

Parliamentary Oversight and Corruption in Tanzanian Policy Brief Presenting Key Issues and Lessons Learned

Introduction

According to Transparency International's Corruption Perception Index, Tanzania scored 32 out of a possible 100 and ranked 116th most corrupt nation out of the 176 countries they monitor. All arms of government, civil society and the private sector play a role in this ranking, but the National Assembly, Tanzania's parliamentary body, is the principal institution for overseeing the government and ensuring accountability. While the National Assembly has institutional mechanisms to fight corruption, strong executive control makes rigorous scrutiny difficult. Using in-country, interviewer-led interviews and self-administered questionnaires with 49 respondents (13 MPs, 10 Parliamentary Staff, 11 Civil Society Organization (CSO) representatives, eight staff of the parliament, and seven journalists), we undertook a country-specific research to determine how successfully the National Assembly is in fulfilling its oversight function. Legislative oversight tools, potential, political will were all considered in the data analysis.

The Tanzania Political Context

Post-independence, 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.

Since 1992, Tanzania has *technically* had a multiparty democracy, with national elections every five years and the President restricted to two-terms. However, power has not *actually* changed from one party to another. There is some evidence that democracy is strengthening, as evidenced by greater civil society voice in governance and the coverage of *all* political parties by the state-owned media. Nonetheless, the political opposition remains weak, with much infighting. Additionally, there have been some other events of concern for the country's democracy:

- 2015 - The annulment of elections in Zanzibar resulted in a boycott by the opposition.

- 2016 - The ban of public assembly and public broadcast of parliamentary sessions until 2020.
- 2016 - The introduction of the Media Services Bill, which is designed, respondents said, to repress the media and curb freedom of expression.

There is a theoretical balance of power in government; the President has the power to dissolve the National Assembly, while the National Assembly has the power to dismiss the President. The President appoints all cabinet ministers from the National Assembly, and he can also appoint MPs as District and Regional Commissioners; he also appoints 10 of the 390 National Assembly members. The President is, therefore, deeply influential in the legislature and legislative decision-making.

Corruption in Tanzania

Corruption in Tanzania is pervasive and permeates all sectors of the economy and governance, especially the executive and judiciary. Tanzanians witness petty and grand corruption regularly, with bribes necessary for government procurement, land administration, taxes and customs. As a result, public confidence in state institutions is low.

Transparency in public service is absent, with very little oversight, no effective watchdog institutions, and the desire for an unfair advantage encouraging an environment ripe for corruption. Systemic inefficiencies, inflation, fewer jobs and lower life expectancy result as the Tanzanian reality.

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), but their independence has been questioned. Laws have also been enacted, but their implementation is weak. Furthermore, penalties against corrupt individuals are largely ineffective, with measures applied selectively to offenders. While the current President, John Magufuli, has been touted as a strong anti-corruption campaigner, executive influence in the legislative body still exists.

Executive-Legislative Relations

The President appoints the Prime Minister to head the National Assembly, and all members of his cabinet and their deputies are also chosen from there, in consultation with the Prime Minister. Many of the respondents in our study noted the potential for cronyism, and that this undermines Parliament's scrutiny role. Only sixty percent (60%) of respondents correctly noted that Parliament can censure or impeach a minister; more than half believe the National Assembly *has* censured a Minister, although most believe that this is rare. All respondents correctly noted that Parliament has never censured the President, despite having the constitutional right to do so.

The budget is government's most important economic policy tool. The National Assembly has the power to amend the budget, but de facto the Finance and Economics Affairs and Budget Committees are the internal bodies responsible. The 2015 Budget Act spelled out the Budget Committee's eleven functions, including: reviewing budget guidelines, estimates, and making recommendations; scrutinizing 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 that the National Assembly frequently amends the budget and the former, much less so.

The government also has the responsibility of bringing most Bills to the National Assembly for approval. Before a Bill becomes law, it goes through a lengthy process of consultation and decision-making at the Ministerial, Permanent Secretaries and Cabinet levels. Non-ministerial members of the legislature are constitutionally empowered to introduce bills through a formal process. Once such a private member's Bill is introduced, it goes through all the standard processes before it is accepted as law. This process is extremely difficult for a member of the opposition. Ministers can reject a Bill at the voting stage, which means that few survive. In the unlikely event that the Bill gains majority acceptance in the voting stage, the President has the final authority to sign it into law.

Political party cohesion in Tanzania is only considered by survey respondents to be '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, 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 decisions do not benefit their constituents. We were told that legislators who side with their party's interests are rewarded in the form of ministerial appointments and party support through leadership positions, while those not siding with their party may be suspended or dismissed from the party.

External Oversight Institutions

Auditor General. The National Audit Office is Tanzania's Supreme Audit Institution, headed by the Controller and Auditor General, who is appointed by the President. 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 believe there to be complete independence in the execution of the Auditor General's work, while 45% disagreed. On the whole, our survey indicated that the National Audit Office has been effective in its work, although the CSO representatives were more sceptical, explaining that sanctioning cited public officials is an executive responsibility that 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 was established in 2001. The Ombudsman is appointed by the President, and despite the Commission of Human Rights and Good Governance Act 2001 stipulation to act upon the legislative Appointment Committee's recommendations, the legislature is *not* involved in the appointment process, according to the research. Moreover, the Ombudsman does not report to the legislature and nor does it 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. The heads of these institutions are appointed by the President, and do not report to the legislature. 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. These 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 and open the governance process to scrutiny, enhancing democracy. Even so, the Act does not meet its potential, with respondents considering 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 recent enactment of the Media Services Act, which restricts the media’s ability to uncover corruption. The media is only considered to be ‘somewhat effective’ in investigating and revealing corruption. Interestingly, about 58% of the respondents have witnessed cases where media reports and parliamentary actions reinforced each other in the oversight of the executive and 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 Oversight Tools

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. Meeting some eight to eleven times annually, and having five to six technical staff, survey respondents did not consider these committees to be politically biased. Indeed, the respondents thought that the committees have been 'very effective' in uncovering cases of fraud and corruption in the public service.

Processes within the Chamber. *Question Time* bring agents of the executive to the House to answer important questions from members. The governing and opposition parties equally share Question Time, but respondents reported that this mechanism has not 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 anticorruption agencies. The legislature has set up *special committees* and *commissions of enquiry*; their work is considered to be 'highly effective' by 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 a '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 believe that the Assembly has sufficient power to meet separation of power principles. The National Assembly has competent staff to execute its mandates.

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 eighteen 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 governance regarding their roles. Executive power curtails and overshadows legislative power and thwarts the separation of power's intention. Additionally, the executive's power in the legislature limits scrutiny over 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 of corruption.

In the short term, efforts need 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 effectively censor 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.

Longer 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 are 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 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.

Reference

Transparency International (2016).

https://www.transparency.org/news/feature/corruption_perceptions_index_2016 Accessed February 15, 2017.

This Briefing Note was written by Rasheed Draman, with Rick Stapenhurst, Louis Imbeau, and Deji Oloare. The authors wish to acknowledge the research assistance and support provided by Thomas Eric Eboutou and Brooke Larson. Full research results can be found in Rasheed Draman, with Rick Stapenhurst, Louis Imbeau and Anthony Staddon (submitted) “Policy Oversight and Corruption in Tanzania”, *Journal of Anti-Corruption Law*. Additional research results can be found at Rick Stapenhurst, Louis Imbeau, Anthony Staddon, Rasheed Draman and Brooke Larson (forthcoming) “Anti-Corruption Evidence: The Role of National Parliaments in Curbing Corruption” New York: Springer.