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REGIONAL EVIDENCE PAPERS

Horizontal Accountability of the Executive to the Legislature in Africa: A Case Study of Kenya



OSSREA Organisation for Social Science Research in Eastern and Southern Africa
Ethiopia

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Regional Evidence Papers are an output of the ELLA Programme. They contain an overview of regional evidence, as well as original data collection and analysis, on a particular research topic. A pair of Regional Evidence Papers are produced on each topic, one focused on Latin America and one on Africa, using a common research question and design. This Regional Evidence Paper is paired with a sister paper whose title is *The Deficits in Accountability in Argentina: A tale of Two Worlds* authored by CIPPEC in Argentina. Based on this two regional papers, a Comparative Evidence Paper is constructed, comparing the experiences of the two regions, in order to support inter-regional lesson-learning. All [publications](#) can be found in the ELLA programme [website](#).

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ABOUT THE ELLA PROGRAMME

ELLA, which stands for Evidence and Lessons from Latin America, is a south-south knowledge and exchange programme that mixes research, exchange and learning to inspire development policies and practices that are grounded in evidence about what works in varied country contexts. The programme has been designed and is coordinated by [Practical Action Consulting \(PAC\) Latin America](#), in line with the objectives agreed with the funder, the [UK Department for International Development \(DFID\), UK Aid](#). The [Institute for Development Studies \(IDS\), Sussex University, UK](#), supports on research design, methods and outputs. To learn more about ELLA go to our [website](#), where you can also browse our other publications [Horizontal Accountability](#) and other [ELLA development issues](#).

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SUMMARY

Objectives of the study

This paper assesses the legislative, representative, financial control and oversight roles played by parliaments in Africa, with Kenya as the main case study in a context of accountability. The regional focus includes all the countries of East Africa; and Tanzania, Uganda, Burundi and Rwanda for a more detailed regional overview. The need to strengthen accountability is premised on the importance of having checks and mechanisms for parliaments to exercise their representative, legislative and oversight functions in a manner that ensures the prevention of abuse of power and subjects the Executive bodies to processes that open up their activities to public scrutiny with the possibility that in case they overstep their mandates they can be subjected to sanctions. The paper examines gaps in accountability and the factors that sustain those gaps.

Methodology

The main question addressed in this paper is: what are the determinants of the low performance of horizontal accountability mechanisms in Africa in general and in Kenya in particular? Our main hypothesis is that in Africa in general and in Kenya in particular, the low performance of horizontal accountability mechanisms results from deficits in legislative and Executive capacities, as well as a lack of incentives for both branches of power on the one hand, and the complex interplay between formal and informal institutions on the other. We examined a number of horizontal accountability mechanisms and assessed the extent to which these effectively work. Based on the African Parliamentary Index (API) (Parliamentary Centre 2011) and instruments and indicators of independence and accountability of independent agencies by De Vrieze F. and Ieseanu L. (2011), we focused on the following indicators: the existence of a budget review procedure; the time frame available for parliament to review the budget; room for public hearings on the budget; whether committees work together on the budget proposals of government; whether parliament can amend the proposed budget; whether it can send back the budget to the Executive; the level of details of expenditure in the budgets and whether the committees access information on defence and security services budgets; the existence of a Budget Act, a budget office and office of the Auditor General and the access to information these offices have on budgets and finances. Also considered is the nomination process of the Executive, its performance, assessment, reporting, transparency, system of appeals and consultations and coordination.

The increasing influence of parliaments

During the first three decades of independence most parliaments in Africa were dominated by the executive arms of their governments. But beginning in the nineties parliaments have managed to secure constitutional reforms that have established independent budget offices and audits agencies; separated the staff of parliaments from the mainstream civil service; entrenched the parliamentary committee system; opened parliamentary debates to the public; institutionalized parliamentary approval of the appointment of ministers and other senior public officials and enacted elaborate legislative procedures for budget preparation, presentation approval and scrutiny of expenditure. However, parliamentary effectiveness in ensuring horizontal accountability is still constrained by the predominance of informal over formal rules and procedures; control of state power by elite groups separated by ethnicity; collusive and predatory alliances and cliques; undemocratic political parties which have no culture

of accountability; rules relating to party discipline and the whip system which stifle freedom of speech among MPs and complicated rules of procedure on how business is transacted in parliament. For instance, as will be shown later, a self-assessment by MPs on their representative, financial control, oversight, and legislative functions in Kenya, Uganda and Tanzania, indicated that none of the parliaments in those countries was doing very well on all of these functions. They also identified human resources constraints as a big challenge in most countries. A descriptive analysis of Rwanda and Burundi also show weak parliaments especially in the period after independence in both countries.

Horizontal accountability in Kenya

Kenya was chosen as a case study because of its long history of struggle for parliamentary reforms. The paper covers mechanisms used by parliament in Kenya to make the Executive accountable. Questions by notice which is the most frequent mechanism was found to be averagely effective because the questions assessed were not probative enough to elicit concrete information; MPs lack preliminary evidence based data to strengthen their questions; ministers frequently refuse to appear to answer questions, they are not disciplined and most of the answers given were lacking in commitments. Motions by members are also used but they were found to be ineffective because they were tabled only occasionally, did not lead to concrete decisions, and there was no follow up on the action taken after they were tabled. The same was the case with ministerial statements. Parliament did better in terms of legislative function because it was possible to pass private member bills and there was room for consulting members of the public. In addition, there are various commissions to oversee the enforcement and implementation of laws. However, debates on bills take very long, procedures allow the Executive to bring bills under certificates of urgency leaving no room for adequate discussion and there are no mechanisms for members to follow up on the implementation of the laws passed in this way. The Kenyan parliament has a number of strong oversight committees. The paper focuses on the Public Accounts Committee which was found to be well resourced but was constrained by delays in the submission of audited accounts, the failure of public servants to appear when called or appearing unprepared, at times unsatisfactory responses when they appear, the failure of many ministries to account for advances and in some cases some ministries spending above limits without authorization.

The case study covers the National Cereal and Products Board in order to show how state owned enterprises account to parliament. A motion to censure a minister who had violated procedures relating the management and distribution of maize in 2009 was used to study the effectiveness of parliamentary control of state owned organizations. It was concluded that due to political divisions on party and ethnic lines, such motions are limited in their effectiveness.

Conclusions and recommendations

The paper concludes that the prolonged struggle for reforms in Kenya and the perennial tendency of the Executive to circumvent and subvert formal mechanisms and reverse the processes of change, raises the question of whether Kenya and other African countries can really accept and institutionalize good governance based on western models. In that vein the conclusion is that a hybrid model that combines formal and informal mechanisms could work better. To reduce the influence of ethnic identity, it is recommended that the government and parliament look for ways of strengthening national identity and reduce space for ethnic identities, as well as to redesign administrative borders to create multi-ethnic administrative districts and provinces. To deepen popular participation in policy making it is recommended to establish cross-county committees to foster cooperation between counties on issues of security and development; create a consultative forum for policy advice made up

of experts, the private sector and other sectors outside the political party system. To increase the role of political parties in deepening democracy, it is recommended to strengthen democracy within political parties; fostering collective action and decision making at all levels and in order to increase freedom of speech in the two houses to review the Standing Orders of Parliament. Finally, to ensure the decisions of parliament are implemented fully, and to introduce severe sanctions on government officials who refuse to answer questions or to appear before parliament or its committees, as well as to establish independent mechanisms for handling cases of corruption involving members of parliament and the Executive.

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GLOSSARY

ACBF	African Capacity Building Foundation
AfDB	African Development Bank
API	African Parliamentary Index
CIPPEC	Centre for Implementation of Public Policies Promoting Equity and Growth
DLP	Development Leadership Programme
HA	Horizontal Accountability
IBP	International Budget Partnership
KANU	Kenya African National Union
KENAO	Kenya National Audit Office
MDAs	Ministries, Departments and Agencies
MDGs	Millennium Development Goals
MP	Member of Parliament
NA	National Assemblies
NCPB	National Cereals and Produce Board
OECD	Organisation for Economic Co-operation and Development
OSSREA	Organisation for Social Science Research in Eastern and Southern Africa
PAC	Parliamentary Accounts Committees
SOEs	State Owned Enterprises
SOTU	State of the Union
SWG	Sector Working Groups
UK	United Kingdom
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission of Africa
USAID	United States Agency for International Development

INTRODUCTION

Accountability is one of those golden concepts that is increasingly used in political discourse and policy documents because it conveys an image of transparency and trustworthiness. It is central to the theory and practice of both democracy and better governance. It is used as a synonym for many loosely defined political desiderata, such as transparency, equity, democracy, efficiency, responsiveness, responsibility, and integrity (Mulgan 2000b). The term “has come to stand as a general term for any mechanism that makes powerful institutions responsive to their particular publics” (Mulgan 2003: 8). Accountability will here be defined as a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor can be sanctioned. It exists when there is a relationship where an individual or body, and the performance of tasks or functions by that individual or body, are subject to another’s oversight, direction or request that they provide information or justification for their actions (Storm, 2003). Accountability makes the abuse of political power less likely, while at the same time helping to empower governments to serve the ends that democratically elected governments are legitimately asked to pursue. This paper will focus on Horizontal Accountability which refers to the capacity of state institutions to check abuses by other public agencies and branches of government, or the requirement for agencies to report sideways (ibid).

In 2005 the Economic Commission for Africa acknowledged in its *African Governance Report* (2005:116) that in the past, constitutional mechanisms to contain Executive dominance “were systematically weakened, revised, suspended or replaced with ones that had a concentration of power in the Executive branch”. Now, strengthened accountability arrangements including some brand new institutions are in place in many African countries. Starting with a quick survey of experiences of East African countries and then focusing on Kenya, this paper documents evidence gathered about the conditions under which legislative bodies succeed or fail to hold accountable public agencies of the Executive as well as the Executive’s own capacity for being accountable. Relying on The African Parliamentary Index (API) developed by the Parliamentary Centre in 2011 (API, 2011) and Instruments and indicators of independence and accountability of independent agencies developed by De Vrieze F. and Leseanu L. (2011), among others, the paper assesses horizontal accountability through the legislative, representative, financial control and oversight roles played by parliaments in Kenya, Tanzania, Uganda, Rwanda and Burundi with Kenya as the main case study.

This paper is divided into seven sections. After the introduction we explain the problem, conceptual framework and research design. Then we give a background of where the parliaments in the region have come from and then we show where they are heading. After that we undertake a quick survey of their performance in the region, focusing on East Africa. After that we focus on Kenya as the main case study and we wind up with a case study of one state owned enterprise in Kenya in order to highlight its accountability to parliament.



Photo: [Parliament of Kenya Building](#)

Credit: Jorge Lascar

RESEARCH DESIGN AND METHODS

The problem

The main question addressed in this paper is: what are the determinants of the low performance of horizontal accountability mechanisms in Africa in general and in Kenya in particular? The underlying assumptions are first that there are gaps between the formal institutions and the actual practices of accountability of the Executives to the legislatures and secondly that there no clear incentives that can lead to better policy outcomes. The results are expected to support policy design and parliamentary reforms in African countries as they continue to search for systems of governance that can increase horizontal accountability, democratic space, efficient service delivery, poverty reduction and zero tolerance of corruption. The goal was to assess the weaknesses in accountability, tracing their causes and the institutions affecting its development, and make recommendations to policy actors on how to improve the situation.

Hypothesis

Our main hypothesis is that in Africa in general and in Kenya in particular, the low performance of horizontal accountability mechanisms results from deficits in legislative and Executive capacities as well, as the lack of

incentives for both branches on the one hand, and on the other the confusion which can arise in the interplay between formal and informal institutions. We hypothesize that capacity in itself is not enough to enhance the performance of parliaments but that a blending of formal and informal institutions is also required, alongside mechanisms to reduce the risk of the informal undermining the formal. Combined with capacity enhancement this can lead to better results. It is also assumed that sanctions and incentives are a necessary pre-requisite for enforcing formal rules and procedures and only when capacity is combined with the right incentives do legislators become enabled and empowered to demand accountability and Executive officials become obliged to comply.

Study Area

Kenya has been selected as a case study for several reasons. First, the political history of Kenya has been characterized by struggles between the Executive and reform-minded members of parliament, civil society organizations and opposition parties which emerged immediately after independence and this eventually led to a new constitution in 2010. These struggles have been punctuated by assassinations, disappearances, election violence and the commercialization of political processes at all levels of governance (Mueller 2014; Mihyo 2015). Secondly, in spite of these factors the Kenyan parliament has managed to function well above average, but its operations have been characterised by the dominance of informal procedures and rules over the formal ones, the commercialization of politics within and outside parliament, ethnic cleavages and temporary political party alliances that affect the objectivity of deliberations on reports, appointments, motions and debates. This is also aggravated by cultural factors which have made ethnic affinities, alliances, cleavages, restricted loyalty and the tyranny of numbers very influential in the way members of parliament discharge their responsibilities.

Thirdly, although Kenya has made big strides in introducing reforms related to governance and horizontal accountability between parliament and the Executive, it is yet to be seen if these reforms and new systems will work effectively because as Susan Mueller has asserted, over the years, "Kenya has displayed a remarkable ability to reinvent the status quo" (Mueller 2014: 3).

Conceptual framework

This study interrogated the horizontal accountability of the Executive to the legislature in African parliaments with Kenya as a case study. Horizontal accountability of the Executive to the Legislature was assessed by analyzing the technical capacities of the Executive, guided by the African Parliamentary Index (API) (Parliamentary Centre 2011) and Instruments and indicators of independence and accountability of independent agencies developed by De Vrieze F. and Ieseanu L. (2011) (See Appendix 4). On the other hand, the strength of the legislature in ensuring accountability was assessed by analyzing the members of parliament's technical capacities, as well as those of officers working in parliament, their legislative experience, and existing procedures of accountability. We also interrogated the influence of informal mechanisms to horizontal accountability. These include: culture, ethnic alliances, religious bodies, lobby groups like the business network and traditional leadership systems. Although political parties are formal mechanisms, there are informal systems within them. Media too is an informal mechanism of accountability because it unearths scandals that lead to the Executive being held accountable.

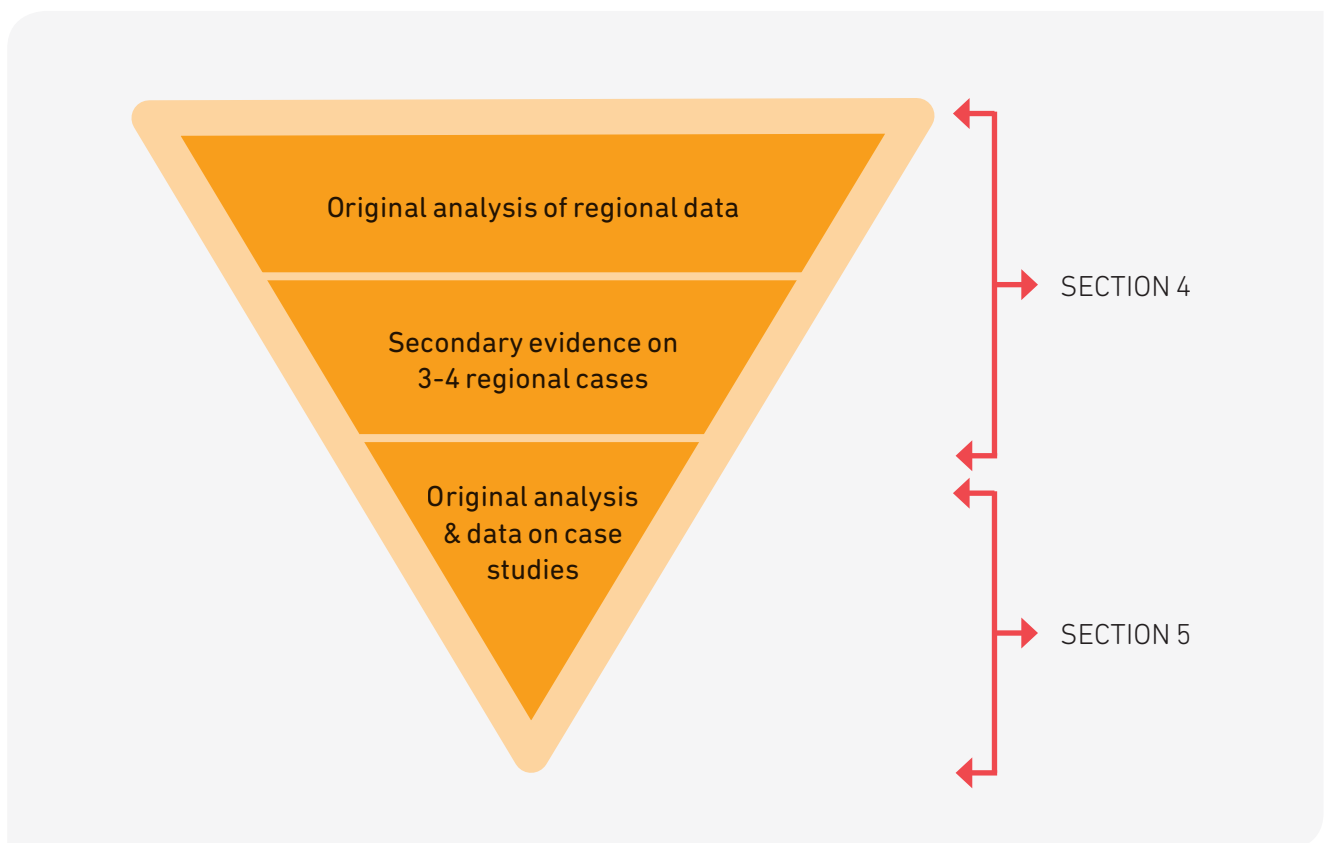
In agreement with OSSREA's partner CIPPEC, the research was organized in two stages. In the first stage we focused on establishing the existence of weak horizontal accountability and getting deeper into understanding our outcome variable. We started from the broader perspective of Africa and using the African Parliamentary Index (API) developed by the Parliamentary Centre, we assessed how parliamentarians in three of the East African countries were performing on legislative, representative, financial control and oversight roles and with what capacity. Then we zeroed in on Kenya as a case study. In order to understand the horizontal accountability architecture in that

country, we looked at the *de jure* horizontal accountability mechanisms and assessed the extent to which these effectively work. We therefore: (i) identified the main horizontal accountability tools in the constitution and other laws, such as debates, questions, ministerial statements, reports, motions, private member bills, presidential consultations, the legislative process and oversight committees; (ii) assessed whether these mechanisms help the legislative branch to effectively hold the Executive accountable and the mechanisms used by the government to respond to Parliament for policy implementation and (iii) assessed whether the Executive branch effectively reports to the Parliament for policy monitoring and evaluation and the effectiveness of these mechanisms.

In the second stage we looked for factors that perpetuate the weaknesses we identified in stage 1. Specifically, we examined the effect of independent variables in this study i.e. legislative/executive capacities and negative incentives and their impact on horizontal accountability. Focusing on the representation, financial control and oversight functions we looked at Parliamentary Reports (Hansards), the Reports of the Auditor General and the Reports of the Public Accounts Committee. The Hansards proved very useful because they contained most of the reports on the various mechanisms we identified.

These two stages have been pursued using an inverted triangle approach as shown in Figure 1 below. Secondary data is used to give the overall review of the region mainly focusing on Kenya, Tanzania and Uganda. We also provide additional descriptive analysis of Burundi and Rwanda that are predominantly francophone countries because they were formal Belgian colonies. A more specific analysis uses field data and information on Kenya and one state owned organisation, the Kenya Cereals and Products Board.

Figure 1. Conceptual Framework for Analyzing Horizontal Accountability in Africa



Research design

The study adopted the mixed methods paradigm by combining both qualitative and quantitative data. Mixed methods research recognizes the importance of traditional quantitative and qualitative research but also offers a powerful third paradigm choice that often will provide the most informative, complete, balanced, and useful research results (Johnson, Onwueegbuzie, & Turner, 2007, Ridenour and Newmann, 2008, Hesse-Biber 2010). It allows researchers to improve the accuracy and validity of the research findings, predict trends, add to the knowledge base, measure change, help understand complex phenomena and both test and generate new ideas (Ridenour, Newmann & De Marco, 2003).

The study further used an exploratory research design so as to give causal explanations of “what” is happening in HA and ‘why’; with an emphasis on the ‘why’. It presents a complex explanatory model involving formal and informal mechanisms for HA and the incentives that promote or impede it.

Exploratory research design helps to understand an issue more thoroughly. It helps in question building so as to provide rich quality information that helps identify the main issues that should be addressed. This reduces bias (Amin, 2014). Furthermore exploratory research design helps in identifying the key issues and variables. It also elicits deep-seated opinions from the respondents. This research employed in-depth interviews with selected experts in their work in the Kenyan Parliament (s). We also analyzed secondary data, particularly media reports and the Hansard Reports. In so doing we tested the causal relationship between the technical capacities of legislatures and executives in relation to HA. We also tested the causal relationship between formal institutions and HA mechanisms, and how the relationship impacts on the accountability of the Executive to the Legislature. And we tested the causal relationship between institutions, HA mechanisms, and incentives to be accountable. Finally, we sought to know the influence of informal mechanisms on HA. We also used the theory-testing approach, from general observations that parliaments in Africa are weak, to a more concrete conclusion based on the Kenyan case study.

Research methods

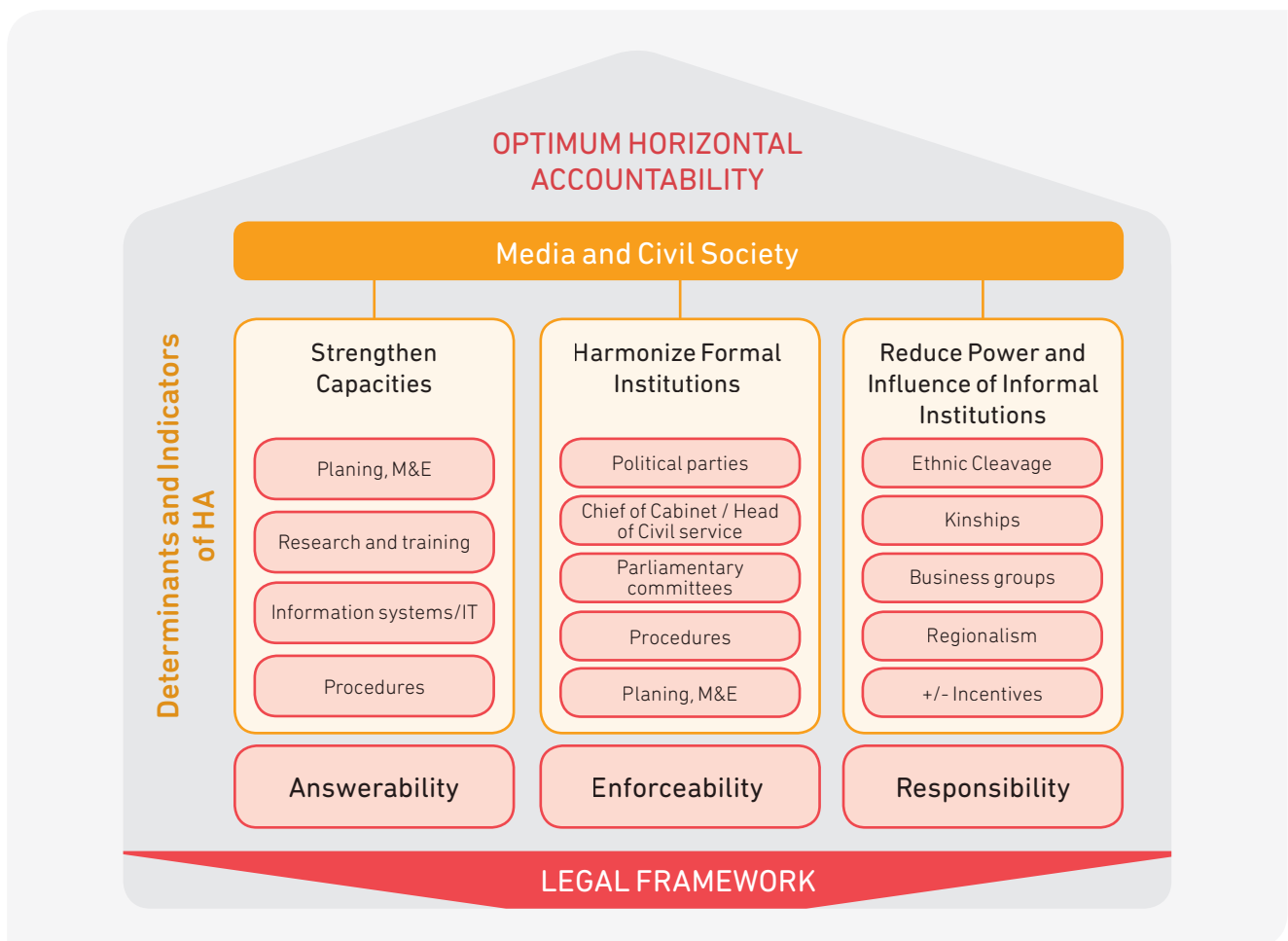
In order to gain a better understanding of deficits in legislative oversight and test our hypothesis, the study employed a number of data collection methods. In the first stage we conducted a desk study involving an extensive analysis of existing explanations and public documents specifically meant to: (i) identify existing mechanisms or institutions involved in horizontal accountability, such as the National Audit Offices, requests for ministerial reports by legislators, questions and answers, motions by members, private members’ bill, government bills, presidential speeches to parliament etc. and (ii) assess how effectively these mechanisms function. This desktop research was complemented by a quantitative analysis of data in the official records of parliament and government departments, and an assessment of records of the National Cereals and Products Board as a case study of accountability of state owned enterprises to parliament.

To test the efficacy of the accountability mechanisms and tease out data and perceptions on the capacity of parliament, we deployed both quantitative and qualitative methods in the national case study of Kenya as a whole and the study of the state owned enterprise. Qualitative material was gathered through in-depth interviews with thirty-two legislators, twenty-four of whom were from County Assemblies in three counties and eight from the National Assembly. The questionnaires sought to capture the perceptions of key actors on the causes of success and failure in the implementation of horizontal accountability tools as well as possible remedial interventions. Primary data was used for the second stage mainly through in-depth interviews on the normative framework: the formal design of horizontal accountability institutions and the laws, rules and organs/bodies under which these should operate.

Then the perceptions of respondents on implementation were gathered, and this included practices regarding the functioning of HA mechanisms, how they work and with what results. We focused on the following indicators: the existence of a budget review procedure; the time frame available for parliament to review the budget; room for public hearings on the budget; whether committees work together on the budget proposals of government; whether parliament can amend the proposed budget; whether it can send back the budget to the Executive; the level of detail of expenditure in the budgets and whether the committees can access this information, and the quality of the information regarding policy implementation and budget execution. We also looked at the existence of a Budget Act, a budget office and office of the Auditor General and the extent to which these offices can access information on budgets and finances; party group cohesion; professionalization and cooperation within Parliament; and the consequences of non-compliance. We also investigated the nomination process for Executive officials, the assessment of the Executive’s performance, reporting, transparency, system of appeals and consultations and coordination.

Another very important issue that we interrogated was the content and quality of the State of the Nation Report. In this report, we investigated the main issues across periods, duration of reports, evidence presented to support reports, methods used to present information, sources utilized and follow up mechanisms. We conceptualized our methodology as shown in Figure 2 below.

Figure 2. A Model for Optimum Horizontal Accountability in the Kenyan Parliament



Source: Authors’ Own Conceptualization

REGIONAL OVERVIEW

An Overview of horizontal accountability functions in Africa

The study of accountability is very important today as many countries in Africa are looking for ways of strengthening democracy by making parliaments stronger and better equipped to confront the challenges of poor design and implementation of policy, poor service delivery, corruption and mismanagement of public resources. The need to strengthen accountability is based on the importance of having checks and mechanisms for parliaments to exercise their representative, legislative and oversight functions in a manner that ensures the prevention of abuse of power and subjects the Executive bodies of the state to processes that open up their activities to public scrutiny with the possibility that in case they overstep their mandates they can be subjected to sanctions. Therefore, accountability carries two basic connotations: (i) answerability on what public officials are doing in the performance of their duties, and (ii) enforcement, that is, the capacity of oversight bodies to impose sanctions on power-holders who may have violated their duties (Schedler, 1999). The study which informs this paper aimed to identify gaps and capacity deficits that constrain effective accountability.

Gaps in accountability have been previously attributed to legislative-executive relations especially in terms of opportunistic trajectories of legislators' political careers (Polsby, 1968), the non-existence of dominant incumbent parties demanding discipline in governance and public management (Cox and McCubbins, 1994, 2007), the lack of a culture of accountability (Oszlak, 2006), or the absence of real, tangible punishments for not being accountable (March and Olsen, 1976). Studies on the effectiveness of parliaments in several countries in Africa indicate that most of them are not yet very open to public scrutiny (Parliamentary Center 2011, Tsekpo and Hudson 2009); they are still weak in terms of their capacity to interrogate and obtain the information they need to be able to guide the Executive; they lack institutional capacity in terms of materials, finances, research capacity (Nijzink et.al 2006, Salih 2005, Hudson and Wren 2007, Kasfir and Twebaze 2005). Every time changes have been introduced, the Executive has always found a way of circumventing them (Mueller 2014). As new rules and tools are developed to give the country a new direction, change breakers are set in motion which either slow down the processes of change or block them altogether. In the next subsections we examine how and with what degree of success and challenges parliaments in Africa have been able to perform their representative, legislative and oversight roles.

Parliamentary effectiveness in ensuring horizontal accountability has been further affected by the predominance of informal rules and practices over formal rules and procedures (Hyden 2008, SAIIA 2008, Scott 2009) and a high preponderance of ethnic cleavages, collusive alliances and predatory cliques controlling power and circulating it among themselves (Basedau, Erdman and Maher 2007). Political parties which send representatives to the electorates have remained undemocratic, dominated by patrons, father figures, founders and funders without a tangible record of accountability (Mihyo 2015). This lack of transparency spills over into representative organs of the state (Salih 2003, Basedau, Erdman and Maher 2007). In parliament, party discipline and the whip system combine to stifle free expression of opinion by MPs, forcing them to toe party lines even in circumstances where they would like to take independent positions (Sitta 2008, Slaa 2008). As a result of these and other shortcomings the performance of African parliaments differs but most of them are generally weak.

The lack of incentives, which have been analysed to be institutionally driven, also contributes to the weaknesses of parliaments. The term 'institutions' refers to rules and sanctions within these bodies. Therefore the success and failure of accountability depends on whether the legal framework and party systems create sufficient



Photo: [Rwanda Parliament](#)

Credit: Rwanda Government

room for legislators to be more autonomous and reduce their career dependence on the Executive (Jones et al., 2002). In the African context, patronage systems characterized by exclusive control of development resources by the Executive in a presidential system with significant levels of corruption, do not provide an incentive for oversight (Basedau, Erdmann and Mehler 2007, Lijphart 1992, Amundsen 2010). In very extreme cases active parliamentarians could also endanger their lives in the process of 'challenging' the Executive (Sitta 2008, Slaa 2008). While taking into consideration the role of culture, Oszlak (2006) considers accountability as not simply a matter of system design, but rather a cultural predisposition that should be assimilated by individuals in order not just to respond when being held accountable but to be accountable as a result of a moral imperative and as a way of doing things.

Furthermore, while studying what motivates actors' behaviour, some scholars have argued that policy actors choose to take certain decisions when they think it is appropriate and refrain from taking them when they sense that the consequences may be severe (March and Olsen, 1976; Rhodes, Binder and Rockman, 2006). The choice between the formal and informal and the leeway wielded by heads of state on whether or not to accept parliamentary guidance or advice is also a product of the excessive discretion and the leeway bestowed upon them by constitutional and other legal provisions. Rational choice theory views institutions as systems of rules and incentives which political actors use to negotiate and navigate political landscapes in order to exercise power and influence. From this angle, if the consequences of deviation from formal institutions or the norm are severe, political actors are likely to avoid the risk, while they will be prone to take some risk if they face

no obvious consequences (Shepsle 2006). In Africa in general, East African countries in particular and most especially in Kenya, sanctions are very weak. Noteworthy for this section is that horizontal accountability in Africa has a long history.

Colonial regimes found structures of accountability in place that were indigenous and had their own checks and balances over the power of the executive authorities (Kashangama 2010). The colonial regimes introduced their own structures of governance based on the structures of their own governments. They therefore established legislative councils whose members were elected by colonial officers, white farmers and business people and missionaries. Chiefs and collaborative elements were also incorporated as members but they were few in number. The legislative councils had power to decide on budgets and to receive reports on the performance of the Executive. However their powers were highly limited because the colonial administrators were primarily accountable to the colonial offices in their home countries.

The structures of the state in many former colonies were structured along the lines of the state in the former colonizing powers. Therefore as they emerged from the womb of colonialism, the structures of governance and government bore the birthmarks of their colonial predecessors. These structures were characterised by strong Executives, which were predominantly accountable to themselves. However the nationalist and popular support enjoyed by the emerging states called for the establishment of governments that had a semblance of accountability based on representative, legislative and oversight functions exercised by the new legislatures. But for about three decades (1960s to the 1990s) parliaments in the region were either appendices of ruling parties in monocratic single party regimes or were controlled directly by the Executives.

The weak position of parliaments in Africa during the first three decades of independence was compounded by a multiplicity of factors. In the immediate period 1960 to 1970 most efforts of African governments and their development partners were directed at strengthening the civil service rather than parliaments (Kiragu and Mukandala 2005). Therefore public administration got more support and moreover, because this was during the cold war, many development partners focused on forming alliances with government leaders and not with oversight bodies. Hence they turned a blind eye to issues of democracy, governance and accountability (Salih 2001: 11-12). It was only in the 1980s that the African elite and development partners began questioning the possibility of development without democracy and good governance. As the cold war ended and development partners and local elites began focusing on development outcomes rather than alliances, the viability and possibility of monocratic structures of power and governance to deliver on development began to be questioned (Crothers 1999:41-42).

In addition parliaments were weakened by the lack of competitive politics between political parties. During the one party system which dominated African politics for three decades, ruling political parties were organized at the grassroots level and claimed to be more representative of the whole citizenry than the parliaments of that time (Nyerere 1968). These regimes introduced state centred systems of participation through which the masses were mobilized to participate in activities whose agendas were predetermined and final decisions already taken only to be rubber stamped. People were made to believe that the Executive arm of the state was the sole source of development resources, and parliaments were seen as part of the Executive system (IPU and UNDP 2003).

In the early period of multiparty politics in the region, it was crystal clear that most of the new opposition parties were offshoots of existing autocratic dominant parties. Therefore the political agendas and ideologies of the new parties were not substantially different from those of the incumbent ones. As a result they did not immediately question the power structures and the marginal positions occupied by parliaments and the judiciaries in these countries. It took another decade before most of the new parties began to question the frameworks of power and to start demanding changes that could ensure a balance of power between the Executive and other arms of the state. Most of the struggles to change the structures of decision-making and accountability were conducted

within parliaments. Change was slow and parliaments on their own could not mount enough pressure on the Executive bodies to cede ground to them on issues of budget and expenditure of public resources. It was after development partners such as the World Bank (1989), USAID and those based in OECD countries began pushing for reforms and increased accountability that parliaments and civil society got the impetus necessary to start rolling back the frontiers of Executive power. Regional organizations such as the UN Economic Commission for Africa took the lead by rallying African governments to develop a common framework for strengthening democracy and good governance using various meetings of ministers and heads of state (Salih 2001:13). The change in donor policies and the lead role played by the ECA in shaping the governance agenda on the continent have galvanized parliaments and enabled them to put up a relentless struggle to assert their supremacy.

Literature on accountability in Africa indicates that although parliaments have been in existence for over five decades in many countries, they remained dominated by the Executive for more than three decades especially in countries that were under authoritarian one party political rule (Hopkins 1970, Kjekus 1974). It was only in the nineties that they began to assert themselves and their struggles for autonomy have been difficult (IPU and UNDP 2009). However, with the support of development partners, they have managed to secure constitutional reforms that have established independent budget offices and audit agencies; separated staff of parliaments from the mainstream civil service; entrenched the parliamentary committee system; opened parliamentary debates to the public; institutionalized parliamentary approval of appointment of ministers and other senior public officials; and enacted elaborate legislative procedures for budget preparation, presentation, approval and scrutiny of expenditure (IPU and UNDP 2003, All Party Parliamentary Group 2008, Barkan et.al 2004, Nijzink et.al 2006). These changes have contributed a lot to raising the level of accountability in several countries but there are still many constraints and challenges.

Successful reforms have been made possible both by donor support and the capability of members to organize themselves into reform groups cutting across party lines as was the case in Tanzania (Sitta 2008) or where parties have formed alliances during election campaigns and entered into agreements that if elected they will jointly push a parliamentary reform agenda, as was the case in Kenya (Sihanya and Okello 2010: 663-671, Mbai 2008, Kadima and Owuor 2014:158-159). The tripartite alliance between the Africa National Congress, the Congress of South African Trade Unions and the South African Communist Party was formed and remains in existence in order to ensure the reform agendas of these three organizations are pushed through the legislature and accepted across the various social groups in the country (Booyesen, 2014:76-78).

Overall, parliamentary effectiveness in ensuring horizontal accountability systems is clogged by the predominance of informal rules over formal rules and procedures (Hyden 2008, SALLA 2008, Scott 2009) and a high preponderance of control of state power by the same elite groups over time, through ethnic cleavages, collusive and predatory alliances and cliques (Basedau, Erdman and Maher 2007). Political parties which send representatives to the legislatures have remained undemocratic, dominated by founders and funders without a tangible record of accountability (Mihyo 2015). This lack of transparency spills over into representative organs of the state (Salih 2003, Basedau, Erdman and Maher 2007). In parliament, party discipline and the whip system combine to stifle free expression of opinion by MPs forcing them to toe party lines especially on matters of censuring ministers or challenging the government on corruption (Sitta 2008). As a result of these and other shortcomings the performance of African parliaments differs from country to country but all are generally weak.

Performance of East African parliaments

In this section, a general performance review of African countries is presented with a focus on the three East African countries of Tanzania, Kenya (the case study), and in comparing indices of parliamentary performance Uganda was also included as data was available. Between 1990 and 2010 the Inter-Parliamentary Union and the United Nations Development Programme and other donors supported several African countries to strengthen their parliaments. At the time of independence, most former British colonies adopted a parliamentary system except Zambia, but all except Botswana, Mauritius and South Africa have switched to presidential systems which have vested a lot of powers in the presidents, thereby weakening parliaments (Nijzink et.al 2006, Lijphart 1992). The rise of Executive presidentialism and the decline of parliamentary systems has severely undermined the separation of powers and truncated the supremacy of parliament (Agyeman-Duah, 2010). Links between citizens and their representatives are also becoming weaker as the percentage of people interviewed on whether they had met their MP ranges from 0.2% in South Africa to 16% in Uganda (Bratton Mattes and Gyimah-Boadi, 2005) and a survey of opinion polls indicated that citizens appreciated the work done by their presidents more than that done by their MPs (Nijzink et.al 2006, Afrobarometer 2004).

This section focuses on the East African countries of Uganda, Tanzania and Kenya. For lack of consistent data and for coherence purposes, Rwanda and Burundi, that joined the East African regional block in 2002, have not been reviewed. However, the general lessons derived from the study apply to Africa in general and East Africa in particular.

In the last twenty years (1995 to 2015) African parliaments in general and East Africa in particular, with good support from development partners, have transformed themselves from 'toothless bodies' (Sitta, Slaa, Cheyo and Ashurst 2008) into strong institutions with power to call their governments to account and influence executive appointments to or removal from high office. They have secured the formation of independent parliamentary budget offices and distanced their staff from the mainstream civil service bodies. In Kenya, they have succeeded in reviewing and developing a new constitution after prolonged periods of resistance to change by the Executive. In Tanzania the efforts to change the constitution by reducing the immense Executive powers started as early as 1968. But the Executive has always resisted reducing the powers of the President which include the power to dissolve Parliament in case of disagreements with parliament on key policies. However, between 2013 and 2015, serious attempts were made to change the constitution and when the ruling party Chama Mapinduzi resisted, four opposition parties formed an alliance known "The Coalition for a Peoples Constitution" and they resolved to support one candidate at all levels in the October general elections in 2015. Although they did not win the majority seats in Parliament, they managed to increase the number of opposition MPs by 15% and in local elections managed to assume the leadership of major municipalities in four major cities. This has never happened before. The stalled constitutional reform process will be revived in 2016 and the outcomes will be seen then. What is noteworthy for the East African region as a whole is that the current state of horizontal accountability has been impacted by a relatively long period of reform.

Before the first wave of reforms, in Tanzania, the budgets of parliament were controlled by the Prime Minister's Office and subjected to bureaucratic rules and procedures under which parliament had to request for funds from government to execute its functions (Sitta 2008). During the period Jomo Kenyatta was the president of Kenya (1963-1971), it was a treasonable offence under the Penal Code in Kenya, to 'imagine' the death of the head of state. Parliament was personally controlled by the President (Hornsby 1985). When President Moi took over, repression became so intense that whoever challenged his leadership would either disappear or end up in detention. This made challenging Executive prerogative taboo. Some scholars have compared President Moi of Kenya with King Louis XVI who once said, "L'État c'est Moi" meaning, "I am the state" (Cross 1983, Throup and Hornsby 1998: 37). In such situations members of parliament could not even attempt to question executive powers.

Therefore, when the Kenya parliament passed the Budget Office Act establishing a parliamentary fund and an independent audit office for parliament in 2006, one member said, 'We used to line up at the office of the President to pick up our salaries on Friday. Now we are independent' (Hansard July 5, 2006). Kenya is the case study and is looked at more closely in section 5. Suffice to say that under such controls, almost invariably in all African countries, parliamentary staff were civil servants appointed and controlled by the civil service authorities (Inter-Parliamentary Union and UNDP 2003: iv, Ashurst 2008: 23) and the accounts of parliaments were audited by government auditors controlled by the Executive.

Survey of East African parliamentary performance

In 2011 the Parliamentary Centre based in Canada organized an intensive survey on how parliaments in selected countries were performing on their core functions of representation, legislation, financial control, oversight through committees, integrity and transparency, and how much capacity they had accumulated to enable them to carry out these functions. The Centre used the African Parliamentary Index (API) which uses indicators summarized in Table 1 below.

Table 1. Summary of indicators used by the African Parliamentary Index (API) to measure performance.

Function	Summary of indicators
Representation	<ul style="list-style-type: none"> • Openness to citizens; media access to proceedings; timely information; non-partisan media relations; independent mechanisms; timely disclosure of information on budgets to the public; promotion of public awareness about the role of parliament.
Legislation	<ul style="list-style-type: none"> • Source of authority; power to amend budget proposals; extent of public inputs into bills; existing mechanisms for monitoring the implementation of laws.
Financial	<ul style="list-style-type: none"> • Budget hearings and review; authority to send back budget bills; public participation in budget processes; access to estimates and accounts of security and defence budgets. • Existence of a budget office (BO); resources for BO; access to up to date information by the BO. • Citizens' inputs into budgetary processes; opportunity for CSOs to input budgets; effectiveness of public participation in budget processes.
Oversight	<ul style="list-style-type: none"> • Existence of committees and whether oversight is by a single or sets of committees; powers and source of powers of the committees; mechanisms for obtaining information and following up on decisions; opportunities for minority parties to exercise oversight powers. • Parliament Accounts Committee (PAC): existence of one; its rights powers and source of its powers; meetings - are they open?; recommendations - are they binding on the Executive?; mechanisms for tracking implementation of recommendations; collaboration between PAC and anti-corruption agencies. • Audit: Appointment of the Attorney General (AG); submission of reports to the Legislature; accessibility of the reports to the public; resources for the AG's office; possibilities of independent audits by AG at the request of parliament.

Institutional capacity	<ul style="list-style-type: none"> Financial and material resources: power to determine its own budget; logistics; constituency development funds; receiving and coordinating donor support; human resources; availability and quality of research capacity
Institutional integrity	<ul style="list-style-type: none"> Existence of a code of conduct for legislators and staff and its enforcement; standards of accountability on parliamentary affairs; mechanisms to detect , prevent and discipline corrupt MPs; declaration of assets and other financial interests by MPs

Source: Parliamentary Centre (2011)

The Parliamentary Centre asked various MPs including those in Kenya, Tanzania and Uganda to assess themselves using the criteria summarized in Table 1. On representation, the indicators place emphasis on accessibility such as the links with the media and civil society and openness. The results indicate that Tanzanian MPs had the highest capacity for representing their people and Kenya had the lowest capacity (Parliamentary Centre 2011:15) because the Tanzania legislature was more accessible to media; MPs had non-partisan relations with the media and there are mechanisms through which Parliament informs the public about its work. The African Parliamentary Index (API) also assesses if legislative authorities provide opportunities for the public to have inputs into legislation and mechanisms for parliament to monitor the implementation of legislation. Kenya scored the highest because the legislative function is taken very seriously in that country; the power of the purse is enshrined in the constitution and the public is afforded opportunity to have inputs into bills. In Tanzania the parliament has no power to amend appropriation bills (Parliamentary Centre 2011: 16).

Indicators for the financial function include the power to authorise expenditure and approve taxes and levies. The Uganda Parliament scored the highest. Those which did not score highly had no budget laws or budget offices and members lacked the capacity to conduct budget reviews. Uganda and Kenya had more capacity on these factors (Parliamentary Centre 2011: 16). Parliamentary oversight indicators emphasize capacity and mechanisms for monitoring executive action in order to balance the powers between the three core arms of the state. The existence of parliamentary committees, and their powers and resources were used to measure their effectiveness. Kenya had the highest capacity for oversight among the Eastern African countries because of the existence and efficacy of the Public Accounts Committee and Auditor General’s Office. (Parliamentary Centre 2011:18).

The API assesses capacity based on infrastructure, IT resources, capacity for research and policy analysis, and access to human, financial and material resources. On capacity to recruit competent staff on an equal opportunity and non-partisan basis, Kenya had the lowest capacity rating overall although its Parliament is the only one among the Eastern African countries which determines its own budget (Parliamentary Centre 2011:19).

Within the API, the integrity of Parliaments is measured through public perceptions about the transparency and integrity of Parliament and Parliamentarians and the existence of codes of conduct, the frequency of their enforcement, and the declaration of assets and interests. Kenya which scored the lowest has no code of conduct, and there was then no duty for MPs to declare their assets, although there are rules in the Standing Orders regulating their conduct (Parliamentary Centre 2011:21). In Table 2 below the scores are tabulated.

Table 2. Self-Assessment by MPs in East African countries on Parliamentary Functions (Scores out 10)

Country	Representation Function	Legislative Function	Financial Function	Oversight Function	Parliament's Transparency and Integrity	Parliamentary Capacity	Total Scores	Total Possible Score
Tanzania	7.5	6.9	5.7	7.1	6.7	7.5	41.4	60
Kenya	2.3	9.3	7.0	7.5	4.7	5.2	30.8	60
Uganda	6.8	6.3	8.4	7.2	7.0	6.8	42.5	60

Source: Extracted from various tables in a Report of the Parliamentary Centre (African Programme (2011)

In summary the report of the Parliamentary Centre indicates that Kenya's Parliament is backed by clear legal mandates on its functions, especially the Fiscal Management Act. It has oversight committees and a strong PAC, a Budget Office and an independent auditor. The Uganda parliament has capacity for budget review backed by the Constitution (Article 155) and is above average on most indicators. Tanzania scored highly on representation and parliamentary capacity, especially budget review.

Summary of binding constraints on the effectiveness of parliaments in the African region

As they continue to assert themselves to ensure accountability, national integrity and transparency, and to effectively represent their constituents, parliaments in Africa still face a number of challenges. Some of these are historical, institutional, procedural, cultural, political and contextual. Historical factors relate to the long history in the region of autocratic leadership. For countries which experienced monocratic single party regimes, autocratic governance has left a big mark on the mind sets of the majority of the people. Although mind sets are changing, responses to authority will remain weak and submissive for some time.

Institutional limitations

Institutional limitations revolve around relationships between the Executive and legislators. In some of the Westminster arrangements that have been adopted by several countries in the region, ministers are appointed from among members of parliament. This creates a problem in competitive politics as members of the ruling parties find it difficult to challenge their fellow MPs in their capacity as ministers. This creates room for collusion between members of the Executive and legislators belonging to the same political entities, diluting the nature of the questions asked and the type of information requested from the Executive (Mihyo 1994). In addition many MPs hold positions on commissions and boards of state owned organizations and agencies. Apart from affecting the separation of powers, such as overlapping memberships of legislative and executive bodies, this undermines the capability of such members to call the Executive to account. This is not unique to Eastern Africa alone. In Mozambique the involvement of such members in the decision making processes of state organizations has made it difficult for anti-corruption bodies to take firm measures against those accused of or suspected of corruption. (Stasavage 2000). In Nigeria, interlocking and overlapping membership on executive and legislative bodies has led to the systemic institutionalization of corruption (Obasanjo 2003) and as a result members of parliament turn a blind eye to Executive failure to respond to audit queries, and they refrain from taking firm action against those found to have committed acts of corruption or fraud (ACBF 2007: 72).

Thirdly, overlapping and interlocking memberships raise the issue of separation of interests. This is limited to the

requirement to declare interest in particular decisions of transactions and does not touch the issue of separation of roles to ensure that members of the Executive are not involved in legislative affairs and vice versa. Furthermore the concept of separation of powers is still farfetched in many constitutions. Executive presidents wield a lot of powers to appoint public servants including judges. Even where, as in Ghana, Kenya or South Africa these powers are subjected to parliamentary scrutiny, the presidents retain discretion to reject advice from parliament.

Institutional factors also involve patronage systems. There is abundant literature on patronage systems, political cleavages and alliances and how they have shaped systems of power and politics in Africa (Van de Walle, 1999, Van de Walle and Buttler, 1999, Linberg, 2003, Gyimah-Boadi, 2007). Within the patronage systems, the state through the Executive is perceived to be the primary if not the only source of development resources. Therefore political actors in local and national assemblies, seek to be as close as possible to the Executive thereby compromising their representative and oversight roles. Constituents also look to their representatives to bring development resources to their areas. Therefore it does not matter how much an MP contributes to debates or oversight bodies or legislation. If they don't deliver development projects or funds, they lose appeal. In a study of voter perceptions about the representative, legislative and oversight roles of parliamentarians in Uganda, Tsekpo and Hudson (2009:2) have noted that, "Voters as a result of social and cultural norms are more often concerned that their MPs provide them and their constituencies with school and hospital fees, funeral expenses, roads and electricity than that they legislate, oversee and represent their interests effectively". Within such mind sets, constituents do not care where the resources come from as long as the MPs can deliver. To meet such expectations, MPs have to be close and friendly to executive officials to avoid losing legitimacy. This strengthens patronage systems and dilutes parliamentary effectiveness.

Procedural limitations

Freedom of expression within political parties represented in parliament and within parliaments themselves is very constrained. The former Speaker of the Tanzanian Parliament has gone on record saying freedom of speech in African parliaments is severely constrained by the party whip system under which party discipline requires members of each party in parliament to toe the party line (Sita 2008). In addition, rules within political parties restrict members from expressing independent opinions outside their political parties whether within or outside parliament. The former Speaker of the Tanzanian Parliament suggested that such rules can only be ruled unconstitutional by the courts.

Standing Orders of Parliament are another source of restraint on freedom of expression within parliaments. Almost invariably, they contain minute details on what MPs can say, how, when and about what. More often than not they give extraordinary powers to Speakers to selectively allow who to speak, for how long, and on what issues. In addition, while some laws give a semblance of guarantee of freedom for MPs to demand and get any information, the same constitutions contain clauses that claw back these rights by entrenching the privileges of the Executive. For example Section 10 (3) of the Parliamentary Privileges and Immunities Act of 1988 in Tanzania provides for the right of any MP to demand and get information from any government official. But under Article 99 of the Constitution, Parliament cannot overrule the President and Parliament cannot amend the budget. In Eastern Africa it is only Kenya's parliament that has effective power to amend budgets. In some countries the Constitutions provide for declaration of assets by top members of the Executive but there are no clear sanctions for nondisclosure. Under the Malawian Assets Act of 2002, MPs as well as top members of the Executive are required to disclose assets on taking office. When the Speaker of Parliament refused to make such a declaration and the issue was raised in parliament, he was told that he was not compellable to make such disclosure. The President followed suit (SOTU Malawi Report, 2014).

Parallel accountability - informal mechanisms

The relationship between parliaments and development partners in Africa has not been very smooth. For countries very dependent on donors, their governments tend to be more accountable to donors to mitigate possible withdrawal of support. Since parliaments lack the incentives to ensure full accountability, most parliamentarians see donors as a stumbling block. A former Chairperson of the PAC in Tanzania has argued that the mere presence of donors in Tanzania has somehow diluted the power of parliament, thereby undermining the democracy which they are seeking to strengthen (Cheyo2008:60). It has also been observed by the All Party Parliamentary Group (2008:14) that, 'aid particularly to governments through direct budget support, strengthens governments and risks making them more accountable to donors and less accountable to their people'. The group has advised donors to engage parliaments arguing that in actual fact parliamentary scrutiny of aid can help them to account easily to their own people (All Party Parliamentary Group, 2008: 15). In Tanzania donors have not been very keen on direct scrutiny. Instead they have formed alternative mechanisms such as the Public Finance Management Assessment which receives reports from government on how donor funds are spent and whether they were used for intended purposes. But these reports are never submitted to parliament. Whether the situation is different in other countries in the region needs further research. But generally there is organized resistance to accountability to parliaments on aid in most countries and as the former Chair of the PAC in Tanzania remarked, many top government officials still regard parliamentarians as quasi civil servants and more transparency means less flexibility for them, and the more transparent a process becomes the more government officials try to sabotage it (Cheyo 2008:65).

Cultural factors

Cultural factors are manipulated by both the constituents and their representatives. In traditional structures of power, the traditional leader (king or chief) was in charge of the welfare function of society so that in case of shortages or hardship, the leader would distribute welfare provisions to distressed communities or families. After independence, the traditional systems of welfare were demolished and even where chiefs were retained they no longer control the welfare function in society. In the absence of traditional welfare funds and systems, the immediate leaders, such as MPs, are viewed as the new chiefs. That is why as we saw earlier the constituents in most cases look to the MPs to provide them with support for school, medical and other fees, to donate substantially to funerals and weddings, and so forth (Tsekpo and Hudson, 2009:2). For such constituents delivery is not within parliament, in terms of how they represent them and how much legislation they pass, but outside parliament and specifically what they deliver to families, households and communities in material and financial terms. This in turn gives the MPs cover for corruption and strengthens systems of patronage characterised by alliances between the Executives who control budgets and MPs as they scramble for development funds to retain legitimacy at the grassroots. In order to mobilize resources for welfare support to constituents, they link up with business groups. This creates room for the rise of corrupt leaders and corrupt societies which are not only rotten to the core but literally from the core.

Recent experiences in the region as a whole put to test the strength of HA, the performance of institutions and the interactions between formal and informal structures as well as the role of incentives. The post election violence in Kenya could be said to be mediated by an ambitious reform embodied in the new constitution promulgated in 2010. The current indictment of the highest figures in the Executives from Africa at the International Criminal Court in The Hague leads to questions of how durable the institutions of accountability are and whether these can be enhanced by bodies outside the region. In the next section we examine the accountability of the Executive to parliament in Kenya which is our case study.



Photo: [Power belongs to the people - wall mural at Electoral Commission in Uganda](#)
Credit: Commonwealth Secretariat

HORIZONTAL ACCOUNTABILITY IN KENYA

Kenya like 24 other countries on the African continent was colonized by The United Kingdom and it inherited a structure of government which was not only shaped by its history but also by the Lancaster Agreement under which state power was transferred. The first parliament was the colonial Legislative Council which held its first sitting on August 17, 1906. From 1906 to 1920 when Kenya was made a colony, members of the Council were appointed by the Governor. European settlers were allowed to elect representatives in 1920 and after they got such rights they immediately opposed the inclusion of Asians and Arabs who were also demanding representation. Africans who constituted 95% of the population did not get the right to be represented in spite of the colonial Devonshire Declaration of 1923 which provided that African voices should be given priority. They were subjected to rule by the Native Local Authorities headed by chiefs appointed by the Governor and constituted of unelected representatives of the chief and the government (Mungeam 1966, Ochieng 1985). In 1943 when African nationalism began to take root, the colonial government incorporated a few Asians and Arabs in the

Council, leaving out Africans (Aringo 2011: 82). The first and only African to be appointed to the Legislative Council was Mr. Eliud Mathu in 1944 who formed the Kenya African Study Union which later became the Kenya African Union and, after being suppressed in the fifties, it transformed into the Kenya African National Union (KANU) that led the country to independence (Mueller 2014: 6). The Legislative Council was not a democratic entity but was used to discuss and approve plans and programmes, most of which were passed on from the government in the UK. It had only one committee, the Standing Committee, and members were not allowed to table private motions. (Aringo, 2011: 83, Ochieng, 1985).

In the first seven years of Kenya's independence (1963 to 1970) the first parliament retained most of the structures inherited from the colonial Legislative Council. The first Speaker, Sir Humphrey Slade, was inherited from the Council and served as Speaker till 1970. During his tenure which included the first and second parliaments, no changes were effected in the structure of parliament except for the establishment of a few committees whose functions were mainly to review proposals and policies and make recommendations to the Executive. The struggle to empower parliament started during the third parliament in 1970 but it was not until 2010 that a new constitution was enacted putting the Kenya parliament in a position from which, all other factors allowing, it can exercise the representative, legislative and oversight functions effectively. In the next sub-sections we examine how the parliament has exercised these functions over the years, based specifically on available data between 2006 and 2015.

The legal framework and formal mechanisms

The 2010 Constitution of Kenya in its Chapter 8 has established a bicameral legislature with the National Assembly representing people of constituencies and interest groups, and the Senate representing Counties and mandated to promote and protect their interests. The powers and functions of Parliament as a whole are as follows:

- a. The National Assembly has legislative and representative functions. The Senate also has both functions but the Senate participates in legislative processes without veto powers over the National Assembly.
- b. The National Assembly allocates revenue across all levels of government. The Senate determines the allocation of funds to Counties and subject to approval by the National Assembly, the Senate passes a resolution once every five years determining the basis for allocating a share of the national revenue to Counties.
- c. The National Assembly appropriates funds for expenditure, exercises oversight over national revenue and expenditure and reviews the conduct of the Offices of the President, the Deputy President and other government officials, and can initiate processes of removal of officials of state.
- d. The oversight powers of the National Assembly (NA) extend to all institutions of the Executive. The Senate does not have most of the powers of the NA outlined in c) and d) above and when it comes to fixing the percentage that should be allocated to Counties, the resolutions of the Senate have to be approved by the National Assembly.

Chapter 9 of the Constitution establishes the National Executive comprised of the President, the Deputy President and the Cabinet. The President is accountable to Parliament and the Cabinet Secretaries are accountable individually and collectively to the President but a Cabinet Secretary can be summoned to appear before the National Assembly or Senate to answer questions or offer explanations. The President can appoint or remove Cabinet Secretaries with the approval of the National Assembly. At the level of counties, there are County Executive

committees headed by a Governor with a Deputy Governor and appointees of the Governor who should not be made up of more than one third from Members of the County Assembly and in any case not more than ten. County Executive Committees implement county legislation and manage and coordinate the administrative functions of the Counties, and they are accountable to County Assemblies comprised of elected representatives. The President of the Republic has powers over the County Governments and she/he can remove a County Governor in exceptional circumstances after setting up a commission of enquiry. Otherwise Governors are elected on a political party competitive basis once every five years.

Article 201 of the Constitution outlines 12 principles that should guide the allocation of resources at national level and how to determine equitable sharing of financial resources among counties and between them and the national level. In addition to the 12 principles, the Constitution establishes special funds. One of them is the Equalization Fund aimed at supporting basic services including water, transport, health and education in marginalized areas. The fund expires 20 years after it was established. Other funds are: the Consolidated Fund and the Contingencies Fund. The existence of these funds has created a new layer of accountability and control because any expenditure from these funds has to be approved by the Controller of the Budget, another independent office working at arms-length from the Executive.

Hence financial control is exercised by the Controller of Budget and the scrutiny exercised by the Auditor General, as provided for in Chapter 12 of the Constitution. The Auditor General presents reports to the Public Accounts Committee which analyses the reports and presents findings to the National Assembly. In addition to these institutions, the Constitution has established independent commissions as watch bodies that are responsible for various activities of government, make decisions independently of the Executive and submit reports to the President and the Parliament. They include commissions on judicial service; parliamentary service; public service; teachers' service; police service; salaries and remuneration; human rights and equality; independent boundaries and elections and land.

Parliament exercises representative, legislative, oversight and supervision of government activities through the following mechanisms:

- Reports on performance normally presented during budget sessions.
- Bills by government or independent members' bills.
- Approvals of appointments or removal of executive officials recommended by the President.
- Parliamentary committees that scrutinize all government proposals and audit reports before they are tabled for discussion.
- Annual budget proposals and appropriation bills
- Independent member motions.
- Debates
- Questions and answers sessions
- Appearances of public officials to give account or answer questions
- Select committees
- Commissions of enquiry on national issues
- State of the nation speeches by the President



Photo: [Pan African Parliament Ordinary Session opening by President of Kenya Uhuru Muigai Kenyatta \(18 May 2015\)](#)

Credit: DIRCO, Government of South Africa

Mechanisms Used by Kenya Parliament in the representation function

The representation function of the members of parliament is exercised through various mechanisms including questions by private notice, motions, ministerial statements, private member motions and general government statements all meant to increase the frequency and level of disclosure of information on government activities. These mechanisms are used to make the Executive answerable and accountable for its action or failure to act on policies and laws.

Questions by private notice

A random sample of one hundred questions was chosen covering the years 2006 and 2010. The year 2006 was chosen because it was close to the 2007 elections. Political parties were preparing for the general elections and identities within political parties and geographical locations were being reconstructed. Militias were coming out into the open to demarcate and claim spatial and political space in the emerging political landscape (Oloo 2010: 43). Most of them were allied to one political group or another or were positioning themselves to serve any political group. Religious groups were also asserting themselves. The clergy not only supported political parties openly but engaged in mobilizing voters along ethnic lines against one political party or another (Chacha 2010:125-7). While all these forces were preparing themselves for what was clearly an imminent political storm, the media continued taking sides with various political groupings, peddling ethnic ideologies based on ethnic arithmetic calculations which fuelled mobilization along ethnic lines and heightened ethnic tensions as the 2007 general elections approached (Obonyo 2008, Mbugua wa Mungai 2010: 235-6). These were very serious and dangerous developments and leadership had to be provided by the Executive and parliament. Therefore we chose 2006 to see if parliament took action to raise questions on these and other security and election related issues.

The year 2010 was chosen because it was the year in which the new constitution was passed after almost 20 years of bitter struggles for change that cost lives and livelihoods especially during the rule of President Moi from 1978 to 2002 (Throup and Hornsby 1998: Chapter 3). This was therefore a landmark year and it was chosen in expectation that parliament would use the experiences of the past decades to lay the foundations for a better future for Kenya. For the two years all the questions that were raised in parliament were assessed. The assessment focused on their content: whether they were properly articulated and presented in a manner that they could elicit actionable response; whether they reflected previous research on the problems raised and the knowledge of alternative solutions; whether the Executives was adequately prepared in their responses; and whether there was follow up or feedback to parliament on an action taken. The issues on which the questions were raised are indicated in Annex 1. Our assessment on the five criteria of effectiveness is indicated in table 3 below.

Table 3. Assessment of questions and responses

Criteria of assessment	Number of questions and answers assessed	Average score for all 100 questions out of 100%	Remarks
Level of articulation and packaging of questions	100	50	<ul style="list-style-type: none"> • Probative value of questions very low • Interrogative approach low • Emotions and partisanship sometimes dilute good questions
Back up research and information for the questions	100	60	<ul style="list-style-type: none"> • Questions on lack of transparency weak on data • Questions on expenditure not backed by research
Capability of questions to elicit actionable response	100	40	<ul style="list-style-type: none"> • Low probative value • Too much diplomacy
Seriousness of the Executive about the importance of questions	100	30	<ul style="list-style-type: none"> • Ministers on occasions fail to turn up and questions are skipped • Sometimes it is unclear which ministry is responsible • The Executive uses the Official Secrets Act to refuse to answer
Follow up on questions	100	20	<ul style="list-style-type: none"> • Follow up was on questions raised by the opposition relating to land rights and victims of disasters • No evidence of immediate action on most questions

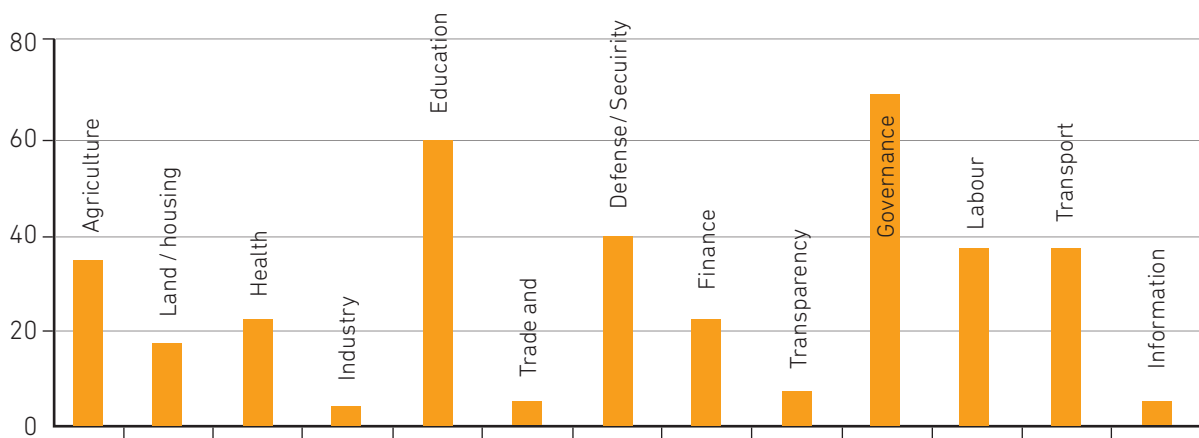
Articulation capacities were assessed in terms of how questions were framed and posed. Most members were asking whether the government was aware of the issue and if so what action was taken on the subject matter. Such questions allowed members of the Executive to say they were aware and were in the process of taking action without giving other details. Some questions were not backed by data and were quickly dispelled by ministers challenging

the person raising them to give evidence. Constituency consciousness also tended to undermine the value of some questions. When raised as constituency-specific questions, the answers given were that they are general problems and there are no funds to address them at the moment. Another limitation of the question mechanism was the lack of a link between the questions and the existing budgets. When a member asked when the government will support a project in a particular area, the answer was easy: there is no budget for that at the moment.

We found that most questions and answers did not reflect serious research and were not backed by data, and the Executive’s representatives did not seem to be well prepared. For example there was a question on how Kenya was doing on MDG 5 on maternal health. Two ministries were involved and each of them kept on pushing the question back to the other. The Vice President’s Office was in charge of MDGs but the Ministry of Health was in charge of maternal health. The issue was resolved in parliament when the Speaker ordered it should be answered by the Minister of Health who in any case did not provide a timely response. The scores on follow up were very low for both the parliament and the Executive. Going through the parliamentary reports indicates that neither government nor the members attempt to follow up on the answers that are given and the promises made to remedy situations. It was only on issues related to unpaid pensioners or persons unlawfully terminated and other labour issues that we noted consistent follow up. In Annexes 1(a) and 1(b) at the back we indicate the type of issues raised.

From Annexes 1 (a) and 1 (b), it is clear that education, agriculture, governance, defence and security attracted more questions than industry, finance, information, transparency and labour. Given the problem of transparency in Kenya, it is paradoxical that very few questions were raised about it. In the case study on the National Cereals and Produce Board some debates and questions on this will be covered. Between 2006 and 2010 there were more questions in the National Assembly than between 2011 and June 2015. There was a surge in the number of questions in 2010 because that was the year during which the new constitution was debated and passed. But it is noteworthy that during this period the opposition was adequately represented, and as a result the question mechanism was effectively used. In the period 2013 – 2015 there were fewer questions partly because of the tyranny of numbers. There are two dominant parties in Parliament (The National Alliance and the United Republican Party) and many members in this ruling coalition seem to have deliberately reduced the use of questions. They have relied more on requesting statements from Cabinet Secretaries. Below are figures indicating the pattern of questions and answers in 2006 and 2010.

Figure 3. Patterns of questions and answers 2006 and 2010

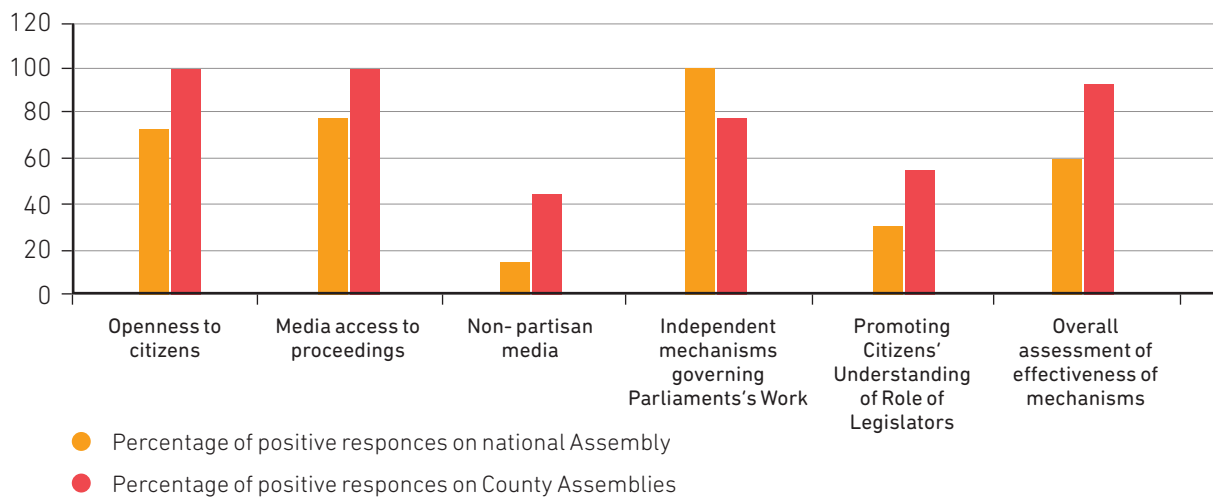


Source: Own Elaboration

Representation in general

In assessing the representation role of parliamentarians we used the set of indicators in the African Parliamentary Index developed by the Parliamentary Centre (2011) discussed earlier on (Section 4.3 above). These include: openness to citizens and media; timely information being disseminated to the public; non-partisan relations with the media; promotion of awareness of the budget processes by citizens and the role of Parliament in general and in budget processes in particular. Twenty-four members of the County Assemblies were given a simple questionnaire to indicate how the National and County Assemblies were performing on these indicators. The results are indicated in the Figure 4 below.

Figure 4. Evaluation of the representation role of Members of Parliament



Source: Responses of Members of the County Assembly

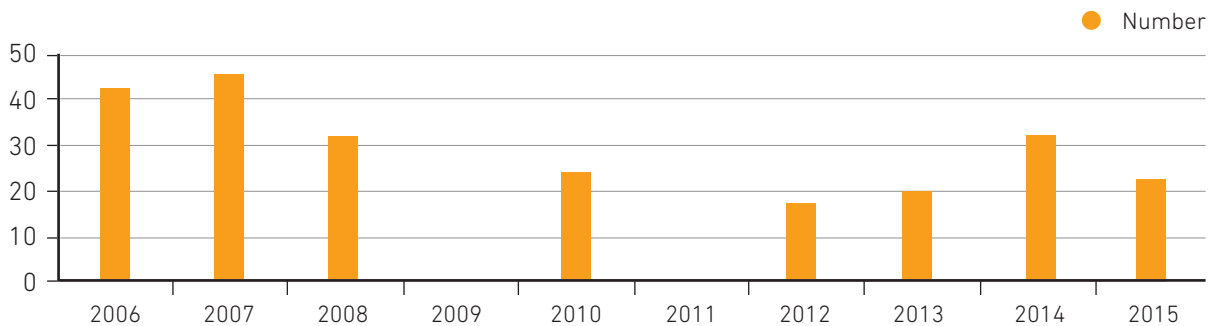
The responses in the table above may be biased more in favour of the County Assemblies because the members of these assemblies were the respondents but they indicate a few factors. It is clear that Members of County Councils think that the National Assembly is strong on openness to the media but very weak on non-partisan relations with the media; it is strong on independent mechanisms for its work but weak on promoting awareness among the public of its work.

The legislative role of parliament in Kenya

By scrutinizing bills presented to parliament by the Executive, the former had the opportunity to make the latter accountable on proposed measures and to contribute to the content of the laws. The Kenyan parliament has been very prolific as regards its legislative role. The study on the legislative function covered the period 2006 to 2015 with figures for 2009 and 2011 missing. As can be seen from figure 5 below, the highest number of bills was in 2007 during which many laws were passed ranging from labour to licensing, communication and information, criminal law reform to media. A thorough examination indicates most of these laws were tabled by the Executive and passed in anticipation of the elections at the end of that year, and they included those aimed at strengthening law and security. Given the post-election violence that ensued after the general elections that year, it is clear that

social engineering through legislation did not prevent the post-election crisis. The lowest number of bills was in the years 2012 and 2013 which were below the number in 2015 up to June. The explanation given by officials of the Kenya parliament was that during the period from 2011 to 2012 MPs were more focused on holding the first election after the 2010 constitution and there was a lot of uncertainty and debate about the actual date. Constitutionally they were supposed to have been held in December 2012 but it was finally agreed they should be held in March 2013 after a lot of haggling and inter-party bickering. Before the enactment of the new constitution in Kenya, that is, before 2010, there were very many bills that were passed. The legislators ensured that these bills were passed and became part of the New Constitution of Kenya. After 2010, we see a sharp decline in the number of bills passed in parliament. This has been attributed to three schools of thought: the first one is, many Kenyans hold the new constitution in high regard and feel that it is adequate apart from a few amendments here and there. They are now more concerned with the new constitution being interpreted and translated into their legal framework. The second school of thought alludes to the decline in the passing of bills as the result of parliamentary business focusing more on the devolution process, power struggles, and discussions on allowances for the Members of Parliament. The third school of thought alludes to this decline resulting from a stronger focus on the oversight function of the parliament. Most researchers on the effectiveness of parliament before and after the 2010 Constitution fall within these three schools of thought (Malumbe 2014, Khaunya, Wawire and Kipn'geno 2015).

Figure 5. Number of Bills Passed 2006 - 2015



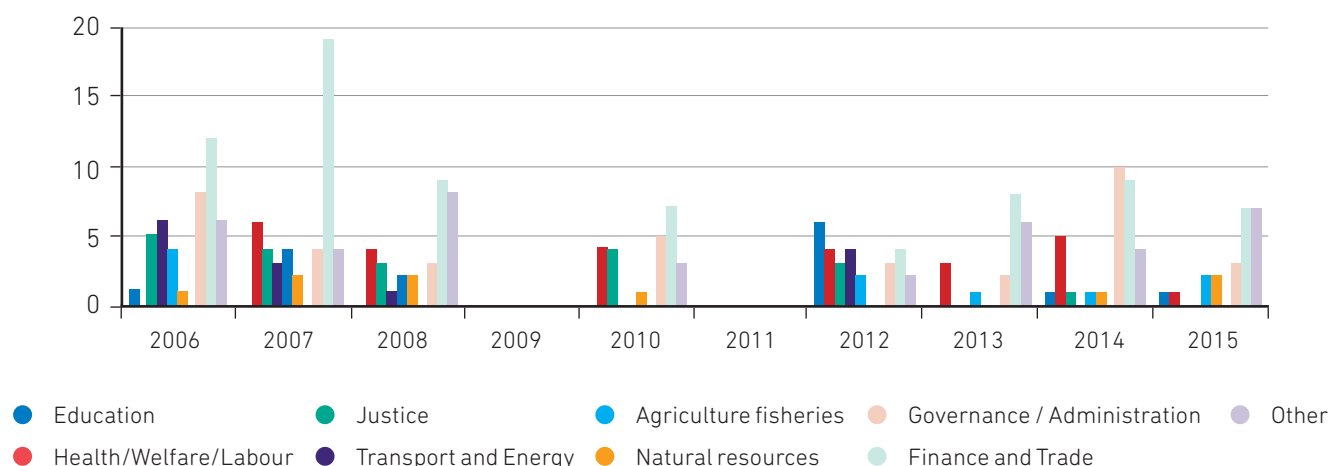
Source: Own Elaboration



Photo: [Rwanda Parliament](#)
Credit: Rwanda Government

The main issues on which legislation was passed in each year are indicated in figure 6 below. They are mainly health and welfare, justice, transport and energy, agriculture and fisheries, natural resources, transparency and governance. Justice dominated the legislative function in 2006 and 2007 just before the post-election crisis, transport has been legislated upon almost every year and health, labour and welfare is third in the league.

Figure 6. Issues of which bills were drafted over the period 2006-2015



In assessing the effectiveness of the legislative function in relation to how it relates to horizontal accountability we focused on the source of legislative authority for parliament; the power to amend appropriation bills; room for public inputs into bills, and the existence of mechanisms to monitor the Executive’s implementation of laws. Our assessment is summarized in the table below.

Table 4. Researchers’ assessment of the legislative function of parliament in Kenya

Indicator of effective legislation function	Score out of 100%	Remarks
Source of authority to legislate	90	<ul style="list-style-type: none"> The constitution confers legislative power on the Legislature Chapter 8 But the power is not absolute. The President can veto legislation and if there is disagreement with Parliament dissolve it. This is always a barrier to parliament holding on to its position.
Power to amend appropriation bills	90	<ul style="list-style-type: none"> This power is exceptional in the region but limited by the threat of dissolution of parliament in case of tug of war.
Power to reject bills*	90	<ul style="list-style-type: none"> The power exists but it is limited by the possibility of dissolution of parliament in case of disagreements. Elections cost a lot and no MP would like to have mid-term elections held.
Power of members to pass private members’ bills*	90	<ul style="list-style-type: none"> Many private bills have been passed since 2006 and this is considered as a victory for parliament because it was not allowed before.
Room for consultation with public and CSO*	50	<ul style="list-style-type: none"> Most bills start and end up in parliament without public participation except referendum oriented laws.
Existence of implementation monitoring mechanism	100	<ul style="list-style-type: none"> The 2010 Constitution established 8 watch bodies that supervise the implementation of laws and policies and report to Parliament and the President.

*This indicator was added by the team

Oversight functions of Kenya parliament

Democratic governance is based on two pillars of institutional functioning - transparency and accountability. Implementation of these two concepts in a parliamentary system of governance is entirely the responsibility of the legislative branch of power. Through the oversight function, Parliament holds the Government accountable for the actions undertaken or not on behalf of citizens by ensuring that actions and policies implemented by the Government and other public institutions are in accordance with the needs of citizens and effectively implemented. In addition, parliamentary oversight enables the controlling and eliminating of excesses of authority stemming from laws by the Government and other public institutions. Inadequacy in accountability and transparency leads to poor governance, often manifested in misappropriation of public resources. Kenya has enacted many laws in line with the New Constitution. However, the outcome of such instruments largely depends on the level of enforcement, itself often a consequence of political will and the institutional strengths of the moment. The objective of this portion of the analysis is to outline existing institutional capacities, identify gaps, and to suggest possible directions for improvement. Knowledge of governance provides an opportunity for policy improvements.

Specifically, our findings provide the impetus for propagating policy transformations to minimize power abuse and to deliver on good governance in the country. Accountability will here be defined as a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct. The forum can pose questions and pass judgment, and the actor can be sanctioned. As Mulgan argues, the proliferation in the use of the term has coincided with the growth in the literature on governance, and from its roots in administrative law, accountability now encompasses issues of control, responsiveness, responsibility, audit, liability and blameworthiness (Mulgan, 2000, 2003). In this study, the relationship between the forum and the actor is the Legislature versus the Executive and heads of State owned enterprises (SOEs). The Executive is expected to account regularly to the Legislature.

In studying the oversight function of parliament we combined financial scrutiny, oversight committees of parliament, reports of the Executive to parliament and the Public Accounts Committee (PAC). Based on the African Parliamentary Index (API) we focused on the following indicators: the existence of a budget review procedure; the time frame available for parliament to review the budget; room for public hearings on the budget; whether committees work together on the budget proposals of government; whether parliament can amend the proposed budget; whether it can send back the budget to the Executive; the level of detail of expenditure in the budgets and whether the committees can access information on defence and security services budgets; the existence of a Budget Act, a budget office and office of the Auditor General and the access to information these offices have on budgets and finances. We also examined the proceedings of the PAC and the effectiveness of its scrutiny in making the Executive accountable.

In Kenya the process of preparing the budget estimates starts with a Fiscal Strategy Paper developed by the Ministry of Finance setting out levels of revenue, expenditure, financing and deficit strategies. The Ministry sends the paper to all ministries, departments and agencies (MDAs). These form sector working groups (SWGs) which prepare budget priorities and organize public hearings. After this the SWGs send their reports to the Ministry of Finance which prepares a composite proposed budget and sends it back to the MDAs. After getting feedback the ministry tables the proposals before cabinet and after cabinet approval it is sent to parliament (Aringo 2011:82). The procedure provided for under the Constitution meets most of the indicators of the API. Under Article 221, budget estimates have to be sent to the National Assembly at least two months before the end of the financial year. The estimates are examined by the Parliamentary Committee on budgets and in its work it is required under Article 221(4) to seek representation from the public and take recommendations from the public into account. No funds can be spent without approval by Parliament and it is only after such approval that government can table an Appropriation Bill again before parliament. If the Bill is not assented by the President and the financial year ends, the National Assembly can authorize expenditure to be charged from the Consolidated Fund under the Consolidated Fund Act.

Key Issues Constraining Parliamentary Oversight of Kenya

Effect of oversight on transparency

The procedure provided for under the Constitution meets most of the indicators of the API and Instruments and indicators of independence and accountability of independent agencies as set out by De Vrieze F. and Ieseanu L. (2011). The reviewed literature revealed that parliamentary oversight has not managed to reduce corruption in Kenya (Kivuva 2013: 23). In spite of isolated cases such as the so-called car scandal of 2004 when government spent US\$12 million on cars which were for personal use by senior government officials and parliament ensured that the programme was scrapped and money paid back (IPS 2006; Martini 2012), parliamentary oversight has not managed to reduce corruption in Kenya (Kivuva 2013: 23). Investigations into some suspected corruption scandals have taken decades and the reports have never seen the light of day. Attempts to prosecute suspects have ended in vain (Mirugi-Mukundi, 2006). Kenya has continued faring badly on transparency perceptions rated 139 in the Corruption Index for 2015 (Transparency International 2015). Earlier, it scored 49 out of 100 in the Open Budget Index 2008. According to International Budget Partnership (IBP) this indicates that the government gives some information to the public but this is not enough to enable citizens to hold the government to account and IBP has also indicated that oversight exercised by Parliament and the Audit Office in Kenya is inadequate (Martini 2012:6).

Reports of the Parliamentary Accounts Committee for the period 2011 to 2013 point to the inadequacy of the oversight function of this committee and the budget office. Under the Standing Orders of the Kenyan Parliament, Order 205 (2), the Public Accounts Committee is responsible for examining the accounts showing how the funds approved by the Parliament for public expenditure have been used. It is charged with oversight of public expenditure to ensure it is in line with the government financial regulations and procedures. It receives audit reports of the Kenya National Audit Office (KENAO) and analyses them. In its work, it is guided by Article 201 of the Kenya Constitution which provides for accountability for public expenditure through openness, prudent and responsible management and clear reporting. However the Committee faces a lot of challenges as it seeks to exercise its functions.

Investigations into some suspected corruption scandals have taken decades and the reports have never seen the light of day. Attempts to prosecute suspects have ended in vain (Mirugi-Mukundi, 2006). In this research, it emerged that the determinants of horizontal accountability which affect the oversight role of parliament in Kenya are technical capacities, informal institutions, formal institutions, responsibility, answerability and enforceability. These are explained below:

Technical capacity of the PAC

An examination of the Reports of the PAC for the period 2011, 2012 and 2013 indicated the following gaps in technical capacities and professional services:

- Limited capacity for editing and polishing reports in the clerk's office.
- Limited capacity in research and information sharing. It was revealed that limited access to transcribed copies of Hansard records makes it difficult for PAC to cross check information and evidence hence low quality information.
- Limited capacity in accounting: Some accounting officers submit poorly prepared responses or submit responses late. Limited financial and human resources capacity in the office of the Auditor General which impact on its capacity to cope with the devolved system of government. Additionally, government

departments had failed to pay huge bills under the recurrent and development budget lines when funds were available.

- Limited capacity of financial auditors, evidenced by missing key documents, vouchers and receipts to support the expenditure. Confidentiality was used to justify this anomaly.
- Limited capacity of procurement officers: There have been instances of illegal procurement of houses in violation of section 76 of the Public Procurement and Disposal Act.
- Limited capacity of monitoring and evaluation.

Scrutiny of annual (work, financial and audit) reports of independent agencies

The annual work report of independent agencies is the most comprehensive document that the Parliament receives that provides information about the agency's operation and general conditions in the regulated sector. According to Parliament's Rules of Procedure and basic laws establishing independent agencies in Kenya, the Parliament once a year reviews the work report of the agency. The National Assembly exercises oversight by receiving annual audited reports of local authorities, independent commissions, political parties and state owned enterprises. They have to be audited by the Auditor General and submitted to parliament under Article 229(4) of the 2010 Constitution. These are submitted first to the relevant Parliamentary Committees whose chairpersons present them to the National Assembly. It should be noted however that most of the reports presented come very late, some up to four years after the relevant financial year and in most cases they are not discussed.

Lack of a harmonized legal framework

The main challenge for the introduction and implementation of new mechanisms of parliamentary oversight is the lack of a harmonized legal framework. Parliament receives reports and can recommend actions to be taken. But within the parliament's structure there is no agency for enforcing the decisions of Parliament or monitoring their implementation. As regards decisions by the various committees on misuse of power or funds, Parliament has no power to make final decisions. Those powers lie with the Executive. Furthermore, Parliament does not pursue a proactive approach in its relations with independent agencies. The content of the annual work reports of independent agencies, and the recommendations drafted by Parliament on these reports are not used in a systematic way to improve the legal framework and the sector public policies regulated by these agencies. Issues of responsibility, answerability and enforceability come into play here.

Use of Parliamentary questions

Parliamentary questions can be used to strengthen accountability in relation to certain aspects of the functioning of independent agencies. More specifically, this instrument of parliamentary accountability enables shedding light on the procedures that were followed and the rationale for the nomination by Government of the persons responsible for managing the independent agencies. This mechanism is widely used in Kenya. In the context of strengthening transparency as a prerequisite for accountability and effective parliamentary oversight, the existing Parliament's Rules of Procedure provide that each member of the parliament has access to information, material or official documents from public institutions, including from independent agencies, to accomplish his or her tasks.



Photo: [Speaker in the Parliament of Rwanda](#)

Credit: Rwanda Government

Proper debate is encouraged by the legislature on issues considered pertinent by the Executive. In the case of ministerial responses in questions and answer sessions, and motions to impeach the Executives whose conduct is wanting, we see the Kenyan Parliament implementing this mechanism effectively. However, due to the fact that at the end of the debates a judgement has to be made based on voting, informal mechanisms (ethnicity, regionalism, kinships, civil society activities and party alliances and other politics) become more influential on the ultimate outcomes.

Majoritarian electoral systems

Various substantive motions were passed before 2010. Thereafter, we see a downward trend in the passing of motions. This is attributed to majoritarian party politics and other informal mechanisms. Indirectly, as part of the authority of Parliament to monitor the implementation of laws, parliamentary committees can initiate overseeing the implementation of basic laws which established independent agencies and thus exercise parliamentary oversight over them. Additional parliamentary oversight tools include the establishment of investigative/inquiry parliamentary committees, and the review of audit reports prepared for each independent institution by the parliamentary committee in question for oversight of public finances.

It was established from the Hansard reports that the party or alliance of parties in power has little incentive to grant the opposition parties opportunities to investigate their activities. For the opposition, the most productive

course of action is to attack the government at any given opportunity. However, when in power, that same opposition will find it prudent to insulate itself from scrutiny. Most of the people in the opposition parties at the time this study was carried out were in government before. Majoritarian electoral systems encourage the government of the day to exclude the opposition parties from the decision-making process within the legislative arena. While at first glance there appears to be a multitude of avenues available to members to hold the Executive to account with regard to both political and administrative matters in Kenya, closer examination reveals that this is not necessarily true. If the Speaker is from the ruling party, the powers of the Speaker in the standing orders ensure that invariably, the Executive is able to use its parliamentary majority to limit the effectiveness of these mechanisms. This is a pointer to the strength of informal mechanisms and their influence on HA in Kenya.

Measuring performance of bodies managing independent agencies

Reports of the Parliamentary Accounts Committee for the period 2011 to 2013 point to the inadequacy of the oversight function of this committee and the budget office. Under the Standing Orders of the Kenyan Parliament, Order 205 (2), the Public Accounts Committee is responsible for examining the accounts, showing how the funds approved by the Parliament for public expenditure have been used. It is charged with oversight of public expenditure to ensure it is in line with government financial regulations and procedures. It receives audit reports of the Kenya National Audit Office (KENAO) and analyses them. In its work, it is guided by Article 201 of the Kenya Constitution which provides for accountability for public expenditure through openness, prudent and responsible management and clear reporting. However the Committee faces a lot of challenges as it seeks to exercise its functions. The main challenge is excessive workload as the committee covers all ministries, counties and state owned enterprises. Analysis of the reports revealed poor monitoring and evaluation procedures evidenced by:

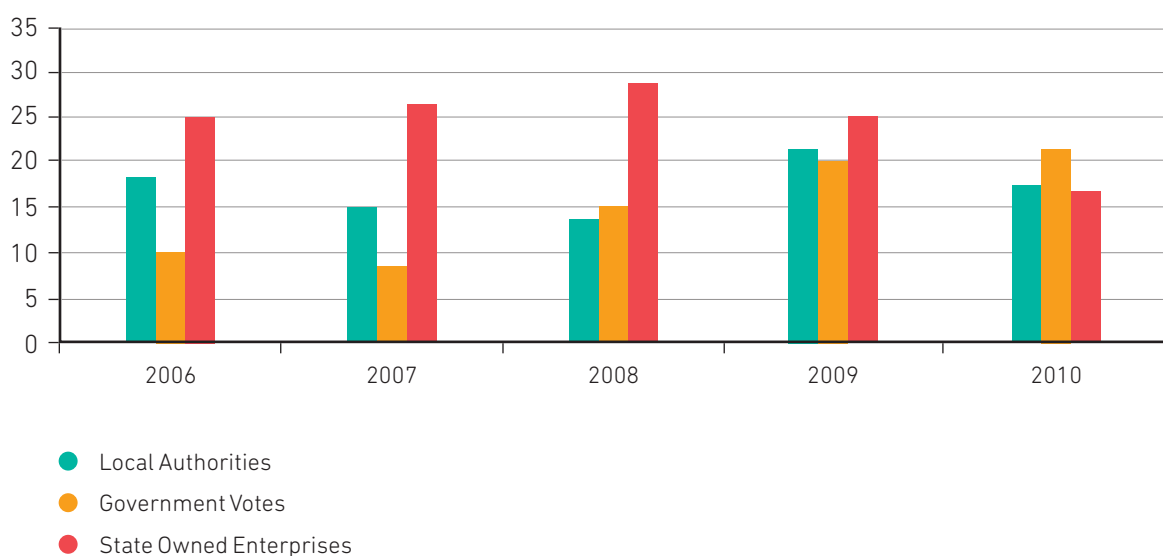
- Backlog of accounts that came up to three years late;
- Delays in accounts of both the national and county governments;
- The unacceptably poor performance of some accounting officers who keep on requesting that appearances be postponed or come unprepared;
- Several instances of concealing or withholding details of expenditure contrary to section 68 of the Public Finance Management Act;
- Financial ceilings on the amounts that can be withdrawn from the Central Bank that were exceeded without explanations and the committee failed to determine how the funds were used;
- Some projects of high cost value which were started and stalled a short time after construction commenced;
- In some constituencies there were delays in spending constituency development funds by MPs, and irregular procurement processes;
- Some ministries had incurred losses due to litigation resulting from failure by the Office of the Attorney General to represent them effectively in the courts;
- There were instances of expenditure without Parliament's approval contrary to the provisions of the constitution. There were also ministries reporting millions of unspent or so called 'surplus funds' and instances of unretired or delayed retirement of subsistence allowance; and
- The PAC has reported that over a period of 5 years, virtually all ministries and departments had account balances and differences translating into billions of shillings some of which had been carried forward and accumulated over the years without clearance.

Appointments of persons in bodies managing independent agencies

Parliament’s relations with state owned enterprises (SOEs) and ministries and the existing parliamentary oversight mechanisms are presented in its Rules of Procedure - which include receiving and reviewing the annual work reports of the Executive and SOEs. Members of Parliament and parliamentary committees can use existing mechanisms that enable parliamentary oversight. According to the Kenyan Constitution, the President nominates members of the Cabinet (Executive) and the Heads of SOEs. Their names are published in newspapers and official government documents. The President then presents these names to parliament for vetting and scrutiny. Parliament usually organizes public hearings with qualified candidates in advance so that members of civil society, media and citizens have the opportunity to familiarize themselves with their platforms. Once approved, the names are published in the Kenya Gazette. However, the opposition parties often complain of not being able to get fully involved because of the “tyranny of numbers”. The majority party in Parliament always approves motions unhindered. The media reports also revealed that ethnicity, kinship cleavages, regionalism and lobbies by interest groups are a big factor here too. Again, we see the difficult interplay between formal and informal mechanisms of accountability in Kenya.

Finally, the National Assembly exercises oversight by receiving annual audited reports of local authorities, independent commissions, political parties and state owned enterprises. They have to be audited by the Auditor General and submitted to parliament under Article 229(4) of the 2010 Constitution. These are submitted first to the relevant Parliamentary Committees whose chairpersons present them to the National Assembly. It should be noted, however, that most of the reports presented come very late, some even four years after the relevant financial year, and in most cases they are not discussed. They are for noting and in our view their impact is minimal. Figure 8 below indicates the number of reports on the accounts of local authorities , state owned enterprises and political parties between 2006 and June 2010. In the next section we look at the accountability of state owned organizations by looking at the National Cereal and Products Board as a case study. See Figure 8.

Figure 7. Reports tabled by Executive on Local Authorities, Government Votes and State Owned Enterprises 2006-2010 (Before the 2010 Constitution)



A CASE STUDY OF THE NATIONAL CEREALS PRODUCTS BOARD

Introduction to the case study

State owned enterprises (SOEs) differ from MDAs in several ways. They operate with relative autonomy, are governed by their own Acts of Parliament, have separate legal personality from that of government and some have private share ownership in their capital structures. However they account through their parent ministries and their accounts are submitted by these ministries to the Auditor General who prepares audit reports and submits them to the National Assembly which passes them to the relevant committees. These committees present them to the National Assembly with recommendations for action. In ordinary circumstances these reports do not stimulate debates or questions. But when there are problems such as misfeasance, mismanagement or lack of transparency, the reports can be discussed. In other circumstances a member can table a motion demanding action or a ministerial statement on the activities of a particular SOE.

The National Cereals and Products Board was chosen as a case study for several reasons. First it has been on the ground for over 50 years, having been formed during the 1950s. Secondly it handles food and therefore caters to the needs of all segments of the population. Third, while there have been frequent food shortages and food price fluctuations in East Africa over the last two decades (AfDB 2012, 2013), Kenya tends to be hit more frequently than its close neighbours Tanzania and Uganda, in spite of its long history of large-scale commercial farming and a dynamic small holder farming sector. Most important, with the cereals trade increasingly becoming a monopoly controlled by a small group of grain trading multinational corporations, cereals are going to be more scarce and less accessible to the poor in the future (Murphy et al, 2012). Therefore bodies such as the NCPB need more control and guidance by both the government and parliament to ensure food security in Kenya.

Censure motions and request for Ministerial statements on the National Cereals and Products Board

The National Cereals and Products Board has featured prominently in questions and debates over the years. In the year 2006 alone, it featured four times as MPs wanted to know why it was failing to buy maize from farmers and still importing maize from outside the country. The media alerted Parliament about the plight of poor Kenyans who were starving to death. There were reports in the Kenyan daily newspapers of civil society organizations and philanthropists who were donating food to save the starving citizens. The media reports also alleged that senior government officials were involved in a scandal of hoarding maize and exporting it to other countries, whereas the national cereals and produce board silos were empty. In cases where farmers had taken their produce to sale, they had not been paid. This sparked public outcry and it was brought before Parliament. On the February 4, 2009, a Ministerial statement was requested on the allocation of maize to maize milling companies. This request for a statement was now being presented in parliament for the third time, seeking clarifications. The Member requesting a statement sought to know why the minister had denied that there had been exports of maize to Southern Sudan when the Prime Minister had indicated that the export was taking place. He also asked why the Minister had indicated that there were 1.6 million bags of maize in NCPB when there were in fact 2.6 million bags. He also wanted to know why orders were issued from the Ministry of Agriculture to managers of NCPB for the release of maize to individuals and companies. The member tabled a note from the Cabinet

Secretary and a letter from the personal assistant of the Minister, with the ministerial letterhead, enforcing the notice as evidence of this ministerial order. The member further demanded clarification on why the Managing Director and trustees of NCPB signed and released maize to a host of companies, some of which were not titled. A letter signed by the trustees and managing director was tabled in the house. This letter had been signed by the Permanent Secretary, the Minister of State for Special Programs, the Permanent Secretary, the Minister of Agriculture and the Managing Director.

At that time in Kenya, Ministers and Heads of the State Owned Enterprises were appointed by the President. In most cases, they belonged to the majority party in Parliament. The Minister had a lot of say on who heads a SOE and all the activities of the SOE were under the Minister. The professionalism of the heads of SOEs did not matter then.

The Member asserted that The Clerk of the National Assembly of Kenya wrote to the Permanent Secretaries to appear for further clarification and that they had refused to do so. The Public Accounts Committee Chair also sought further clarification from the Minister to confirm that all the companies that received maize from NCPB were deserving cases. The list of the companies was also tabled before the House. The Minister was asked to clarify to the House why the managers of the NCPB on the September 29, 2008 approved and released 182,000 bags of maize to companies without the authority of the trustees. These were tabled before the House. The Minister was asked to state why he had not sacked the Managing Director of NCPB, the Marketing Manager and the Financial Controller, and to clarify how a Managing Director of his insurance company went and fronted for gunny bags when the Minister knew that within his ministry, there were plans for purchasing grain and this person requested that they buy gunny bags worth Ksh 574 million. This document was tabled.

The Chairperson of the Departmental Committee on Agriculture, Lands and Natural Resources requested permission for his committee to investigate all those mentioned before the Minister of Agriculture made his clarifications. The Speaker however allowed the Minister to go ahead and clarify. Among the clarifications with regard to the idea of firing the MD and other managers, the Minister of Agriculture told the House that the ministry had contracted the firm Deloitte and Touche to give an assessment of how the restructuring of NCPB could be done. They had given a report and the ministry had also engaged the Criminal Investigations Department, the Inspectorate of State Corporations and officers of the Kenya Anti-Corruption Commission to work on the matter. He promised the House that once the reports were available they would be reviewed and the MD, Marketing Manager or any other board official would be taken to court if suspected of having committed any impropriety. He also added that if the House felt that the Chairperson of the Board was not fit to hold the office and allegations against him were confirmed, then using the constitution and by standing orders, the government would take action.

On Wednesday 18th February 2009, a Member moved a motion to censure the Minister for Agriculture because he had mishandled the purchase, storage, sales and distribution of maize from the NCPB, leading to the unprecedented high cost of maize meal coupled with the scarcity of the commodity that resulted in a national disaster in which some Kenyans succumbed to death and left a further 10 million starving. He alleged that the Minister disregarded the provisions of the Public Officers Ethics Act section 12(4) (c) and (d) and sections 17 and 19 of the same Act in the discharge of his duties. He proposed that the House censure him and resolve that it had no confidence in him and demanded that he resign with immediate effect because he had exhibited incompetence in running his ministry.

This was the third motion of this kind aimed at salvaging the country from food insecurity and food riots. The Member who moved the motion asked if procurement procedures were followed, if there was adequate quality control, and why the Minister had allowed this situation. The Criminal Investigations Department, National Security Intelligence Service, Kenya Anti-Corruption Commission and the Special Forensic Audit had been ordered by the Prime Minister to investigate NCPB. The Minister was expected to step aside together with his

personal assistant, sales and marketing manager and the financial controller of NCPB to allow for investigations to take place. The motion was seconded. The chairperson of the departmental committee on agriculture, lands and natural resources sought to present his report before the motion was finalized. He opposed the motion. One member said,

...'In my own view, the public confidence in the public institutions of this country is very low. Over time, we have not allowed important matters as the one we are raising here today to be resolved conclusively. In this house we debate motions which are connected to the big questions of governance and economic crimes. However we never address them exhaustively in this house. We vote and go home but the question of governance, economic crimes and the relevant laws are never addressed.'

As the debate continued, it became emotional, partisan and divisive. Instead of looking at the whole issue from the perspective of national interest, some members began looking at it through ethnic lenses and also politicizing it because the Prime Minister and the Minister of Agriculture were bitter rivals belonging to rival parties. Rumours began going around that some members had been bribed to vote for the motion. One member said,

...'Mr. Deputy Speaker sir, how would you expect Kenyans to believe us? Where do we expect them to get justice from if they say they have no confidence in us as Members of Parliament and in the institutions of this country? What do we expect if the people's representatives have been accused of being bribed to vote for motions and we do not bother to clear those kinds of allegations from the public?'

At one point the Minister for Justice reminded her fellow Members that,

'...The role of the Parliament is to be a watchdog. The role of government is to serve the people. It is therefore the duty of the government to account to the people through Parliament. When a query is raised relating to a ministry, we ministers must not take it as a challenge. We should fully account to parliament especially when we have nothing to hide. As the government we forget our role. When the public raises the slightest query it is our duty to explain to the satisfaction either of the National Assembly or the members of public out there asking. Let us be accountable to the people.'

At the end, a vote was moved. The motion was defeated by 119 votes against 22. The media reports pointed out that this vote was highly influenced by the informal mechanisms that interfered with the parliamentary oversight function. Among these indicators was the majoritarian electoral system, partisan politics, ethnicity, regionalism and business interest groups. On the other hand, some journalists also attributed this to informal political settlements.

In March 2010, some MPs raised concern that the National Cereals and Produce Board was failing to purchase maize from farmers and the maize was rotting. The Assistant Minister for Agriculture replied that the Treasury had not released the funds for the purpose. One MP expressed surprise that when it came to importing maize at a higher price than buying it from the farmers, there was always money, but when it came to buying it from farmers at a low price there was no money. The Minister said there was no money but he sympathized with the farmers (Hansard 03/03/2010). The response was not adequate because the issue was not whether the Treasury had released funds but why government was not buying maize from the peasants. For parliament and the peasants it did not matter which ministry was delaying the funds but why government was not taking action.

On December 4, 2014, a statement was requested in Senate on the closure of NCPB silos in Uasin Gishu at Migori counties. The Senator for Uasin Gishu, Senator Melly, requested a statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding the closure of the NCPB silos in Uasin Gishu. The Senator sought to know why cheap maize had been imported into the country thereby frustrating farmers in Trans-Nzoia, Lugari, Bungoma and Uasin Gishu; why there was a delay in opening the silos and when they would be opened to allow farmers to deliver and sell maize to NCPB. Another Senator, Dr. Machage also

raised the concern about maize being held in stores in Migori for 3 years. The Minister for agriculture did not adequately answer the questions raised and was requested to give a detailed statement after doing research on the stated questions. There is no record of the research having been done or the research report having been presented. It is our assessment that the NCPB has been operating without adequate accountability because of collusive alliances between the Executive and some members of parliament, ethnic cleavages and divisions and rivalries between political parties.

SUMMARY OF FINDINGS AND LESSONS LEARNT

It emerges from this study that processes of change in Kenya have been in motion for over five decades, they oscillate like a pendulum moving back and forth, held back by a negative political culture, vested interests, ethnic cleavages and predatory leadership. The spirit of reform and change has ushered into existence numerous reforms, formal rules and procedures and new structures of decision making including devolution, decentralization of power and the proliferation of watch bodies, all calculated to increase accountability and transparency. However, informal rules and networks, political alliances, ethnicity and restricted loyalty restrain change from taking firm roots. The study has led to ten lessons about horizontal accountability in Kenya. *First* the democratization project has concentrated too much on the magic of representative democracy through elections and parliamentary processes without paying attention to the forces being represented and the masses of social networks and groups that are left out of this system of representation. *Secondly* within the western model of democracy, the systems of horizontal accountability have concentrated on strengthening the separation powers between the Executive and the legislature and paid less or no attention to the issues of the separation of interests.

Third the democracy project puts a lot of emphasis on the representation, legislative and oversight roles of parliaments and parliamentarians. But for the constituents these may be secondary as what they expect in terms of delivery are projects, programmes and welfare handouts from their leaders, no matter how the resources are obtained. While conventional wisdom emphasizes process accountability, constituents put more emphasis on outcomes accountability, that is, what they get out of the process even if it is not transparent. This in turn has given legitimacy to members of parliament to engage in rent seeking to meet these expectations. *Fourth*, from a cultural perspective and the way the state has been designed since colonial times, it remains the main source of development resources in Africa. This creates room for collusive alliances between the Executive and legislators, thereby not only undermining the ability of the latter to make the former accountable, but also subjecting members of parliament to some degree of control by the Executive.

Fifth, the system of governance and accountability has put government and parliament at the forefront of policy-making and development management leaving out professional bodies, think tanks, social movements and faith based organizations. They are not given a forum such as a Council of State, as is the case in Ghana, and instead reserving for some of them special seats to which their representatives are nominated in some cases through undemocratic processes. This has made parliament and government exclusive institutions in policy-making leaving out experts who could contribute to policy-making and evaluation without necessarily coming through political parties. *Sixth* and related to this, political parties in Africa in general and in Kenya in particular are dominated by their leaders, founders and funders. Their record of democratic participation by members is questionable and their processes of nominating candidates for elections have been in many cases undemocratic, characterized by violence at the grassroots level. Their record of accountability for funds

especially during elections has been unassailable (Wanyama 2010, Mihyo 2015). Given this, it may be too much to expect undemocratic and unaccountable political parties to produce and send to parliament champions of democratic, transparent and accountable governance. Seventh, party rules and norms about collective decision-making in parliament, and the role of the party whip, act as serious constraints on the individual freedoms of the members in parliament, forcing them to stick to party lines and to follow the whims of either the majority or minority leaders in parliament.

Eighth, the Standing Orders of Parliament which govern the way business in the house is conducted need to be reviewed in order to simplify them and allow freedom of expression, adequate representation of public interests and to preserve the dignity of parliament and parliamentarians. *Ninth*, the current political systems based on political competition through elections and voting in order to determine decisions that should prevail, has led to the manipulation of demographic factors leading to ethnic calculus and the tyranny of numbers which are used to bolster ethnic cleavages and exclusive systems of policy-making and governance. In the absence of alternative election and decision-making systems the winner takes all approach will remain an obstacle to democracy, accountability and national stability. *Finally*, the 2010 constitution is in itself not enough to bring change but it is a very appropriate tool for the creation of platforms that can be used to redesign the systems of governance and political processes in order to strengthen democracy, transparency, accountability, national cohesion, integrity and stability.

CONCLUSIONS AND RECOMMENDATIONS

As observed by various authors cited in this paper earlier, Kenya has proved to possess unlimited capacity for policy oscillation, vacillation, reversals and re-enactment of the past. This could be a verdict on the modernization project itself, which seeks to fit its political systems and processes into the western models of good governance without addressing the institutional characteristics and factors which shape the informal systems predominant in the communities where most of the political and administrative actors spend most of their formative and normal lives. The 'resilience of the past' as Susan Mueller cited earlier termed it, is not peculiar to Kenya. It is reflective of the continuing clash between the old and the new, and the modern and the indigenous. Perhaps it is now time to adopt strategies suggested by the African Power and Politics Programme (APPP) by shifting from 'best practices' to 'best fit' approaches and to have a fresh look at 'relations between elections, empowerment, public policies and development' and also to have a second look at 'development leadership and types of regimes' (Booth 2011: 1).

It is not surprising that Botswana and South Africa, which have retained indigenous systems of leadership and preserved positive indigenous rules and institutions, are scoring higher on good governance indicators than Kenya, Nigeria or Uganda, which have inherited systems of appointed chiefs left behind by colonial regimes and diluted them so much that they are appendages of the central systems in spite of the pretence that they are preserving indigenous systems of leadership and governance. The fifty years of attempts to institutionalize best practices approaches to good governance and accountability in Kenya and other African countries and the recurring re-invention of the past requires further thinking about creating the necessary balance between the indigenous and the modern, and creating inclusive political systems and processes beyond numerical aspects of democracy and participation which as we have seen are amenable to manipulation by political elites.

David Booth has convincingly argued that universal best practices approaches to governance for development have failed and therefore he has called for the assessment, revitalization and use of pre-existing institutions with the objective of strengthening factors and institutions supportive of collective action at local and national levels

(ibid). Institutions for generating inclusive and collective action are in severe shortage in many countries on the continent. The Development Leadership Program (DLP) has suggested that solving collective action problems requires efforts aimed at 'building and reshaping the formal and informal institutions that promote or frustrate sustainable growth, security, political stability and inclusive social development' (Leftwich and Wheeler, 2011:5). DLP has called for more focus on political processes rather than on individual leaders; building skills for mobilizing people and resources towards common goals; looking at political processes beyond political parties, elections and government institutions; and involving families, communities, farms, firms, factories and social movements.

We subscribe to these ideas and strategies. We believe that coalition-building will help Kenya to get out of ethnic cleavages, but such coalitions have to be inclusive and not based on predatory and collusive schemes aimed at the manipulation of numbers. The formation of the Orange Democratic Movement and The National Alliance and the latter's alliance with the United Republican Party are a good start, but they need to lead to broader multi-ethnic and multi-regional bodies aimed at developing consensus on broader objectives beyond capturing state power. Short of moving a step further in that direction, Kenya will continue reforming its systems without change for many years to come.

Recommendations to Parliament and Government

New Parliamentary Oversight Mechanisms

Beyond Parliament's Rules of Procedure, there is a need to introduce new parliamentary oversight mechanisms that will allow MPs and parliamentary committees to fully exercise their oversight function. However, this will be made possible if the secretariat of Parliament is given all the necessary human and financial resources for the implementation of new mechanisms for parliamentary oversight of the Executive and SOEs.

Parliament's Partnership with CSOs, Media, Executive and Heads of SOEs

To widen the basis for consultation, Parliament needs to form closer but non-partisan links with media, civil societies, and the Executive in the form of an advisory body such as the Council of State in Ghana which could meet twice a year to review issues raised by the Parliament and Executive/SOEs on parliamentary oversight and the implementation of recommendations by Parliament. This may reduce the duplication of duties, wastage of public funds and harmonization of legislation, and also lead to democratic control, checks and balances and improvement/learning. This will widen space for interparty collective decision-making by subjecting most policies, bills, motions and ministerial statements to bipartisan and inter-party committees.

Establishment of a harmonized framework of accountability and Sanctions

To reduce the problem of multiple legal institutions, it is recommended that Parliament introduce new oversight mechanisms in its Rules of Procedure which include the organization of interpellations, the review of the work plan and assessing the performance of persons and the managing bodies of independent agencies appointed by Parliament without abrogating the principle of separation of powers.

Implementation of Sanctions/Judgements

Parliament is advised to review existing accountability mechanisms and design strict legal sanctions that can be imposed on members of the Executive who fail to meet accountability standards or commit contempt of parliament.

Annual work reports and audit reports

To remove the disconnect between performance and audit reports, Parliament is advised to link the two and develop Rules of Procedure which aim, inter alia, at harmonizing and linking annual work reporting with the findings of audit reports. This could be strengthened further by the establishment of permanent mechanisms for external evaluation of the performance of independent agency.

New procedures for nomination of persons in managing bodies of independent agencies

It is further recommended that Parliament form a committee whose task would be to vet and approve the appointment of heads of independent bodies in order to ensure professionalism, competence and political impartiality.

Build capacity of Political Parties in a majoritarian electoral system

To reduce partisan politics based on political party affiliation and ethnicity, it is recommended that Parliament promote inter-party dialogue and redefine constituency boundaries left behind by the former colonial regime in order to make such constituencies multi-ethnic.

Enhancing Parliament's capacities for effective parliamentary oversight

Although Kenya's parliament is relatively better resourced than others in East Africa, it is recommended that Parliament consider putting more resources in capacity building of the Members of Parliament in budgeting, budget tracking, budgeting and gender mainstreaming, and for the secretariat on research, finance, audit, editing and report writing, procurement, monitoring and evaluation, and knowledge management and information sharing systems, among others.

Strengthening statehood and national identity

In order to reduce the influence of ethnicity and other affiliations that undermine statehood and national identity, it is recommended Parliament:

Use devolution to strengthen local governance and local development, but create wider space for national identity and national cohesion in order to break the population out of ethnic silos and enclaves.

Review the administrative boundaries created by the colonial government, and which have divided the population into ethnic groups by district and constituencies, thereby facilitating the predominance of ethnic identities, and to create broader district and provincial boundaries making institutions of local development and local governance multi-ethnic including other multiple identities.

Establish cross-county committees aimed at collective action and cooperation on development, defence, environmental management and early warning systems on food security, climate change and movement of persons, in order to ensure peaceful use of natural resources and create a national identity that can feed into policy-making at the level of government and the legislatures, thereby removing ethnic competition which undermines accountability.

Assess Constitutional provisions on participation and representation of citizens, and create room for professional organizations, the private sector and business organizations, think tanks and social movements; and create a forum for them to advise on policy without having to go through political parties.

Undertake studies and learn from other countries outside the continent on how to increase democracy within political parties in order to strengthen a culture of transparency, accountability and integrity within them.

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ANNEXES

Annex 1 (A): Table of issues raised through questions

Agriculture	Education	Health	Land	Industry	Transport	Information
Lack of debt relief for farmers	Regional imbalance in the implementation of free secondary education for HIV/AIDS orphans	Failure to hire enough birth attendants	Uncontrolled hiking of real estate rates	Under capitalization of public enterprises	Dysfunctional railway services	Attacks on journalists
Details of expenditure on relief food	Non-payment of allowances for teachers	Shortage of health personnel	Failure to construct houses for public servants	Failure to use coal to dry tea leaves	Failure to complete road projects	Detention and torture of journalists
Vague projections of food security	Shortage of teachers	Lack of transparency in managing tenders	Non-functioning land control boards	Loss caused by illegal trade in molasses	Retention of incompetent contractors	Raid of media houses by police
Cobwebs in the administration of stabilization fund	Low standards of education in the North East	Neglect of unaccompanied patients in public hospitals	Failure to settle squatters		Conflict of interest due to involvement of government engineers in government construction contracts	Grant of broadcasting rights to foreign radio companies
Non refund of deductions from farmers	Disappearance of examination papers	Low rates of recruitment of health staff	Land grabbing by public officials		Lack of transparency in tenders	Hiking of subscription fees by multi-choice
What type of Incentives were put in place for investors	Award of arbitrary grades		Sale of public land by some government officials			
Number of registered ranches	Failure to provide food entitlements to some schools					
Mismanagement of cooperatives	Violent punishments in some schools					
Justification for lowering the price of imported wheat when there was a lot of local wheat	Discrimination of Muslim students in some public schools					
Failure to revive irrigation projects	High teacher - pupil ratios					
Failure to purchase of milk from farmers	Lack of effective delivery in some primary schools					

Annex 1(B): Table of issues raised by questions

Government/ Admiration	Finance	Energy	Environment	Defense/ Security	Transparency	Labour
Arrest and harassment of journalists	Lack of clear reports on the number of public projects funded	Excessive tariff rates for domestic use of electricity	Increase in elephant poaching	Lack of adequate housing for police	Loss of revenues through red tape and corruption	Failure to pay teachers their allowances
Delays in appointing CEOs of public enterprises	Lack of clarity on the value of projects funded	Unequal distribution of electricity across districts	Lack of measures to control poisoning water sources	Non-facilitation of peace committees	Lack of policy on controlling corruption	Delays in paying pensioners
Unclear criteria for distribution of resources between local authorities	Payment of huge sums of fees for members of commissions of inquiry	Delays in completing projects	Failure to regulate solid waste disposal	Delays in compensating victims of terrorism	Fraudulent acquisition of public land	Instances of wrongful dismissal
Delays in disbursement of funds for projects	Lack of policy on control of inflation	Slow pace in exploiting geothermal power	Failure to service and preserve dams	Delays in reimbursement of troops involved in peace keeping operations	Denial of entitlements due to corruption	
Illegal impounding of vehicles by police			Lack of efforts to manage competition between humans and wildlife	Failure to clarify on the presence of Oromo Liberation Front in Kenya		
Police presence at election polling stations			Lack of action on encroaching bushes	Police involvement in violent robberies and failure to take action on suspects		
Police presence at schools while armed during examinations			Silence of GM foods	Fatal stabbing of civilians by a police officer		
Frequency of torture			Lack of policy on the exploitation of birds by sport hunters	Failure to give report on disarmament in Kenya		
Un-procedural termination of services of chiefs				Incursions into Kenya by Ethiopian raiders		
Frequent misappropriation of funds				Failure to compensate families of citizens killed in South Sudan		
Unclear criteria for pilot electronic voter registration				Surge in armed robberies		

Annex 2: Responses from the executive at county level

Question	Machakos	Nyandarua	Kitui
1) What do you understand by HA between the Executive and the legislative	The Executive arm of the state implements laws, policies and programmes. Horizontal accountability is about reporting to parliament how they are implemented	The county government is set up by the governor to help the implementation of policies	Transparency and national integrity are major areas of governance
	It is horizontal because the two bodies are at a higher level	We account to the county assembly through reports, questions and answers	We strengthen them through horizontal accountability
		We are still learning how devolution works	We give account on all activities of government
2) What are the obstacles to functioning of these practices	Devolution is new. The first obstacle is for cabinet ministers to know how it works.	Nyandarua is not well endowed like other counties	This is a poor county. Therefore it lacks many things others take for granted
	The second one is to get to the same level of understanding with MCAs because they may be believing they possess more power than they actually have	It has no office of its own. It is hosted by a church	Revenue mobilization is a challenge and it affects all activities
	We have other problems such as data, information, information processing capacity etc.		Lack of action on encroaching bushes
3) What are the necessary conditions for effective accountability	Accountability is about activities. The more activities counties have, the more they can account for	To be effectively accountable the county assembly needs to have system of accountability	Badly resourced counties do not have much to account for
	Another important resource is funding. The more you have the more you account for	Those systems must be functioning	Accountability is a two-way process
	Thirdly service delivery is important. No services no accountability	There has to be resources at Executive and assembly level	Capacity to analyze reports at the assembly is also essential
There has to be consequences for inaction		Feedback mechanisms have to be in place	
4) What is the role of accountability in the quality of public policy	Public policy is designed by policy makers based on the Executive and passed by policy makers in parliament	Parliament leads and the Executive manages policy	The Executive serves the people and it can best account for them through parliament
	It is a joint activity between the two bodies. Therefore after implementation accountability to parliament enriches policy	The two processes are mutually dependent. Accountability improves policy management	Public policy is about the wishes of the people. Therefore accountability improves the quality of these wishes
	Policy improvement comes from accountability. It is the source of innovation	It also contributes to policy evaluation which improves quality	Quality is about perceptions. If accountability affects perceptions, it improves quality

Question	Machakos	Nyandarua	Kitui
5) Do you consider the exchange of information useful? What benefits your agency?	We provide all the necessary information to the assembly	It is the duty of the Executive to give information	Providing information is an obligation. We are the ones to account and not vice versa
	We get advice and guidance from them	If the information given is not adequate we cannot be allowed to execute policies	If the assembly is not happy they can freeze the votes and we can't spend
	We sit in their committees to answer questions	If we are transparent in accounting we get legitimacy, we can keep our jobs	
	When the assembly is satisfied we get more support		
6) Do you think the assembly has enough human and financial resources to carry out its responsibilities of supervising and monitoring the Executive?	Machakos County is one of the best resourced counties. It has enough financial resources	The Nyandarua County is still struggling. The financial resources are low and human capacity is still low.	Sizes of budgets determine the capacity to recruit, train and motivate. This capacity is still not advanced
	The assembly decides on the distribution of resources	In spite of these challenges we think the assembly has enough powers and clout to control the government	Devolution is still evolving. In the next phase after 2017 we will have grown in terms of capacity
	The human resources are highly developed. We have people with second degrees etc.	What is important is leadership which is strong	
	But we need to train people on parliament related issues		
	We need more local projects to generate financial resources		
7) In preparing the report of the opening session of the assembly are you expected to provide information? In what areas? Do they specify time? Do you do analysis of indicators or not used after the speech.	The speeches of the governor to the Assembly are prepared by the officers in the Governor's office	The secretariat in the office of the governor prepares documents for the speech	We have had one election in 2013 and the first speech was made then.
	They include what the government has achieved and what it plans to achieve	After its presentation we get feedback and guidelines	It was prepared on the governor's office with everything he wanted included.
	Traditionally there are no questions to the governor. After the governor has gone a debate is conducted on the speech and the government gets feedback.		After the speech we got feedback through Hansard.
8) What types of information are you asked by the legislature	Sector based information is requested through questions		Performance based information.
	When we present reports we give information on issues raised		Implementation of projects.
	When presenting reports to committees we give statistics on sectors involved	All kinds of information about government activities in the county	Revenue and expenditure.
			Social services information. Other information e.g. on community development and procurement.

Question	Machakos	Nyandarua	Kitui
9) Do you perform evaluations	The county has a policy unit which undertakes monitoring and evaluation	We have started the process of including evaluation in our activities	We can't support policy or advise the governor without valuations.
	These activities are continuous	We would like to include this in our training programmes	Since 2014 we have been conducting evaluation exercises.
10) Do you prepare reports for presentation to Senate or the County Assembly	This is compulsory	Whenever the Assembly is meeting we compile reports and submit.	We prepare regular reports to the Assembly
	Senate decides on county issues	The senate receives reports from counties on budgets etc.	We present statements
	We report on how we have implemented its decisions		We send reports to the Assembly and Senate.
	Locally we report regularly to the Assembly either during sessions or when called upon		

Annex 3: Responses by legislators at the county level

Question	Machakos	Nyandarua	Kitui
1. What do you understand HA	Bringing government to book	Reducing conflict between the two levels of government	Information sharing
	Fighting Executive impunity	To help government to function better	Better serving the people
	Increases peoples voice	To help legislators account to the people	Negotiation of distribution of resources
	It reminds the Executive that power belongs to the people.		Policy analysis by committee Collective decision making
2. How does the HA work in Kenya	Parliament receives reports from ministers	State of the nation address	Presidential address
	Questions and answers	Inaugural address of parliament by president	Private bills and motions
	Private member motions	Summons of cabinet secretaries to appear	Parliamentary committees
	Presidential address every year	Coordination between senate and national assembly.	Questions and answers
	Approval and removal of appointees	Surprise checks	Budgets of ministries
	Commissions of inquiry		Supplementary funding bills
3. Examples of HA	Presidential address every year	Questions are in the Hansard	Refer to Hansard
	Removal and appointment of ministers	Appointments are usually made when there is a vacancy	There are many examples
4. Obstacles for further use of the mechanism	President still retains a lot of powers and discretion	Too many standing orders	There is too much work during sessions, we rush through agendas
	It takes time to understand legislative procedures.	Ministers fail to turn up	Politics plays a major role as some members are partisan.
	Support for members is still low in terms of information	Some answers are too short	Ethnic alliances hinder effective accountability.
	Appointments are influenced by politics	Some questions get lost and are forgotten	
	Ministers send their assistants	Time is usually short and there is a rush	
5. What are the necessary conditions for further accountability?	President's powers and discretion need to be reduced	Standing orders need simplification	Members do not get enough time to analyse
	Political parties need courses on collective decision making	Policy papers should be distributed in time	Policy brief would help
	Infrastructure such as library etc. needs improvement.	Ministers failing to appear should be fined heavily	Assistants need to be trained in policy analysis
		When questions are raised they should be answered fully.	Negotiation skills are lacking members get emotional
	Adequate time need to be given for debates.	Political parties need exposure how parliaments work.	

Question	Machakos	Nyandarua	Kitui
6. What is the role of accountability in the quality of public policy	It improves governance	It enforces rule of law	It is important for transparency and national integrity
	Strengthens democracy	Enhances legitimacy of policy	It makes policy owned by the people
	Shows respect for the electorate	Increases public trust in government	Such policy becomes easier to implement
	Can reduce corruption	It is a policy monitoring and evaluating mechanism	
	Increases acceptability of policies		
7. Do you consider the exchange of information between the two bodies useful?	When information is exchanged administrative decisions go smoothly	Absolute power corrupts Exchange reduces corruption	It is very useful because it creates clarity
Why? What benefits your agency	Budgets once approved are implemented	When government is accountable it can easily mobilize resources from private sector	It makes approvals easier
	When reports are given in time, there is no obstacle to funding development		It enhances trust between two bodies
	It reduces corruption	Non- exchange of information encourages suspicion	Exchange increases mutual recognition and respect.

Annex 4: Instruments and indicators of independence and accountability of independent agencies

Instruments	Indicators
1. Institutional features and governance	<ul style="list-style-type: none"> a) Decisions are taken by a managing body or individual b) Head of the agency is appointed by the Parliament c) Members of the managing body are appointed by the Parliament d) Criteria for removal are clear e) Duration of the term of persons appointed is clearly defined f) Restrictions before and after appointment of person are clearly and strictly defined
2. Political and actual independence	<ul style="list-style-type: none"> a) Incompatibility with other functions b) Interference of ministries in decisions of agency c) Political appointments d) Frequent turnover of heads of agency e) Independence from industry
3. Budget and financial resources	<ul style="list-style-type: none"> a) Sources of budget: state budget or own revenues b) Agency prepares its budget c) Parliament approves the budget d) Staff recruitment by agency e) Selection criteria for staff are set by agency f) Remuneration for staff: according to law or regulations set by the agency g) Salary for head of agency: according to law or regulations set by the agency
4. Reporting and transparency	<ul style="list-style-type: none"> a) Annual report submitted to parliament b) Requirements on structure and content report c) Own initiative to submit info and reports d) Publication on the web e) Official Gazette
5. Performance assessment	<ul style="list-style-type: none"> a) Financial report submitted b) Financial Audit by Office of Auditor General c) Clear objectives d) External performance assessment e) Publicly availability of agency's performance assessment
6. System of appeals	<ul style="list-style-type: none"> b) Timely processing of appeals by courts c) Appeals may suspend agency decisions d) Functioning judicial system
7. Consultations and coordination	<ul style="list-style-type: none"> a) Agency conducts informal and formal consultations b) Conclusions of consultations are published and publicly accessible

Adapted according to the table prepared by De Vrieze F. and Ieseanu L. (2011), "Independent and regulatory agencies in Moldova and their relationship with Parliament", UNDP, pg. 33-34, last accessed on 31st January 2016:

<https://iniciativatpa.files.wordpress.com/2010/06/report-on-independent-institutions-final-version-original.pdf>