

Corporate Governance and the Enforcement of Standards: An Appraisal of Standards Organizations in Tanzania

Edwin Babeiya
University of Dar-es-Salaam, Tanzania.

Abstract

This article debates the enforcement of quality standards within Tanzania's corporate governance framework. The article probes into whether the continuing increase in the number of organizations responsible for monitoring and enforcing quality standards of consumable and non-consumable industrial products (also referred to in this article as standards organizations) has an impact on protecting the rights and welfare of stakeholders (consumers). Specifically, the article examines the extent to which these organizations have been effective in carrying out their prescribed functions. Using documentary review, the article concludes that Energy and Water Utilities Regulatory Authority (EWURA), Tanzania Bureau of Standards (TBS) and Tanzania Food and Drugs Authority (TFDA) have not been effective in monitoring and controlling the enforcement of standards, a situation that puts consumers' welfare and public health at stake. Such ineffectiveness is attributed to a number of factors such as lack of adequate financial and human resources, weaknesses in the synergies among standards organizations, poor networking with other stakeholders and weak legal framework that deprives these organizations of some of the powers to make final decisions. Finally, the article emphasizes that any successful attempt to effectively enforce standards in Tanzania has to address these challenges.

Key Words: Counterfeit Goods, Standards Organizations, Consumers' Welfare, Corporate Governance

Introduction

This article reviews the role of standards organizations in maintaining good corporate governance in Tanzania. The article argues that while it is important for the government to create a conducive business environment for producers and importers of different products which are supplied in the domestic market, it still has an obligation to ensure that the rights and interests of the citizenry are protected. Using the stakeholder theory which calls for corporations to adhere to the core principles of corporate governance, the article looks at the extent to which standards organizations in the country have facilitated adherence to the requirements to produce and supply quality-standard products for domestic and external consumption. In this theory, a stakeholder is regarded as any group or individual who can affect or is affected by the achievement of the organization's objectives (Haslinda & Benedict, 2009).

As Kumar (2010) argues, stakeholder theory encourages managers to pay attention to all constituencies that can affect the value of the firm. This concern is also reflected in the principles of corporate governance of the Organization for Economic Cooperation and Development (OECD). One of these principles emphasizes that corporate governance frameworks should recognize the rights of stakeholders established by law through mutual agreements and encourages active co-operation between corporations and stakeholders (Mallin, 2010). It is on

this basis that initiatives to ensure that corporations carry out their functions diligently have been devised.

One such initiative is the establishment of the organizations for monitoring and enforcing standards both nationally and internationally to ensure that consumable and non-consumable goods supplied in the domestic market have the required quality standards. Focusing on the Energy and Water Utilities Regulatory Authority (EWURA), Tanzania Bureau of Standards (TBS) and Tanzania Food and Drugs Authority (TFDA), the article analyses the effectiveness of these organizations in supervising the enforcement of standards in Tanzania. Being the main bodies responsible for enforcing standards in the country, their selection for review was triggered by the fact that despite their presence, the public continues to express concern over the problem of substandard and counterfeit goods. The main question that this article attempts to answer is: “Why does Tanzania continue to suffer from the problem of substandard goods despite an existence of numerous standards organizations?”

In the course of analyzing the role of standards organizations, this article also uses a power-authority formulation as part of the analytical framework. The term power in this context is construed as the ability to bring about intended effects and it involves elements such as rewards or punishment (Russell, 1938, as cited by Hague & Harrop, 2007). The term is therefore associated with the ability to influence or compel others to act in a particular way. On the other hand, authority is understood as the rightful use of power and is conferred by a rule and exercised in accordance with rules (Coxall & Robins, 1992). The main argument of this article is that the ability of standards organizations to create a good corporate governance space largely depends on the extent to which these organizations have both power and authority to enforce prescribed standards. The choice of this analytical framework rests on the view that, in some contexts, the establishment of control organizations, especially in Africa, does not encompass giving them enough power to play their prescribed roles.

A conceptual overview of corporate governance

Corporate governance is very broad and thus has different meanings to different organizations (Haslinda & Benedict, 2009). Etymologically; the term ‘corporate governance’ originates from ancient Greek and Latin. In Latin, the word *corpus*, which comes from the Latin verb *corporare*, means body and thus a corporation is construed as a body of people or a group of people authorized to act as an individual (Mensah, Aboagye, Addo & Buatsi, 2003). On the other hand, the word *governance* is derived from a Greek word *gubernatio* meaning management or government. Therefore corporate governance involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined (Mensah et al, 2003).

Corporate governance is concerned with the processes, systems, practices and procedures that govern institutions. It is therefore a set of processes and structures for controlling and directing organizations and also constitutes a set of rules, which govern the relationships between management, shareholders and stakeholders (Haslinda & Benedict, 2009). There are two perspectives of corporate governance. The first one links corporate governance with management control and the protection of shareholders. The second one sees corporate governance as dealing

with the processes of appropriate management of a company's resources to the satisfaction of all stakeholders, namely: shareholders, management and workers as well as all groups of persons that come into contact with the firm in its day-to-day activities (Mensah et al, 2003). Basing on this brief conceptual overview of corporate governance, this work examines the functioning of standards organizations in Tanzania, using the second perspective of corporate governance mentioned above. The focus of this study thus goes beyond internal relationships within the organization as described in the first perspective of corporate governance to examine the effectiveness of external control mechanisms for ensuring that other stakeholders (consumers) are not affected by the activities of various firms.

A General Overview of Corporate Governance in Tanzania

Like many other developing countries, corporate governance culture in Tanzania is still in its formative stages. It can be recalled that the pre-liberalization era marked a state-centred framework that did not grant freedom to corporations, both private and public, to perform their functions without being closely monitored by the State (Swai, 1995; Samoff, 1981; Picard, 1980; Kahama, 1986). This control was characterized, among other things, by instances of politicization (Mallya, 1988; Mukandala, 1988; Mwase, 1985). However, this control had a positive implication in terms of protecting the rights of the consumers as advocated for by the stakeholders' theory. This was mainly because, as the state was the main actor in terms of production of goods and delivery of services through public parastatals, it was easy to monitor and ensure the quality of consumables. It is worth remembering that during this time the productive processes were geared towards serving the public, especially the poor people. This determination was bolstered by the country's adoption of the socialist ideology whose effective execution began after the 1967 Arusha Declaration.

Nonetheless, since the adoption of liberal policies marked by the growth of the private sector and the coming of foreign investors, the manner in which corporations perform their duties has significantly changed. This is demonstrated by the decreasing role of the state in managing public parastatals. As a result of this change, the government decided to take various measures in order to establish a more effective corporate governance framework which, apart from setting a conducive environment for the production process as a means to steer economic growth, ensures that the rights of stakeholders (the consumers) are protected. One of those measures was the creation of the Presidential Parastatal Sector Reform Commission (PSRC) in 1992 to monitor the privatization of previously state-owned corporations.

The formation of PSRC went hand-in-hand with the establishment of the Tanzania Investment Centre (TIC) whose responsibility is to coordinate and facilitate both local and foreign investment. Together with the above initiatives, the government of Tanzania also introduced the Business Environment Strengthening Programme (BEST) in 2005. This programme aimed at reducing the burden on businesses by eradicating procedural and administrative barriers, improving the quality of services provided by government to the private sector including commercial dispute resolution and enhancing the capacity of the private sector to advocate for and demand a better business environment (Bamwenda & Mlingi, 2005).

Some notable achievements can be identified since the government embarked on these corporate governance reforms. The first one is the expansion of the banking sector. For instance, currently there are 29 registered commercial banks in Tanzania and there are

also seven registered regional banks in the country. Similarly, by July 2012 there were 211 registered bureaux de change (Bank of Tanzania, n.d). Furthermore, foreign investment in the country, particularly in sectors such as mining and tourism is expanding rapidly. For instance, as per 2010 statistics, there were 705 registered tourism operators. In addition, as a result of corporate governance reforms, the Dar es Salaam Stock Exchange (DSE) continues to expand and the number of listed companies at DSE is currently 17. Other achievements stemming from corporate governance reforms are enumerated in Tanzania's economic survey of 2009 which shows that there has been an increase of economic projects in all sectors of the economy. That survey, for instance, shows that a total of 572 projects were registered; of which 284 were owned by local investors, 149 were owned by foreign investors, while 139 were joint venture projects. The report also indicates that in 2009, manufacturing activities attracted more investors, with 183 projects worth Tshs. 654,472 million and employment opportunities to 14,143 people (United Republic of Tanzania [URT], 2010).

There are also company-specific achievements. For instance, before privatization Tanzania Breweries Company Limited faced critical problems such as obsolete machinery, low quality of products, difficulty in obtaining raw materials, just to mention a few. However, after privatization, the performance of the company both in terms of productivity and profitability has significantly increased (Joseph, 2003). Some of the recorded achievements in the period between 1993 and 2003 include: increase of production capacity from 4.2 million crates per year in 1993 to 12.2 million in 1998 and close to 20 million crates in 2002; increase in barley production from 6,000 tons to 18,000 tons per year; improvement in the beer market from 40 per cent in 1994 to more than 84 per cent in 2003; and, increase in profit from Tsh 11,285 million in 1995 to Tsh 31,022 million in 2003 (Joseph, 2003).

Other positive development stemming from corporate governance reforms was the establishment of a regulatory framework that led to the birth of standards organizations such as EWURA, the Bank of Tanzania, the Fair Competition Commission (FCC), the Surface and Marine Transportation Regulatory Authority (SUMATRA) and TFDA and other specific laws such as the Companies Act of 2002. This also involved the reinvigoration of TBS to cope with these changes. The rationale behind the regulatory framework is to ensure that the operations of corporations are guided and sanctioned by laws so as to ensure that, among other things, the rights of all categories of stakeholders are protected. The discussion that follows, therefore, reviews three standards organizations – EWURA, TBS and TFDA and focuses specifically on the extent to which they have succeeded in ensuring promotion and protection of consumers' rights in Tanzania through supervision and enforcement of quality standards.

Energy and Water Utilities Regulatory Authority

Tanzania's Energy and Water Utilities Regulatory Authority (EWURA) was established in 2001 with the responsibility of technically and economically regulating the electricity, petroleum, natural gas and water sectors. Its duties and functions are provided for in the Energy and Water Utilities Regulatory Authority Act No. 11 of 2001, Cap 414. Section 6 of this Act outlines the main duties of the Authority which include: promoting effective competition and economic efficiency; protecting the interests of consumers; protecting the financial viability of efficient suppliers; promoting the availability of regulated services to all consumers including low

income, rural and disadvantaged consumers; enhancing public knowledge, awareness and understanding of the regulated sectors including the rights and obligations of consumers and regulated suppliers, the ways in which complaints and disputes may be initiated and resolved; and, taking into account the need to protect and preserve the environment (URT, 2001).

The functions of the Authority are provided for in Section 7 of the same Act, and they include: to issue, renew and cancel licences; to establish standards for goods and services; to establish standards for the terms and conditions of supply of goods and services; to regulate rates and charges; to make rules; to monitor the performance of the regulated sectors in relation to levels of investment, availability, quantity and standard of services, the cost of services, the efficiency of production and distribution of services; and in the case of petroleum and natural gas, to regulate transmission and natural gas distribution. Other functions of EWURA include: to facilitate the resolution of complaints and disputes; to disseminate information about matters relevant to its functions; and, to consult with other Regulatory Authorities.

Since its establishment, EWURA has realized some achievements particularly in protecting consumers through the regulation of fuel prices. The authority has been regularly publishing indicative prices for fuel which specify price limits of petroleum products. This has to some extent curbed unpredictable price increase and cartels that characterized the fuel market prior to this arrangement. It is worth noting that before EWURA's intervention, there were outcries from the public over the unstable fuel prices which seriously affected the consumers in terms of paying much for fuel but also led to regular increase of fares for passengers. This intervention was thus a timely response, which did not only help in ensuring economic stability, but also helped in protecting the rights of consumers as advocated for by the stakeholders theory.

However, a mere publishing of indicative prices seems not to have been enough in addressing the question of fuel prices. This is because while the authority issues indicative prices, it does not consider fuel stocks by the time new prices are announced. As a result, new prices apply to stocks that were bought at different rates. While this practice sometimes affects fuel dealers, it has a serious effect on the general public, and this is especially the case when fuel prices go down. It has been a common practice that when EWURA announces the decrease of fuel prices, the country or some regions suffer from shortage of fuel as dealers tend to hold their stocks while anticipating prices increase in the forthcoming indicative prices to be issued by EWURA. As a result, regular change of indicative prices has been favouring the dealers who happen to have larger stocks of fuel.

Notwithstanding that positive role of controlling fuel prices, EWURA remains generally weak, a situation which also suggests the limitation of the country's corporate governance framework. Its weaknesses are reflected in various aspects as discussed below. One of the areas where the authority seems not to perform well is the handling of the adulteration of fuel. Following the persistent tendency of unethical fuel dealers to dilute petrol with kerosene, there was growing public demand for immediate action from respective authorities to curb the problem. This resulted in the decision by the government to increase tax on kerosene, which due to its low prices, was being used to dilute diesel and petrol. As a result of that decision, EWURA significantly raised kerosene prices, believing that this was going to serve as a deterrent to adulteration of petrol and diesel. This decision proved detrimental to the

majority of Tanzanians, especially those living in rural areas, who depend largely on kerosene. For instance, following the increase of tax on kerosene, there has been an abrupt increase of its prices from around TShs 1,600 to more than TShs 2080 per litre. A clear picture of the rise of fuel prices is provided in Figure 1 which shows that the once huge difference in prices between kerosene and petrol has significantly been decreasing. Using Dar es Salaam, Mwanza and Kigoma as illustrative cases respectively, the figure indicates that while the difference in prices between kerosene and petrol in February 2010 was almost TShs 400 in the three regions, the figure that was almost the same in June 2011, that difference decreased significantly to less than TShs 200 in June 2012. That difference came to an end in the indicative prices starting from 2 January 2013 as, according to the new indicative prices issued by EWURA, the price for kerosene was higher than that of diesel. As per those prices, one litre of petrol in Dar es Salaam cost TShs 1,993, that of diesel was TShs 1,967 and that of kerosene was TShs 1,973. In Mwanza, one litre of petrol was sold at Tshs 2,142, diesel TShs 2,117 and kerosene TShs 2,122. In Kigoma, petrol was sold at TShs 2,223, diesel Tshs 2,198 and kerosene TSh 2,203.

While the price for kerosene continues to surge, it is important to note that only 14 per cent of Tanzanians have access to electricity as, for instance, access to electricity in rural areas is only one per cent (United Republic of Tanzania, 2003). Although recent figures suggest an increase in the percentage of people with access to electricity, still limited access to power is recorded. The National Strategy for Growth and Poverty Reduction II suggests that the percentage of rural access to electricity by 2010 is six per cent whereas that of urban areas is 18 per cent. It is thus obvious that the majority of Tanzanians still depend on kerosene for both cooking and lighting. With this price hike, it is obvious that the majority of people are highly affected.

Note: In each of the three years indicated in the table, the three bars show kerosene and petrol prices for Dar es Salaam, Mwanza and Kigoma regions respectively.

Source: *Compiled by the author using EWURA's indicative prices.*

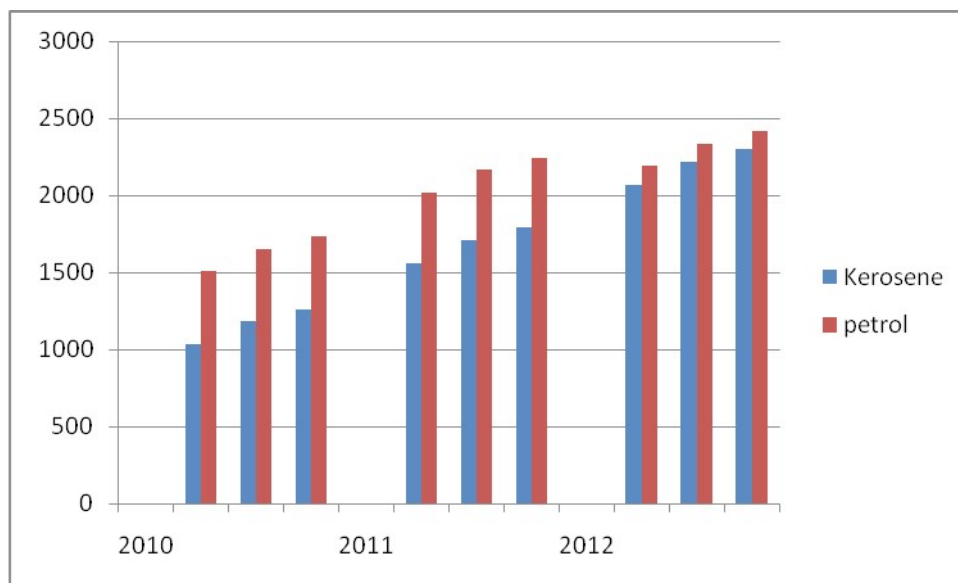


Figure 1. Kerosene prices versus petrol prices from 2010 to 2012

While ordinary citizens seem to be the victims of the increase of fuel prices, very little was heard about the perpetrators of adulteration. It was as if this practice was done by ghosts whose identity and whereabouts could not be established. There was no keen interest from responsible authorities to apprehend and prosecute those involved in adulteration as the best solution appeared to be that of increasing kerosene prices. The worst reality of the decision to increase kerosene prices is that there has not been any initiative to subsidize those people, especially in rural areas who, due to their situation of destitution, cannot afford the high prices of kerosene. This situation is in sharp contrast to what is advocated for in the stakeholders' theory which advocates for taking care of the interests of all categories of stakeholders.

There are various reasons that can explain the weakness of EWURA. While factors such as limited financial resources, corruption and lack of adequate skilled human resources partly explain the weakness of this authority, the main reason for EWURA's inefficiency is the failure of existing laws to grant finality to the authority. For instance, section 7-(3) of EWURA Act provides that in the performance of its functions, the Authority shall not award or cancel a major or exclusive licence having a term of five or more years without prior consultation with the minister and the relevant sector minister. Section 7-(4) of the same Act further states that the minister may, from time to time as occasion necessitates it, give to the Authority directions of a specific or general character on specific issues, other than in relation to the discharge of the regulatory functions, arising in relation to any sector, for the purposes of securing the effective performance by the Authority of its policy, functions and compliance with the code of conduct. Lack of finality is also reflected in Section 19 (1)-(2) of the EWURA Act which, despite granting the authority the power to hold an inquiry, still gives the responsible minister the power to influence the modality of holding such inquiry. Section 19(3) provides that the minister may specify a time within which the authority shall submit its report on the inquiry and that, if so, the authority must submit its report to the minister within that time.

The implication of this power arrangement is that it deprives EWURA of the authority and autonomy to discharge its functions without influence from superior powers. Contrary to the ethos of New Public Management, which advocates for autonomy for managers so that they can be innovative, EWURA stands as an authority whose powers are subjected to hierarchical control and thus is in some instances not able to issue final decision. For instance, there were many appeals from the public that those companies that would be implicated in fuel adulteration should have their contracts cancelled by EWURA, but such cancellation was not witnessed. Nonetheless, as section 7-(3) & (4) of the EWURA Act states, the authority cannot cancel all types of contracts without an approval from the minister. All these provisions clearly show that while EWURA has authority to enforce quality standards, it does not have power to make final decisions on some categories of issues that might affect consumers' rights.

Tanzania Bureau of Standards

The Tanzania Bureau of Standards (TBS) was established under the Ministry of Industry, Trade and Marketing by an Act of Parliament, the Standards Act No.3 of 1975 as the National Standards Institute and became operational in April 1976. The Bureau was established as part of the efforts by the government to strengthen the supporting institutional infrastructure for the industry and commercial sectors of the economy. Specifically, TBS was mandated to undertake

quality control measures for products of all description and promote standardization in industry and commerce. The National Standards Institute was subsequently renamed Tanzania Bureau of Standards through an amendment No.1 of 1977.

TBS has many functions as stipulated in section 4-(1) of the Standards Act of 2009. These functions include: to undertake measures for quality control of commodities, services and environment of all descriptions and to promote standardization in industry and trade; to make arrangements or provide facilities for the testing and calibration of precision instruments, gauges and scientific apparatus, for the determination of their degree of accuracy and traceability by comparison with standards approved by the minister on the recommendation of the Board, and for the issuance of certificates in regard to them (URT, 2009).

Other functions of TBS are: to make arrangements or provide facilities for the examination and testing of commodities and any material or substance from or with which, and the manner in which, they may be manufactured, produced, processed or treated; approve, register and control the use of standard marks; to grant, renew, suspend, vary or cancel any license issued for the use of any standards mark; to assist industries in setting up and enforcing quality assurance and environmental management systems procedures; to prepare, frame, modify or amend National Standards; encourage or undertake educational work in connection with standardization quality assurance, metrology, testing and environment; to assist the government or any other person in the preparation and framing of standards; to co-operate with other government agencies, representatives of any industry or any other statutory corporation or person with a view to securing the adoption and practical application of standards and to provide for the inspection, sampling and testing of locally manufactured and imported commodities with a view to determining whether the commodities comply with the provisions of the standards Act or any other law dealing with standards relevant to those commodities.

TBS is also mandated to act as the custodian of the National Measurement Standards of Weights and Measures and, from time to time, adjust, replace or cancel any standards where the adjustment, replacement or cancellation is necessary for the maintenance of conformity to the international standards. Other functions of the Bureau are: to collect, publish and disseminate literature and other materials on standardization and other related subjects and to provide facilities for the members of the public to have access to the materials; to carry-out, promote or assist in research or standardization and related subjects; to co-operate with regional and international organizations in all matters related to standardization and quality assurance and represent the country in such matters; and, lastly, to publish from time to time updated versions of the National Standards for the quantities and units of measurement to be used, which shall be in conformity with the latest version of the International System of Units.

An appraisal of TBS in supervising the enforcement of standards shows that the Bureau has shown strengths in some areas. One of those strengths is that it issues quality certificates to products manufacturers. Most of local manufacturers have been using the Bureaus' mark (TBS) to prove to the customers that the products they manufacture are in accordance with the prescribed standards by the Bureau. In other instances, TBS has been conducting inspections (though not comprehensive) to retailers, suppliers and manufacturers of various categories of products. For instance, on Friday, 22 February 2013, the Fair Competition Commission (FCC), the Tanzania Bureau of Standards

(TBS) and the Police Force, conducted an investigation in roofing sheet factories in Dar es Salaam following growing complaints from consumers over the questionable quality of goods produced by some factories. During this exercise, the inspection team observed non-conformity to product quality standards at Dragon Roofing Sheets Factory and thus factory owners were ordered to meet all quality standards before resuming production (FCC, 2013). The observed weaknesses during that inspection included: producing goods without product information such as a batch number; anti-corrosion/rust coating material used; and, ascription to the manufacturer such as a logo or manufacturer's identity. Also, it was observed that the factory was selling products without any quality assurance certification from TBS (FCC, 2013). This was a positive intervention which portrayed the bureau's readiness to ensure that the rights of stakeholders (consumers) are protected. Likewise, it at least showed the functioning of the country's corporate governance regulatory framework, especially on the aspect of the relationship between the bureau and FCC on one hand; and the consumers of factory goods on the other. That relationship is depicted by the fact that the conducted inspection was a response to peoples' outcry over production of substandard goods. The other positive indicator of the functioning of TBS, stemming from this inspection is the ability of the bureau and FCC to impose sanction on the producer and the order for conformity to standard requirements. This is in sharp contrast with the way EWURA has been handling the control of fuel prices and fuel adulteration as we earlier indicated.

Nevertheless, the strengths of the Bureau do not outweigh its weaknesses which seem to affect its ability to effectively monitor and control the enforcement of standards. For instance, TBS does not have the power to compel all producers to obtain quality certificates before they start rendering their services. This weakness is providing a leeway for manufacturers to opt not to submit their product samples to TBS especially for goods manufactured outside the country. Mtui (2006) argues that TBS issues its quality mark on only certain categories of products that are within its mandate. These are products that are locally made and the imported ones for which TBS has standards and their manufacturers have applied for a TBS mark. Mtui (2006) also explains that those products for which TBS does not have standards are tested using a product certification scheme which uses foreign standards. According to Mtui (2006), a batch certification scheme used for imported products that do not bear a TBS mark has proven ineffective because there are various types of substandard imported products that get into the market as a result of a poor standards verification system. This ineffective control system compounds smuggling of counterfeit goods especially from China. For instance, in 2010 more than 101 containers packed with counterfeit products were caught.

The above weakness reduces the Bureaus' status to a mere organ whose main responsibility is to issue certificates and not to monitor the quality of products. In a society that is very sensitive to consumers' welfare, getting a standards certificate is an obligation, not an option. Thus, giving latitude to manufacturers to decide whether to get a TBS mark or not implies lack of sensitivity about consumers' wellbeing. One of the consequences of granting manufactures the power to decide on the use of a TBS mark is that the Bureau is forced to incur expenses to pay for media adverts that are meant to entice and encourage manufacturers to submit the samples of their products to the Bureau for verification. In an effective corporate governance framework, there ought to have been a law requiring all manufacturers to submit samples of their products prior to putting them in the market or beginning bulk production.

Another weakness of the Bureau is that it does not have an effective monitoring mechanism that can ensure that the samples submitted to TBS for verification are the same ones that are supplied to the market. As a result, there have been public outcries that some of the products such as bottled drinking water that bear a TBS mark are substandard. The implication of this concern is that some unethical manufacturers are using TBS mark to give cover to their substandard goods.

The failure of the Bureau to effectively perform its prescribed functions is attributed to various factors. One of those factors is lack of adequate skilled human resources to undertake regular nationwide inspections. As pointed out earlier in this essay, one of the functions of the Bureau is to undertake inspections as stipulated in Section 24-(1) of the Standards Act which provides that inspectors may at all reasonable times enter any premises where there are suspicious commodities, take samples of such commodity, material or object; inspect the manufacturing process; and require any information from the inspected person. This is, however, difficult to carry out due to lack of human resources. For instance, contrary to the provisions of the Standards Act of 2009 which provides that inspectors are supposed to visit manufacturers for inspection at least twice a year, TBS inspectors were in 2006 conducting few inspections. The Bureau was visiting upcountry producers only once a year while those in Dar es Salaam were visited twice a year due to the limited number of inspectors (Mtui, 2006). For instance, by 2006 the Bureau had 24 inspectors with the responsibility of inspecting all manufacturing companies and importers in the whole country (Mtui, 2006). The situation has not changed since and the Bureau continues to face the same problem.

Due to few human resources, TBS has no upcountry branches and only operates from Dar es Salaam as reflected in the Bureau's organizational structure that only includes units, directorates and sections without any zonal or regional branch offices. EWURA also does not have regional or zonal offices in its organizational structure. The structure only contains the board of directors at the top, followed by the director general, procurement management department, communications and public relations and seven different divisions. It is only TFDA whose organizational structure is composed of four directorates and five zonal offices.

Like EWURA, TBS also suffers from limited autonomy. Apart from having many functions, the Bureau is deprived of its prescribed autonomy. For instance, Section 31 of the Standards Act provides that the Minister may give the Board directions of a general or specific nature and that the Board shall give effect to every direction given. The weakness of this provision is that it is too general and takes for granted that every direction issued by the minister is in public interest. Given the persistent and rampant corruption in Africa which in certain instances involves governing political elites, there is a possibility that the Minister may use this provision to further his/her selfish needs.

Lack of autonomy is also reflected in the limited power for the Bureau to determine the penalties to be imposed on culprits as provided for by the 2009 Standards Act. Section 27-(1) of this Act provides that where a person contravenes any of the provisions of the Act for which no specific penalty is provided, commits an offence and on conviction, shall be liable to imprisonment for a term not less than two years or to a fine not less than fifty million shillings and not exceeding one hundred million shillings or to both. Section 27-(2) further provides that on a second or subsequent conviction of any person for an offence committed under the

Standards Act, that person shall be liable to imprisonment for a term of not less than three years or to a fine of not less than fifty million shillings and not exceeding one hundred million shillings or to both.

The penalties stipulated above are sometimes not enough and might instead act as a catalyst to unethical behaviour which might have adverse effects on consumers. As most of illegal businesses, such as importing and selling counterfeit goods are lucrative and involve billions of money, imposing a penalty of fifty or one hundred million Tanzanian shillings is very low compared to the profit the dealers get from this business. For instance, in a joint operation against counterfeit goods that was carried out in collaboration between TBS and Fair Commission Competition between July 2011 and December 2012, a total of 313 containers packed with counterfeit products worth Tshs 324,700,000 were seized (FCC, 2013). These figures show a huge difference between the proposed penalties and the value of substandard goods. It is therefore obvious that dealers in these goods can easily pay fines whenever caught without necessarily eroding their capital. The Bureau should have been given more power to suggest appropriate penalties (to be enacted into law) depending on the nature of the cases, together with an understanding that imposing harsh penalties might at least send a warning signal and serve as a precedent to other dealers in that business. Lack of this latitude puts the rights of consumers at a great risk as trade in substandard goods remains uncontrolled. In the power-authority axis, it can be established that the bureau has no adequate power to pursue illicit trade in standard goods.

Tanzania Foods and Drugs Authority (TFDA)

According to Section 5-(1) of the Tanzania Food, Drugs and Cosmetics Act of 2003, TFDA is the regulatory body for the products regulated under the TFDA Act. The main functions of the Authority include: to regulate all matters relating to quality and safety of food, drugs, herbal drugs, medical devices, poisons and cosmetics; to regulate in accordance with this Act, the importation, manufacturing, labelling, marking or identification, storages promotion, sell and distribution of food, drugs, cosmetics, herbal drugs and medical devices or any materials or substances used in the manufacture of product; to ensure that evidence of existing and new adverse events, interactions and information about pharmaco-vigilance of products being monitored globally, are analyzed and acted upon; and to ensure that clinical trials on drugs, medical devices and herbal drugs are being conducted in accordance with prescribed standards (URT, 2003).

Other functions of the Authority as provided for in Section 5-(1) of the TFDA Act include: to foster co-operation between the Authority and other institutions or organizations and other stakeholders; to approve and register products regulated under the TFDA Act, manufactured within or imported into, and intended for use in the United Republic, to examine; to grant, issue, suspend, cancel and revoke certificates and licences or permits issued; to appoint inspectors and order inspection of any premises; to promote rational use of drugs, medical devices and herbal drug; to establish and maintain the Tanzania National Formulary and Tanzania Pharmacopoeia; and, to provide the public with unbiased information on products regulated under this Act.

Section 5-(1) of TFDA Act further provides that other duties of the Authority include: to prescribe standards of quality in respect of products regulated under the Act, manufactured or intended to be manufactured or imported into or exported from the United Republic; to promote, monitor and ensure successful implementation of the provisions of TFDA Act; to attend to and, where possible, take legal measures on complaints made by consumers against manufacturers of products regulated under this Act; and; to do such acts or take such measures as are, in the opinion of the Authority, necessary or expedient for the prevention of health hazards to consumers which may result from the consumption or use of low or bad quality products regulated under TFDA Act (URT, 2003).

Apart from those functions, TFDA is granted powers by Section 6 of the Act to: enter or remove any name from any register prescribed under this Act or, subject to such conditions as the Authority may impose, restore it thereto; hire and terminate services; and condemn and order destruction or disposal in any way any product regulated under TFDA Act found to be unfit for its intended use (URT, 2003).

Looking at both the powers and functions of TFDA, it is clear that like TBS and EWURA, it has some areas where it has had a better performance. One area where the Authority has performed well, especially in recent times, is the control of substandard drugs. In collaboration with the Ministry of Health and Social Welfare, some pharmacies with out-dated and substandard drugs have been closed. This has also involved the closure of some private hospitals deemed to be operating below minimum standards. The *Business Times* newspaper shows that the rate of substandard drugs in Tanzania has fallen from 13percent a decade ago to 3.7 per cent. Likewise, in the first combined INTERPOL-World Health Organization (WHO) operations against counterfeit pharmaceutical products in Tanzania and Uganda that took place between 29 September and 5 October 2008, more than 100 types of fake products were seized. The operation targeted pharmacies, warehouses and illicit markets. Some of the confiscated drugs were anti-malarial, cardiac, anti-fungal, multivitamin, hormonal and skin medicines (Interpol, 2008).

Despite these achievements, the above-mentioned numerical figures do not suggest a substantial decrease of counterfeit medicine as cases of illicit drugs are still rampant throughout the country. This is testified, for example, by *the Citizen* newspaper, echoing TFDA's findings which indicate that half of substandard human drugs entering Tanzania are said to be fake (the Citizen, 2012). The situation is even worse in rural areas as dealers in counterfeit drugs take advantage of porous borders and weaknesses in inspection to ferry such products to remote villages. Similarly, complaints over questionable quality of varieties of foods and beverages are ubiquitous in Tanzania.

Various reasons explain the weaknesses of TFDA. Like, TBS and EWURA, TFDA suffers from inadequate funds and shortage of skilled personnel. This is despite having five zonal offices. This problem was reiterated by TFDA Director General in his speech to the Ministry of Health, where he indicated that in 2012, the authority had 186 staff working at TFDA headquarters and in zonal offices. He insisted that this was far below the needed manpower of 354 employees (TFDA, 2012). This means that the authority has a deficit of 168 staff. As substandard drugs are prevalent across the country, dealing with the problem through zone offices stands to be

inadequate. Given the country's big geographical size, with more than 25 administrative regions and 113 districts, that number of staff is not enough to effectively protect more than 44 million consumers. The nature and magnitude of the problem calls for more presence of the authority throughout the country at least up to the district level and not at the zonal level as it is currently the case. Limited presence of the Authority is also made worse by inadequacy of equipment such as mobile laboratories. For instance, According to TFDA Director General, the authority lacks laboratory equipment known as Gas Chromatography coupled with mass spectrophotometer (GC-MS) which would be important in enabling TFDA to identify and quantify pesticide residuals in food (Al Itrah Broadcasting Network Television-IBN TV, 2013). Government's commitment to supply the Authority with adequate working tools remains limited. As a result, the Bureau is sometimes forced to depend on donations. For instance, in June 2012, TFDA received five mini-lab kits for drug testing from Merck Company based in Germany.

Like TBS, the problem of low penalties seems to also act as a catalyst for continuation of illegal trade in substandard and counterfeit drugs. For instance, section 99-(3) of TFDA Act provides that any person who deals, sells, offers or exposes substandard products commits an offence and is therefore liable to a fine of not less than one hundred thousand shillings and not exceeding one million shillings, or to imprisonment for a term not exceeding six months or to both such fine and imprisonment. Similarly, section 123- (1) provides that any person who commits an offence under the TFDA Act for which no specific penalty is provided shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months or both such fine and imprisonment. All these penalties are very low and partly contribute to the persistence of the problem. As Table 1 shows, the cumulative annually estimated average market value of counterfeit products that fall in the category of goods to be regulated by TFDA such as pharmaceuticals and medical equipment; cosmetics and detergents, foodstuffs, alcohol and bottled drinking water is Tshs 36 billion. Basing on this lucrative nature of counterfeit products, imposing the proposed penalties does not only continue to put the welfare of the consumers at risk, but also exposes the weakness of the country's corporate governance regulatory framework. The obvious weakness is that the system is not proactive enough in devising control measures that can at least help to reduce the magnitude of this business.

As table 1 indicates, there are twelve (12) main counterfeit products in Tanzania. These include: industrial equipment and raw materials whose estimated range of market value is between 20 to 300 billion Tanzanian Shillings (Tshs) and estimated average market value of 160 Billion Tanzanian shillings; agricultural inputs with an estimated range of market value of 10 to 150 billion Tshs and estimated average market value of 80 billion Tshs. Other counterfeit products are vehicle spare parts that have an estimated range of market value of between 20 to 100 billion Tshs and average market value of 60 billion Tshs; electronic equipment and appliances with an estimated range of market value of 20-50 billion Tshs and estimated average market value of 35 billion Tshs, and cosmetics and detergents whose estimated range of market value is 14-50 billion Tshs and their estimated average market value is 32 billion shillings.

Also included in the list of counterfeit products are pharmaceutical and medical equipment that have an estimated range of market value of 6 to 30 billion Tshs and estimated average market value of 18 billion Tshs; and clothing and apparel that have an estimated range of

market value of 5-20 and estimated average market value 13 billion Tshs. Other counterfeit products are plastic products that have estimated range of market value of 5-20 billion Tshs and estimated average market value of 13 billion Tshs; building materials whose estimated range of market value is 1-5 billion Tshs and estimated market value of 3 billion Tshs; foodstuffs that have an average range of market value of 1 to 4 billion Tshs and estimated average market value of 3 billion Tshs. The two remaining main counterfeit products in Tanzania are chemicals whose estimated range of market value is 1 to 4 and estimated average market value is 3 billion Tshs; and alcohol and bottled drinking water with estimated range of market value of 1 to 2 billion Tshs and estimated average market value of 2 billion Tshs.

Table 1: Counterfeit goods and their estimated market value

Sn	Main Counterfeit Products	Estimated Range of Market Value (Bill TZS)	Estimated Average Market Value (Bill TZS)
1	Industrial equipment and raw materials	20 - 300	160
2	Agricultural inputs (Dursban, Gladiator, Blue copper, Red copper, Dithane, Cobox, etc)	10 - 150	80
3	Vehicle spare parts (Tyres, batteries, bearings, tubes, engine parts, etc)	20 - 100	60
4	Electronic equipment and appliances (TVs, radios, cassette recorders, computers, wire cables, pirated music etc)	20 - 50	35
5	Cosmetics, detergents (creams, lotions, toothpastes (Whitenedent, Colgate, Close-up)	14 - 50	32
6	Pharmaceuticals & medical equipment (drugs, surgical gloves, scissors, blood pressure machines, etc)	6 - 30	18
7	Clothing and apparel (khanga, shirts, athletic shoes, etc)	5 - 20	13
8	Plastic products	5 - 20	13
9	Building materials (wire cables, door locks, bulbs (Phillips)	1 - 5	3
10	Foodstuffs	1 - 4	3
11	Chemicals (industrial and domestic)	1 - 4	3
12	Alcohol and bottled drinking water (wine, beer, Konyagi, Uhai)	1 - 2	2

Source: (URT, 2008)

Conclusion

The above discussion has shown that Tanzania's corporate governance framework is still at its infant stage in terms of acting as tool for protecting consumers. Despite the fact that there have been some positive interventions to protect consumers from the effects of substandard goods, the degree of consumers' protection remains low. This is contrary to the emphasis by the stakeholders' theory on the importance of protecting the categories of stakeholders from being negatively affected by the activities of the firms. The article has demonstrated and cited some empirical cases which show the persistence of multibillion-shilling illegal trade in substandard

goods, despite the existence of various standards organizations. The article also has identified various factors that are attributed to the failure of these organizations to monitor and enforce standards on different categories of products. These include shortage of financial resources and skilled human resources, inadequacy of equipment, weak synergies and networks, weak legal framework and unclear division of power between these organizations and other actors such as ministers.

The Way Forward

On the basis the above observation, the article makes some recommendations on what needs to be done to ensure that the country's corporate governance framework effectively protects the consumers.

The first recommendation is that for the country's corporate governance framework to be in a position of effectively protecting the consumers, emphasis should be put on promoting more synergies among TFDA, EWURA, TBS and other regulatory bodies. As the above discussion has shown, all the reviewed organizations are characterized by many weaknesses which suggest that none of them can perform its presupposed duties independently and effectively. This situation thus calls for joint efforts among these organizations in monitoring and enforcing standards on the goods that are within their mandate. Given the nature of the economy that has allowed for a proliferation of producers and importers, there is a compelling need for teamwork among these organizations to ensure that consumers are protected. Establishing these synergies does not seem to be a difficult task as laws establishing these organizations recognize the significance of cooperation. For instance, Section 5-(2) of the TFDA Act provides that in the performance of its functions, the Authority shall maintain a system of consultation and cooperation with other organizations dealing with the same business.

There have been efforts to ensure cooperation among these organizations but they still seem inadequate in ensuring more and effective protection of consumers. One of joint efforts among these organizations is the creation of an interdepartmental task force to monitor the enforcement of standards after the amendment in 2007 of the Merchandise Marks Act of 1963 and the passing of Merchandise Marks Regulations in 2008. The members of this task force came from the Attorney General Chambers, Tanzania Revenue Authority, Tanzania Police Force, Tanzania Bureau of Standards and TFDA (Mkono, Kameja & Mrema, 2009). Similar recent cooperative initiatives involved TBS, FCC and the Police Force as earlier indicated in this article.

In addition to synergies, it is imperatives that current corporate governance measures aiming at protecting consumers adopt a networks model. As Stephen Osborne (2006) argues, New Public Governance (NPG) which is a contemporary paradigm of public administration sees networks as a very effective tool in attaining the goals of the organization. Public administration and management is thus said to be characterized by a pluralist and plural state with multiple interdependent actors and multiple processes of policy making. While supporting Osborne's thesis, this article maintains that it is important for the fight against substandard and counterfeit goods to be anchored upon a networks theory that calls for joint efforts among stakeholders. In this case, government bodies need to work hand-in-hand with other actors such as the general public, the media and civil society organizations.

While cooperation among standards organizations is poor, the situation is even worse with other actors such as the general public and civil society. The study by the United Republic of Tanzania in 2008 identified low level of networking among the above categories of stakeholders (URT, 2008). This has consequently resulted in a frail role of civil society organizations in advocating for the enforcement of standards. In spite of the fact that there is an influx of counterfeit goods in the Tanzanian market, there are no strong civil society organizations playing a watchdog and advocacy role in ensuring that consumers are protected. Most of standards organizations have been collaborating with local government authorities (LGAs) and the Police Department in conducting some operations against substandard goods, with little consideration of other stakeholders. However, given the fact that LGAs and the Police are preoccupied with their core functions, they cannot effectively participate in fighting substandard goods.

What is, however, clear is that substandard goods cannot be eliminated through seasonal operations that are carried out in only some parts of the country. Any success is thus anchored upon an interplay of roles among all types of stakeholders, starting from the general public who need to be educated about the nature and effects of these goods, to increased cooperation among all stakeholders. Failure to have a firm network thus gives room for the persistence of illicit commodities. This observation is supported by the Fair Competition Commission and the Confederation of Tanzania Industries whose estimate in 2008 was that almost 40 percent of all electrical equipment were counterfeits and that as a result Tanzania incurred losses of between 15 and 25 per cent of total domestic revenue due to counterfeit imports. Similarly, CTI's study of 2008 showed that between 15 and 20 per cent of goods circulating in the domestic market were counterfeit products.

Efforts to protect consumers need to also involve the rationalization of the legal and regulatory framework. The legal framework that is guiding the operations of standards organizations in Tanzania needs to be rationalized as it currently affects the functioning of these organizations. As the above discussion has demonstrated, one of the weaknesses of this framework is its failure to grant these organizations the power and authority to make final and binding decisions without subjecting them to the controls of politicians. This is, for instance, provided for by Section 7-(3) and (4) of the EWURA Act which limits the authority of the Bureau in decisions related to the enforcement of contracts. Such provisions clearly indicate that standards organizations are not autonomous, especially in decision making. These organizations thus need to be given powers to enable them to carry out their duties properly and more effectively. Such measures have to include, *inter alia*, the power and authority to determine and propose appropriate penalties and sanctions (to be enacted into laws) against producers of and dealers in substandard goods.

Furthermore, the rationalization of the legal framework needs to ensure that new laws on counterfeit and substandard goods complement each other in addressing this problem. This recommendation stems from the fact that the failure of the legal framework to suggest appropriate sanctions has partly played part in the persistence of trade in substandard goods which have adverse effects on consumers. Lack of complementarity among these laws was also echoed by the chairperson of Confederation of Tanzania Industries (CTI) who pointed out that Tanzania has many laws and policies on fake goods which have persistently been unable to curb the problem of counterfeit products.

Furthermore, as the above discussion has indicated, all standards organizations are suffering from lack of capacity, especially in terms of human resources. Most of these organizations are understaffed and they thus fail to expand the scope of their operations. For instance, as per TBS website, the bureau has 151 staff who are supposed to take care of all standards-related issues nationwide. By whatever standards, this number cannot cater for millions of Tanzanians prone to the effects of substandard goods. Limited number of human resources was also evident at EWURA, as by December 2011 the authority had only 97 staff, which was two staff less than the approved EWURA establishment of 99 staff. Although EWURA might look well staffed in terms of available staff and the approved authority's staff establishment, these figures suggest the weakness of the country's corporate governance framework. With this number of staff, it is very unlikely that, for instance, the bureau can closely monitor fuel adulteration countrywide where more than 113 administrative districts ought to be served by the authority. Suffice it, therefore, to underline the fact that the authority's approved staff establishment is very unrealistic. It is on this basis that EWURA and TBS have no upcountry branches, a situation that forces them to operate mainly from Dar es Salaam. This situation creates a compelling need for more efforts in equipping these organizations with adequate skilled staff that can enable them to effectively fulfil their mandates and obligations in all parts of the country.

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