

**A Comparative Analysis of Laws & Institutional
Regimes on Public Expenditure Accountability in
East Africa**



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List of Abbreviations

AG	Auditor General
ATI	Access to Information
DPP	Director of Public Prosecutions
EAC	East African Community
EU	European Union
IBP	International Budget Partnership
IG	Inspectorate of Government
IGG	Inspector General of Government
IMF	International Monetary Fund
UN	United Nations
UNDP	United Nations Development Program
OAG	Office of Auditor General
OBI	Open Budget Index
OECD	Organization for Economic Cooperation and Development
PEFA	Public Expenditure Financial Accountability
TI	Transparency International
WB	World Bank

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Executive Summary

Proper and efficient public finance management systems and tools are crucial for the economic, social and political transformation of all modern democratic societies. One of the most important aspects of a good public finance management system is accountability. This is generally understood as the obligation to ‘demonstrate that work has been conducted in accordance with agreed rules and standards and also includes the duty to report fairly and accurately on performance results alongside the mandated roles and plans.’ In terms of public expenditure, accountability entails demonstration that public funds have been spent in accordance with agreed public expenditure rules, standards and budgetary framework. Accountability in this context also means that public funds are put to their intended use and are properly accounted for.

A strong framework for public expenditure accountability substantially improves on the utilization of public funds and reduces on corruption and the loss of public funds. Public expenditure accountability also promotes good governance since citizens are involved in fiscal and budgeting processes where they let their voices be heard. This improves citizens’ trust in government and gradually on their compliance with government policies, especially those aimed at raising required revenues such as taxation.

Public expenditure accountability is even more important in the context of the fast tracking of the East African Political Federation that has so far seen all the five states of Burundi, Kenya, Rwanda, Tanzania and Uganda adopt a customs union, common market and most recently a monetary union which requires the harmonization of all fiscal laws and policies. This is an important step in the integration process but can only succeed where accountability thrives; first at the level of states and secondly between states and their citizens. Accountability encourages people’s participation and promotes macro-economic stability which is essential in integration.

This study examines the extent to which the existing legal and institutional framework in the four East African countries of Kenya, Rwanda, Uganda and the United Republic of Tanzania incorporates the notion of accountability in public expenditure. Accountability is examined at two levels that is to say pre and post expenditure, although most emphasis is placed on existing post expenditure mechanisms. All the four countries are found to have relatively comprehensive legal and institutional frameworks on public finance management. Existing laws are, however, not well enforced in most of the countries creating a dilemma to the extent that countries which seem to have a strong legal and institutional framework are the poorest in accountability. This partly explains why corruption levels and poverty are still high in most of these countries. That said, the recent adoption of the East African Community Monetary Policy presents a

good opportunity for all countries in the region to include public expenditure accountability in their various legal and institutional frameworks, and equally importantly to formulate a common vision of accountability in all aspects, including in public expenditure. Harmonization also creates an opportunity for countries to collectively review progress and implementation of agreed principles of accountability. This will go a long way in consolidation of the East African Federation through strengthening trust among states and between states and their citizens.

1. Introduction

Accountability to citizens is key in any democracy including budding democracies like the East African countries. In a democracy, people entrust their powers and mandate with the state that is expected to exercise those powers within the set limits. The state must therefore demonstrate that it indeed acted within those limits if its mandate is to be renewed. In doing so, the state provides accountability to citizens. In the context of public finance, states are vested with powers to mobilize, manage and apply public funds to agreed priority sectors. Nonetheless, these powers must be exercised within an agreed framework usually set out in the national budget. The process leading to such a framework must be participatory and people centered and once agreed upon this framework must then guide all state interventions. Importantly, at the end of an agreed timeframe, the state must indeed demonstrate that it acted within this agreed framework. By doing so, the state will have fulfilled its duty to account to citizens.

Accountability therefore generally denotes the obligation to *‘demonstrate that work has been conducted in accordance with agreed rules and standards and also includes the duty to report fairly and accurately on performance results alongside the mandated roles.’*¹ It follows that public expenditure accountability may be understood to mean the obligation to demonstrate that public funds have been spent in accordance with the agreed rules, standards and budgetary framework. This is critical in the broader management of public resources and goes a long way in ensuring that public funds are put to their intended use. Short of accountability, vices such as corruption, theft and loss of public funds will thrive. This in turn negatively affects service delivery and worsens the poverty situation in poor and under developed countries.²

Aside from improving on service delivery, accountability in public expenditure strengthens citizens’ trust in government. This in turn improves on compliance with critical government policies such as taxation. Citizens will feel much more obligated to contribute to the public resource envelope where they are engaged and importantly where accountability for monies received is provided.

Accountability in public expenditure is even more important in the context of regional and economic integration where there is often harmonization of fiscal and monetary systems. This is not only due to the complexity that comes with

1 See Report of the Working Group on Transparency and Accountability, IMF, World Bank & 22 Countries October 1998. See also UNDP Accountability Framework and Oversight Policy, 2008. Available on web.undp.org/.../dp08-16Rev1... accessed 20th August 2014

2 See World Bank, Making Services Work for Poor People, World Development Report, Washington (2004). Available on <https://openknowledge.worldbank.org/handle/10986/5986> accessed 25th August 2014

such processes, but to also the need to guarantee stability and sustainability of the integration. Lack of accountability breeds distrust among partner states as well between states and their citizens. Citizens need to know that their voice is respected and that public funds are properly expended under a broader framework that integration usually entails. They will otherwise not see the dividends of such integration where there is no feedback from their respective governments.

Related to this but even more important, unaccountable regional blocs are prone to systematic financial crises that ultimately affect the whole bloc.³ The lack of proper financial accountability in some Euro-zone states is partly to blame for the current financial struggles in the regional bloc.⁴ One of the key lessons that East African states can learn from this crisis is the need to put accountability at the forefront of integration.

In November 2013, five East African countries of Rwanda, Uganda, Kenya, Tanzania and Burundi signed the Protocol on the Establishment of the East African Community Monetary Union (hereinafter referred to as ‘the protocol’).⁵ The main objective of the Protocol is to promote and maintain monetary and financial stability with the aim of facilitating economic integration in order to attain sustainable growth and development of the community.⁶ To achieve this objective, partner states are expected to, among other things, take some steps such as the harmonization and coordination of fiscal policies and financial accounting and reporting systems, as well as the adoption of common rules for regulation of each partner states’ financial systems.⁷ In each of the member states, an existing framework of fiscal policies, financial accounting and reporting systems is thus envisioned.

Clearly while not explicitly mentioned, accountability in public expenditure is intended by states under the protocol. The purpose of this study is therefore to critically examine existing legal and institutional frameworks in four selected EAC countries (Kenya, Rwanda, Uganda and Tanzania) and identify the extent to which these incorporate aspects of public expenditure accountability. In more specific terms, the study highlights differences in public expenditure accountability systems across the four countries; appraises the performance of such systems where they exist and advances some of the good practices

3 See George Omondi, IMF Boss Cautions East Africa on Monetary Union, *The East African*, January 7, 2014.

4 See *The Euro Crisis; An Even Deeper Democratic Deficit*, *The Economist*, May 26, 2012..

5 See Protocol on the Establishment of the East African Community Monetary Union, November 2013.

6 *Id.* See Article 2. See also Article 5, Treaty for the Establishment of the East African Community that sets out to among others achieve a monetary union for sustainable growth and development of the community.

7 *Id.* See Articles 4 and 5 of the Protocol.

emerging in this regard.

1.1 Methodological Approach to the Study

The study strictly relied on qualitative research methods. Most of the findings are derived from a desk review of existing literature on public expenditure accountability but most significantly from the study and analysis of laws and institutional regimes on public expenditure accountability in the four EAC countries of Rwanda, Uganda, Kenya and Tanzania. The study therefore represents an audit of legal and institutional regimes on public expenditure accountability and does not go deep into existing practices outside the law.

To assess the suitability of and extent to which existing laws and institutions support and/or incorporate public expenditure accountability, the study draws on a number of regional and international good practices on public expenditure accountability. In particular, the study borrows heavily from the framework for accountability advanced by the World Bank in the 2004 World Development Report. The report which focuses on enhancing accountability in service delivery as a way of reducing poverty worldwide represents a comprehensive definition and application of the concept of accountability than a number of other existing studies on the subject. Under the accountability framework, there are two routes to accountability that is; the Long and Short routes.⁸

The short route of accountability involves citizens/clients directly demanding for accountability from service providers.⁹ It is more functional where the provider is a private entity which makes it easier for citizens to delink from services provided if found unsatisfactory. This although the most desirable is very rare as in most of the cases there is always an intermediary in the chain of service provision. Most usually such an intermediary is a government entity, policy maker or politician and in those circumstances the long route becomes the most realistic mode of accountability.

The long route considers three parties, citizens also referred to as clients, agents who may constitute governments, parliament and other policy makers and thirdly the ultimate service providers.¹⁰ Under the framework Citizens finance and entrust agents with responsibilities and these agents sub delegate these responsibilities to service providers.¹¹ The agent is then required to ensure that the provider has fulfilled all responsibilities and provide feedback to the citizen.¹² This route is the most realistic when looking at public expenditure

8 World Bank (2004), Making Services Work for Poor People, World Development Report, Washington pp. 47 to 50.

9 *Id.*

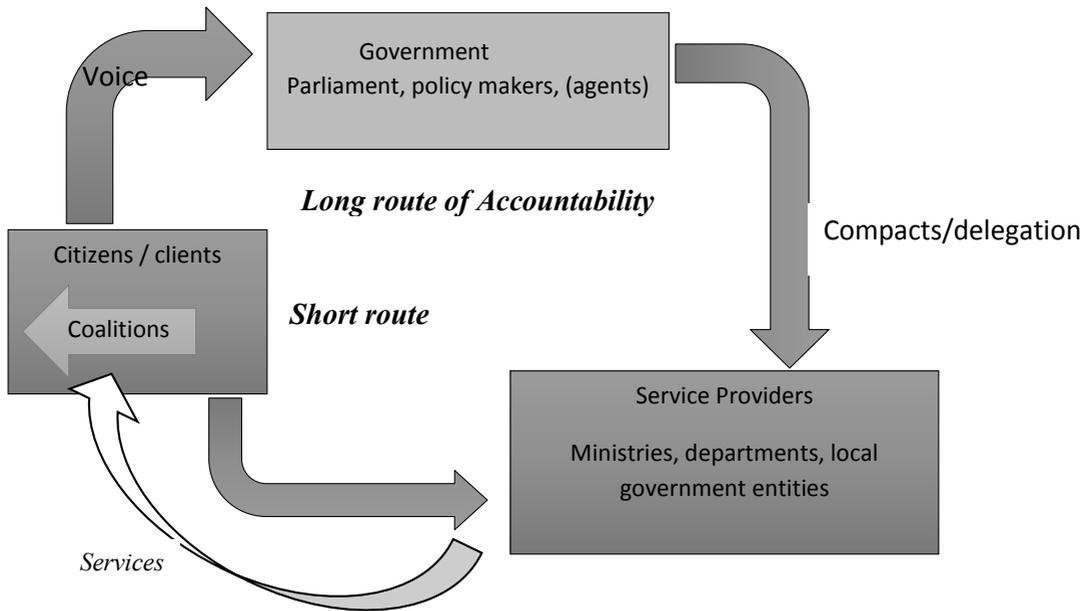
10 *Id.*

11 *Id.*

12 *Id.*

accountability.

Fig 1. Accountability Relationships



Source: *World Development Report 2004*¹³

In addition to the World Bank framework, the study incorporates a number of accountability standards established by a number of reputable institutions over the years. According to the International Monetary Fund (IMF) for instance accountability is looked at as the obligation to ‘*demonstrate that work has been conducted in accordance with agreed rules and standards and also includes the duty to report fairly and accurately on performance results alongside the mandated roles.*’¹⁴ Accountability is also looked at through the prisms of open budget processes; public availability of information, clarity of roles and responsibilities and assurance of fiscal integrity at all levels.¹⁵ These are important in strengthening public expenditure accountability.

Accountability has also been recognized as a key component for sound and effective budgeting and public expenditure by the Organization for Economic Co-operation and Development (OECD) and most recently the International

¹³ Supra n.2

¹⁴ See Report of the Working Group on Transparency and Accountability, IMF, World Bank & 22 Countries October 1998. See also UNDP Accountability Framework and Oversight Policy, 2008. Available on www1.worldbank.org/publicsector/pe/.../4PFMIndicators.pdf accessed 16th August 2014

¹⁵ See International Monetary Fund’s Code of Good Practices on Fiscal Transparency, 2007.

Budget Partnership (IBP).¹⁶ According to the OECD and IBP, accountability thrives on disclosure of vital budgetary information, public participation as well as the existence of strong budget oversight institutions. A combination of these boosts fiscal performance, lowers sovereign borrowing costs and reduces on opportunities for corruption.¹⁷

The major limitation with the OECD and IBP approaches is that they are too restricted to budget processes which are just one of the major components of an effective public expenditure accountability framework. Nonetheless both the OECD and IBP approaches contain vital components for effective public expenditure accountability.

1.2 Structure

The study is structured into five major parts. Part I deals with a general introduction to the notion of accountability more so in the context of public expenditure, part II deals with the major pillars of accountability and part III deals with different country laws and institutions on public expenditure accountability. Part IV draws a comparative analysis of the four countries' laws and institutions on public expenditure accountability while part V offers a number of conclusions and recommendations.

2. Pillars of Accountability

For Accountability to thrive, a number of pre-conditions must be met.¹⁸ First, there must be free and unhampered access to information. This promotes transparency in the administration of public funds which in turn promotes public participation. Secondly, both internal and external oversight must exist as a way of ensuring that those responsible are performing their duties in accordance with the set rules and guidelines. Third, sanctions must be imposed on duty bearers who fail to comply with agreed laws and standards.¹⁹ These pre-conditions are what are herein referred to as the pillars of accountability and greatly apply in the enforcement of public expenditure accountability.

2.1 Access to Information, Public Participation & Transparency

Information on fiscal policies and realities must be made available to the public. The public should be provided with information on the budget and in particular on past, current and estimated revenues, expenditures, public debt

¹⁶ See OECD Best Practices for Budget Transparency, 2002. Available on www.oecd.org/d... Accessed 29th August 2014. See also Paolo De Renzio & Harika Masud, Measuring and Promoting Budget Transparency: The Open Budget Index as a Research & Advocacy Tool, *An International Journal of Policy, Administration & Institutions*, Vol 24, No.3 July 2011 (pp. 607-616)

¹⁷ *Id.*

¹⁸ *Id.* See also notes 13 and 14 Supra.

¹⁹ *Id.*

levels, sector allocations and other related information.²⁰ This information should also be reflected in all financial reports prepared by public entities.²¹

Free flow of information ensures that citizens are knowledgeable and empowered to meaningfully participate in fiscal processes. Citizens are also able to track all budgetary allocations and hold those responsible accountable where they are in possession of critical fiscal information.²² Beyond the information provided, citizens must be in position to demand for and access fiscal information in possession of government and all public authorities. This together with the government responsibility to proactively disclose information is what constitutes what is now internationally recognized as the right to information, also sometimes referred to as the right to know.²³

Information disclosure either proactively or on request strengthens transparency in the management and administration of public expenditure. The other aspect of transparency is open competition in procurement of public services. All eligible providers should be allowed to compete favorably for opportunities wherever they exist in the public sector. Competition enables public entities and the public to obtain the best goods and services at the most competitive price which in turn creates value for money. Transparency in procurement and disposal of public assets also helps reduce on corruption.

2.2 Audit and External Oversight

Oversight and parliamentary scrutiny of all fiscal decisions, public revenues and expenditure is necessary to guarantee that public funds are put to their intended use.²⁴ Oversight should be provided at two levels that is to say internal and external. Internally, every public entity that receives benefits or spends public funds must have internal checks and controls on all its expenditure. The responsible officers in public institutions such as ministries, departments and other units must prepare quarterly and annual financial reports. These must be internally audited and subjected to an external audit usually by the Auditor General or other independent central agency responsible for auditing reports of all public entities.

²⁰ *Id*

²¹ *Id*

²² See Björkman, M. and Svensson, J. (2009) 'Power to the People: Evidence from a Randomized Field Experiment on Community-based Monitoring in Uganda', *Quarterly Journal of Economics* 124 (2): 735-69.

²³ See Article 19, International Covenant on Civil Political Rights, UN Doc. A/6316 (1966), 999 U.N.T.S. 171. See also Article 9 of African Charter on Human and Peoples Rights, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986. See also Model law on Access to Information for Africa, 2012. Available on <http://www.achpr.org/instruments/access-information/> accessed 30th August 2014.

²⁴ See PEFA, Public Financial Management Performance Measurement Framework, Washington DC, 2001. See also Note 14 Supra.

Audited reports should be submitted to a select committee of Parliament for scrutiny before they are laid before Parliament for appropriate action. The select committee should have powers to inquire into all aspects of the report and to summon responsible officials for explanations of any unclear matters. In the event that the explanations provided are found wanting, the matters should be referred for further investigation. In addition to this, estimates of government revenue and expenditure should be presented before Parliament for debate before commencement of every financial year. These checks help in plugging any gaps that may exist in the allocation and expenditure of public funds.

Externally, there should also be an opportunity for citizens and other stake holders such as the media and civil society to provide oversight. This can only be made possible where there is free flow of information and where laws that promote whistle blowing and guarantee critical rights and freedoms such as the freedom of speech exist.

2.3 Sanctions and Anti-corruption Framework

Accountability is composed of two essential components that is; answerability and enforceability.²⁵ Enforceability is only possible where sanctions exist. Officers who fail to adhere to accountability guidelines, rules and laws must be dealt with in accordance with the law.²⁶ This promotes compliance and reduces on corruption especially in public institutions. Corruption deprives critical sectors of funds required for effective service delivery, as the few resources available are diverted into the hands of a few. Strong sanctions help in deterrence of corruption and the use of public offices for private gain.

In addition to sanctions, anti-corruption laws should also provide for asset recoveries so that in the event that an official is found to be corrupt, his/her properties are disposed of to refund the stolen monies. The law by itself is not sufficient and should be backed by independent and efficient institutions responsible for investigation and prosecution of those found to be corrupt. Over and above, there must be the political will to decisively tackle corruption.

A robust anti-corruption framework is critical for public expenditure accountability more so in East Africa where cases of grand and petty corruption are rampant. According to Transparency International's Corruption Perceptions Index 2013, with the exception of Rwanda, all other EAC countries ranked above 100.²⁷ Out of 177 countries assessed, Rwanda ranked 49th,

25 See Gaventa J & McGhee, R (2013), The Impact of Transparency & Accountability Initiatives, Development Policy Review, 31.

26 *Id.*

27 See Transparency International Corruption Perceptions Index 2013. Available on <http://cpi.transparency.org/cpi2013/results/> accessed 20th July 2014. In the same report, Tanzania ranked

Tanzania 111th, Kenya 136th and Uganda 140th.²⁸ This is a demonstration of the dire situation that most EAC countries are in.

3. Country Laws and Institutions

This section of the study looks at the legal and institutional framework on public expenditure accountability in the four countries of Kenya, Rwanda, Uganda and Tanzania. For each of these countries, the study looks at the extent to which the laws and institutions establish rules and procedures for accountability and reflect key pillars/tenets of public expenditure accountability outlined in Section II of the study.

A. Kenya

Public expenditure accountability in Kenya is dealt with under the Constitution and a number of finance, procurement and anti-corruption related laws. The laws establishes both institutions and systems for accountability.

i) Public Expenditure Accountability under the Constitution

Kenya adopted a new Constitution in 2010 following a comprehensive constitutional review process. Chapter 12 of the new Constitution is dedicated to the management and administration of public finances. Under this part of the Constitution, all aspects of public finance in Kenya are to be guided by principles of openness, accountability and public participation among others.²⁹ Other principles highlighted include equity, fairness in taxation and equitable development. In addition, the Constitution requires all public monies to be used in a prudent and responsible way with clear financial management and reporting.³⁰

The Constitution also provides for a consolidated fund into which all monies raised and received on behalf of the national government should be paid unless otherwise authorized by law.³¹ Once these monies have been received in the consolidated fund, they may only be withdrawn in accordance with an Appropriation Act passed by parliament.³² Even then the Constitution requires that the withdrawal is done with the consent of the Budget Controller.³³

Public borrowing which equally impacts on public expenditure and accountability

111, Kenya ranked 136, and Uganda ranked 140 out of 175 Countries.

28 *Id.*

29 See Article 201

30 *Id.*

31 See Article 206 (1)

32 See Article 206 (2) (a)

33 See Article 206

is restricted. Article 211 is to the effect that Parliament may enact a law that prescribes the terms on which the government should borrow.³⁴ The law, when passed should also impose reporting requirements.³⁵ Additionally the Cabinet Secretary responsible for finance is required to present all information on loans, guarantees and all other information necessary in ascertaining the level of indebtedness.³⁶ It must also be shown how the proceeds from the loan were utilized or are intended to be utilized.³⁷

The cabinet secretary responsible for finance is also required two months before the end of each financial year to submit estimates of the next financial year's government revenue and expenditure to the national assembly.³⁸ Once submitted a select committee and later the national assembly considers the estimates and if satisfied the assembly enacts an Appropriation Bill authorizing for those funds to be charged on the consolidated fund.³⁹ In the event that the Appropriation Bill is not assented to in time or the appropriated monies are insufficient or a financial need not anticipated in appropriation arises, parliamentary approval must be obtained before any expenditure is made.⁴⁰

Lastly, the Constitution introduces two important offices/institutions critical for accountability in public expenditure. The first is the office of the Controller of the Budget established under Article 288 (1). The main function of the Controller is to oversee budget implementation and to authorize withdrawals from public funds.⁴¹ Related to this function is the duty to submit a budget implementation report to Parliament every four months.

The Auditor General's (AG) office is established under Article 229 of the Constitution. The Auditor General like the Controller of the budget, is appointed for a non-renewable term of eight years.⁴² This is key in strengthening independence of the person appointed as he/she doesn't expect any favors from the appointing authority. The main AG's responsibility is to audit and report on all accounts held by and or operated by government, courts, commissions, national assembly and political parties funded by public funds.⁴³ The AG is also required to report on the status of public debt and any other entity that he/she may by legislation be required to audit.⁴⁴ It is in his discretion to decide on whether to audit and report on the accounts of any other entity that

34 See Article 211 (1) (a)

35 See Article 211 (1) (b)

36 See Article 211 (2)

37 *Id.*

38 See Article 221 (1)

39 *Id.*

40 See Articles 222 and 223

41 See Article 228 (4) and (5)

42 See Article 229 (3)

43 See Article 229 (4)

44 *id.*

is funded by public funds.⁴⁵

There is a general requirement for the AG's reports to confirm whether or not public money has been applied in an effective manner and once finalized these reports must be submitted to Parliament for debate and any other appropriate action.⁴⁶

ii) Mandate, Rules and Procedures

These are dealt with under the Public Finance Management Act of 2012. The law has two major objectives namely; to ensure that public finances are spent in accordance with the provisions of the Constitution and secondly to promote accountability in the management of public finances.⁴⁷ To this end, the Public Finance Management Act contains a number of provisions that promote accountability in the context of public expenditure. The law also establishes a number of institutions responsible for public expenditure accountability. In some cases the law bestows these functions on already existing bodies such as the National Assembly.

One major institution established under the law is the National Treasury.⁴⁸ The key function of the National Treasury is to promote transparency, effective management and accountability with regard to public finances at county and national levels.⁴⁹ The National Treasury is expected to fulfill this function in a number of ways, including the formulation of policies for financial management, accounting and reporting.

It is also the role of the National Treasury to prepare and submit a budget review and outlook paper to Cabinet for approval.⁵⁰ Once the review and outlook paper has been approved, it should be presented to the budget committee and laid before each house of Parliament for debate.⁵¹ There is a further requirement to have the budget review and outlook paper publicized within fifteen days after it has been presented to Parliament.⁵² In addition to reporting on the monies obtained from the consolidated fund, the National Treasury is required to prepare and submit annual financial statements to the Auditor General in respect to monies spent from the contingency fund.⁵³

At the end of each financial year, the National Treasury is required to prepare

45 See Article 229 (5)

46 See Article 229 (6) and (7)

47 See Section 3, Public Finance Management Act 2012. See also Long Title

48 See Sections 11 and 12

49 *Id.*

50 See Section 26.

51 See Section 26 (3) (a)

52 See Section 26 (3) (c)

53 See Section 23

an annual consolidated financial statement.⁵⁴ Most, if not all the information included in the annual statement is to be obtained from quarterly reports prepared by accounting officers in accordance with Section 83 of the Act. The report should also contain information on individual performance of the entity.⁵⁵ Performance is assessed in both financial and non-financial terms.⁵⁶

The work of the National Treasury is complimented by that of accounting officers whose major function is the proper management of finances in the entities for which they are responsible.⁵⁷ The accounting officer should ensure that all resources under their responsibility are used in a lawful and authorized manner but more importantly in a manner that is effective, efficient, economical and transparent.⁵⁸ For this, the accounting officer should report all incidences of fraud and loss to the appropriate authorities including the National Assembly. They are also responsible for preparation of annual financial statements.⁵⁹

Under Section 73, every government entity is required to audit its accounts in accordance with guidelines issued by the Accounting Standards Board. The Board is established under Section 192 to, among others; develop generally accepted standards for the development and management of accounting and financial systems.

For enforcement purposes, the law imposes sanctions on errant public officials who fail to comply with its provisions. Under Section 196, a public official is expected to exercise his/her powers in regard to expenditure and revenue mobilization in accordance with the Constitution and other applicable laws. Any official who acts contrary to the law faces a maximum of two years imprisonment or a fine not exceeding one million shillings, or both.⁶⁰

From the discussion above, it is observable that the Public Finance Act 2012 promotes public expenditure accountability in a number of ways. The law sets a number of rules and standards that must be complied with in expenditure of public funds and non-compliance with these standards is a punishable offence under the law. Importantly, the Public Finance Act sets up a number of institutions such as the National Treasury, County Treasurer, Budget Controller and that of the Auditor General. These monitor compliance with the rules and standards set by the law and the Constitution. The National Assembly is also empowered to exercise oversight over public expenditure and to take

54 See Section 80

55 See Section 83

56 *Id.*

57 See Section 67

58 See Section 68 (1)

59 See Section 81

60 See Section 196

appropriate action where the conduct of an individual or public entity is found wanting.

iii) Access to Information and Transparency

Although Kenya does not have a specific access to information law, Kenyan citizens have a right to access information held by the state under the Constitution.⁶¹ The right also extends to information held by another person if it is required for exercise or protection of any right or fundamental freedom.⁶² Under clause 2, the state is required to publish and publicize information affecting the nation.⁶³

Fiscal information is among the categories of information that may be requested for from the state under Article 35. If provided, this information can be used to hold those responsible for loss of public funds accountable. The availability of Information also empowers citizens to meaningfully participate in fiscal processes such as the budget process. These are key in setting rules and standards on the basis of which those who carry financial responsibilities may be held accountable.

iv) Sanctions and Anti-Corruption Mechanisms

Chapter Six of the Constitution of Kenya is dedicated to the preservation of integrity in leadership. Under this chapter, leadership and integrity is to be guided by a number of principles that include; selection on basis of personal integrity, objectivity and impartiality, honesty, discipline and accountability to the public.⁶⁴ To enforce compliance with the values of integrity and leadership enshrined in the Constitution, Parliament by legislation is directed to establish an independent ethics and leadership commission.⁶⁵

The law establishing the Commission was enacted within one year of coming into force of the 2010 Constitution.⁶⁶ The law provides for functions and powers of the Commission and put in place procedures for appointment of officials of the commission including the chairperson.⁶⁷ In the main, the commission is vested with the responsibility to develop and promote standards for integrity and anti-corruption and to formulate a code of ethics.⁶⁸ The law also grants the Commission powers to investigate and recommend to the DPP prosecution of

61 See Article 35 (1) (a)

62 See Article 35 (1) (b)

63 See Article 35 (3)

64 See Article 73 (2)

65 See Article 79

66 See the Ethics and Anti-Corruption Commission Act, 2011.

67 See Long Title, Ethics and Anti-Corruption Commission Act, 2011.

68 See Section 11 (1) (a)

acts of corruption and breaches of the code.⁶⁹ In addition the Commission can initiate proceedings for the recovery and protection of public property or for the confiscation of proceeds of corruption or for payment of compensation.⁷⁰

As per its mandate, the commission can investigate cases of impropriety in public expenditure and recommend appropriate action for officials responsible for such acts. This promotes accountability in the expenditure of public funds.

The other major anti-corruption law that promotes accountability is the Anti-Corruption and Economic Crimes Act.⁷¹ This law defines corruption to include, among others, fraud, embezzlement, abuse of office, breach of trust and any other offence involving dishonesty.⁷² These offences are tried by special magistrates and upon conviction, the law prescribes a number of penalties which range from fines to imprisonment for not more than ten years.⁷³ Other actions that may be taken against the corrupt include forfeiture of unexplained assets and an order to compensate the affected party.⁷⁴

Mainstream anti-corruption laws are complemented by a host of other laws such as the Witness Protection Act.⁷⁵ Under this law, witnesses of corruption and its related offences are protected.⁷⁶ This encourages whistle blowing and increases chances of successful conviction.

Anti-corruption laws greatly improve on accountability in public expenditure. In addition to providing a broad framework within which to hold the corrupt accountable, the laws also help deter corruption and its related tendencies.

B. Rwanda

Rwanda quickly recovered from the tragic events of 1994 to establish a relatively strong public finance management and accountability system that is now recognized among the best in sub-Saharan Africa. The legal and institutional framework has been vital in delivering accountability in many respects.

i) Public Expenditure Accountability under the Constitution

The Constitution deals with a number of key aspects of broader public finance management and accountability. Under Article 79, the Chamber of

69 See Section 11 (1) (d)

70 See Section 11 (1) (k)

71 Anti-Corruption and Economic Crimes Act, 2003.

72 *Id.* See Section 2 (1)

73 *Id.* See Section

74 See Sections 55 and 51

75 See Witness Protection Act, 2006.

76 *Id.* See Long Title

Deputies is required to adopt a Finance Bill every year. The Bill is presented by Cabinet and should be accompanied by the current financial year's budget implementation report certified by the Auditor General of State Finances.⁷⁷ The Chamber examines the next financial year's budget on the basis of the budget implementation report and ultimately passes the Finance law which determines the revenues and expenditures of the state for the next financial year.⁷⁸ If at the time of commencement of the financial year the Finance Bill is not voted, the Constitution authorizes the Prime Minister to order a provisional monthly expenditure equivalent to one twelfth of the preceding budget.⁷⁹

Under these provisions, Parliament is given the power to analyze and scrutinize budgetary estimates as well as revenues and expenditures accrued in the implementation of the budget. This is a critical step in promoting public expenditure accountability.

In addition to Parliamentary oversight, the Constitution also establishes the institution of the Auditor General of State Finances.⁸⁰ The chief function of the Auditor General is to conduct an objective audit to establish whether public revenues and expenditures were made in accordance with the law and in conformity with the prescribed justifications.⁸¹

In furtherance of this obligation, the Auditor General is required to prepare and submit an annual report on implementation of the state budget of the previous year.⁸² The report must indicate the manner in which the budget was utilized and point out any misappropriations or general squandering of public funds.⁸³ In the event of any irregularities, the Auditor General should make appropriate recommendations which must be implemented by institutions and public officials to whom they are directed.⁸⁴

ii) Mandate, Rules and Procedures

These are found in the Organic Law on State Finances and Property.⁸⁵ Generally, the law establishes principles and modalities for sound management of state finances and properties.⁸⁶ In terms of scope, the law relates to public financial management of the central government, public institutions, local government

77 See Article 79, Constitution of Rwanda

78 *Id*

79 *Id.* See Article 80

80 *Id.* See Article 183

81 *Id.* See Article 183 (2)

82 See Article 184.

83 *Id.*

84 *Id.*

85 See Organic Law No. 12/2013 on State Finances and Property

86 See Article 1

and parastatals.⁸⁷ Under the same law, transparency and accountability are recognized among principles of sound financial management.⁸⁸

In terms of good financial management, all forms of revenue whether they constitute loans and/or grants and all expenditures must be included in the consolidated fund and spent in accordance with the budget.⁸⁹ Extra-budget expenditures from whatever source are prohibited and all withdrawals from the consolidated fund are prohibited and may only be effected with the written permission of the relevant Minister, or in the case of a decentralized entity, the chairperson of the executive committee.⁹⁰

In addition to the above, the law requires budgetary estimates to be subjected to scrutiny of the Chamber of Deputies and in the case of a decentralized entity to the council.⁹¹ To facilitate this role, the Chamber and Council have the power to require cabinet and chief budget managers to appear before them and explain further on any issue as regards policies, programs and budget utilization.⁹²

At the end of each budget cycle, public entities are required to prepare and submit quarterly budget execution reports to the Minister.⁹³ In addition to this, public entities are required to prepare and submit a number of other documents that include, among others, the monthly financial statements,⁹⁴ consolidated financial statements,⁹⁵ and annual activity reports.⁹⁶ It is on the basis of these reports that the Minister can prepare and submit a consolidated budget execution report to cabinet the Chamber of Deputies for debate and scrutiny as required by law.⁹⁷

Overall, it is the responsibility of the Accountant General to monitor accounting activities and to promote public entity compliance with established accounting and financial reporting.⁹⁸

The work of the accountant general is complemented by the office of the Auditor General established under the Constitution. The Auditor General's main mandate is to undertake an audit of all public entities and to prepare and present to parliament an annual report constituting the balance sheet of

87 See Article 2

88 See Article 4

89 See Article 7

90 See Article 10

91 See Article 11

92 *Id.*

93 See Article 65

94 See Article 66

95 See Article 67

96 See Article 68

97 *Id.*

98 See Article 63

the state budget of the previous fiscal year.⁹⁹ The report should also indicate the manner in which the budget was utilized and should in particular highlight all the unnecessary expenses and cases of misappropriation.¹⁰⁰

The effect of these provisions as contained in the law is to set up a framework under which officials entrusted with this responsibility of managing public funds may be held accountable. Sanctions are imposed on public officials who fail to respect the standards set under the framework. This has a far reaching effect on improving accountability in public expenditure.

iii) Sanctions and Anti-Corruption

Corruption is dealt with under the Constitution and the Law Determining the Mission, Powers, Organization and Functioning of the Office of the Ombudsman.¹⁰¹ The office of the Ombudsman which is charged with the duty of preventing corruption is established under Article 182 of the Constitution. Law no.76 of 2013 expounds on this provision by among other things determining the mission, powers and functions of the Ombudsman.¹⁰²

Under Article 4 of the law, the chief responsibility of the ombudsman is to prevent and fight corruption in both the public and private entities. The ombudsman is to achieve this objective using a variety of approaches such as creating public awareness on corruption and its dangers and; following up and exposing the corrupt.¹⁰³

The Ombudsman is also charged with the duties of receiving complaints against public servants and receiving asset declarations of specified persons and political organizations that receive state grants.¹⁰⁴ This helps check on accumulation of wealth through corrupt means.

In order to perform its functions effectively, the office of the Ombudsman is granted investigative powers.¹⁰⁵ An officer of the ombudsman can obtain any documents, testimonies and explanations as are necessary for its investigations.¹⁰⁶ It does not matter whether the sought information is confidential or not.¹⁰⁷

The Ombudsman, Deputy Ombudsman are also clothed with prosecutorial

99 See Article 69

100 *Id.*

101 See Law No. 76/2013 Determining the Mission, Powers, Organization and Functioning of the Office of the Ombudsman

102 See Article 2

103 See Article

104 See Article 4

105 Article 12

106 Article 13

107 *Id.*

powers.¹⁰⁸ Prosecutorial powers may also be exercised by employees of the ombudsman subject to an order issued by the Prime Minister.¹⁰⁹ In addition to prosecution of suspects, the Ombudsman may also initiate a legal action for recovery of assets that are connected to the commission of corruption or its related offences.¹¹⁰ Under Article 16, Ombudsman is vested with powers to execute judgments, orders and writs with an enforceable title.¹¹¹

The law establishing the office of the ombudsman is complimented by a number of other laws such as the Whistle Blowers Protection Law¹¹² and the Leadership Code Act.¹¹³ The former protects persons who disclose information relating to acts of corruption while the latter establishes a code of conduct for all public officials. Failure to abide by the code has a number of consequences.

iv) Access to Information and Transparency

Transparency thrives on freedoms of information and expression. In the case of Rwanda, these are guaranteed under Article 34 of the Constitution. Rwanda is also one of the few African countries that have most recently passed an Access to Information Law.¹¹⁴ The main objective of the law is to enable journalists and citizens to access information in possession of public organs and in some instances that in the hands of private entities.¹¹⁵ The law also requires those bodies to which it applies to proactively disclose vital information to the public.¹¹⁶

On the face of it, it is possible for all citizens to access information including that which relates to government/public expenditure.¹¹⁷ This notwithstanding there are fears that the Ministerial Order passed after the law to guide the implementation has far too many restrictions and it remains to be seen on how this will impact on public expenditure accountability in the future.

108 See Article 13

109 *Id.*

110 See Article 14

111 See Article 16

112 See Law No. 35/2012 of 19/09/2012 Relating to the Protection of Whistle Blowers

113 See Organic Law No. 61/2008 of 10/09/2008 on the Leadership Code of Conduct as amended by Organic Law No. 11/2013

114 See Law No 04/2013 Relating to Access to Information

115 *Id.* See Article 1

116 *Id.* See Article 7

117 *Id.* See Article 3

C. Tanzania

Tanzania is currently undergoing a comprehensive constitutional review process and this is anticipated to influence public finance management and accountability at different levels. This analysis, however, looks at the extent to which existing laws and institutions incorporate accountability in the context of public expenditure.

i) Public Expenditure Accountability under the Constitution

The Constitution contains a number of provisions on public finance management and public expenditure accountability. Under Article 135, all revenues derived by the state are required to be paid into the consolidated fund unless such revenue is excluded from being paid into the fund by law. Once in the consolidated fund, no expenditure is permitted unless such expenditure is authorized by the Constitution or approved by Parliament through passing the Appropriation Act.¹¹⁸ Even then, all expenditures from the consolidated fund require the approval of the Controller and the Auditor General.¹¹⁹

Parliament is also vested with powers to approve government revenue and expenditure estimates for every financial year.¹²⁰ The President must cause estimates of the next financial year to be presented to Parliament for debate and approval and if satisfied, Parliament passes an Appropriation Act authorizing government to draw funds from the consolidated fund in accordance with the approved estimates.¹²¹ The involvement of Parliament at this early stage enables it to exercise sufficient oversight over public monies and enhances accountability in the budgeting and spending of public funds.

In addition to these safeguards, the Constitution also establishes an important office of the Controller and Auditor General.¹²² The Controller and Auditor General is responsible for authorizing payment of funds out of the consolidated fund after ascertaining that all legal requirements have been met.¹²³ It is also the responsibility of the Controller and Auditor General to ensure that monies dispensed from the consolidated fund have been spent in accordance with the purpose for which they were released.¹²⁴ The Controller and Auditor General also exercises audit powers over all government accounts and those managed by government officials.¹²⁵

118 See Article 136

119 *Id.*

120 See Article 137

121 *Id.*

122 See Article 143

123 *Id.*

124 *Id.*

125 *Id.*

The findings of the Controller and Auditor General in this respect should be included in an annual audit report which should be submitted to the President for onward transmission to the General Assembly.¹²⁶ In the event that the President fails to submit these reports to the national assembly, the Controller and Auditor General are required to submit the report to the Speaker of the National Assembly.¹²⁷ Once before the Assembly, it evaluates the performance of the different departments and recommends the most appropriate action where it discovers incidents of financial mismanagement.

ii) Mandate, Rules and Procedures

The Public Finance Act operationalizes constitutional provisions on public finance management. The law aims to provide for the effective control, management and regulation of the collection and use of finances.¹²⁸ It also sets out to enhance parliamentary control and supervision of public funds and resources.¹²⁹

To achieve these objectives, the law vests a number of responsibilities in the Minister responsible for finance. It is the responsibility of the Minister to ensure that full and transparent accounts of current and projected revenues and expenditures are made to the National Assembly every year.¹³⁰ In addition to this, the Minister is required to provide a full account to the Assembly and to ensure that transparency systems are in place at all times.¹³¹ This gives the National Assembly full control over all resources and public monies in accordance with the law.¹³²

The Minister is assisted by the office of the Accountant General established under Section 7 of the Act.¹³³ The Accountant General compiles and manages all public accounts as well as the custody and safety of public money.¹³⁴ He/she is also expected to prepare and transmit a copy of annual accounts to the Minister, Controller and Auditor General of the Republic of Tanzania.¹³⁵ Below the Accountant General, the law appoints accounting officers for each expenditure vote.¹³⁶ Each of these accounting officers is responsible and accountable for all expenditures applied to their respective vote by Parliament and for all revenues received, held or disposed of by or on account of the

¹²⁶ *Id*

¹²⁷ *Id*

¹²⁸ Long Title, Public Finance Act 2001.

¹²⁹ *Id*.

¹³⁰ Section 2 (a)

¹³¹ See Section 2 (c)

¹³² *Id*.

¹³³ See Section 7 (1)

¹³⁴ See Section 7 (2)

¹³⁵ See Section 25

¹³⁶ See Section 8 (1)

department to which the vote provides.¹³⁷ All accounting officers report to the Accountant General who then prepares one comprehensive report.

Reports prepared by the Accountant General are subject to examination, inquiry and audit by the Controller and Auditor General under Section 31. The Controller and Auditor General is also vested with the responsibility to inquire into reports of all ministries and government departments, public authorities and any persons entrusted with the duty of collection and payment of public expenses.¹³⁸

Upon examination, the Controller and Auditor is required to prepare and submit a report of their findings to the President and the Minister.¹³⁹ In the event that during the course of inquiry a serious matter that requires the attention of the National Assembly is revealed, the Controller and Auditor General is required to prepare and submit a special report to the Assembly.¹⁴⁰ In all other cases, the Controller and Auditor General should submit all reports to the Minister who shall have them laid before the National Assembly within seven days of the sitting of the Assembly.¹⁴¹ In the event that the Minister does not have the reports laid, the Controller and Auditor General shall transmit a copy to the Speaker of the Assembly who shall have it laid before the National Assembly for debate and the most appropriate action.

The Controller and Auditor General is permitted to make appropriate recommendations to the Minister to reduce on unproductive expenditure and to avoid loss of public monies through fraud or corruption.¹⁴²

In sum, the Public Finance Act outlines clear rules and procedures that must be complied with in the expenditure of public funds. The law also vests the responsibility to ensure that these are complied with in the Minister of Finance, Accountant General and Controller and Auditor General and various accounting officers. These provisions promote accountability in public expenditure.

iii) Transparency and Access to Information

Tanzania just like Kenya is still in the process of developing an access to information specific law. For now citizens have to rely on the Constitution to obtain critical information including information on public expenditure accountability. Under Article 18 of the Constitution, every person has a right to seek and receive information.¹⁴³

¹³⁷ *Id.*

¹³⁸ See Section 26

¹³⁹ See Section 35

¹⁴⁰ See Section 35

¹⁴¹ See Section 36

¹⁴² See Section 34

¹⁴³ See Article 18 (a) Constitution of Tanzania

Citizens also have a right to be informed at all times of various important events of life and issues of importance to society.¹⁴⁴ While this provision forms a basis for the state to relay critical information to the public, in practice this is rarely the case. Budgetary information and that on public expenditure is withheld from ordinary citizens for the most part.¹⁴⁵

iv) Sanctions and Anti-Corruption

The Prevention and Combating of Corruption Act 2007 contains the major legal and institutional framework on the prevention of corruption in Tanzania.¹⁴⁶ The main objective of the Act is to enhance good governance and the eradication of corruption.¹⁴⁷

The law defines corruption and other related offences and provides for an appropriate penalty where one is convicted for any of the offences listed.¹⁴⁸ Punishment takes the form of imprisonment or imposition of a fine or both.¹⁴⁹ In addition, upon conviction an application may be made to the courts for forfeiture of proceeds of corruption.¹⁵⁰ Forfeiture proceedings are greatly aided by the powers vested in Bureau officers to require public officials under investigation to provide a full and proper account of all property that they possess including that possessed by their agents.¹⁵¹ On the whole, forfeiture of property helps in the recovery of lost public funds and ensures that the corrupt do not benefit from their wrongful acts.

In terms of the institutional framework, Section 5 of the law provides for the establishment of the Prevention and Combating of Corruption Bureau. The Bureau's main function is to, among others; facilitate public bodies to detect and prevent corruption, enlist public support in the fight against corruption and to investigate incidences of corruption at the direction of the DPP.¹⁵²

The other important piece of legislation is the Economic and Organized Crime Control Act of 1984. Under the Act, corruption and bribery are recognized as economic crimes that can be tried and punished by the economic crimes court.¹⁵³

Tanzania also has a law on public procurement whose main objective is to

144 *Id.* See Article 18 (d)

145 See ADE, Final Public Expenditure Financial Accountability Report for Mainland Tanzania, 2013.

146 See Section 4 (2)

147 See Section 4, Prevention and Combating of Corruption Act 2007.

148 *Id.* See Chapter III and in particular Sections 15, 16, 17, 18, 21, 27 and 28 among others.

149 *Id.*

150 *Id.*, See Section 40

151 See Section 26

152 *Id.* See Section 7 (d)

153 See 1st Schedule, Economic and Organized Crimes Act, 1984.

stump out corruption in public procurement processes.¹⁵⁴

D. Uganda

Aspects of public expenditure accountability are contained in the Constitution and a number of laws made thereunder. The country is, however, in the process of reforming its major laws on public financial management and this is expected to affect accountability in public expenditure. Some of the suggested reforms are considered briefly.

i) Public Expenditure Accountability under the Constitution

In terms of procedures for financial management, all revenues and monies received on behalf of government should be paid into the consolidated fund.¹⁵⁵ All withdrawals from the consolidated fund must be effected under the authority of either the Constitution or an Act of Parliament.¹⁵⁶ In addition all withdrawals must be approved by the Auditor General.¹⁵⁷

At the beginning of every financial year, the President is required to prepare revenue and expenditure estimates within fifteen days before commencement of every financial year.¹⁵⁸ Before these estimates are debated, they are reviewed by a special committee of Parliament which makes the appropriate recommendations.¹⁵⁹

The above safeguards and procedures must be strictly complied with in the management of public finances. Public officers who fail to comply are to be held accountable.

Aside from the oversight role played by Parliament, the Constitution also establishes the office of the Auditor General.¹⁶⁰ The key function of the Auditor General is to audit and report on all public accounts.¹⁶¹ A report containing all accounts audited is required to be submitted to Parliament annually.¹⁶² Upon submission Parliament is expected to debate, consider the report and take appropriate action within six months.¹⁶³

It should be noted that the Constitution contains a specific provision on accountability. Under Article 164, the Permanent Secretary or the accounting

154 See Public Procurement Act 2004.

155 See Article 153 (1), Constitution of the Republic of Uganda, 1995 (As Amended)

156 See Article 154 (1)

157 See Article 154 (3)

158 See Article 155 (1)

159 See Article 155 (5)

160 See Article 163 (1)

161 See Article 163 (3)

162 See Article 163 (4)

163 See Article 163 (5)

officer in charge of a Ministry or department are directly accountable to Parliament for all funds received and spent by that Ministry or department.¹⁶⁴

ii) Mandate, Rules and Procedures

Mandates, rules and procedures are contained in the Public Finance and Accountability Act. The law provides for the regulation of financial management of government and prescribes responsibilities for persons entrusted with government financial management.¹⁶⁵ To this end the law bestows the responsibility to supervise, control and manage public finances on the Minister of Finance.¹⁶⁶ As part of this responsibility the Minister is expected to enhance parliamentary control over public resources through creation of transparent systems that among other things promote full accountability to Parliament as regards the use of public resources.¹⁶⁷ This strengthens parliamentary oversight which is critical in achieving accountability in public expenditure.

The law also establishes the office of Accountant General which is responsible for management of government accounts and the custody and safety of public monies.¹⁶⁸ The Accountant General is also responsible for ensuring that every government ministry, department or agency sets up an appropriate system of account that ensures prompt and proper accountability for all monies received.¹⁶⁹

The Accountant General is assisted by accounting officers appointed under Section 7 of the Act.¹⁷⁰ Accounting officers exercise control and are personally accountable to Parliament for the regularity and propriety of all expenditures and for all resources received.¹⁷¹

In addition to creation of responsible offices, the law also provides for the audit and examination of accounts under Part IV. At the end of each financial year, the Accountant General is required to prepare and submit annual accounts to the Auditor General and the Minister of Finance.¹⁷² Accounting Officers are also required to prepare and submit a record of annual accounts to the Minister of Finance and Auditor General.¹⁷³ The submitted accounts must also include classified expenditure.¹⁷⁴

164 See Article 164

165 See Long Title, Public Finance and Accountability Act

166 *Id.* See Section 3

167 *Id.*

168 See Section 6 (2)

169 See Section 6 (3) (b)

170 See Sections 7 (1) and Section 6 (2)

171 See Section 7 (2)

172 See Section 30 (1) (b)

173 See Section 30 (1) (b)

174 See Section 30 (2)

The law enjoins the Auditor General to examine and audit all reports submitted by the Accountant General and accounting officials.¹⁷⁵ Once this process has been finalized, he/she is required to prepare and submit a report to Parliament.¹⁷⁶ The report must state the extent to which all expenditures have been properly and efficiently utilized. This is a very important check and greatly harnesses accountability.

This said, there are ongoing efforts to comprehensively reform the law. The proposed Public Finance Bill 2012 contains a number of proposals with strong implications for public expenditure accountability.¹⁷⁷ The Bill makes provision for management of expenditure commitments, roles of accounting officers, accounting standards, audit committees, annual reporting and accountability for classified expenditure.¹⁷⁸ It also provides for the management of petroleum revenues which are expected to increase immediately commercial production commences.¹⁷⁹ These aspects are key in enhancing accountability.

iii) Transparency and Access to Information

The Ugandan Constitution guarantees the right of every citizen to access information in possession of government and its agencies except where the disclosure of information is prejudicial to state security or interferes with the right to privacy of another person.¹⁸⁰

Uganda is also one of the first four countries in Africa to enact an Access to Information specific law.¹⁸¹ The law equally protects the right of citizens to timely and accurate information.¹⁸² The law also requires public entities to proactively disclose certain information to the public.¹⁸³

It is therefore possible to access fiscal information using provisions of the Access to Information Act. At the same time fiscal information is also of the kind that should be proactively availed. In this respect, Uganda has on several occasions been ranked high for fiscal transparency in the region.

The free flow of fiscal information promotes transparency and accountability but the dilemma remains in the fact that in the Ugandan situation, this is not necessarily the case. That said, timely access to information is critical to achieving accountability and citizens should utilize the current legal framework

175 See Sections 32 and 33

176 *Id.*

177 See Public Finance Bill, 2012.

178 See Long Title, Public Finance Bill 2012.

179 *Id.*

180 See Article 41

181 See Access to Information Act, 2005.

182 *Id.* See Section 5

183 *Id.* See Section 7 and 8.

to obtain fiscal information that they can use to hold those responsible accountable.

iv) Sanctions and Anti- Corruption

Uganda has a strong anti-corruption legal and institutional regime whose basis is firmly built in the Constitution. Under Chapter 18 of the Constitution, the office of the Inspectorate of Government is established to, among others, eliminate corruption, abuse of authority and of office.¹⁸⁴ The Constitution also mandates Parliament to pass a law containing a code of conduct.¹⁸⁵ The Law which was passed in 2002 requires leaders in specified offices to submit a written declaration of their wealth to the Inspector General.¹⁸⁶ Failure to comply with this provision amounts to a breach of the code and attracts a penalty.¹⁸⁷

In 2005 the Constitution was amended to introduce a Leadership Code Tribunal whose major role is to enforce the Leadership Code Act.¹⁸⁸

The other legislation that deals with corruption is the Anti-Corruption Act of 2009.¹⁸⁹ The law reinforces the Constitution in many ways but most importantly defines the offence of corruption and other related offences.¹⁹⁰ It also vests the power to investigate and prosecute corruption cases in both the Inspectorate of Government and the Director of Public Prosecutions (DPP).¹⁹¹

The Anti-Corruption Act also provides for confiscation and seizure of assets of the corrupt.¹⁹² Where a person is convicted of an offence related to corruption, the court has powers to order for confiscation of any property that is subject or is directly or indirectly derived from an act of corruption.¹⁹³ This provision is laudable to the extent that it enables government recover some of the public funds lost through corruption. It is however limited to the extent that the prosecution must demonstrate that the property was derived directly or indirectly from an act of corruption. Amidst this background, one of the Members of Parliament recently introduced an amendment bill that would allow confiscation of any property in possession of the corrupt and his/her agents upon conviction without necessarily demonstrating that such property

184 See Articles 223 and 225 of the Constitution.

185 See Article 233

186 See Section 4, Leadership Code Act 2002.

187 *Ibid*, See Section 6

188 See Article of the Constitution (as amended)

189 See Anti- Corruption Act 2009

190 See Part II of the Act

191 See Section 36

192 See Section 63

193 *Id*.

was derived from an act of corruption.¹⁹⁴

Other relevant legislations include the Whistle Blowers Protection Act,¹⁹⁵ Public Procurement and Disposal of Public Assets Act¹⁹⁶ and the recently enacted Anti-Money Laundering Act.¹⁹⁷ These laws encourage disclosure of corrupt behaviors and promote fair competition in public procurement and disposal of public assets an area often riddled with corruption.

Uganda therefore has a vibrant legal and institutional framework on corruption. Albeit in practice these laws are rarely enforced and when enforced, it is done selectively. The result is that public funds are continuously squandered without accountability. According to the World Bank, the country loses an estimated USD 300m to corruption every year.¹⁹⁸

4. Comparative Analysis

All countries considered that is; Kenya, Rwanda, Uganda and Tanzania have fairly comprehensive rules, standards and procedures for public expenditure accountability in place. In all the four countries, public revenues must be deposited into the consolidated fund from where they can only be withdrawn and spent with the authority of Parliament. It is also a Constitutional requirement in all the four countries for governments to bring before Parliament projected revenues and expenditures before commencement of a new financial year. Similarly, at the end of every financial year, audited financial reports of all government departments should be presented before Parliament for scrutiny. In Kenya and Rwanda where Parliament is bicameral, consideration of budget estimates and financial reports is undertaken by the lower house i.e. National Assembly. Parliamentary oversight in the budgeting and reporting process greatly improves on accountability in public expenditure.

In addition to Parliamentary procedures, the four Constitutions also establish institutions critical for public expenditure accountability. One important institution that exists in the four countries is that of the Auditor General. In Tanzania the Auditor General also doubles as the Controller of the budget. The Auditor General's main responsibility across the countries role is to audit

194 See Mary Karugaba & Moses Walubiri, 'Corruption: Tough Bill Tabled in Parliament' *New Vision*, August 28, 2013. See also David Lumu & Mary Karugaba, 'NRM Endorses New Anti-Corruption Bill', *New Vision*, February 13, 2013 Available on www.newvision.co.ug/article/fullstory.aspx?story_id... Accessed 15th August 2014.

195 See Whistle Blowers Protection Act 2010.

196 See Public Procurement and Disposal of Public Assets Act 2003 (As Amended)

197 See the Anti- Money Laundering Act 2010.

198 See Human Rights Watch, *Letting the Big Fish Swim: Failures to Prosecute High Level Corruption in Uganda*, October 2013 Available on www.hrw.org/reports/2013/.../letting-big-fish-swim... Accessed 4th September 2014

all government accounts and report to Parliament with recommendations for action where there is non-compliance with well-established accounting and reporting procedures.

The other institution that is common in all four countries is the ombudsman. In Kenya this office is known as the Ethics and Anti-Corruption Commission, in Rwanda it is the office of the Ombudsman, in Tanzania it is the Anti-Corruption Bureau and in Uganda it is the Inspectorate of Government. The mandate of the ombudsman varies across the four countries. In Kenya and Tanzania the ombudsman's role is restricted to investigation of corruption cases while prosecution of these offences is solely vested with the DPP. On the other hand, in Uganda and Rwanda, the ombudsman is empowered to investigate and prosecute corruption and other related offences. It should however be noted that in the case of Uganda, the IG and the DPP have concurrent powers to investigate and prosecute corruption and related cases.¹⁹⁹ This has been criticized on the basis that it creates an unnecessary duplication of powers that further burdens already scarce resources.²⁰⁰

It should also be noted that for purposes of fast tracking prosecution of corruption and related offences, Uganda established a special anti-corruption court in 2008.²⁰¹ The court has been successful in trying a significant number of corruption cases but faces the challenge of interference with its work by the executive especially where high flying politically connected individuals are involved.²⁰² This represents an absence of political will to prosecute corruption and is a clear demonstration that however sound the laws and institutions may be, they cannot achieve much without commitment at the highest political level.

With regard to access to information and transparency, the national Constitutions of Kenya, Rwanda and Uganda all guarantee the right of citizens to information especially that held by government. In Tanzania, the right to information is protected as a right to seek and receive information in exercise of the right to freedom of expression under the Constitution. In the rest of the countries, national constitutions protect the right to access information in clear and specific terms. Beyond Constitutional provision, Rwanda and Uganda have taken steps to enact freedom of information laws that expand on the scope of the right to information although in some instances the same laws greatly restrict citizen unhampered right to access in possession of government. Citizens in all the four countries can therefore access budgetary

199 See Sections 33 and 49, Anti-Corruption Act 2009.

200 Human Rights Watch, "Letting the Big Fish Swim"- Failures to Prosecute High Level Corruption in Uganda, October 2013.

201 See Information on Anti-Corruption Court, Available on http://www.judicature.go.ug/data/menu/19/Anti-Corruption_Division.html

202 *Supra*, Note 198.

and other fiscal information using the Constitution and access to information law where it exists.

In addition to the right of citizens to seek and receive information, in some instances governments are by law required to proactively disclose fiscal information in their possession. The Fiscal Management Act of Kenya for instance requires the Minister of finance to publish, on a monthly basis in the Gazette, actual revenues collected as well as actual exchequer releases to ministries and government departments. This has helped to open up the budget process to the public. A similar obligation exists under the proposed Uganda Public Finance Bill 2012. In some countries like Rwanda, finance laws require government to widely publish a simplified version of the budget to enable citizens follow budget processes and monitor expenditure. This is also true in the case of Tanzania.

Table 1: Summary of Legal and Institutional Framework on Public Expenditure Accountability in four East African countries

Country	Uganda	Kenya	Tanzania	Rwanda
Constitution (Accountability Provisions)	<p>Constitution of the Republic of Uganda, 1995 (As amended)</p> <p>Article 153- All state revenue to be paid into consolidated fund and spent only with the authority of Parliament.</p> <p>Article 155- budgetary estimates to be prepared and submitted to parliament for approval within fifteen days before commencement of every financial year.</p> <p>Article 163 – Auditor General to audit all public accounts and submit a report of his findings to Parliament every year.</p> <p>Article 164- Permanent Secretary and accounting officer in charge of the Ministry or department directly accountable to Parliament for all funds received and spent.</p>	<p>Constitution of the Republic of Kenya, 2010</p> <p>Article 201 – All aspects of public finance to be guided by openness, accountability and public participation.</p> <p>Article 206 (1)- All public revenues to be deposited in consolidated fund and only withdrawn with approval of the National Assembly & consent of budget controller.</p> <p>Article 221 (1) - Budgetary estimates to be submitted to the National Assembly for approval.</p> <p>Article 288 (1) - Office of the Controller of the Budget whose function is to oversee budget implementation & authorise all withdrawals.</p> <p>Article 229 (3) - Office of Auditor General to audit and report on accounts of all public entities and private entities funded by public funds.</p>	<p>Constitution of the Republic of Tanzania 1977</p> <p>Article 135- All revenues derived by the state to be paid into the consolidated fund.</p> <p>Article 136- All expenditures out of consolidated fund to be approved by Parliament, the Controller & Auditor General.</p> <p>Article 137- Parliament to approve all budgetary estimates.</p> <p>Article 143- Controller and Auditor General to ensure all monies have been spent in accordance with purpose for which they were released.</p> <p>Article 143- Controller & Auditor General to audit all government accounts & prepare a report for the National Assembly.</p>	<p>Constitution of the Republic of Rwanda, 2003.</p> <p>Art. 79- Cabinet required to present a Finance Bill containing budget estimates to the Chamber of Deputies for approval. Bill to be accompanied by the current financial year's certified budget implementation report.</p> <p>Article 183- Office of the Auditor General of State Finances established to conduct audits & report on whether public expenditures & revenues were made in accordance with the law.</p> <p>Article 184- Auditor General to prepare & submit an annual on budget implementation & to report all irregularities.</p>

<p>Mandate, Rules & Procedure</p>	<p>Public Finance & Accountability Act</p> <p>Section 3- Minister of Finance vested with the responsibility to supervise, control & manage public finances and to promote full accountability to parliament as regards the use of public resources.</p> <p>Section 6- Accountant General to manage government accounts and the custody of public monies.</p>	<p>Public Finance Management Act 2012</p> <p>S.11 & 12- National Treasury's function is to promote transparency, effective management & accountability for public finances at country & national levels</p> <p>S. 26- National treasury also to prepare and submit a budget review & outlook paper for Cabinet approval. This same paper should be publicised and presented to the budget committee and Parliament for debate.</p> <p>S.80- National Treasury required to prepare an annual consolidated statement together with a performance report in respect of each entity.</p> <p>S. 73- All government entities required to audit their accounts in accordance with guidelines of the Accounting Standards Board.</p>	<p>Public Finance Act 2001</p> <p>Section 2- Minister to provide a full and transparent account of current & projected revenues and expenditure to National Assembly.</p> <p>Section 7- Accountant General to compile and manage all public accounts and custody of public money.</p> <p>Section 25- Accountant General to prepare and submit a copy of annual accounts to the Minister, Controller & Auditor General</p>	<p>Organic Law on State Finances & Property No. 12/2013.</p> <p>Article 4- Transparency & Accountability included among principles of sound financial management.</p> <p>Article 7- All State Revenues to be deposited into consolidated fund and only spent in accordance with the approved budget.</p> <p>Article 11- All budgetary estimates to be scrutinised by the Chamber of Deputies and in case of decentralised entities these are scrutinised by the Council</p> <p>Article 65- Public entities to prepare & submit quarterly budget execution reports to the Minister. Other documents to be submitted include; monthly financial statements, consolidated financial statements & monthly financial statements (Articles 66, 67 & 68)</p> <p>Article 63- Accountant General to monitor accounting activities and promote public entity compliance with accounting & financial standards.</p> <p>Article 69- Auditor General to audit all public entities, prepare and present to parliament an annual report for the financial year.</p>
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<p>Access to information & Transparency</p>	<p>Constitution & Access to Information Act 2005.</p> <p>Article 41- Every citizen has the right to access information in possession of government & its agencies except where disclosure of information is prejudicial to state security or interferes with the right to privacy of another person.</p> <p>Section 5 Access to Information Act- every citizen has a right to access information in possession of government and its agencies.</p>	<p>Constitution of the Republic of Kenya 2010 & Public Finance Management Act 2012.</p> <p>Article 35 (1) - Every citizen has the right of access to information held by the State. Article 35(3)- The State also has a duty to publish & publicise any important information affecting the nation.</p> <p>S.39(6) The National Treasury to take all reasonably practicable steps to ensure that the approved and budget estimates are prepared and publicised in a form that is clear and easily understood by, and readily accessible to, members of the public.</p> <p>S.39.(8). The Controller of Budget shall ensure that members of the public are given information on budget implementation both at the national and county government</p>	<p>Constitution</p> <p>Article 18- every person has a right to seek and receive information.</p>	<p>Constitution & Law Relating to Access to Information No. 04/2013.</p> <p>Article 34 of the Constitution- right to freedom of information guaranteed.</p> <p>Article 1 of Law Relating to Access to Information- journalists and citizens have a right to access information in possession of public organs</p>
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<p>Sanctions and Anti- Corruption</p>	<p>Constitution, Anti-Corruption Act 2009</p> <p>Article 223 & 225- Inspectorate of Government established to eliminate corruption and abuse of authority.</p> <p>Article 223- Parliament to pass a Leadership Code of Conduct that among other things requires leaders in specified offices to declare their wealth to the Inspector General of Government.</p> <p>Part II of Anti- Corruption Act defines corruption, and other related offences. It also provides for penalties in respect of the offences.</p> <p>Other relevant legislations against Corruption include the Whistle Blowers Protection Act, Public Procurement and Disposal of Public Assets Act and the Anti-Money Laundering Act.</p>	<p>Constitution, Ethics and Anti-Corruption Commission Act 2011</p> <p>Article 73 (2) - Leadership & integrity to be guided by a number of principles including honesty, discipline & accountability to the public.</p> <p>Section 11 of the Act establishes the Ethics & Anti- Corruption Commission whose main role is to develop and promote standards for integrity & Anti-Corruption; and to develop a Code of Ethics.</p> <p>Section 11- Other role of the Commission is to investigate acts of corruption & recommend to DPP for prosecution. Commission can also initiate proceedings for recovery & protection of public property.</p> <p>Other laws include the Anti-Corruption and Economic Crimes Act, 2003. Section 2 of this Act defines & prescribes penalty for corruption and other related offences.</p> <p>Anti –Corruption legal regime complimented by Whistle Blowers Protection Act.</p>	<p>Prevention & Combating of Corruption Act, 2007.</p> <p>Chapter III of the law defines corruption and other related offences and the prescribed penalties.</p> <p>Section 5- Prevention & Combating of Corruption Bureau to investigate cases of corruption and enlist public support in the fight against corruption.</p> <p>Section 40- Bureau also has powers to initiate proceedings for forfeiture of corruption proceeds.</p> <p>Other important legislation is the Economic & Organised Crime Control Act of 1984. The law recognises corruption and bribery as economic crimes tried and punished by the economic crimes court.</p>	<p>Constitution & Organic Law Determining the Mission, Powers, Organisation & Functioning of Ombudsman No.76 of 2013.</p> <p>Article 182 Constitution and Article 4 of the Law on Functions of Ombudsman- Office of Ombudsman established to prevent & fight corruption in both public & private entities.</p> <p>Article 4 of the law- Ombudsman to receive complaints against public servants & to receive asset declarations of specified persons.</p> <p>Article 12 & 13- Ombudsman clothed with both investigative and prosecutorial powers.</p> <p>Other laws that complement the above include; the Whistle Blowers Protection Law and Leadership Code Act.</p>
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5. Accountability Outlook across the four countries

Important to note is that this study provides an insight into existing situation under the different institutional and accountability regimes across the four countries covered under analysis. A quick glance at international accountability-related assessments for the region presents a dilemma. While Uganda scores better than Kenya, Tanzania and Rwanda on most of the indicators including the Open Budget Index (OBI) and other accountability processes, it ranks highest in corruption as shown in table 2. This brings into question the validity of the accountability relationship postulated in the framework for accountability. There is now concern that increased transparency over public expenditure has not necessarily resulted into greater accountability over public expenditure.

Table 2: Country performance on accountability related indicators

Indicator	Uganda	Kenya	Tanzania	Rwanda
<i>Open Budget Index (OBI) 2012 Scale; 0- worst performing in terms of Budget transparency and accountability and 100th best performing</i>	65th	49th	47th	8th
<i>Corruption Perception Index 2013 Scale; 0-highly corrupt, 100- very clean</i>	26th	27th	33rd	53rd
<i>Select Public Expenditure and Financial Accountability</i>				
<i>Scope, nature and follow-up of external audit</i>	B+ (2012)	D+ (2012)	C+ (2013)	B+(2010)
<i>Legislative scrutiny of the annual budget law</i>	C+	C+	B+	C+
<i>Legislative scrutiny of external audit reports</i>	D+	C+	D+	B
<i>Financial information provided by donors for budgeting and reporting on project and programme aid</i>	C	D	C	D+

Sources: OBI report 2012 (IBP), CPI report 2013(Transparency International) and various country PEFA reports for Uganda, Kenya, Tanzania and Rwanda

6. Conclusion & Recommendations

Accountability is very critical in public expenditure for a number of reasons. First, it promotes fiscal discipline by, among others, ensuring that resources are deployed to accomplish planned projects. This greatly improves service delivery and guards against theft and loss of public funds through corruption. Public expenditure accountability also promotes citizens' compliance with government policies such as taxation since citizens feel involved in planning and expenditure of public resources. More so, accountability is important in the context of regional integration. Trust among partner states is consolidated where there is accountability for funds allocated to common projects and

initiatives. The East African federation will therefore only be able to succeed where other blocs have failed if states put accountability at the center of integration.

This study finds that the four countries of Rwanda, Kenya, Tanzania and Uganda all have a fairly comprehensive legal and institutional framework that supports accountability in public expenditure. The biggest dilemma is however the fact that countries with seemingly stronger laws like Uganda are not necessarily the best on public expenditure accountability in practice.²⁰³ Instead countries like Rwanda have excelled in this significantly reducing the levels of corruption and loss public funds. Kenya and Tanzania on the other hand while better than Uganda in practice are equally highly ranked in as far as the elimination of corruption is concerned.²⁰⁴

It is therefore concluded that while laws and institutions are important to the extent that they lay out rules and procedures that must be followed and prescribe sanctions for non-compliance with these rules, they in themselves are not sufficient. To succeed, laws must be complemented by high level commitment at the political level. Short of this, accountability in public expenditure will remain an elusive concept undermining service delivery and potentially causing unrest among citizens.

The anticipated harmonization of fiscal laws and policies under the East African monetary protocol presents a good opportunity for consolidation of public expenditure accountability at regional level. As has been observed in this study, accountability is central for the success of regional integration processes especially the monetary union. It is therefore imperative that member states build on existing fairly strong legal and institutional frameworks as well practices in the region to ensure that accountability is incorporated in all aspects of public expenditure. In this respect a regional legal and institutional framework that incorporates all these good practices is proposed if this initiative is to massively succeed. This would insulate against interferences with the law and institutions as is the case in some of the member states. Such an initiative would also encourage peer review, a factor that may improve on the political will to enforce laws on accountability in individual member states.

203 *Supra*, Note 25.

204 *Id.*

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