

Parliamentary Oversight and Corruption in Tanzania

Policy Brief, Presenting Key Issues & Lessons Learned

Introduction

The Tanzanian National Assembly is responsible for overseeing the government and ensuring accountability. While there are institutions and mechanisms that can be tooled to fight corruption and assist legislative oversight against corruption outside of the National Assembly, these institutions are under the influence and control of the Executive, making it difficult for the legislature to subject the Executive to rigorous scrutiny to promote accountability. The research data was collected by interviewer-led and self-administered questionnaires, completed by forty-two respondents (13 MPs, 10 Parliamentary Staff, 11 CSO representatives and 8 media representatives), as well as additional research on oversight and anti-corruption in Tanzania.

The Tanzania Political Context

After independence in 1961, Tanganyika merged with Zanzibar in 1964 to become the republic of Tanzania, a single state under a presidential-parliamentary democratic system. The President is both the head of state and the head of government. Zanzibar has a semi-autonomous status with its own executive, judiciary and legislative organs. Under Tanzanian Constitution, executive decisions relating to non-union matters—those relating to health, education and the environment—are exercised by the Revolutionary Government of Zanzibar.

In 1992, Tanzania peacefully switched from a one-party hegemony to a multiparty democracy. Elections are conducted every five years and the President is restricted to a two-term limit. Although, power is yet to change from one party to another, democracy in Tanzania seems to be growing. Civil society organizations have more voice in governance, while the state-owned media is also capturing the voice of *all* political parties. Since the multiparty democracy initiative was kick-started in 1995, however, there have been some events that have threatened Tanzania's democracy:

- 2015 - Annulment of elections in Zanzibar resulted an election boycott by the opposition.
- 2016 - Authorities ban public assembly and public broadcast of parliamentary sessions until 2020.

- 2016 - Media Services Bill described by many as an act to repress the media and curb freedom of expression¹.
- Political opposition in Tanzania is weak. Infighting plagues its foundation.

The 1977 Constitution mandates that the National Assembly is the only body which can make laws; the Assembly also has the power to impeach the President, but by contrast, the President has the power to dissolve the Assembly, to appoint MPs as Ministers, and as District and Regional Commissioners.

The National Assembly is unicameral and has 390 members: 263 members elected to represent, 113 special seats, one Attorney-General, five members elected by the Zanzibar House of Representatives, and nine members appointed by the President. The National Assembly has 18 committees under four thematic committee headings: Housekeeping Committees, Sector Committees, Crosscutting Committees, and the Watchdog Committees. Every member must sit on at least one committee.

Corruption in Tanzania is pervasive, and permeates all sectors of the economy and governance, especially the executive and judiciary. Tanzania experiences petty and grand corruption regularly, and public confidence in public institutions is low. In daily life, Tanzanians must pay bribes, especially in government procurement, land administration, taxes and customs.

Transparency in public service is absent, government officials have discretion in the execution of their duties, there are no effective watch dog institutions, and the common desire to gain an unfair advantage all contribute to create an environment ripe for corruption. As a result, systemic inefficiencies, private sector transaction cost inflation, corruption's impact on cost of living, reduction in employment and life expectancy are realities for the average Tanzanian citizen.

A number of institutions have been created to deal with corruption, including the Prevention and Combating of Corruption Bureau (PCCB) and the Ethics Secretariat (ES). Laws have also been made, but the implementation of the laws and the independence of these institutions have been questioned. The penalties to fight corruption are largely ineffective, with measures to combat it applied impartially to offenders.

The current President, John Magufuli —who has been touted as a strong anti-corruption campaigner— is making progress. Institutionalizing a punitive and preventive approach with the support of all stakeholders (especially parliament, media, private sector and the government) will bring synergy and broader focus on the fight against corruption.

¹ Refer to < <https://freedomhouse.org/report/freedom-world/2017/tanzania> >

External Factors

Executive legislature relationship. The National Assembly is headed by the Prime Minister, who is appointed by the President. The President appoints ten (10) members who are not elected into the legislature, and all members of his cabinet and their deputies from the house.

Appointment of ministers. All Ministers who are members of the Cabinet are appointed by the President with Prime Minister consultation, while substantive and deputy ministers are appointed from parliament. 83% of those in the research study do not believe the legislature plays a role in cabinet formation, and 16% indicated there *was* a parliamentary role. There is great potential for cronyism between members of the party in power, who may double as the majority in the National Assembly, to seriously undermine the parliamentary scrutiny intended by the constitution.

Censure and Impeachment. 60% of respondents believe parliament can censure or impeach a minister. More than half believe the National Assembly *has* censured a Minister, however most believe that this is rare. 100% concurred that censure has never occurred with the President, despite constitutional support for censure by the National Assembly.

Budget Making. The budget is government's most important economic policy tool. While all participants agree that the National Assembly has the power to amend the budget, truly the Finance and Economics Affairs and Budget Committees are the internal bodies responsible. The 2015 Budget Act spells out the Budget Committee's eleven functions, including: reviewing budget guidelines, estimates, and making recommendations; scrutinize audit office, Judiciary and National Assembly estimates, among others. The National Assembly has played a role in budget amendments, but amendment timing is irregular. MPs and other stakeholders disagree on the degree to which the legislature has amended the budget, with the latter believing the National Assembly amends 65% of the time, and the former seeing budget amendments only occurring 25% of the time.

Veto of legislation. Non-ministerial members of the legislature are constitutionally empowered to introduce bills by first introducing intentions to the Clerk along with the formal name and objectives and reasoning behind the bill. A private member's bill then goes through all the standard processes before it is accepted as law. This process is extremely difficult for a member of the opposition. Ministers of government are chosen from parliament, empowered to reject a Bill at the voting stage. In the unlikely event that it survives the Speaker's antics and then gains majority acceptance in the voting stage, the President has the final authority to sign it into law. The government also has the privilege of bringing bills to the National Assembly for approval. Before a bill becomes law in Tanzania it goes through a lengthy process of consultation and decision-making at the Ministerial, Permanent Secretaries, and finally the Cabinet levels².

² See < http://www.parliament.go.tz/uploads/documents/publications/en/1445606413-FACTSHEET_1.pdf >

Political Parties. Political party cohesion in Tanzania is somewhat strong. New political parties have emerged and pose a greater threat to the incumbent party (Chama Cha Mapinduzi). The Tanzania Centre for Democracy was formed to create dialogue between the parties as inter and intra party tensions have risen. As a result of violence and verbal abuse in party politics, the government has banned political party activities until the next general election in 2020, which the opposition party has defied openly. Some Members from opposition parties were suspended and harassed for various misconduct against their colleagues from the other side. Changing parties is prohibited in legislature. With so much political party power, democracy is restricted. Assembly members must take their party's position on issues before the House, even if the decision do not benefit their constituents. According to the research, legislators who side with their party's interest are rewarded in the form of ministerial appointments and party support through leadership positions. Legislators may also be suspended and dismissed for not siding with their party.

External Oversight institutions

Auditor General. The National Audit Office is Tanzania's Supreme Audit Institution, headed by the Controller and Auditor General, who the president appoints. The National Audit Office reports to the President, who tenders the audit report before the National Assembly for scrutiny. The work of the office should lead to prosecution, imprisonment, refunds, warnings, and removal from office, which promise to ingrain accountability in public officials. About 55% of respondents indicated complete independence in the execution of its work, about 45% disagreed. 58% believe the Controller and Auditor General could not be removed from office without recourse to the Legislature. As a whole, the survey indicated that the National Audit Office has been effective in its work and good for governance. However, CSOs do not believe the office is effective and sanctioning cited public officials is an executive responsibility, which may be biased. Usually, though, the accused are suspended, relieved of their duties, tried in court, and sometimes forced to resign.

The Ombudsman. Tanzania's Ombudsman is the Commission for Human Rights and Good Governance, which strives for good governance and human rights by the state and citizens, was established in 2001. This person is appointed by the president, and despite the Commission of Human Rights and Good Governance Act 2001 stipulation to act upon legislative Appointment Committees recommendations, the legislature is *not* involved in the appointment process, according to the research. The Ombudsman does not report to the legislature and does not have independence over its budget. Respondents were unclear if the president could unilaterally remove the Ombudsmen, despite constitutional language that "a Commissioner may be removed from office only for inability to perform the functions of his office, due to illness or to any other reason, or for misbehavior inconsistent with the ethics of office or any law concerning ethics of public leaders".

Anti-Corruption Agencies. Chief among Tanzania’s many anticorruption agencies include, the Prevention and Combating of Corruption Bureau (PCCB), the Economic and Organized Crimes Control and the Police force. The heads of these institutions are appointed by the president, and do not report to the legislature, though all arms of government can consult them. 80% of respondents believe the anticorruption agencies do not independently manage their budget and staffing needs, and 85% that the heads of these agencies can be removed without recourse to the legislature, and the agencies were deemed only somewhat effective.

Media and Access to Information. Tanzania is one of the few countries in Africa with a Freedom of Information Act to protect freedom of speech, help journalists, and open the governance process to scrutiny, enhancing democracy. In spite of the act, it does not meet its potential, with respondents ranking it “neither effective nor ineffective” in assisting the legislature. Subtle rigidities in the act can potentially block members and the general public from accessing information. Respondents alluded to government’s interference in the media, possibly due to the Cybercrime Act and the Media Services Act. The media’s ability to put the executive and the legislature in check is considered somewhat effective. The media has not been very instrumental in uncovering corruption. Their efforts have been passive, and are expected to deteriorate with the Media Services Act of 2016, which restricts the media’s ability to uncover corruption. The media has, therefore, been just somewhat effective in investigating and revealing corruption. About 58% of the respondents have witnessed cases where media reports and parliamentary actions reinforced each other in the oversight of the Executive and/or Uncovering Corruption.

Civil Society Organizations (CSOs). CSOs are strategic in governance and can offer needed expertise. The survey revealed, however, that CSOs in Tanzania have just been “somewhat effective” in overseeing the work of the executive and uncovering and reporting incidences of corruption in the country.

Internal Factors

Committee System. The National Assembly’s Public Accounts and Local Authorities Accounts Committees are responsible for oversight, assuring that the appropriations of sums granted by the Assembly are equal to Public Expenditure. They are not considered biased by respondents and meet about eighth to eleven times annually. They have about five to six (5-6) technical staff. The respondents indicated that, generally the committees have been very effective in uncovering cases of fraud and corruption in the public service.

Processes within the Chamber. Question times bring agents of the executive to the house to answer important questions from members. Both sides are given the same executive question time, but haven’t used that tool effectively, as many do not believe questioning in the chamber to be particularly effective in uncovering fraud and corruption. Justice for fraud is slow, with the

government referring most matters to the anticorruption agencies. The legislature has set up special committees and commissions of enquiry, including the 2017 Committee set up by the Speaker to investigate the revenue tanzanite contributes to the economy, and the 2017 commission to probe diamond mining in Tanzania. The work of the commissions are considered highly effective by all respondents, having led to ministerial resignations, the termination of heads of institutions, and executive sanction recommendations against law breakers.

Mandate and Independence. These committees/commissions of enquiries have been successful at their work mainly because of the “considerable degree of autonomy” that the legislature enjoys in the performance of its duties. Although the current arrangement in Tanzania does not give the legislature absolute independence in determining its budget, respondents generally were off the view that, they have “considerable power” which fairly satisfies the operation of the principles of separation of powers. To a “considerable extent” as revealed by the survey, the National Assembly has competent staff to execute its mandates under the constitution.

Information Resources. Tanzania’s National Assembly has a library with political documents, and prepared indexes and directories for important information that Members use often. Members also have access to their own independent sources of information, including Think Tanks, and CSOs.

Conclusions and Recommendations

The 18 Legislative Committees are the main platforms for effective legislative oversight, with three dedicated to internal National Assembly business, and the remaining fifteen responsible for oversight. Members can introduce bills, have freedom of information and other privileges necessary for oversight.

However, the National Assembly’s structure subtly obstructs effective oversight, which does not support clear legislative-executive jurisdiction with consensus between all the arms of state regarding their roles. Executive power curtails and overshadows legislative power and thwarts the separation of powers intention. Additionally, the executive’s power in the legislature limits scrutiny over the oversight.

In theory, Tanzania’s external factors could have positive effects on the oversight function of the legislature, but with no guarantee of independence it is difficult. Anticorruption bodies, such as the ombudsman, media, and Civil Society Organizations, provide important anticorruption resources to the legislature. Unfortunately, a significant number of them are also under the control of the executive, which receives their reports, appoints, and dismisses heads of some of these institutions, and makes laws that limit their capacities. Maintaining the sanctity of these bodies requires that they are freed from political influence. Without any constitutional provision to assure their independence, a great deal of political will is needed to rid the country off corruption.

In the short term, efforts should be directed at making a political commitment towards maintaining independence in external institutions that support legislative oversight. Curtailing executive dominance in the legislature should be a long term objective addressed through constitutional amendment. Nevertheless, any attempt to shrink the power of the Executive is likely to meet strong opposition. It is important to increase consultation and have a consensus with all the arms of state to make the amendment realizable.

Solving all the oversight challenges will require correcting the institutional and constitutional rigidities hampering oversight. Legislative and executive support for independence in the external institutions that support legislative oversight should be a short term goal. Stringent laws that gag the media should be loosened to accommodate the watchdog role of the media. Efforts towards making anti-corruption state institutions independent and free from political leadership interference should be the priority of governance stakeholders.

Long term, a constitutional amendment to reduce executive dominance with a clear delineation of responsibility to support checks and balances is recommended. Attempts to shrink the power of the executive is likely to meet strong opposition, so extensive consultations and discussions by all stakeholders is needed to encourage cohesion that clearly shapes the governance structure of Tanzania. This is especially true for a county like Tanzania is a one party hegemony, where executive dominance is a tool that aids the incumbent party to win elections. The incentive to refresh the system may not be entertained by the incumbent.