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A CRITICAL APPRAISAL OF THE ACCOUNTABILITY MECHANISM OF EAST AFRICAN LEGISLATIVE ASSEMBLY

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Abstract: *Democratic accountability requires that governments must first be known and popularly accepted, with citizens empowered to effect change by preventing subjugation. This paper analyzes the role of the East African Legislative Assembly (EALA) in ensuring accountability within the East African Community (EAC). In an attempt to dispel the criticism levied against the Assembly about its functionality, this paper reviews various literature the concept of accountability, as well as the role of parliamentary institutions, with a specific focus on the accountability function. The paper presents how different relationships coupled with the responsibility to provide information, and enforceability cumulate into practice of accountability. The paper then seeks to establish how EALA has ensured accountability in its activities and functions. From its study, the paper finds the Assembly exercises its accountability and oversight functions through sensitization campaigns, administration of public petitions, parliamentary question and answer sessions, and inter-parliamentary sessions. However, despite having undertaken a pro-active role in ensuring accountability within the region, conscious efforts must be undertaken to enforce and implement its recommendations.*

Key Words: *Accountability, East African Legislative Assembly, East African Community, Democracy, Governance Transparency, parliaments*

1.1 Introduction

The East African Community (EAC) which comprises, as partner-states, republics of Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda, is one of the Regional Economic Communities (RECs) recognized as the “pillars for the African Economic Community (AEC), together with seven other RECs, by the Abuja Treaty which establishes the African Economic Community (AEC)¹. The Community as it is currently structured organizationally, normatively, and institutionally, is a result of concerted effort by the leadership of the heads of states of its founding member-states, Kenya, Uganda and Tanzania. The Treaty Establishing the East African Community was signed and ratified by the three states on 30 November 1999. The Treaty provided for the creation of three major organs of the Community: the Secretariat, the East African Court of Justice, the East African Legislative Assembly (EALA), as well as a host of other institutions and departments.²

The East African Legislative Assembly (EALA) was established as the independent Legislative arm of the Community. The Summit of the Heads of State of the original three EAC partner-states formally inaugurated EALA at its first sitting in Arusha, Tanzania, on the 30th day of November 2001. Currently, EALA draws its membership of 54 parliamentarians from the six Partner States. This paper argues that for the EAC to achieve the set of goals outlined in the Treaty, it is imperative that its oversight function which is the prerogative of EALA is effectively discharged.

1.2 Statement Of The Problem

The East African Legislative Assembly was created to oversee the formulation of laws that facilitate integration within the Community. It is the sole legislative organ of the Community. Its mandate transcends the domestic purview and links legislation not only within the partner states but also between the EAC region and the wider African continent. As a legislative arm of the Community, EALA has the mandate of ensuring that other organs of the Community perform their functions effectively. EALA bears the oversight mandate over the Community. From its mandate, it is clear that the EALA occupies a critical role in the integration agenda. It is important, therefore, that the organ performs its functions effectively and competently if headway is to be made in the EAC integration. But to discharge its functions effectively, EALA must also be seen to be representative of, and responsive to the needs of the EAC citizens. In other words, it must show features of accountability. However, there has been little study carried out to establish the role played by the Assembly in ensuring accountability to the citizenry and within the organs of the Community. The purpose of this paper, is to highlight the accountability function and structures of the Assembly, and to establish the extent to which the Assembly in the discharge of its functions, practices accountability.

1.3 Theoretical Framework

This paper draws from the insights of the liberal theory of preference formation, which assumes that governmental preferences reflect the interests and power of societal groups, mediated by domestic political institutions (Moravcsik, 1993: 481). This theory resonates with the establishment of the organs of the EAC including the formation and constitution of EALA. Each

¹ https://au.int/sites/default/files/treaties/7775-treaty-0016_-_treaty_establishing_the_african_economic_community_e.pdf

² http://www.eala.org/uploads/The_Treaty_for_the_Establishment_of_the_East_Africa_Community_2006_1999.pdf

institution is created out of the assumption that Partner State representation directly translates into the protection of specific state interests. Further, the institutional preference stems primarily from the economic interest of states (Moravcsik, 1998: 3). The major claim of this theory is that governments pursue integration as ‘a means to secure commercial advantages for producer groups, subject to regulatory and budgetary constraints’ (Moravcsik, 1998: 38).

Simply put, there must be a demand for realization of mutual interest and desire for institutional formation; governments must then negotiate on the establishment or development of integration, on substantive policy arrangements and, finally, on the institutional design of regional integration. These negotiations need to be held and concluded together successfully to enhance integration. To this end, there exists mutual interest in the economic development of the EAC, the common vision being a market-driven and people-centered integration. Therefore, all institutional developments and policy establishments are anchored on this.

The theory of preference formation posits that integration is driven by governments – and by their concern about each other’s commitment to and future compliance with the substantive deals reached. The institutions of regional integration are instruments of the states. Delegation and pooling serve to remove agreements from the influence of domestic actors who might build up pressure for non-compliance if their integration costs or losses increase. They also remove them from decentralized intergovernmental control, which may be too weak to secure compliance, in particular, if powerful member states violate the rules (Moravcsik, 1998: 9, 73). The degree to which governments pool and delegate their decision-making competences depends on the value they place on the issues and substantive outcomes in question and on their uncertainty about the future behavior of other governments. The more a government benefits from a cooperative agreement and the higher the risks of non-compliance by other governments are, the more its readiness to cede competences to the regional institutional organization.

The theory of preference formation is relevant for the analysis of the East Africa Community whose main objective is to achieve a form of economic integration which raises economic growths of partner states through regional trade. As the theorists would argue, there is also the pooling of resources and delegation of power by partner states that affect the integration process. Partner states acknowledge that they all have common interests and goals, and hence delegate representatives in the different organs and institutions of the Community. These state representatives essentially strive to ensure that the policies and interests of their respective governments are presented during debates and negotiations and are reflected in regional legislation and policies. Whereas the establishment of EALA can be explained with reference to arguments advanced by liberal intergovernmentalist theorists, the essential process of legislation within the organ, and the manner in which EALA functions can better be explained by the liberal theory of preference formation.

1.4 Literature Review

There is no universally accepted definition of accountability. Historically and semantically, the word ‘accountability’ is closely related to accounting, in its literal sense of bookkeeping. Dubnick (2002: 7-9) traces the origins of the concept of accountability to its usage during the reign of William I, in the decades after the 1066 Norman’s conquest of England. In 1085 William required all the property holders in his realm to render *a count* of what they possessed. These possessions

were assessed and listed by royal agents in the so-called Domesday Books. This was done not only for taxation purposes, but also as a means reaffirm royal authority. But the concept has evolved from its original etymological understanding and restricted meaning that equated it with bookkeeping and taxation. Today, accountability is used not just to refer to bookkeeping and financial administration but also to a wide array of subjects, including democracy and good governance. Moreover the concept no longer just refers to sovereigns holding their subjects to account, but also to the reverse: it is the authorities themselves who are being held accountable by the citizens. Citing Sinclair (1995) and Day & Klein (1987) Mulgan (2000) argues that the concept of ‘accountability’ has lost some of its former straightforwardness and due to its multifaceted nature, has found itself in unfamiliar grounds with increasingly complex categorization that requires constant clarification.

Despite having definitional divergences, social scientists agree that accountability is a multi-faceted concept (Biira 2019:17). Similarly, there seems to be some consensus that accountability denotes a process of being called “to account”, which implies the existence of some form of hierarchical relationship requiring one to report one's actions to an authority. Mulgan (2000) has further pointed out that the core purpose of accountability is to make agents or subordinates act in accordance with the wishes of their superiors. This, when applied to the context of democratic governance, creates a relationship between citizens and holders of public office, and between elected politicians and bureaucrats. Accountability allows, for example, for the citizens to exercise some level of control over public officials. Mulgan further links accountability and democratic governance with the extent to which governments pursue the wishes or needs of their citizens (accountability as ‘responsiveness’) regardless of whether they are induced to do so through processes of authoritative exchange and control. He also associates accountability with public discussion between citizens on which the concept of democracy depends (accountability as ‘dialogue’), even when there is no suggestion of any authority or subordination between the parties involved in the accountability relationship.

Behn (2001) has, on the other hand, categorized accountability as financial accountability, accountability for fairness, accountability for performance and accountability for personal probity, arguing that the four dimensions of accountability are necessary for new public management. The emphasis here is on accountability as performance and cooperation, contrary to the traditional public administration paradigm that puts emphasis on efficiency, and hierarchical authority. Pollitt (2003) has perhaps proffered the most concise definition of accountability. He describes accountability as ‘the obligation to explain and justify conduct’, an obligation that implies a relationship between an actor, the account, and a forum, the account-holder, or accounted (Pollitt 2003: 89)

The foregoing discussion highlights the element of relationship as a feature of accountability. The concept of accountability is pegged on the existence of a “duty of care” where, according to Jenkins and Goetz (2001), person A is said to be accountable to B if A is obliged to explain and justify his actions to B, or if A may suffer sanctions if his conduct, or explanation for it, is found wanting by B. They call A the ‘object’ and B the ‘agent’ (ibid). Here the essential component of accountability is the requirement that subordinate (A) accounts and renders an explanation to superior (B) or face sanctions in the absence of such explanation. This second element of accountability establishes a responsibility to answer, explain and justify one’s actions or face sanctions. Ultimately, this

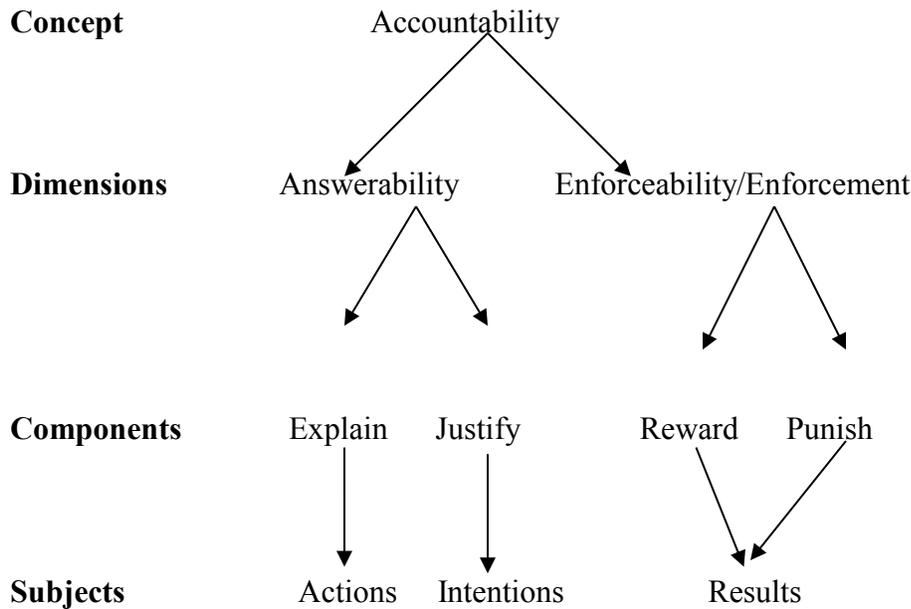
summates to the final attribute of accountability, which is enforceability.

Information plays a key role in holding those who wield power to account (Keohane and Nye 2003, 389). Schedler et al (1999:14-15) have argued that enforceability of accountability allows free flow of information and taking of responsibility. Person A (a person called to account) has a duty to divulge information and person B has a duty to receive that information. Consequently, the recipient of the information is under duty to analyze and determine whether the explanation/justification rendered is sufficient or not and person B, makes the call on whether to reward or to punish. Enforceability entails rewarding good and punishing bad behavior, and thus bearing the consequences for what one has done. Schedler et al (1999:14-15)

Pollitt (2016) argues that explanations and justifications are not usually offered in a void, but vis-à-vis a significant other. This usually involves not just the provision of information about performance, but also the possibility of debate, of questions by the forum and answers by the actor, and eventually of the judgment of the actor by the forum. The judgment also implies the imposition of formal or informal sanctions on the actor in case of mal-performance or, for that matter, of rewards in case of adequate performance. Keohane (2003:139) argues that this relationship of accountability is “institutionalized” when the principal’s right to receive reports and to sanction is recognized and accepted by the agent. Although there seems to be some consensus on the aforementioned attributes of accountability, there is somewhat a divergence on the element of enforceability. Schedler et al argue that accountability does not have to bear features of enforceability and answerability in order for it to be effectively practiced. They assert that answerability can still be effected without enforceability/enforcement. Biira (2019:17) has demonstrated, with the example of the South African Truth and Reconciliation Commission, and the case of Indonesian student protests against General Suharto in 1998, that enforcement can exist without answerability.

From the foregoing discussion, it has been established that accountability has a number of features: it is external, in that the account is given to some other person or body outside the person or body being held accountable; it involves social interaction and exchange, in that person A, who calls for the account, seeks answers and rectification while person B, that being held accountable, responds and accepts sanctions; it implies rights of authority, in that those calling for an account are asserting rights of superior authority over those who are accountable, including the rights to demand answers and to impose sanctions.

Illustration 1: The delineations of the concept of accountability



Adapted from Biira, 2019:20

1.5 Methodology

The target population for the study was that of current members of EALA as well as professional staff of EALA. The study used a purposive sampling technique to select from respondents for structured interviews among the 54 members of EALA. Of the identified sample size of 54, 14 respondents were interviewed with an additional 5 staff members, bringing the overall sample size to 19 respondents. Structured interviews was the selected instrument for data collection. The interview questions were administered to each respondent. The researcher administered the questionnaires individually to all respondents of the study. Primary data was collected from selected members of parliament including the employees of EALA. But the paper also draws from secondary data obtained through analysis and review of official EALA activity reports, strategic plans, official EAC documents, academic papers, dissertations, books and journals, as well as the media and Internet. Both primary and secondary data were analyzed qualitatively and quantitatively.

1.6 Findings And Conclusion

The findings from the interviews show that EALA as a regional legislative institution discharges its oversight function of accountability through several practices. EALA's oversight responsibility covers both the EAC citizenry and the EAC organs. EALA exercises its accountability function through several initiatives. Public sensitization is one such activity through which the Assembly exercises its accountability obligation to the citizenry. EALA holds regular sensitization campaigns, which it utilizes as forums for engaging stakeholders in the EAC integration project, and for disseminating information to the citizens of EAC on issues of integration. The campaigns also provide a platform for the citizens to engage their representatives at EALA on integration agenda, and on concerns about EAC. These interactions foster and build a "people-centered" integration project, which is the ultimate objective of the EAC.

Similarly, EALA uses petitions, especially from members of the public, and from non-state actors such as civil society organizations to ensure accountability in the EAC. The right to petition, for which a provision is made in the East African Legislative Assembly (Powers and Privileges) Act, 2003³ gives a voice to EAC citizens and enables them to take their policy concerns directly to the Assembly and to influence the Parliamentary agenda. This right also provides the citizens direct access to EAC organs and the right to petition the Community with complaints or requests for action on certain issues. Once a petition is presented to the Assembly, it makes policy decision or recommendation. Then the Council of Ministers takes it up for implementation and the Summit is informed. Hence, through the petition system, a citizen has access to the Council of Ministers as well as the apex organ—the Summit. Petitions therefore provide citizens with a direct access to the Community. But it also allows the citizens to express a corresponding right to information and response. The Community also allows both natural and legal personalities to present petitions. In addition, the questions asked must be relevant to Community objectives. This allows a large ambit of Community-related issues to be presented by the citizenry and addressed by EALA. Petitions promote dialogue and active participation of the citizens in the integration project.

In exercising its oversight mandate, EALA presents questions relating to matters of the Community to the Council of Ministers. The parliamentary question and answer sessions oblige the Ministers to explain and defend their work, and policy decisions and actions of their respective governments. Through this forum, the Assembly is able to seek enforcement of the policy decision made and receive detailed progress reports and answers directly from the persons concerned. This, alongside the inter-parliamentary relations seminar (also known as the "Nanyuki Series"⁴), provides an avenue through which EALA and the National Assemblies of the EAC partner-states interact. The overall objective of the Nanyuki series is to strengthen the functional relationship between EALA and the national assemblies. This forum allows EALA members to exchange information and policy ideas with their counterparts in national assemblies. Through the series, each partner-state's National Assembly is informed and updated about the proceedings at EALA. In turn, the National Assemblies take the information back to their constituencies. Through the series, the integration agenda of the Community is discussed with the voters of EALA. This enables EALA to account directly to its constituents.

³ [http://www.eala.org/uploads/Scan_20160921_\(4\).pdf](http://www.eala.org/uploads/Scan_20160921_(4).pdf)

⁴ The Nanyuki Seminar Series are the series of regional seminars which serve to strengthen the functional relationship between EALA and the EAC National Parliaments and to widen and deepen knowledge of the EAC and the integration process. (see <http://www.eala.org/documents/category/nanyuki-series>)

Judicial pronouncements and decisions of the East African Court of Justice have also been seen to constitute channels of accountability within the Assembly. Through the Court, the Assembly has been called to action, and where inaction and reluctance to enforce the Treaty was observed the Assembly is castigated. Although EALA has made substantial efforts in ensuring accountability within the EAC, its overall performance may be termed as dismal. This is especially because there is generally low public knowledge about the EAC among its citizens. An indicator of successful regional integration is that the regional integration project is known, acknowledged and recognized by its citizens. Scarcity of information about the Community has negative impacts on its growth. If people do not have sufficient information about the Community, they will not take part in the integration process. Indeed, the very survival of EAC is predicated on how much citizens know and partake in the integration project.

EALA has faced several challenges at policy, legislative and institutional levels which have conspired to impede its ability to effectively discharge its accountability functions. First, the Assembly does not have sufficient powers to implement its decisions. For example, when it debates and makes recommendation about a policy to the Council of Ministers, the Assembly has no powers to sanction the Council if it fails to implement the recommended policy. It can only make further inquiries. The Assembly cannot, for example, employ financial sanctions to ensure compliance with its recommendations. This impedes the Assembly's overall efforts to ensure accountability.

The Assembly also suffers from a lack of funding to ensure implementation of some of its programs. For example, the Assembly has been unable to have its inter-parliamentary sessions with national assemblies (Nanyuki series) from 2017 to 2018 due to lack of funds. In addition, there are concerns that the public sensitizations campaigns are conducted for a short period due to limited resources. The Assembly also does not enjoy sufficient fiscal autonomy. It is not able to carry out effective accountability programs because its budgetary allocation is not sufficient to cover all its operational expenses. In addition, the Assembly also lacks adequate personnel to discharge its accountability functions. The Assembly's number of staff is below the recommended and approved number. As is the practice, during each activity, it is expected that each chapter be accompanied by Staff members of EALA who assist in administrative and logistical planning. With a team of just over 25 staff members, EALA is not able to discharge its duties to the entire EAC population that bears a combined population of one hundred and twenty million people. This hampers the operation of the Assembly.

The Self-defeating principle of variable geometry constitutes another challenge to the accountability mechanisms employed by the Assembly. Although the principle promotes the spirit of togetherness and non-competitiveness, all of which are necessary for effective integration, its application presents diabolical challenges to accountability as it is often used as an excuse by non-compliant partner states to avoid making difficult policy decisions recommended by EAC. The principle is conveniently invoked when it only serves certain state interests, and when it even threatens the integration project, and this hampers harmonization and coordination of integration agenda.

1.7 Recommendations

In order to strengthen the role of EALA in ensuring accountability, the EAC will need to effect

certain changes. First, it needs to mobilize strong political will and commitment from partner states. The partner states must make strong pronouncements and declarations during public addresses in their countries on issues relating to the East African Community. This is to sell the integration agenda to citizens of the Community. The spill over of the “EAC gospel” will increase awareness of the community within the community.

Secondly, there is a need to reconsider the utilization of the principle of variable geometry. This principle appears to be more problematic than advantageous, as it impedes EALA’s efforts to discharge its accountability functions. For example, members of the Council of Ministers often invoke the principle as an excuse for failing to implement recommended policies, often pointing out that the principle permits them to do so, within their own timeline. A review of the utilization of the principle will not only ensure effective accountability within the Community, but it will also enhance integration of the community.

Third, the Treaty should be revisited and reviewed in order to make express provision for accountability as a function of the Assembly. This proposed provision on accountability must stipulate the mechanisms and spell out the activities to be employed as accountability assessment and implementation mechanisms. Moreover, to increase its ability to carry out its oversight and accountability responsibilities, the Assembly should be given enforcement powers that allow it to levy sanctions and punish non-compliance. The Assembly, for instance, should have the power to sanction states for non-compliance either by setting down strict timelines of performance, or imposing financial or administrative sanction. There is a need to amend the Treaty and make provision for a more autonomous and independent EALA. The Treaty should remove any provision that allows interference by other organs of the Community in the affairs of EALA.

Fourth, the partner states of EAC should provide adequate financial support to EALA to enable it to carry out its sensitization campaigns as well as its inter-parliamentary sessions. Each state should make budgetary allocations for such activities as they help serve the interest of the specific members. For example, Kenya as a state should provide financial support for the sensitization activities being undertaken in Kenya for Kenyans. Further, each partner state should shoulder the expenses associated with the Nanyuki series.

There is also need to address the problems of staffing and quality of personnel of EALA. EALA must improve its technical and administrative services. This requires the recruitment of qualified technical and administrative personnel. Currently, the Assembly has no regional offices; it operates with focal persons at the Ministries in charge of EAC affairs in the respective partner states. In particular, the Assembly should have regional offices in the partner states equipped with staff members representing the Community, to work in collaboration with those based at the headquarters. The Assembly’s budgetary allocation should be sufficient to achieve the optimal recommended staffing level.

A further recommendation regards the process of nominating EALA members. It should be required of the process that prospective candidates be those who are acquainted with the integration agenda, and are sufficiently known by the EAC citizens. The candidates must be offered a platform to engage citizens by means of campaigns in print, electronic media, or visits to all regions of the Community. Proof of such campaigns should be issued to the nominating government and a copy sent to the office of the Clerk.

Finally, the inter-parliamentary sessions should be strengthened to allow for mechanisms of accountability within the national parliaments and EALA. Instead of having the series as an opportunity to present progress reports and line-up of activities, the sessions must be proactive and be used to allow the national assemblies to pose questions and seek clarification from the Assembly. The series can be used to set the integration agenda of the community and thematic areas that the Assembly must address.

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