systems, breach response plans, and documentation protocols by HLIs is essential to meet legal obligations and reduce institutional risk.

Section 26 of the PDPA prohibits data controllers from retaining personal data beyond the duration necessary to fulfil the purpose for which it was originally collected. HLIs must implement clear data retention schedules that involve organising data into categories based on sensitivity and relevance, while also establishing secure protocols for data disposal. Retention of personal data must be confined to information that is essential for academic or administrative functions. Section 45 of the Act prohibits the international transfer of personal data to jurisdictions that do not meet the standards of adequate protection. The international data transfer regulations outlined in Section 45 of the Act are essential for HLIs due to their utilisation of foreign learning platforms and participation in international research collaborations. Standard contractual clauses and binding corporate rules represent the sole permissible mechanisms for facilitating data transfers.

The data controller is required to implement internal compliance monitoring systems, as stipulated in Section 38, which encompass scheduled audits and risk assessment procedures. The PDPA requires HLIs to document their data processing activities, verify the legal bases for all data operations, and generate audit reports to demonstrate accountability. The compliance obligations outlined above can be fulfilled if the HLIs establish and implement policies and operational procedures for the protection of personal data. The policy standards serve as a road map to guide all other compliance obligations.

5.0 Discussion

The PDPA's introduction above clearly portrays HLIs as data controllers. Assuming the role of a data controller entails significant compliance obligations. The term also applies to any processor, individual, or agency engaged in data processing on behalf of the controller. They must be responsible for and able to demonstrate their compliance with the basic principles of data protection. The PDPA and its Regulations indicate that all personal data processing in HILs must be conducted lawfully, transparently, and fairly, with data acquisition limited to the minimum necessary for the intended purpose of processing. Moreover, personal data must be precise and maintained in a manner that allows for the identification of individuals only as long as necessary, while providing adequate security measures. The accountability principle mandates HLIs to assume responsibility and exhibit compliance.

Furthermore, significant advancements concerning consent necessitate that it should be provided freely and demonstrate a specific, informed, and explicit expression of the data subject's wishes.[15] PDPA expands the data subject's rights, and HLIs are duty-bound to comply with these rights when processing personal data. Besides the data subject rights, PDPA imposes enhanced obligations on data processors and controllers. For example, designing appropriate technical and organisational measures to ensure data protection, such as encryption, is required. In section 27(1), the PDPA sets out the concept of 'data protection by design and default.

[15] The Personal Data Protection Act, (n 13) s 30.

This is further elaborated in Regulation 24, where the controller is required to design technical measures to safeguard and implement the principles of personal data protection. The PDPA, in Section 14, requires all entities that collect or process personal data in Tanzania, including HLIs, to register with the PDPC. However, Section 21 of the PDPA excludes public institutions from registration requirements. This is to the effect that immediately after the Act came into force, all public institutions are deemed to be registered and hence required to comply with the PDPA.

The University of Dar es Salaam (UDSM) is a public institution that processes a large volume of personal data related to students, faculty, and staff. The compliance rate of this HLI was examined by reviewing various policies available in the UDSM library and on its website. According to the website, it was established that there is no privacy notice embedded, which is a necessary requirement to demonstrate compliance. Additionally, there is no robust data protection policy document aligned with the PDPA that is readily available at UDSM, either in hard copy in the library or as a soft copy on the website.[16] The absence of a data protection policy is contrary to Section 65 of the PDPA, which requires institutions to draw up and implement a code of ethics or policy for personal data protection. However, the University has several policies that pertain to privacy and data protection, such as the Acceptable Use of ICT Resources Policy[17] and the Security Policy.[18] The UDSM Community site also upholds a 2020 privacy policy that outlines the management of personal data on their platform.[19]

Upon reviewing these policies, particularly the Acceptable Use of ICT Resources Policy and the Security Policy, it is evident that they ensure the proper use of ICT resources and protect individuals, assets, and the university's reputation from potential threats. These policies are not

[16] University of Dar Es Salaam Privacy Policy, 2020 available at https://alumni.udsm.ac.tz/privacy-policy&ved=2
[17] University of Dar es Salaam Acceptable use of ICT Resources Policy, 2024 available at http://www.udsm.ac.tz/sites/default/files/2024-9/03%2UDSM%20ICT%20Security%20and20%Acceptable%20Use%20of%20ICT%20Resources.pdf.
[18] University of Dar es Salaam Security Policy and Operational Procedures, available at https://www.udsm.ac.tz/sites/default/files/2025-03/UDSM%2520SECURITY%2520POLICY.pdf&.
[19] University of Dar Es Salaam Privacy Policy, 2020 available at https://alumni.udsm.ac.tz/privacy-policy&ved=2

intended to protect personal data; hence, the absence of a proper policy implies that the University has not complied with the PDPA. Additionally, reviewing the privacy policy, which was adopted in 2020, prior to the enactment of the PDPA. Similarly, a privacy policy was adopted to protect the personal data of the UDSM community in compliance with the GDPR; hence, it cannot be said that it was adopted in compliance with the PDPA, as it was adopted long before the PDPA's enactment. The above explanation shows the absence of a privacy notice on the website and the absence of personal data protection and privacy policies that align with the PDPA at UDSM. This indicates that UDSM has not taken reasonable steps towards compliance with the PDPA.

The second higher learning institution whose policies were analysed is Sokoine University of Agriculture (SUA). While reading and researching different policies in the library and on the institutional website, it was established that in line with UDSM, SUA's institutional repository (SUAIRE) website contains a privacy statement.[20] It highlights that they collect and process personal data and provides the purposes for which this data is collected. Additionally, it outlines the circumstances under which they can disclose personal data in their possession. On the other hand, SUA has several other policies and guidelines, including the SUA Information and Communication Technology Policy (ICT Policy)[21], the SUA Intellectual Property Policy,[22] The Institutional Repository Policy,[23] and many others. Some of these policies include provisions for data privacy and security.

For example, the ICT policy has some provisions that incline towards privacy protection.
Still, the main objective of the policy is to mainstream ICT access and proper use to support teaching, learning, research, consulting, and outreach. An analysis of all these policies and guidelines reveals that the protection provided for personal data is minimal and does not comply

[20] Sokoine University of Agriculture Institutional Repository Privacy Statement, available at https://www.suaire.sua.ac.tz/info/privacy.
[21] Sokonie University of Agriculture Information and Communication Technology Policy, 3rd Edition, 2023, available at https://www.sua.ac.tz/sites/default/files/ictpolicy2022%20-%20march%2017%20(2)pdf.
[22] Directorate of Planning and Investment, Sokoine University of Agriculture Intellectual PropertyPolicy, 2002, available at https://www.dpd.sua.ac.tz/intellectual-property-rights-ipr-policy-2002/
[23] Sokoine University of Agriculture, Institutional Repository Policy, 2014 Available at https://www.lib.sua.ac.tz/phocadownload/suair.pdf.

with the provisions of the PDPA. This conclusion is implied by the fact that the basis of all these documents is not the PDPA but in fulfilment of other obligations. Also, the presence of a privacy statement signifies transparency; however, it does not ensure adherence to the PDPA unless it explicitly references the PDPA. Such statements are non-compliant with the PDPA as they are formulated without adherence to the law's stipulations and employ generic privacy terminology rather than the legal responsibilities pertinent to specific scenarios. The privacy statement on SUA's website provides general information regarding data collection and user rights. These statements do not demonstrate compliance unless integrated into a comprehensive PDPA-compliant data protection system.

The third HLI, whose policies and regulations were analysed for non-compliance, is the Open University of Tanzania (OUT). It is a public institution that processes vast amounts of personal data relating to students, staff and other stakeholders; hence, it is subject to PDPA. The analysis was conducted through reading different policies found in the institution's library as well as on the website. It was found that no privacy notice is provided for users on the website. However, a draft data protection policy has not yet come into effect. Moreover, it was established that the OUT has appointed a DPO, who is responsible for compliance procedures. It was also discovered that several other policies are available on the website, including the ICT policy.[24] the ICT security policy and procedures,[25] the gender policy,[26] the health policy,[27] and many others. However, none of these available policies is intended to provide for personal data protection practices in the university. This implies that, although the compliance rate is still minimal at the time of writing this article, the OUT has taken reasonable steps towards compliance with the PDPA, as evidenced by the appointment of a DPO and the development of a draft personal data protection policy and procedures.

[24] The Open University of Tanzania, Information and Communication Technologies Policy2019, Available at https://sso.out.ac.tz/custom/media/docs/intranet_doc_202208031107.pdf

[25] The Open University of Tanzania, ICT Security Policy and Procedures, 2022. Available at https://sso.out.ac.tz/custom/media/docs/intranet_doc_202406121103.pdf.

[26] The Open University of Tanzania, Gender Policy Towards Balancing OUT Community, 2021. Available at https://sso.out.ac.tz/custom/media/docs/intranet_doc_202208310114.pdf.

[27] The Open University of Tanzania, Health Policy, 2022. Available at https://sso.out.ac.tz/custom/media/docs/intranet_doc_202209011223.pdf

Another institution whose policies and regulations underwent an examination is Tumaini University Makumira (TUMA). This is a private university that collects and processes a significant amount of data from its stakeholders. Analysis of the policies in the library, as well as on the institutional website, revealed that the university website does not contain a privacy notice to inform its users about privacy and data protection. However, the website contains a number of policies, such as the ICT policy,[28] the data security policy,[29] the research ethics policy,[30] and the consultancy policy and procedures,[31] to name just a few. Several of these policies include provisions relating to data protection and general information security. For example, among the objectives of the data security policy is to establish a data security programme and processes for ensuring the security and confidentiality of confidential information. In addition, it intends to establish physical, administrative and technical safeguards to protect against unauthorised access or use of confidential information, which resembles, to some extent, one of the compliance requirements provided by the PDPA. However, the primary purpose of the policy is to protect confidential information, whereas the PDPA provides for the protection of an individual's data. Further, the policy intends to establish a security program and not protect personal information in line with data protection principles; hence, it is not in compliance with the PDPA.

Another policy that was examined is the ICT policy. This policy ensures that its users have access to best practices for the identification, protection, and management of available ICT resources. It ensures the security and privacy of the data stored, redirected, or processed by TUMA ICT resources. Though the policy purports to protect the privacy of data, it is too broad. It focuses on preserving all data, not just personal data. In addition, the protection may not be in line with data protection principles because, in its wording, it does not explicitly state that it has been amended to comply with the PDPA, despite being reviewed after the

[28] Tumaini University Makumira, Information and Communication Technologies Policy, 2023. Available at https://makumira.ac.tz/docs/ICT-Policy.pdf.
[29] Tumaini University Makumira, Data security Policy, 2020. Available at https://makumira.ac.tz/docs/ICT-Policy.pdf
[30] Tumaini University Makumira, Research Policy,2023. Available at https://makumira.ac.tz/docs/Research%20Ethics%20Policy-1.pdf.
[31] Tumaini University Makumira, Consultancy Policy and Procedures, 2024. available at https://makumira.ac.tz/docs/TUMA%20consultancy%20policy%20and%20procedures.pdf.

PDPA came into force. The discussion above clearly demonstrates that TUMA is yet to take sensible steps towards compliance with the PDPA.

6.0 Conclusion

Analysis of the compliance practices of various top HLIs reveals the following common trends. First, in these universities, there is no privacy and data protection policy covering the fundamental principles and practices of data protection posted on HLI's websites or available in their libraries. This is the exception of OUT, which has a draft personal data protection policy in place. It is challenging to determine how the HLIs collect and process personal data in this digital era, where data protection is of paramount importance, without a policy to that effect. Secondly, some of the HLIs understand the importance of privacy and data protection and have posted privacy statements on their websites.

However, the statement is posted in either an institutional repository or a community site, but not on the main website. Furthermore, some of the statements were made prior to the enactment of the PDPA and were not in compliance with it. For example, the statement on the UDSM community site explicitly states that it is made in line with the GDPR. Thirdly, the HLIs have different policies, some of which have provisions for data protection. However, the protection offered is too general and may not necessarily be categorised as personal data protection. For example, Tumaini University's data security policy protects confidential information, which may not necessarily include personal data. Fourth, it is unclear whether the institutions are registered with the PDPC as data controllers and processors, as required by law. It is imperative to note that the HLIs or the PDPC have not shared the information about registration status with the public. This problem may be due to the fact that the registration deadline (30 April 2025) had just ended when the article was being written. Fifth, except for the OUT in all other examined HLIs, it was not possible to determine whether the institutions, as data controllers, have appointed a DPO as mandated by law. The information to that effect is not shared with the public by either the PDPC or the institutions. From the above discussion, it can be submitted that the compliance rate in HLIs is very low and still in its infancy stage, and in some institutions, it is non-existent. The main reasons may stem from inadequate training and awareness campaigns on the importance of not only personal data protection laws but also compliance with these laws.

7.0 Way Forward

Despite the non-compliance practices and the reasons presented above, the article provides a fertile ground for encouraging compliance in HLIs. First, by highlighting the noncompliance, one may propose that the PDPC has to offer training and awareness campaigns to bring the law to society. Seminars, workshops, presentations, and leaflets can all help achieve this. Additionally, the commissioner should exercise his statutory powers and make bold decisions to enhance compliance from various organisations, including HLIs. In addition, the HLIs should comply with the law by registering with the PDPC as data controllers and processors, thereby legitimising data handling activities within their institutions. Furthermore, they should appoint a DPO who will oversee compliance with the PDPA. Further, HLIs should adhere to data protection principles and facilitate or grant data subject rights as required by the PDPA. Lastly, the HLIs should adapt data protection policies and procedures to ensure ongoing compliance.

Who Qualifies as a Corporate Social Responsibility Stakeholder? Assessing Tanzania's Legal Regime Against International Standards

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Abstract
It has been challenging for businesses to identify relevant stakeholders for corporate social responsibility. This article assesses how current laws in Tanzania identify stakeholders and whether such identification aligns with international frameworks. The article adopted doctrinal research to critically examine the structure, certainty, and scope of laws in identifying relevant stakeholders. Then, the article comparatively analysed the laws of Tanzania and their alignment with international frameworks. It is found that current laws identify government actors, employees and potential victims of business activities as relevant stakeholders based on the impact and inclusive bases. However, such identification falls short of international standards because it is narrow-based, government-centric, ambiguous, and lacks a requirement for regular review and updating. Consequently, other relevant stakeholders, including consumers and local communities, are often excluded from corporate social responsibility, ultimately diminishing their role in promoting responsible business practices for sustainable development in Tanzania.

Keywords: *Corporate Social Responsibility*, *Stakeholders Identification*, and Stakeholder *Engagement*.

1.0 Introduction

Corporate Social Responsibility (CSR) is a currency for modern business, investment, and sustainable development.[1] The effectiveness of CSR activities, however, depends on the engagement of stakeholders.[2] Stakeholders play different but complementary roles to ensure the CSR initiatives become meaningful and impactful.[3] Therefore, stakeholder

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[1] L. Zu, 'From corporate social responsibility (CSR) to sustainable development: The role of the United Nations' in *Responsible Management and Taoism, Volume 2: Transforming Management Education for Sustainable Development Goals (SDGs)*

[2] K. Lopatta, et al., 'Stakeholder Engagement and Corporate Social Responsibility (CSR) Performance: International Evidence' (2017) 24(3) *Corporate Social Responsibility and Environmental Management* 199.

[3] Ibid.

engagement is crucial to promoting responsible business practices. Nonetheless, identifying stakeholders with whom the companies may engage has never been an easy task for CSR stakeholders.[4] The reason is that it is not clear legally who qualifies as a relevant stakeholder for CSR purposes. As a result, CSR stakeholders cannot certainly establish whether they are recognised and protected by the laws. The failure to develop the statutory recognition and protection of stakeholders diminishes their role in promoting sustainable and responsible business practices.

CSR is a growing phenomenon in Tanzania and is largely voluntarily regulated in non-extractive sectors and legally regulated in extractive sectors.[5] The growth in CSR is attributed to an increase in research on the subject.[6] While existing studies address CSR matters differently.[7]The legal identification and prioritisation of stakeholders for CSR activities, as well as benchmarking against international CSR frameworks, are missing. Consequently, the voice and role of stakeholders in fostering CSR practices in Tanzania are limited because companies are not engaging with them. This is because it is unclear legally who the CSR stakeholders are and their roles in holding companies accountable for the environmental and social impacts of their business operations.

In response, this article applies doctrinal research to assess how the laws in force in Tanzania currently identify CSR stakeholders and whether the legal identification of stakeholders aligns with international frameworks. The objectives of this article are three. First, to examine the legal framework governing CSR in Tanzania. Another aim was to identify relevant CSR stakeholders within this legal framework. The last aim is to determine whether the legal approach to identifying CSR stakeholders in Tanzania aligns with international CSR frameworks. The key guiding questions are two. Who qualifies as a CSR stakeholder under the laws

[4] J. F. Vos, 'Corporate social responsibility and the identification of stakeholders' (2003) 10 *Corporate Social Responsibility and Environmental Management.*
[5] W. Maliganya and G. Bulengela, 'Rethinking the Practices of Corporate Social Responsibility in the Mining Sector for Sustainable Development in Tanzania' (2025) 15(1) Journal of Management and Science 102-114.
[6] B. Lougee and J. Wallace, 'The Corporate Social Responsibility (CSR) Trend' (2008) 20(1) *Journal of Applied Corporate Finance* 96–108.
[7] H. Aguinis and A. Glavas, 'What We Know and Don't Know About Corporate Social Responsibility: A Review and Research Agenda' (2012) 38(4) *Journal of Management* 932.

governing CSR in Tanzania? Two, does the legal approach of identifying CSR stakeholders in Tanzania align with international CSR frameworks.?

Due to the absence of a comprehensive law regulating CSR activities across all sectors in Tanzania[8], it isn't easy to identify and protect CSR stakeholders, ensuring that CSR practices become meaningful and impactful. This article, which addresses the legal identification of stakeholders in Tanzania and its alignment with international frameworks through doctrinal research, is of great importance. Its importance lies in the fact that it highlights legal gaps and inconsistencies in the statutory recognition and protection of CSR stakeholders. Eventually, this article advocates for a more integrated and coherent CSR legal regime that identifies and protects CSR stakeholders. Besides, businesses operating in Tanzania are engaging globally in trade and investment due to globalisation. As a result, they are required to comply with international CSR standards such as stakeholder engagement. This article assesses whether the legal environment for identifying CSR stakeholders in Tanzania aligns with international CSR frameworks. Hence, the article assesses whether Tanzania's legal regime is keeping pace with global expectations and informs necessary reforms.

The article consists of various sections. Section 1 introduces the subject of the article and its justification. Section 2 reviews the relevant literature on the legal identification of stakeholders for CSR purposes. The essence of this article is to identify research gaps that it addresses. Section 3 describes the methodological approach adopted in this article to assess the legal frameworks for identifying CSR stakeholders and to determine whether these frameworks align with international standards. Section 4 provides international frameworks relevant to identifying stakeholders for CSR purposes. Section 5 examines the current legal framework governing the identification of CSR stakeholders in Tanzania. Section 6 argues whether the CSR legal regime in Tanzania aligns with international CSR frameworks. Section 7 identifies the legal gaps for identifying CSR stakeholders. Section 8 presents conclusive remarks.

[8] S.G. Lauwo, *et al.,* 'Corporate Social Responsibility Reporting in the Mining Sector of Tanzania: (Lack of) Government Regulatory Controls and NGO Activism' (2016) 29(6) *Accounting, Auditing & Accountability Journal* 1038 https://doi.org/10.1108/AAAJ-06-2013-1380 accessed 17 July 2025

2.0 Corporate Social Responsibility

The subject of stakeholder identification attracts research interests. This is because businesses interact with a diverse range of stakeholders in their operations. Hence, accurately identifying the relevant stakeholders with whom companies should engage in planning, decision-making, and executing CSR projects is a complex and challenging task. This section of the article reviews existing studies on stakeholder identification to identify research gaps that this article aims to address. Hence, this section reviews relevant literature in three categories. These are conceptual, empirical and theoretical reviews.

Stakeholders are persons or entities that can affect or be affected by the company's decisions and operations.[9] Stakeholders denote persons or entities having an interest in any decision or activity of an enterprise.[10] The interests create a relationship between stakeholders and the organisation.[11] This relationship can be either informal or formal. The relationship created by this interest exists whether or not the parties are aware of it. The essence of stakeholders in CSR lies in the fact that they shape the reason and manner through which companies carry out responsible business practices.[12] Stakeholder's shape CSR practices through their interests, expectations and influence.

Stakeholders can be either internal or external.[13] The categorisation depends on how the persons or entities are tied to the company operations. If they are within the company and their interests are aligned with the company's operations, they are considered internal stakeholders.[14] The internal stakeholders include employees, executives and shareholders. If they are outside the company but can be affected by

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[9] V. Gaur, 'Understand your stakeholders' (2013) 2(1) *International Journal of Advancements in Research & Technology 1.*

[10] ISO 26000, Clause 2.20.

[11] Ibid., Clause 5.3.2.

[12] S. D. Dmytriyev, et al., 'The relationship between stakeholder theory and corporate social responsibility: Differences, similarities, and implications for social issues in management' (2021) 58(6) *Journal of Management Studies*

[13] A. L. Franklin, 'Identifying stakeholders' in *Stakeholder Engagement* (Springer International Publishing 2020) 19.

[14] L. Azevedo, 'Communication with Internal and External Stakeholders' in *Crisis Communication Planning and Strategies for Nonprofit Leaders.*

or influence company activities, they are considered external.[15] The external stakeholders include consumers, local communities, government and its agencies, and suppliers.

Stakeholder identification is a foundational step in achieving the success of CSR projects.[16] Poor identification of relevant stakeholders often leads to inadequate CSR practices.[17] In contrast, strategic and effective stakeholder identification makes CSR programmes inclusive, sustainable and impactful.[18] Hence, there is a close link between the inclusivity and sustainability of CSR programmes and stakeholder identification and engagement. The process of stakeholder identification varies greatly. The determinants of stakeholder engagement variation are socio-economic, legal, and cultural contexts.[19] As a result, a company may not always be aware of all its stakeholders, although it should attempt to identify them. Similarly, many stakeholders may not be aware of the potential impact of an organisation on their interests.

Studies demonstrate that Tanzania has witnessed significant growth in CSR awareness and practice over the past decade.[20] According to Fulgence, the demands of international and domestic stakeholders have driven this growth.[21] However, Rugeiyamu indicates that the prevalent sectors include mining[22], manufacturing[23], banking[24], tourism[25], and

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15 S Graham, 'The influence of external and internal stakeholder pressures on the implementation of upstream environmental supply chain practices' (2020) 59(2) *Business & Society* 351.
16 N. Glaveli, 'Corporate social responsibility toward stakeholders and customer loyalty: Investigating the roles of trust and customer identification with the company' (2021) 17(3) *Social Responsibility Journal* 367.
17 M. Ying, *et al.,* 'How do stakeholder pressures affect corporate social responsibility adoption? Evidence from Chinese manufacturing enterprises in Ethiopia' (2021) 14(1) *Sustainability* 443.
18 M. Jeriji and W. Louhichi, 'The relationship between poor CSR performance and hard, negative CSR information disclosures' (2021) 12(2) *Sustainability Accounting, Management and Policy Journal* 410.
19 J. Kujala, *et al.,* 'Stakeholder engagement: Past, present, and future' (2022) 61(5) *Business & Society* 1136.
20 W. Maliganya and G. Bulengela, supra (n. 3).
21 S. E. Fulgence, 'Corporate Social Responsibility in Tanzania' in Stephen Vertigans, Samuel O Idowu and René Schmidpeter (eds), *Corporate Social Responsibility in Sub-Saharan Africa* (CSR, Sustainability, Ethics & Governance, Springer 2016) 111-152.
22 P. M. Manyanki and E M Msoka, 'Human Rights and Environmental Justice in Tanzania: Legal Responses to Mining and Land Disputes' (2025) 9(2) Journal of African Interdisciplinary Studies 88-103.

telecommunications.[26] Community welfare has been the dominant focus of most CSR projects in Tanzania. Mbirigenda and Msoka note that CSR endeavours in education, health, environmental conservation, and infrastructure development are common in the country.[27] Therefore, the extent and manner in which businesses from different sectors have undertaken CSR initiatives are significant enough to attract research and regulatory interests in Tanzania.

Nevertheless, Gillo and others note that current CSR practices reveal a neglect of certain aspects, such as access to clean water and sanitation.[28] This neglect is due to the high costs that businesses may incur in such elements.[29] Moreover, CSR practices are not effective. Mbirigenda highlights misuse and malpractice[30], inconsistent practices[31], gaps between CSR commitment and implementation[32], and misalignment of CSR projects and stakeholders' needs and interests in CSR practices.[33]

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23 E. L. Mwansasu and L R Mwagike, 'Environmental Sustainability Practices in Supply Chains and Manufacturing Firms' Performance: Evidence from Tanzania Breweries Limited' (2025) 8(1) SEISENSE Journal of Management 1-16.

24 Q. Mawinda and O. Swalehe, 'Impact of CSR Practices on Bank Financial Performance: The Case of NMB Bank, Tanzania' (2024) 23(3) IUP Journal of Bank Management 52-71.

25 S. J. Suluo, *et al.,* 'Corporate Sustainability Practices in Tourism—Evidence from Tanzania' (2023) 20(5) Tourism Planning & Development 747-768.

26 H. A. Rugeiyamu, *The Impact of Corporate Social Responsibility on Financial Performance of the Telecom Companies: Case Study of TIGO Tanzania* (PhD thesis, The Open University of Tanzania 2020).

27 S. K. Mbirigenda and C. T. Msoka, 'Community Development Through Corporate Social Responsibility: Some Issues from Selected Companies in Tanzania' (2015) 6(1) Syllabus Review 99-125.

28 I. O. Gillo *et al.*, 'Barriers to Corporate Social Responsibility Implementation in Tanzania: Evidence from the North Mara Gold Mine' (2024) 14(2) African Journal of Development Studies.

29 Ibid.

30 S. Mbirigenda, *Corporate social responsibility in Tanzania: experience of misconception, misuse and malpractices* in *Contemporary Concerns in Development Studies: Perspectives from Tanzania and Zambia* (2015) 100.

31 F. M. Philip, *Regulation of Corporate Social Responsibility Practices in Tanzania* (Master's Degree Dissertation, The Open University of Tanzania 2019).

32 S. K. Mbirigenda, *Corporate Social Responsibility Management Systems in Tanzania: Opportunities, Challenges and Prospects for Local Communities' Participation in the Decision-Making Processes* (PhD thesis, University of Dar es Salaam 2015) http://localhost:8080/xmlui/handle/123456789/3380 accessed on 2nd April 2025

33 D. Jamali and C. Karam, 'Corporate Social Responsibility in Developing Countries as an Emerging Field of Study' (2018) 20(1) International Journal of Management Reviews 32-61. See also, A. Chauhan, 'The Positive Impact of Corporate Social Responsibility: A Study of CSR in India' (2020) 11 Indian Journal of Positive Psychology 237.

Despite the growth of CSR, stakeholders face challenges in developing, deciding, implementing, and evaluating CSR plans and projects. This challenge arises from the uncertainty surrounding the legal identification of stakeholders that companies may engage with, as well as the stakeholders' understanding of their roles and legal position in promoting responsible business practices in Tanzania. However, existing studies have underexplored the question of who qualifies as a relevant stakeholder for CSR purposes under the current legal framework, as well as whether such a framework aligns with international CSR frameworks in terms of identifying relevant stakeholders. This article contributes to the existing legal scholarship by addressing the earlier-mentioned gap through an analysis of current legal frameworks, examining how they identify relevant stakeholders for CSR purposes and their alignment with international standards.

The effectiveness of stakeholder identification depends on several theoretical foundations.[34] Stakeholder theory asserts that since enterprises comprise various parties, there is a need for enterprises to consider the interests of all stakeholders, not just shareholders. Freeman articulated stakeholder theory in 1984.[35] Stakeholders refer to all individuals or entities that are affected by the activities of an enterprise.[36] It underscores that stakeholder become relevant when they are affected by or have the potential to affect corporate actions. It is pertinent to stakeholder identification based on the influence corporate actions have on people or entities, or the influence they have on corporate actions. Stakeholder theory defines who qualifies as a CSR stakeholder. Stakeholder Salience Theory postulates that there are three bases through which stakeholders are identified and prioritised.[37] These are power, legitimacy and urgency.[38] Power denotes the ability of the stakeholders to influence the

34 S. Agarwal, *CONCEPTS AND THEORIES OF CSR* (12 May 2024) SSRN https://ssrn.com/abstract=4902862 accessed 21 July 2025.
35 R. E. Freeman, Strategic Management: A Stakeholder Approach (1984).
36 A. Russo and F. Perrini, 'Investigating Stakeholder Theory and Social Capital: CSR in Large Firms and SMEs' (2010) 91(2) *Journal of Business Ethics* 207.
37 L. R. Serna, *et al.,* 'Stakeholder identification and prioritisation: The attribute of dependency' (2022) 148 *Journal of Business Research* 444 https://doi.org/10.1016/j.jbusres.2022.04.062 accessed 21 July 2025.
38 Wageningen University & Research, *The Stakeholder Approach to Corporate Social Responsibility: A Vision for Sustainable Development* (WUR 2003) https://edepot.wur.nl/201400 accessed 21 July 2025.

firms. Legitimacy refers to the perceived appropriateness of the stakeholders' claims.

Urgency refers to the sensitivity of stakeholders' issues about time. Mitchell, Agle and Wood articulated stakeholder salience theory in 1997.[39] The relevance of stakeholder salience theory lies in the fact that it outlines a dynamic method of stakeholder classification and provides a rationale for why some stakeholders are prioritised over others. Resource-Based Theory posits that enterprises often depend on external resources to operate.[40] Hence, they must interact with stakeholders who have control over the resources on which the enterprises depend.[41] This is relevant to the article because it provides a basis for stakeholder identification, which involves control over critical resources. It also demonstrates the essence of stakeholder engagement for securing the resources enterprises depend on for their operations. This article adopts the stakeholder theory because it provides a framework for who qualifies as a stakeholder in CSR activities. This can guide the analysis of current laws to determine how they identify relevant stakeholders based on the stakeholder framework and whether the legal identification aligns with international standards.

3.0 Methodological Approach

This article assesses how the current legal frameworks in Tanzania identify CSR stakeholders and whether these legal identifications align with international standards. Hence, the focus is on the CSR legal regime in Tanzania and its alignment with international standards in identifying stakeholders. The objective of this article necessitated adopting doctrinal research to systematically analyse the laws and determine their certainty and scope for identifying CSR stakeholders.

Procedurally, the article accessed relevant CSR laws from the *TanzLII*. Then, the author extracted relevant provisions that identify CSR stakeholders. Next, the article analysed the provisions in terms of determining how they identify CSR stakeholders. The article also accessed international CSR frameworks from the official website of the

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39 R. K. Mitchell, *et al.,* 'Toward a Theory of Stakeholder Identification and Salience' (1997) 22(4) AMR 853.

40 G. Hooley, *et al.,* 'Competitive positioning and the resource-based view of the firm' (1998) 6(2) *Journal of Strategic Marketing* 97.

41 TheoryHub, 'Resource-Based Theory' (TheoryHub, 2025) https://open.ncl.ac.uk/theories/4/resource-based-theory accessed 21 July 2025.

respective institutions, such as UN Treaty Series, OECD, ILO, and ISO. The article identified the updated framework files from the website and downloaded them. The article also reviewed the status of the frameworks in terms of their ratification and applicability to Tanzania. Thereafter, the article extracted the relevant provisions dealing with stakeholder identification and analysed them to establish principles enshrined that govern stakeholder identification.

Analytically, the article employed legal textual analysis, utilising the rules of statutory interpretation. The purpose was to determine the effectiveness of laws in identifying CSR stakeholders. Moreover, the article comparatively analysed how the provisions of Tanzanian laws for CSR stakeholder identification align with international standards enshrined in international frameworks. The essence is to determine how far international standards have influenced the laws of Tanzania, and where the laws fall short in terms of identifying CSR stakeholders. This article employed textual, comparative, and thematic analyses to achieve its aim of assessing the legal frameworks for identifying CSR stakeholders.

4.0 International CSR Frameworks on Stakeholder Identification

The increased importance of multinational enterprises and their growing power and influence since the 1960s and 1970s raised questions about their governance. The United Nations (UN) attempted to address this question at the global level. Still, it was the Organization for Economic Co-operation and Development (OECD) and the International Labour Organization (ILO) that adopted two critical instruments in this area: the OECD Guidelines for Multinational Enterprises (OECD Guidelines)[42]**,** adopted in 1976, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), adopted in 1977.[43] Later, the United Nations developed two critical frameworks relevant to responsible business practices: the United Nations Global Compact (UNGC) in 2000 and the United Nations

[42] OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, https://doi.org/10.1787/81f92357-en.

[43] International Labour Organization, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (Geneva, 2006, amended 2022) https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_emp/%40emp_ent/%40multi/documents/publication/wcms_094386.pdf accessed 17 July 2025

Guiding Principles on Business and Human Rights (UNGPs) in 2011.[44] In 2010, the International Organisation for Standardisation (ISO) developed guidance on social responsibility, known as ISO 26000.[45]

Collectively, the frameworks are voluntary but influential in CSR practices worldwide. Enterprises worldwide are not legally bound to adopt them but choose to do so to demonstrate their commitment to fair, ethical, transparent and responsible practices. The international CSR frameworks are voluntary in respecting state sovereignty and legal systems and accommodating industrial diversities. Additionally, the evolving nature of CSR underscores the need for international CSR frameworks to be voluntary, enabling gradual standardisation of responsible business practices. While there are many international CSR frameworks, this article focuses on the ILO Tripartite Declaration, the OECD Guidelines, the ISO 26000, and the United Nations Guiding Principles on Business and Human Rights. Although international frameworks address many aspects of CSR, this article explores relevant principles applicable to CSR stakeholder identification. These are:

4.1 Impact-Based Identification

The international CSR frameworks do not establish a direct, impact-oriented basis for identifying CSR stakeholders. Actual or potential adverse effects of business decisions and operations serve as the basis for stakeholder identification. Principle 18 of the UNGPs requires enterprises to identify stakeholders based on the principle that they are individuals and groups whose activities may harm them. Likewise, Paragraph A14 of the OECD Guidelines identifies stakeholders as those whose interests are directly or indirectly affected by the enterprise. Similarly, Clause 5.3.2 of the ISO 26000 recognises stakeholders as those affected by the decisions or activities of the organisation. Analogously, Paragraph 10(e) of the ILO Tripartite Declaration uses the impact of activities on workers and other social actors.

[44] Office of the UN High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (OHCHR 2011) https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf accessed 17 July 2025.

[45] International Organization for Standardization, *ISO 26000:2010 Guidance on Social Responsibility* (ISO 2010) https://documentation.lastradainternational.org/lsidocs/3078-ISO%2026000_2010.pdf accessed 17 July 2025

4.2 Inclusive-Based Identification

Inclusivity and breadth are the key principles for identifying relevant stakeholders for CSR purposes. CSR stakeholder identification must be inclusive enough to accommodate all relevant stakeholders. This is evident in Clause 5.3.2 of the ISO 26000, which lists a wide range of possible stakeholders. Equally, Paragraph A14 of the OECD Guidelines denote inclusivity through all affected interests or persons. Principle 18 of the UNGPs emphasises the protection of those whose rights may be at risk. Paragraph 10(e) of the ILO Tripartite Declaration refers to workers and representative organisations.

4.3 Rights and Interests Oriented Identification

Another significant principle applicable to identifying stakeholders for CSR purposes is the consideration of rights and interests. International frameworks define stakeholders as those whose rights or interests may be affected by a business's decisions and operations. While Clause 5.3.2 of the Iso 26000 includes both legal and moral claims of persons, Principle 18 of the UNGPs focuses on human rights. Likewise, Paragraph A14 of the OECD Guidelines accommodates the interests of affected parties. The affected interests may include both social and environmental interests. In contrast, paragraph 10(e) of the ILO Tripartite Declaration centres narrowly on labour rights and protections. Hence, to identify relevant stakeholders, companies must consider those whose rights or interests may be affected by their decisions and operations.

4.4 Context-Based Identification

The contexts of businesses and their operations differ, so does the stakeholder identification for CSR projects. The international CSR frameworks establish that the nature, context, and scope of business organisation and relationship should inform the process of stakeholder identification for CSR purposes. Clause 5.3.2 of the ISO 26000 recognises that various factors determine whether stakeholders are relevant or not. The factors include sector, scale and geography of the business operations. Similarly, Principle 18 of the UNGPs requires businesses to determine relevant stakeholders and other relevant parties, especially in the context of human rights. Likewise, Paragraph A14 acknowledges that stakeholder identification must be done in light of the situation and structure of the enterprise.

4.5 Dynamic and Ongoing Process

The international frameworks acknowledge that the process of identifying relevant stakeholders for CSR purposes is dynamic and ongoing. This means businesses must regularly review and update their stakeholder identification process to account for changing circumstances. Clause 5.3.2 of the ISO 26000 requires periodic review of stakeholder relevance. Principle 18 of the UNGPs indicates that risks and affected stakeholders may change over time. Hence, it necessitates regular reassessment. Paragraph A14 of the OECD and Paragraph 10(e) of the ILO imply adaptability through ongoing due diligence.

4.6 Legal Regime on CSR Stakeholder Identification in Tanzania

While CSR practices are largely voluntary in Tanzania, the extractive sectors are subject to legal regulation. However, there are general laws whose provisions may apply to stakeholder identification for CSR purposes. The key statutes forming part of this article for scrutiny include the Constitution of the United Republic of Tanzania[46], the Companies Act[47], the Mining Act[48], the Environmental Management Act[49], and the Mining (Corporate Social Responsibility) Regulations.[50]

Article 21(2) of the Constitution is very relevant to the identification of stakeholders for CSR purposes. The Constitution recognises the principle of public participation in matters that affect the people of the country. Accordingly, every citizen has the right to participate in the process.[51] This implies that the Constitution supports inclusive stakeholder identification, although it requires statutory implementation.[52] The constitutional identification of stakeholders is general because it is not operationalised for CSR purposes.

Section 136 of the Mining Act is fundamental to CSR planning for the mining sector in Tanzania. It outlines procedures and requirements when developing a credible CSR plan. It identifies relevant stakeholders that mineral rights holders may engage with when creating a CSR plan. The

[46] [Cap 2 R.E. 2002].
[47] [Cap 212 R.E. 2023].
[48] [Cap 123 R.E. 2023].
[49] [Cap 191 R.E. 2023].
[50] [G.N. No. 409 of 2023].
[51] The Constitution, Art 21(2).
[52] Ibid., Art 21(1).

relevant stakeholders identified under Section 136 of the Mining Act include local government authorities, the Minister for Local Government and the Minister for Finance.[53] However, host communities are recognised as stakeholders because their priorities are taken into consideration when developing a CSR plan.[54] However, the term 'host communities' refers to the inhabitants of the local area in which mining operation activities take place.[55] Hence, stakeholder identification is geographically grounded and government-led, as evidenced by the identified stakeholders.[56]

Besides, Section 186(1) of the Companies Act identifies stakeholders based on their interests. It requires the directors of the company to consider the interests of both the members and the company's employees. Hence, the relevant stakeholders are members and employees of the company. This does not account for external stakeholders, such as consumers and suppliers, because it focuses solely on internal stakeholders. It limits the stakeholder identification to the members and employees.

Moreover, Regulation 4(1) of the Mining (Corporate Social Responsibility) Regulations requires the involvement of street or village councils in the preparation of the CSR plan. This involves councils where the mining activities take place. The essence of council participation is to ascertain the priorities of the host communities to take into account when preparing a CSR plan.[57] Moreover, the priorities of the host communities must be deliberated and approved by the Ward Development Committee before being submitted to the Councils for approval.[58] There is a need for a CSR Expert Committee in every council to scrutinise CSR plans, oversee implementation, and provide consultancy services for CSR projects.[59] Hence, the stakeholders identified therein include street/village councils, Ward Development Committee, CSR Expert Committee and host communities.

[53] The Mining Act, s 136(1).
[54] Ibid., s 136(2).
[55] Ibid., s 136(5).
[56] Ibid., s 136(1).
[57] The Mining (CSR) Regulations, Reg 4(2).
[58] Ibid., Reg 4(3).
[59] Ibid., Regs 5, 6 and 7.

Furthermore, Section 89(1) of the Environmental Management Act prescribes public participation in Environmental Impact Assessment (EIA), an essential CSR component. It identifies relevant stakeholders as 'especially those likely to be affected by the project being the subject of an Environmental Impact Assessment study or review. 'It outlines three methods for identifying the relevant stakeholders.[60] First, circulation of the EIA Statement for written comments from various institutions and government agencies. Second, public notification. Third, solicitation of oral or written comments by any appropriate means from the people who will be affected.

Therefore, the CSR legal regime in Tanzania identifies relevant stakeholders through a local government-led approach. This involves the involvement of local government authorities in determining the priorities of the host communities, approving, and overseeing the implementation of CSR. However, the legal identification of stakeholders is geographically narrow, excluding non-local stakeholders who are nonetheless affected, and there are no continuous mechanisms for updating the list of stakeholders.

5.0 Alignment of Tanzania's CSR Legal Regime with International Standards

This section examines whether the CSR legal regime in Tanzania aligns with international standards regarding the identification of CSR stakeholders. The alignment between Tanzania's CSR legal regime and international standards for identifying stakeholders for CSR purposes indicates substantial alignment and partial alignment.

Since CSR is a global phenomenon in modern business and investment undertakings, there are international frameworks that exist to regulate it.[61] The regulation is broad in terms of the subjects covered in the global frameworks. One of the regulatory aspects is stakeholder engagement. However, engaging stakeholders has been difficult due to companies' failure to identify relevant stakeholders for engagement regarding CSR undertakings. To address the challenge, international frameworks, through

[60] The Environmental Management Act, s 89(2).
[61] N. Pisani, *et al.,* 'How Global Is International CSR Research? Insights and Recommendations from a Systematic Review' (2017) 52(5) *Journal of World Business* 591 https://doi.org/10.1016/j.jwb.2017.05.003 accessed 17 July 2025.

their provisions, enshrine principles to govern CSR stakeholder identification. These include impact, rights and interests, inclusivity, contexts and dynamism. These principles are enshrined under Clause 5.3.2 of the ISO 26000, Principle 18 of the UNGPs, Paragraph 10(e) of the ILO Tripartite Declaration, and Paragraph A14 of the OECD Guidelines.

Since the ILO Tripartite Declaration is not a treaty, ratification is not required.[62] However, Tanzania has endorsed the ILO's Declaration and core labour standards through its laws, such as the Employment and Labour Relations Act and the Labour Institutions Act. The UNGPs are soft law with no requirement for ratification.[63] While Tanzania acknowledges UNGPs in discourse, it has not adopted a National Action Plan on Business and Human Rights. However, it has a National Action Plan for Human Rights. The OECD Guidelines for Multinational Enterprises bind OECD members and non-members through declaration[64]; however, Tanzania is not an adherent country. The ISO 26000 is a voluntary standard; the Tanzania Bureau of Standards (TBS) refers to ISO norms, but there has been no formal adoption of ISO 26000. Therefore, the international standards are not legally binding.

Tanzania is not obligated to ratify or adopt them; however, as part of the international community, Tanzania participates in global efforts to promote responsible business practices for sustainable and inclusive development. Tanzania has taken legislative and institutional steps to align with aspects of internationally recognised standards, especially in extractive industries and environmental governance. Legislatively, Tanzania has enacted the Mining Act[65], the Petroleum Act[66], the Tanzania Extractive Industries (Transparency and Accountability) Act[67], and the Mining (Corporate Social Responsibility) Regulations[68], which have CSR-specific legal obligations in the extractive sectors. Moreover, Tanzania has provisions in its Constitution[69], the Companies Act[70], and

62 The ILO Tripartite Declaration, Paragraph 7.
63 The UNGPs, General Principles, pg 1.
64 The OECD Guidelines, Foreword.
65 The Mining Act, s 136.
66 The Petroleum Act, s 222.
67 The Tanzania Extractive Industries (Transparency and Accountability) Act, s 15.
68 The Mining (Corporate Social Responsibility) Regulations, reg 4.
69 The Constitution, Art 21(2).

the Environmental Management Act[71] that may apply to CSR-related endeavours, although not directly in non-extractive sectors. Institutionally, Tanzania has vested government authorities with the role of overseeing and supervising CSR endeavours, including stakeholder identification. These include the local government authorities[72], the Tanzania Extractive Industries (Transparency and Accountability) Committee[73], the Mining Commission[74], the National Environmental Management Council[75], Ministers for Minerals, Minister for Finance and Minister for LGAs.[76] Besides, Tanzania became an EITI-compliant country in 2009.[77] The participation shows her commitment to disclose information on revenue, contracts, and CSR. EITI requires multi-stakeholder governance. This is based on paragraph A14 of the OECD Guidelines and UNGPs on business transparency.

Section 89 of the Environment Management Act primarily reflects five basic principles for stakeholder identification as enshrined in international frameworks. It identifies the public as a stakeholder for EIA. The EIA is a critical component of CSR's environmental aspect. However, the provision qualifies the public to identify the relevant stakeholders through those likely to be affected. It also outlines mechanisms to identify relevant stakeholders, such as public notices, solicitation, and circulation of EIA statements to the public to invite comments. The provision aligns with inclusivity through public participation, impact-based through those likely to be affected, contexts through EIA and dynamic through different mechanisms. Therefore, section 89 of the Environmental Management Act aligns with the most robust frameworks for identifying affected stakeholders.

Similarly, Section 136 of the Mining Act and Regulation 4 of the Mining (Corporate Social Responsibility) Regulations reflect the impact, as well as the inclusive and context-based identification of stakeholders, for CSR purposes in the mining sector. The alignment manifests through the

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70 The Companies Act, s 186.
71 The Environmental Management Act, s 89.
72 The Mining Act, s 136(4) and the Mining (Corporate Social Responsibility) Regulations, reg 4.
73 The Tanzania Extractive Industries (Transparency and Accountability) Act, ss 15 and 16
74 The Mining Act, s 24.
75 The Environmental Management Act, ss 83 and 89.
76 The Mining (Corporate Social Responsibility) Regulations, reg 9.
77 https://eiti.org/tanzania accessed on 23rd July 2025.

obligation for mineral rights holders to develop a CSR plan while consulting Ministers for LGAs and Finance[78], local government authorities, to identify priorities of the host communities[79], deliberation and consideration through the Ward Development Committee[80] and the CSR Expert Committee.[81] Hence, they accommodate localised, community-level stakeholders, but don't address broader interest groups or long-term review processes.

Likewise, Article 21(2) of the Constitution of the United Republic of Tanzania enshrines the principle of public participation. This principle is relevant in determining who qualifies as a stakeholder, as it accommodates the impact, inclusive, and rights-based bases for identifying stakeholders. It establishes a constitutional right for all citizens to participate in decisions affecting them. The bases accommodated are applicable in CSR matters. Thus, the constitutional alignment with international standards is broad in scope but not operationalised for CSR stakeholder identification specifically.

However, section 186 of the Companies Act offers a partial alignment because it accommodates the rights and interests based on the performance of company functions. This is based on the fact that directors are duty-bound to consider the interests of both members and employees. This is not inclusive because it accommodates only internal stakeholders. No recognition of external stakeholders.

At this juncture, this article argues that the CSR legal regime in Tanzania aligns partially with the principles for identifying stakeholders for CSR purposes as prescribed in international CSR frameworks. The legal identification of stakeholders for CSR purposes in Tanzania is impact-based and inclusive at the community level. However, it falls short of aligning with dynamic, systematic, and rights-based identification beyond local communities, as per international CSR frameworks.

6.0 Legal Gaps for CSR Stakeholder Identification

This article assesses how the current legal frameworks identify relevant stakeholders for CSR purposes in Tanzania and whether they align with

[78] The Mining Act, s 136(1).
[79] Ibid., s 136(3)
[80] The Mining (Corporate Social Responsibility) Regulations, reg 4(3).
[81] The Mining (Corporate Social Responsibility) Regulations, reg 7.

international CSR frameworks. The assessment reveals the following gaps.

First, *narrow identification of stakeholders*. Section 186 of the Companies Act[82] identifies only members and employees; hence, consumers and local communities are excluded. Section 136 of the Mining Act[83] and Regulation 4 of the Mining Corporate Social Responsibility Regulations[84] identify host communities indirectly through local government authorities. As a result, the effectiveness of CSR practices may be compromised due to the non-inclusion of relevant stakeholders and the failure to consider their interests and expectations.

Second, *government-centric identification*. Section 136 of the Mining Act[85] and Regulation 4 of the Mining Corporate Social Responsibility Regulations[86] address Ministers for LGAs, Minister for Finance, LGAs, Councils and Ward Development Committees as stakeholders involved in the CSR plan. All these are government-led institutions. Thus, individuals and local communities have limited access to CSR stakeholders. The implication is that CSR stakeholder identification becomes a top-down process because it vests power in the government-led actors. The interests of the communities may not be represented well during stakeholder engagement for CSR purposes.

Third, *no requirement for ongoing and dynamic stakeholder identification*. The CSR legal regime in Tanzania lacks a provision that requires businesses to continuously review and update their lists of stakeholders, even though business operations may change and new impacts may emerge. As a result, the stakeholder identification based on the existing legal provisions becomes a static exercise. This detaches the sustainability aspect of CSR from the shifting social and environmental conditions, as new stakeholders and their concerns may be overlooked.

Fourth, *ambiguous identification*. Some statutes dealing with CSR define and identify stakeholders ambiguously. For example, section 89(1) of the

[82] [Cap 212 R.E. 2023].
[83] [Cap 123 R.E. 2023].
[84] [G.N. NO. 409 of 2023].
[85] [Cap 123 R.E. 2023].
[86] [G.N. No. 409 of 2023].

Environmental Management Act[87] establishes that the public may participate in the EIA by including 'especially those likely to be affected by the project'. The quoted statement leaves room for interpretation by the person responsible for enforcing the provision. As a result, some vital project victims may be left out of participating in the EIA. Moreover, section 89(2) of the Environmental Management Act empowers the NEMC to circulate the EIA statement for comments from various institutions. However, the term “various institutions” may be subject to subjectivity, as what amounts to multiple institutions is uncertain. Consequently, it creates an open interpretation for the one deciding what institutions to include or not. Therefore, using ambiguous terms when defining and identifying stakeholders for CSR may challenge the enforcement of statutory provisions, as it gives discretion to the enforcer. Eventually, inconsistencies may occur, and some critical stakeholders may be excluded from the process. As a result, efforts to foster responsible business practices may be debilitated.

7.0 Conclusion

Stakeholder engagement plays a crucial role in the success of CSR initiatives, as it ensures that CSR efforts are relevant, credible, sustainable, and aligned with both business objectives and societal expectations. However, without clear and coherent criteria for identifying relevant stakeholders, the effectiveness of stakeholder engagement becomes blurry. The clarity and coherence of the criteria depend on the structure, certainty, and scope of the legal frameworks governing stakeholder identification for CSR purposes. This article assessed how the CSR legal regime in Tanzania identifies relevant stakeholders and its alignment with international CSR frameworks. The assessment drew on doctrinal research, supplemented with comparative legal analysis, as the subject requires a critical examination of CSR-related laws and their alignment with international standards regarding stakeholder identification for CSR purposes.

The assessment reveals that while Tanzania has made significant strides in identifying relevant stakeholders for CSR purposes in the extractive and environmental sectors, due to the impact and inclusive bases accommodated in its legal regime, it is appropriate for CSR. Nevertheless, Tanzania's CSR legal regime only partially aligns with the core principles

[87] [Cap 191 R.E. 2023].

articulated in international CSR frameworks, such as the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, ISO 26000, and the ILO Tripartite Declaration, in identifying relevant stakeholders for CSR purposes. This is because international frameworks offer a multidimensional and principled approach to stakeholder identification, grounded in impact-based, inclusive, rights- and interest-oriented, context-specific, and dynamic considerations. In contrast, the Tanzanian legal regime primarily reflects alignment in impact and inclusivity principles, as evident in provisions of the Mining Act, the Environmental Management Act, and the Constitution. However, critical gaps remain. Therefore, stakeholder identification in Tanzania is mainly government-led and lacks mechanisms for ongoing review. Similarly, the current legal texts are ambiguous, undermining clarity and consistency in stakeholder recognition. As a result, the role of stakeholders in fostering responsible business practices becomes minimal and fails to contribute to sustainable and inclusive development.

As CSR continues to evolve globally, the ability of a legal system to effectively guide stakeholder identification is central to fostering responsible, sustainable, and equitable business practices. To bridge the identified gaps, this article recommends that Tanzania consider introducing legal reforms on section 136 of the Mining Act, Section 186 of the Companies Act, section 89 of the Environmental Management Act, and Regulation 4 of the Mining (Corporate Social Responsibility) Regulations that institutionalise a broader, more participatory, and adaptive approach to stakeholder identification. The legal reform should reflect not only local realities but also global expectations. In doing so, the legal reforms strengthen legal clarity. They will ensure inclusivity beyond local communities and internal stakeholders. They will be embedding dynamic stakeholder review mechanisms. The mechanisms are essential steps toward enhancing the legitimacy, effectiveness, and sustainability of CSR practices in the country.

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