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THE CHALLENGES OF ENFORCING PUBLIC ACCOUNTABILITY: EXPERIENCE FROM TANZANIA

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Abstract
This article explores some challenges of enforcing public accountability in Tanzania using secondary data. In so doing, the article employs the institutional perspective to identify and discuss five challenges within the institutional architecture that constrain enforcement of public accountability. The main argument is that most of the challenges facing enforcement of public accountability are resulting from the institutional architecture, which presents a paradox of two contradictory logics. One logic is that citizens are the principals with the power to hold their leaders accountable. The other logic is that the ability of citizens to hold their leaders to account must be restricted. Previous research offers explanations for accountability deficits in Tanzania. However, these studies under emphasize the contradictions in the legal framework and the role of political culture thereby obscuring an understanding of constraints to public accountability in Tanzania. This article expands this discourse by exploring the contradictions within the legal framework and between the formal and informal institutions in a way that subverts the ability of citizens to hold their leaders to account. The article also identifies the gap between the theory and practice of accountability to appreciate the role of political culture among citizens as a significant agency in enforcing accountability.

Keywords
public accountability, enforcement, public administration, Tanzania

"Sovereignty resides in the people and it is from the people that the Government through this Constitution shall derive all its power and authority; …the Government shall be accountable to the people" (Art. 8(1) (a) and (c) of the Constitution of URT, 1977)

Introduction

Accountability is a prevalent term in today's global discourse. It is increasingly being considered a pre-requisite to democratic governance across almost all parts of the world (Bovens 2007). The discourse on accountability has also captured the attention of scholarship from different countries (Schillemans 2015; Aleksovska 2021; Zumofen 2016; Demir, Reddick, Ponomariov & Flink 2019; Kelsall 2004; Hyden 2010; Kamuzinzi & Rubyutsa 2019; Hathaway & Askvik 2021; Godwin, Ntayi & Munene 2021). In Tanzania, Article 8(1) of the Constitution of the United Republic of Tanzania (URT), 1977 stipulates that "the government shall be accountable to the people." At face value, this constitutional provision implies a straightforward accountability relationship between the principal and the agent. The principal in this article is construed to mean the bearer of a right or a legitimate claim over another person, *who delegates power, tasks, and resources* to the agent who is entrusted to fulfill *the tasks* on behalf of the principal *and* to *provide explanation to the former* regarding those tasks with a possibility of facing consequences in a form of sanctions or rewards (Lawson & Rakner 2005, 9; Bovens 2007; Hyden 2010).

However, enforcement of such accountability relationship is complex and paradoxical. It is complex in the sense that accountability is a "social interaction and exchange" that involves the process of calling someone to give an account of their actions (Mulgan 2000; Bovens 2007; Laegreid & Neby 2016; Schillemans 2016; Mizrahi & Minchuk 2019). On the one hand, the constitution of the URT carries provisions that imply the citizens are the principals with the power to hold their leaders accountable. On the other hand, the same constitution carries provisions that impede the ability of citizens to hold their leaders to account. This is the sense in which the term *paradox* is applied. This article takes a holistic approach to argue that enforcement of public accountability in Tanzania is weak because citizens are facing five main challenges that combine to constrain their ability to enforce accountability. These challenges include the legal framework, inadequate checks and balances, questionable electoral processes, impotent media, and political culture and institutionalised docility. It is observed in this article that of the five challenges, the political culture and institutionalised docility among citizens potentially affects accountability because acquiescence is difficult to change than bad laws and structures. The article is organized into the following five main parts: the introduction, the methodology, the conceptual and theoretical underpinning for public accountability, findings and discussion, and, finally, concluding remarks.

Methodology

The article uses secondary sources including newspapers, government reports, parliamentary records, and internet sources to examine five challenges of enforcing public accountability in Tanzania. The use of documentary sources by this article is based on the fact that this method is one of the systematic procedures employed in social science research to collect information. It is relatively less expensive than fieldwork (Scott, 1990). The legal documents covered included the Constitution, the Newspapers Act No.3 of 1976, the Media Services Act No.12 of 2016, the Written Laws (Miscellaneous Amendments) Act No.3 of 2020, the Political Parties Act (Cap. 258 R.E. 2019), the National Elections Act (Cap. 343 R.E. 2015), the Cybercrimes Act No.14 of 2015, and the Statistics Act No. 9 of 2015

(and its amendment of 2019). A review of these various pieces of legislation helped to identify provisions in the laws that constrain the ability of citizens at the national level and provide immunities and how that is inconsistent with accountability. The article also collected information from five newspapers to determine the consistency between practices as reflected in decisions and political stances of leaders as reported in the media between 2015 and 2023 and what the law requires. These included (i) The Citizen, (ii) Mwananchi Newspaper, (iii) Daily News, (iv) the East African, and (v) Mwanahalisi Online. The author entered key words in the Google search engine according to identified themes and only newspapers that appeared with full stories relevant to the search were selected. In addition, the author used internet sources including websites such as the Mo Ibrahim Foundation where the 2022 Ibrahim Index of African Governance was accessed to see how Tanzania fares in some variables measuring accountability. Blogs and Twitter were also used to capture various themes related to public accountability and political statements made by political leaders between 2015 and 2023.

Accountability: A Literature Review and Theoretical Framework

The Concept of Accountability

The usage of the term accountability has significantly changed from its original meaning in two ways. First, the accountability relationship, at least in Western societies, has reversed to the opposite direction from the citizens (*the agent*) giving an account to their leader (*the principal*) to one in which the leader is expected to give an account to the citizens (Bovens 2007,183; Kuppens 2016). Such shift may be attributed to advances in governance systems of those societies. Secondly, the concept has expanded beyond its original usage in the confines of "bookkeeping and financial administration" to signify often cherished values of transparency, trustworthiness, responsiveness, responsibility, integrity, fairness, and sovereignty of citizens (Mulgan 2000; Bovens 2007). Values are the "core beliefs and desires that guide or motivate attitudes and actions" (Goss 1996, 576). In Tanzania the term *uwajibikaji,* a popular Swahili word for accountability, for example, carries two connotations. First, it implies fulfilling one's responsibilities or obligations as expected. Secondly, it also refers to taking responsibility for actions or inactions done by a person or their subordinates. This often manifests in the form of imposing or accepting sanctions either through resignation and/or expulsion from one's position or holding somebody to account for their actions.

This article adopts Mark Bovens' (2007) conception of accountability. Bovens (2007, 450) conceives accountability to mean a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences such as fines, disciplinary measures, civil remedies, penal sanctions, calls for resignation, or negative publicity that erodes their public image. This conception captures five important descriptive elements central to the understanding of accountability. First, it looks at accountability as a social interaction involving a relationship between individuals or institutions/agencies with two distinct roles: the principal and the agent. Secondly, for accountability to exist, there has to be delegation of power. The principal who is the substantive bearer

of power and responsibility entrusts part of that power and/or responsibility to another person – the agent – to act on their behalf (Joshi & Houtzager 2012). This brings us to the third element, that is, obligation to render account – also called answerability (see Dubnick 2003; Kuppens 2016). The agent is bound to explain and provide justifications to the principal about their actions or inactions. Fourthly, in the event the agent fails to meet the principal's expectations, the latter has the right (of authority) to demand answers or explanations from the former (Jones 1992; Mulgan 2000; Dubnick 2003; Bovens 2007; Hyden 2010). Finally, having received explanations or justifications from the agent, the principal may pass judgment, which is often associated with the possibility of facing consequences (Bovens 2007). Such consequences may be positive or negative in a form of rewards and sanctions, respectively. Enforcement of accountability, therefore, is the ability of the principal not only to demand explanation from the agent but also to impose sanctions (Schedler 1999; Brinkerhoff 2001; Lindberg 2009).

The literature on accountability identifies five main types of accountability, including political accountability, administrative accountability, legal accountability, professional accountability, and societal accountability (Dubnick 2002; Bovens 2007; Mulgan 2000). These five types are embedded in two main dimensions of accountability: horizontal and vertical accountability. Horizontal accountability refers to "the mutual oversight embedded in the state's institutions of checks and balances" (Fox 2015, 347). Horizontal accountability often manifests in the relationship between the Parliament and the Executive, the Controller and Auditor General and other public organizations, the Courts and other state institutions and individuals, the Prevention and Combating of Corruption Bureau (PCCB) and other public officials, just to name a few. Vertical accountability, on the other hand, refers to the "political accountability relations between citizens and their representatives" (Fox 2015, 347). Citizens delegate their power to their political leaders reflecting the notion of the social contract and they are expected to hold them accountable for their actions or inactions (Bovens 2007).

According to the 2022 Ibrahim Index of African Governance, Tanzania's trend in accountability and transparency for the period between 2012 and 2021 has deteriorated by 12.5 points (Mo Ibrahim Foundation 2023). Out of 54 African countries, Tanzania ranks 27th on the accountability and transparency index, while Kenya and Rwanda are ranked 12th and 19th respectively. Previous research has examined accountability in Tanzania (Lawson & Rakner 2005; Killian 2009; Gray 2015; Kabyemela 2017; Katomero, Hoppe, & Wesselink 2017; Kessy 2020; Lameck & Hulst 2021; Cheeseman, Matfess, & Amani 2021). Kabyemela (2017), for example, argues that despite a number of reform initiatives at the local government level, citizens are still unable to hold their village governments accountable partly because of a poor legal framework and limited participation of the citizens in decision-making.

Similarly, Kessy (2020) argues that mechanisms for both the demand and supply sides of accountability in local governments in Tanzania are not effective. The author cites such reasons as the inability of the local population and NGOs to enforce accountability due to fear and limited awareness, among others, as leading to ineffective accountability. Gray (2015), Cheeseman et al (2021), and Sorreime and Tronvoll (2020), among others, have also examined accountability deficits at the national level. Some of these studies attribute such accountability deficits in Tanzania to the presence of factions within the ruling party, Chama cha Mapinduzi (CCM). Gray (2015) and Cheeseman et al (2021), for example,

argue that clientelistic factionalism within the ruling party tends to place constraints on the president to achieve what they want to achieve. While this argument correctly underscores the influence of informal institutions on the functioning of the formal ones as described by the institutional theory, such orientation underemphasizes the contradictions in the legal framework and the role of political culture, thereby obscuring our understanding of other factors constraining accountability in Tanzania. The present article extends further a discussion on accountability in Tanzania. Its contribution to the accountability discourse is twofold. First, it applies the institutional theory to examine the contradictions, in accountability terms, within the legal framework as well as between the formal and informal institutions in a way that subverts the ability of citizens to hold their leaders to account. In so doing, the article identifies some provisions in the laws that provide immunities and shows how such immunities are inconsistent with accountability. Secondly, the article identifies the gap between the theory and practice of accountability to appreciate the role of political culture as a significant agency in enforcing accountability that lacks in citizens.

Theoretical Framework

The article applies the principal-agent theory and the institutional theory. The principal-agent theory is used to understand the dynamic relationship between the principal and the agent. The institutional theory helps to capture the various logics embedded in the accountability mechanisms. The institutional logic is based on the belief that every "society has a central logic – a set of material practices and symbolic constructions – which constitutes its organizing principles" (Friedland & Alford 1991, 248). The principal-agent theory assumes that "social life is a series of contracts" (Perrow 1986, 224). The theory, therefore, concerns itself with the contractual relationship between one party (the principal) who delegates work to someone else (the agent) who is expected to provide a detailed account of whether the principal's expectations have been met or why they have not been met.

The constitution of a country usually serves as a contract between citizens and their leaders. This is why it is important to examine it to see if it provides adequate safeguards to ensure accountability. To the contrary, when citizens are unable to devise appropriate incentives in their capacity as "the principal," they may not be able to effectively check the behaviour of their political leaders (the agent) as assumed by the principal-agent theory (Eisenhardt 1989. This reasoning echoes John Locke's idea of a social contract. According to Locke, the government acquires the right to reign by consent of the people on the understanding that the former would protect the "life, liberty and estate" of citizens to the extent that the people have the right to hold their government to account should it fail to meet their expectations (Killian 2009; Rugeiyamu, Shayo, Kashonda, & Mohamed 2020). While the principal-agent framework helps to capture the formal legal institutions of democratic accountability, it fails to adequately explain the complex accountability relationships embedded in and mediated by informal institutions (Olsen 2013). This is why it is important to use the institutional theory to complement the principal-agent theory.

The institutional theory, on the other hand, focuses on the role of institutions in directing human behaviour towards a certain desirable conduct (Scott 1995; March & Olsen 2005; Olsen 2013). The term *institutions* generally denotes the formal and informal rules

that regulate "political, economic and social interaction" and practices (North 1991, 97). The institutional theory is premised on the assumption that institutions bring about order and predictability. That is to say, they shape, facilitate, and control political actors to "act within a logic of appropriate action" (March & Olsen 2005, 5–6) Gretchen Helmke and Steven Levitsky (2004) provide an excellent distinction between formal and informal institutions. Formal institutions include the state constitutions, laws, rules, regulations, policies, structures, and standard operating procedures. Informal institutions, on the other hand, involve unwritten rules including traditions, customs, values, beliefs, and codes of conduct (North 1990; Helmke & Levisky 2004; March & Olsen 2005; Morgan, Campbell, Crouch, Pedersen, & Whitley 2010). Accordingly, these institutions restrict some actions and facilitate others (North 1991). Institutions are able to constrain and facilitate political actors' behaviour because they create incentives and expectations (Olsen 2013). This is partly why accountability and control are seen as integral parts of institutions (Olsen 2013). The application of the institutional theory to the study of public accountability affords us an analytical tool for understanding the role that institutions play in shaping accountability relations, whether through formal or informal means. In discussing the formal and informal institutions of accountability, this article focuses on the constitution of the United Republic of Tanzania, the laws, the structures, norms, and practices that mediate accountability relations in the public realm.

Findings and Discussion

The challenges for enforcing public accountability in Tanzania

This section discusses five challenges facing the enforcement of public accountability in Tanzania. These include the legal framework that provides enormous powers and legal immunities to leaders, inadequate checks and balances, questionable electoral processes, impotent media, and institutionalised political docility. The article argues that of these five challenges, institutionalised political docility is the most significant deterrent to public accountability. All bad laws and ineffective structures may be changed provided that citizens are politically active and able to exert pressure on political leaders to do so.

The legal framework and immunities

The legal framework in Tanzania provides the formal institutional framework and conditions against which the accountability forum may hold the actor accountable for his or her actions. The argument advanced in this section is that some of the laws rather than being consistent with accountability they act as antidotes to it. Hence, these institutions are not only inadequate but they also present a paradox of enforcing the account giving because they create conflicting logics. The paradox is twofold. On the one hand, some of the laws appear to create contradictory outcomes as shall be shown shortly. On the other hand, those who ought to enforce the laws are in some instances the violators of the very law they are expected to enforce. This raises an interesting question as to who is responsible for enforcing accountability.

As regards the first aspect of the legal framework, there are contradictions in the laws such that while some provisions in the law appear to be pro-accountability, others are in-

hibiting accountability. A few examples are illustrative. Article 13(1) of the Constitution of the URT provides for equality before the law. It states: "All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law."

While Article 13(1) talks about equality before the law, Article 46 of the same constitution suggests that not all individuals receive equal treatment. Article 46(1) provides the President with immunity from criminal and civil proceedings. Unless impeached by the National Assembly in accordance with Article 46A of the Constitution of Tanzania, a cumbersome procedure that makes impeachment almost impossible, the President cannot be prosecuted in any court of law. Article 46(1) states: "During the President's tenure of office in accordance with this Constitution, it shall be prohibited to institute or continue in court any criminal proceedings whatsoever against him." Article 46(3) extends this immunity to post-retirement. In 2020 the law was amended to extend the scope of public officials covered by immunity against prosecution. The Written Laws (Miscellaneous Amendments) Act No.3 of 2020 is illustrative. It reads: "where redress is sought against the President, Vice President, Prime Minister, the Speaker, Deputy Speaker or Chief Justice for any act or omission done in the performance of their duties a petition shall only be brought against the Attorney General." Unlike other countries such as South Africa, where the President can be held accountable for actions committed while in public office, in Tanzania the law prevents any such attempt to hold the President to account for actions committed before assuming office, while in office and even after their retirement.

The presidential immunity against prosecution remains a contentious issue. In his autobiography, the former President of Tanzania, the late Benjamin Mkapa writes in defense of impunity. He states, "I do not believe that past presidents should be taken to court for transgressions during their presidency. Certainly, if they have stolen something, then, there must be a way to recoup this, but to take a former president to court could undermine the whole concept of government" (Mkapa 2019, 205–206). Mkapa's reference to the "concept of government" implicitly suggests that the head of government has no obligation to give account about their actions or inactions. This line of thinking underscores the institutional logic underpinning the enormous presidential impunity. Of course, if the President is taken to court because of their misconduct, such misconduct is a disgrace to the highest office. Unfortunately, Mkapa does not suggest any viable sanction that would enhance accountability other than saying "there must be a way" to dealing with such acts. Nonetheless, the requirement to account in a court is likely to reduce any possibility of flouting the law with impunity and consequently enhancing accountability. During a dialogue organized by the Mwalimu Nyerere Professorial Chair in Pan-African Studies of the University of Dar es Salaam held on June 15, 2016, Jenerali Ulimwengu[1] expressed dissatisfaction with presidential immunity against prosecution noting that such immunity impedes accountability. Mr. Ulimwengu categorically argued that to enhance accountability and the rule of law, it was high time to abrogate the presidential immunity so that a former president can be taken to court to give an account for any wrongdoings that they are believed to have committed (Mwananchi Newspaper 2016).

Other senior officials are also provided with numerous immunities against any possible prosecution. Another law that grants immunity to public officials from prosecution is the Political Parties Act (Cap. 258 R.E. 2019). Section 6 of the Act states, "No suit shall lie

1 Jenerali Ulimwengu is a renowned journalist and lawyer in Tanzania.

against the Registrar, Deputy Registrar, Assistant Registrar, or other officers appointed under this Act for anything done or omitted to be done in good faith and without negligence in the performance of any function under this Act."

It is understood that to ensure harmony in society no person ought to be above the law and that the law rules all (Dicey 1902). When a portion of the population enjoys impunity from being called to account, public accountability seriously suffers. The decision of the South African court against former President Jacob Zuma, who on June 29, 2021, was sentenced to prison for 15 months for contempt of court, is a good example of an attempt to enforce public accountability.

Similarly, Article 9(c), (g), (h), (k) and Article 13(5) of the Constitution of the URT (1977) place special duty to the government to ensure an equitable access by all citizens, to social, economic, and political rights without discrimination on the basis of their tribe, place of origin, political opinion, colour, religion, sex, or station in life. This is in harmony with the UN Resolution 51/59 of 1996. The resolution requires public officials to act fairly and impartially as well as to "ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies … without undue preferential treatment…" or discrimination of any group or individual (Dobel 2005).

As Wenar (2006) correctly argues, being accountable transcends the simple placing of responsibility upon the agent. He asserts, "When we say that someone is responsible for something, we mean that it is up to them to take care of it. When we say that someone is accountable for something, we mean that they have an extra responsibility on top of this – a responsibility to be able to show that they have fulfilled their original responsibility" (Waner 2006, 6). Likewise, having a law that prohibits discrimination is a good thing, but it is not sufficient unless it can be effectively enforced. In Tanzania, it is not uncommon, especially during election campaigns, to hear politicians warning voters not to vote for the opposition lest they lose development projects. This tendency is a form of clientelism that characterizes African politics (Hyden 2008). The late President John Magufuli, for example, while addressing a campaign rally in Tunduma on October 1, 2020, warned that should voters elect opposition candidates instead of David Silinde, the CCM parliamentary candidate for Tunduma constituency, the government would not implement a planned water project in the area (Mwanahalisi Online Friday October 2, 2020). In the context of public accountability, this statement has multiple implications.

First, the President's statement in the above instance subverts formal institutions. It runs counter to not only his oath but also to the laws of the land. According to Article 42(5) of the Constitution of the URT, any person assuming the office of President is required to take an oath of allegiance before assuming the functions of the office of President. The second part of the oath says (a literal translation of this article):

> I, ….., do swear that I will faithfully discharge my duties and diligently perform my functions in the office of the President of the URT. That I will do justice to all in accordance with the laws, customs and traditions of the URT without fear, favour, affection or ill will. So, help me God.

Upholding justice without fear, favour, affection or ill-will is the original responsibility of the President as required by Article 13(5) of the Constitution of URT for which they are supposed to be accountable. The use of threat (cancelling a water project) to the people of

Tunduma constituency in this context, is not only illustrative of the potential for discrimination on the basis of political affiliations, but it also signifies an accountability deficit. Secondly, it may be said that the implementation of the water project in Tunduma was construed by the late Magufuli within the patron-client relations as an act of benevolence rather than "compliance with popular demands" (Mulgan 2000, 566) as embedded in the notion of the social contract. This indeed suggests a complex power relationship between citizens (electorates) and politicians characterized by elements of informality that can only be discerned through institutional lens. This is partly why, despite such statements contravening the laws of the land, not much was heard of citizens demanding accountability because traditionally the "might makes right."

Inadequate checks and balances

Oversight mechanisms are intended to horizontally foster accountability. Some of the most common oversight institutions include the Parliament (in Swahili *Bunge*), the National Audit Office (NAO), the Public Ethics Secretariat, and the Prevention and Combating of Corruption Bureau (PCCB), among others. These are structures that are designed to facilitate horizontal accountability by ensuring that government institutions and individuals are held accountable for their actions or inactions. However, their effectiveness often depends on the willingness of the executive branch, especially the Presidency, to endorse any attempt by these structures to enforce accountability whenever high-ranking public servants are involved. According to the law, the role of the NAO, for example, is only confined to auditing and reporting. It does not have the mandate to impose any sanctions. The Parliament has powers to impose sanctions. However, as Ole Nørgaard (2001, 9) notes, "institutions are not neutral transmitters and aggregators in the political process. The ways in which they are construed determine the relative power and influence of competing political interests". Whether the Parliament uses its powers to impose sanctions very much depends on the prevailing political atmosphere within the ranks of the ruling party. Intra-party differences within the ruling party have in the past given rise to a parliamentary buoyancy that often fades once the differences are subdued (Mateng'e 2012).

The infamous Richmond scandal[2] of 2007 is illustrative of how horizontal accountability works in times of intra-party tussle. In 2006 Tanzania experienced an acute shortage of power supply. In response to the crisis, the government contracted the Richmond Development Company LLC to supply generators to provide 100 megawatts at a cost of 172 billion Tanzanian shillings (TZS). However, the contracted company failed to deliver as per contract. On November 13, 2007, the Parliament constituted a Parliamentary Select Committee to investigate the tendering process and whether the company actually had the required capacity to provide the service. The Parliament's investigation found that the company actually had no capacity to discharge the contracted service. The Committee further found that the Prime Minister influenced the awarding of the contract to the Richmond Company. The Committee therefore recommended that all officials including the Prime Minister be held accountable for interfering with the tendering process. The Prime Minister and two other cabinet ministers for Energy and Minerals and the East African Community resigned on February 7, 2008. Despite the fact that the resignation of

2 This was a controversial power supply contract offered by the Tanzania Electricity Supply Company (TANESCO) to a dubious Richmond Development Company in 2006.

these ministers and the Prime Minister happened at a time of political tussle within the ranks of the ruling elites – suggesting why the then President Jakaya Kikweke described it as *ajali ya kisiasa,* or literally implying a political accident, it still symbolized the manifestation of horizontal accountability.

Another example of horizontal accountability combining both political and administrative attempts at its enforcement is provided in what may be described here as the David Jairo's saga. On July 18, 2011, during a parliamentary session in Dodoma one Member of Parliament alleged that the then Permanent Secretary (PS) of the Ministry of Energy and Minerals, David Jairo, issued a memo to several agencies requiring them to avail the ministry about 50 million Tanzanian shillings (TZS) each for "facilitating" the approval of the ministry's budget by the Parliament during the 2011/2012 financial year. According to the MP, this money would be used to bribe members of parliament to pass the ministry's budget. Following the accusation, the Chief Secretary announced that he had suspended the accused officer and directed the Controller and Auditor General to audit the agencies and the ministry involved. Findings of the CAG's audit indicated that the Ministry of Energy and Minerals had collected over TZS 418 million. The money was transferred from three agencies and one ministerial department in order to facilitate the preparation and presentation of the Ministry's budget speech in Parliament in July 2011 (JMT 2011, 59). In the same month, following the CAG's report, the Chief Secretary declared exoneration and reinstatement of the PS on grounds that their investigation did not find any incidence of fraud adding that what the latter did was a common practice in almost all ministries. This too focused public attention on the institutions of accountability and how they can direct the behaviour of both MPs and senior government officials. The illicit payment to MPs in order to smoothly pass the Ministry's budget, which the Chief Secretary described as a "common practice," underscores not only a bureaucratic pathology that has become a norm but also a manifestation of the co-existence of formal and informal institutions in shaping the behaviour of actors in political processes (Helmke & Levitsky 2004). The measures taken by the Chief Secretary and their outcome, though seriously contested by Members of Parliament and the general public, were ostensibly indicative of an administrative form of accountability.

Dissatisfied with the Chief Secretary's decision, on August 26, 2011, the Parliament formed a committee to investigate the matter. The findings of the Parliamentary Committee revealed that the Ministry's actions in regard to the contributions from its agencies and departments were inappropriate and illegal and that even the money collected was not appropriately spent (URT 2011). The Committee, therefore, recommended that the Parliament should demand the government to, inter alia, hold accountable all public officials involved in the Jairo saga. There were essentially no serious consequences that followed this incident. All officials went on with their routines as if nothing had happened until some of them retired from public service.

The Parliament is theoretically the forum to which the Executive is supposed to give an account. The challenge, however, is that although the constitution recognizes that the Parliament is the supreme institution overseeing the Executive, the latter, headed by the President, has traditionally remained too powerful to allow the former to effectively hold it to account (Katomero, Hoppe & Wesselink 2017). It may be argued that these excessive powers of the presidency have their roots in the framing of the constitution in the post-independence era. The constitution of Tanzania was framed in the context of a single

party regime that was largely organized and influenced by the personality and charisma of Julius K. Nyerere – the country's first president. The President is also the Chairperson of the ruling party which controls the Parliament. By all practical standards, the Executive in Tanzania has more leverage over the Parliament and, in many instances, it acts as the principal in its relations with the latter (Mateng'e 2012), which some have described as "a team of cheerleaders" (Ulimwengu 2022) because of its rubber-stamping role. The implication of such relationship between the Parliament and the Executive is that the balance of power tilts in favour of the latter thereby impeding enforcement of public accountability. Public accountability institutions are theoretically believed to be lying in the hands of the electorate who may decide during elections to either reward or impose sanctions. It is to this issue that the ensuing discussion turns.

Questionable electoral processes

In Tanzania, there are several legal instruments that regulate the conduct of elections. The main ones include the Constitution of the URT, Cap. 343 of the National Elections Act (as revised in 2015), Cap. 292 of the Local Authorities (Elections) Act (as revised in 2015), the Election Expenses Act, and the Political Parties Act (Cap. 258 R.E. 2019). Elections are regarded as a manifestation of vertical accountability in which citizens (the principal) freely delegate their sovereign power to their deputies (i.e. political representatives or leaders) through the ballot box after a certain specified period of time (Bovens 2007; Schillemans 2016; Mizrahi & Minchuk 2019). In Tanzania, Articles 65 and 42 of the Constitution provide that elections are held after every five years. In a democracy, this process of delegating decision making power to elected officials usually constitutes the foundation of any government's legitimacy. As such, this social contract, as conceived by John Locke, forms the basis by which citizens can hold their leaders accountable (Fearon 1999; Bovens 2007). Similarly, Dubnick (2003) asserts that politicians are driven by the "psychological need" to be accepted by the electorate and the urge to impress the latter who would judge the "ethicality of their actions" or inactions on the basis of their strategic value at the time of elections. However, it must be understood that such psychological need of a politician to be accepted by the electorate becomes an effective ethical behaviour mechanism (instrumental) only when the electorate has the power to make a choice through the ballot box and that those in authority are not only honestly competing for acceptance by citizens but they are also willing to respect the citizens' choice. This, by extension, requires an impartial election management organ and an effective multiparty system that can freely offer an alternative choice to voters.

By August 2022 Tanzania had 20 political parties (19 with full registration and one with provisional registration) (ORPP 2022). This would imply that Tanzanian citizens have several electoral alternatives by which they can hold their government accountable. However, experience shows that elections, even in the context of a multiparty system in Tanzania just like elsewhere in Africa, are less effective accountability mechanisms (Kabyemela 2017). Elections are seen as an inadequate accountability mechanism because of "strategic election manipulation," "executive aggrandizement" (Bermeo 2016, 10–13), and the possibility of fraud. Nancy Bermeo (2016, 10, emphasis is mine) uses the term "executive aggrandizement" to describe a form of democratic backsliding in which "elected executives weaken checks on executive power one by one, undertaking a series of institutional

changes that hamper the power of opposition forces *including the media, opposition parties, civil society organizations, and individual citizens* to challenge executive preferences".

The scale of suppression of opposition parties in Tanzania between 2015 and 2021, when the laws actually provided for their free operations, has never been experienced before since the multiparty system was re-introduced in the country. On June 24, 2016, the late President Magufuli announced a ban on political rallies of opposition parties while restricting opposition politicians to hold public rallies only within their respective constituencies (Amnesty International 2023). The ban on opposition public rallies came at the time when the Tanzania Police Force hyped their slogan *tii sheria bila shuruti,* literally implying "obey the law without coercion." The decision to ban rallies of opposition parties was not based on any law in the country. According to both the Constitution and the Political Parties Act, political parties have the right to conduct their business freely. Section 11(1) of the Political Parties Act (Cap.258 R. E. 2019) is emphatic. It states: "Every political party provisionally or fully registered shall be entitled to hold and address public meetings in any area of the United Republic after giving notification to the police officer in charge of the area concerned for purposes of publicizing itself and soliciting for membership." In the context where the law becomes secondary to an arbitrary decree of a leader, *tii shuruti bila sheria* (meaning obey coercion even when it is contrary to the law) would be a proper description. In January 2023 President Samia Suluhu Hassan rescinded her predecessor's ban on opposition parties, as she declared, "I am here to declare that the ban on political rallies has been lifted. It is the right of political parties to hold rallies but we all have responsibilities. The government's responsibility is to provide sufficient space for such rallies to be held peacefully regardless of the party's affiliation and not to try and obstruct them as political rallies are constitutionally legal" (Reuters January 3, 2023; the East African January 3, 2023).

Although the state-party fusion is a deterrent to democracy in the country (Makulilo 2014), the blatant disregard of the law by authorities in restricting the activities of political parties is a manifestation of how the powers of the president can be abused with impunity. There is an intricate relationship that prevails between the ruling party and the state machinery (including institutions involved in managing the elections), which often erodes the independence and impartiality of the latter. Scholars on electoral politics have indicated how the prevailing relationship between the ruling party and the state benefits the former in electoral processes (Huntington 1991; Levitsky & Way 2010). Levitsky and Way are most emphatic on this point:

> Uneven playing fields tend to emerge under conditions that facilitate incumbent control over key and societal resources. Such conditions often exist in cases of incomplete transition from single-party rule. Single-party regimes tend to fuse the state and ruling party, creating a highly politicized state in which bureaucrats are also party cadres, state properties are also party properties, and resources from various state agencies are systematically deployed for party use (Levitsky & Way 2010 quoted in Makulilo 2014, 95).

Various election observation reports have provided evidence of the advantage of incumbency and how it benefits the ruling party in the Tanzanian electoral processes (TEMCO 1997; 2011). Some scholars have questioned the impartiality of those involved in managing the electoral process because of their close ties with the ruling party (Mukandala, Mushi, Barkan & Njema 2005; Makulilo 2012; Makulilo 2014). In 2016 the late President Magufu-

li appointed a number of party cadres to the positions of City Directors, Municipal Directors, Town Directors, and District Executive Directors. Most of these appointees vied for nomination in the ruling party to contest for parliamentary seats during the 2015 but did not make it. According to the Tanzanian electoral laws, once appointed to these positions, these officials become the Returning Officers (ROs) who are responsible for managing and supervising elections, on behalf of the National Electoral Commission (NEC), at the constituency level. Section 7(1) of the National Elections Act (NEA), (Cap.343 R. E. 2015) states, "For purposes of an election held under this Act, every City Director, Municipal Director, Town Director, and District Executive Director shall be a Returning Officer for the purposes of conducting an election in a constituency and such Returning Officer may be for more than one constituency." A report by TEMCO aptly questions, "How could the National Electoral Commission delink itself from CCM given its composition, manner of its appointment, reliance on CCM government discretionary funding, and even more compromising, reliance on borrowed government personnel, most of whom were believed to be (or to have been in the immediate past) CCM members?" (TEMCO 1997, 193).

Unfortunately, Article 74(12) of the Constitution of the URT provides a strange immunity to the NEC such that even the country's courts have been restricted to hold the electoral management body accountable. It states, "No court shall have power to inquire into anything done by the Electoral Commission in the discharge of its functions in accordance with the provisions of this Constitution." The Constitution further complicates matters when it comes to presidential elections. Once the NEC has declared the presidential election results, no court in the country has power to inquire into the election of the President. Similarly, Articles 41(7) and 107A(1) of the Constitution create a paradox in the legal framework. While Article 107A(1) recognizes the Judiciary as the final authority in matters of dispensation of justice, Article 41(7) curtails the powers of the Judiciary and prevents it from having any jurisdiction to inquire into the election of a presidential candidate who has been announced by the NEC as the winner in an election. It states, "When a *presidential* candidate is declared by the Electoral Commission to have been duly elected in accordance with this Article, then no court of law shall have any jurisdiction to inquire into the election of that candidate" (emphasis is mine).

The problem with Article 41(7) is threefold. First, it creates conditions of potential abuse of power and unfair bias against those competing with the incumbent presidential candidate. Despite Article 74(14) of the Constitution prohibiting "all persons concerned with the conduct of elections to join any political party," evidence, as alluded to in this article, indicates that some leaders and members of the ruling party had been appointed to serve the Electoral Commission in various capacities. For example, while one of the Commissioners of the NEC was at one time the ruling party's Publicity Secretary, the former Director of Elections of the NEC, before being appointed to the position, had previously vied for nomination within the ruling party to compete for a parliamentary seat in the 2015 elections. He also previously served as the District Executive Director who, among others, was responsible for managing elections at the constituency level. Secondly, the constitutional provision denies the Court its rightful mandate of dispensing justice thereby eroding a sense of responsibility for the Electoral Commission. Lastly, the provision denies citizens the opportunity to legally demand explanation, through the courts, from and to impose sanctions to the NEC should they feel it has not done its job in a just or appropriate manner.

The foregoing circumstances suggest that beneficiaries of neopatrimonialism are unlikely to refrain from favouring the ruling party against their electoral opponents reflecting what James Hathaway and Steinar Askvik (2021) call the kinship logic. By the kinship logic these authors refer to the use of state resources by powerful leaders to grant favours to people in exchange for loyalty (Hathaway & Askvik 2021) that others call neopatrimonialism (Hyden 2013) or clientelism (Wang & Wissenbach 2019). The tendency to act partially in order to give advantage to one actor over others in the electoral process obstructs the democratic process thereby undermining the very logic of democracy, i.e. the free choice of the electorate through which public accountability is enforced. The following statement by a former Member of Parliament is illustrative of how access to state resources is a powerful ploy for winning the loyalty of subordinates. *Magufuli alitaka kunifukuza CCM baada ya kukataa muswada wa habari ambao ulilenga kuwakandamiza waandishi wa habari. Mimi nina watoto na wanasoma, kujinusuru nikaamua kubadili gia angani nikaja na hoja ya miaka saba na … kesi ikaisha* (Darmpya Blog May 2022; Zama Mpya TV May 2022). In this Swahili quote, the former MP is saying (my literal translation), "The late Magufuli wanted to expel me from the ruling party, Chama cha Mapinduzi (CCM) when I initially opposed a bill tabled by the government, which I considered repressive to journalists. To save my political career and continue financing my children's education, I started proposing the extension of the presidential tenure from five to seven years. I believed, in so doing, my case would be dropped. It actually worked out."

Impotent media

The media is believed to be one of the mechanisms by which citizens can enforce public accountability through uncovering misconduct, thereby exerting pressure upon the agent to account for his or her actions (Bovens 2007). Since 1992 when Tanzania adopted plural politics, the media has significantly grown in volume. For example, by August 2022, the number of newspapers and magazines in the country stood at 257 (URT 2022). Private radio stations have increased from one in 1992 to 210 by December 2021. Television stations have also increased in Mainland Tanzania from one television station, i.e. ITV, established in 1994, to 56 stations and 663 registered online televisions by December 2021 (TCRA 2021).

However, one of the serious snags facing the media is the restrictive nature of the media laws in the country. These laws, among others, provide the Minister responsible for media institutions and the Director of Information Services with powers to suspend or de-register any media house or newspaper without going to court. Section 25(1) of the Newspapers Act No. 3 of 1976, for example, states, "Where the Minister is of the opinion that it is in the public interest or in the interest of peace and good order so to do, he may, by order in the *Gazette*, direct that the newspaper named in the order shall cease publication as from the date… specified in the order." The discretionary powers given to the Minister by this provision restrict the independence of the media to the extent that any newspaper needs to weigh the cost of publishing anything that may appear unpleasant to the Minister or the government for that matter lest they lose registration and consequently business. On several occasions, the Minister responsible for media institutions has shut down newspapers, radio stations, and suspended live transmission of *Bunge* sessions (HRW 2019). Similarly, Sect. 9(b) of the Media Services Act No.12 of 2016 grants powers to the Director

of Information Services to "suspend or cancel the license *of any print media* in the event of failure of a license to comply with the prescribed conditions of a license" (emphasis is mine). Given the prevailing legal framework, majority of the media institutions are not willing to venture into investigative journalism, as they would risk being kicked out of business. As such, the media remains an impotent mechanism for facilitating enforcement of public accountability.

It may therefore be said the extent to which the media can or cannot be an effective mechanism for enforcing public accountability depends on several factors including but not limited to the nature of the regime in power, the skills and competences of the media personnel, the resources at their disposal, to name a few. In the context of our present discussion, the nature of the regime is very decisive in shaping the role of the media. When a regime is democratically transparent and accommodative of dissent opinion as it was the case during Kiwete's administration, it would devise institutions that facilitate the media to become a buoyant platform through which citizens voice their demands for public accountability. Nonetheless, when the regime enacts repressive laws, the media also bends to a more passive role mostly reporting political rituals, symbolism, and propaganda with no serious consideration of perspectives critical to the regime (Ng'wanakilala 2019; Paget 2020). When repressiveness remains unchecked it gradually breeds a culture of docility and *uchawa* – a Swahili term which refers to a political culture of fawning sycophancy – as a survival tactic with negative consequences on the ability of citizens to demand accountability. It is to this issue that the ensuing section turns its attention.

Political culture and institutionalised docility

Over the last seven years a culture of political docility began emerging in Tanzania especially in dealing with those entrusted with authority in public office. Docility, according to the Oxford American Dictionary, implies the state of being "ready to accept control or instruction." Political docility, therefore, is a term used here to refer to a tendency among citizens of being ready to accept control or instruction, even when such control or instruction is illegal. When such tendency grows into acceptance by society as a norm, it becomes institutionalized. Political docility is usually an outcome of what Almond and Verba (1963) refer to as "subject culture",[3] which is often created by authoritarian or centralised political structures. Public accountability does not automatically happen. Its enforcement requires a certain agency found in the citizens' ability to demand accountability. As long as this agency is lacking, the civic pressure – which significantly determines the extent of alignment between society's values, laws, and structures and accountability – also wanes. When a system of government or its sycophants press for unquestioning obedience to the leaders from citizens – a typical feature of authoritarianism – such system tends to breed a culture of political docility among citizens. The idea that citizens can hold their leaders accountable makes sense only when citizens are willing and able to exercise their right of holding their deputies to account. It is observed that of the five challenges identified in this article, institutionalized political docility is the most significant deterrent to accountability. All repressive laws and ineffective structures may be altered for enhanced accountability provided that citizens are able to exert pressure on political leaders to do so. It is

3 Subject culture implies a state in which citizens remain passive even when they are not happy with the state of affairs. They obey the law but they do not bother to shape it (Almond & Verba 1963, 118).

almost a norm to treat whatever the President says or does, for example, as incontrovertible. Even when the leader issues an illegal order, citizens dare not demand accountability but appear only to be soothed by the old dictum "might is right."

In recent years a culture of fawning sycophancy has emerged in Tanzania. Projects that are publicly funded by tax payers' money including the construction of school classrooms and toilets would be attributed to the presidency. Such statements as *tunamshukuru Mheshimiwa Rais kwa kutupa fedha za kujenga huu mradi* (literally meaning "we thank the President for giving us money for this project") are not uncommon. This is a sort of systematically planned indoctrination which in the long run aims at creating the impression that all resources in the country belong to the President and they can benevolently allocate it the way they see fit. The citizen's mindset is manipulated to believe that the financing of development projects implemented by the government is not an act of public accountability but an altruistic act of generosity or charity. This, in the end, reinforces political docility with negative implications on the ability of citizens to enforcing public accountability.

In Tanzania, just like in other African countries, it is culturally not a common phenomenon to expect a superior to be held to account by the subordinates (Mateng'e 2012). The question of power differential is key in the relationship between the country's political leaders and the citizens (Cammack 2012). The former, while theoretically is the agent, is too powerful to the extent that there is no practical possibility of being sanctioned by citizens – the principal. The institutional lens would suggest that this is reminiscent of the imperial or traditional systems of administration in which "compliance is not owed to enacted rules but to the person who occupies the position of authority" (Hyden 2008, 25). In traditional societies the powers of leaders were absolute and citizens were simply treated as subjects with no right to question their master.

In her "4Rs" philosophy, President Samia Suluhu Hassan indicates that she wants to promote reconciliation, resilience, reforms, and rebuilding in Tanzania (Hassan 2022). Although these ideas are yet to develop into a systematic thought, they signify an optimism about public accountability. The first "R", reconciliation, implies the restoration of harmonious relations among citizens despite their differences. It resonates with Nnamdi Azikiwe's notion of political *risorgimento* that calls for a just society in which all people enjoy their rights and freedoms with dignity (Irele & Jeyfo 2010). The biggest challenge is for those in power to ensure justice prevails in society in a way that not only reinforces accountability but also creates trust of citizens towards their institutions. The second "R", resilience, refers to the urge to withstand the socio-economic and political challenges currently facing the world including the effects of the COVID-19 pandemic. The third "R", reforms, is a call to embarking on political and economic reforms through constitutional reforms and amendment of electoral laws so as to strengthen democracy and economic growth for mutual prosperity. The hesitations to resume the constitutional reform process and the recent arrests and treason charges instituted in August 2023 against critics of the controversial Intergovernmental Agreement[4] between the United Republic of Tanzania and DP World of the Emirate of Dubai, raise scepticism among opposition parties and civil society regarding the sincerity of the reform agenda of Hassan's administration.

4 The agreement was signed by the government of Tanzania and the DP World of Dubai in October 2022 allowing the latter to manage all the ports in Tanzania. Despite opposition from citizens, the agreement was ratified by Tanzania's parliament in June 2023.

Some analysts even believe that the succession of Samia S. Hassan to the presidency in 2021 will scarcely strengthen democracy because "she has risen to power through a political party that has coercion and repression built into its DNA" (Cheeseman, Matfess, & Amani 2021, 85). The fourth "R", rebuilding, concerns a resolve to revive important sectors of the economy and a commitment to continue with major national development projects that would revamp the country's economy and create employment opportunities and economic benefits for all citizens. The extent to which these initiatives will ameliorate the various contradictions in the legal framework and practices to allow an effective enforcement of public accountability in Tanzania, is not clear. Only time will tell.

Conclusion

This article has identified and examined five challenges in the institutional architecture that constrain enforcement of public accountability in Tanzania. It has shown that the existing legal framework creates paradoxes that inhibit enforcement of public accountability. While some constitutional provisions appear to promote accountability, others provide numerous legal immunities to public officials and institutions against prosecution to the extent they deny citizens the opportunity to hold their leaders and institutions to account. Given the present institutional design characterized with neopatrimonialism, even elections, as other studies have shown, remain an ineffective avenue through which citizens can hold their leaders accountable. In addition, the existing legal framework still limits space for civic institutions such as civil society organizations and the media to effectively facilitate public accountability. A number of repressive laws are still in place inhibiting the effective functioning and contribution of these institutions to enhancing public accountability. Unless these immunities to political leaders and repressive laws are rescinded so that public officials know that they will be required to account for their actions or inactions, public accountability will remain far-fetched.

The article has also argued that the five challenges identified reinforce each other to stifle public accountability. It is noted that the laws and structures may be altered for enhanced accountability depending on the extent to which citizens are able to exert pressure on political leaders to do so. This is the reason why institutionalised political docility is the most significant factor that militates against effective public accountability. A continuous empowerment of citizens through civic education may be useful in order to raise the confidence of citizens to enable them actively demand for accountability among public servants and political leaders. Such civic education will hopefully help to institutionalise a culture of respecting institutions of accountability. The extent to which the opportunity presented by President Samia Suluhu Hassan's willingness to engage other stakeholders in the process of reviewing the constitution and amending the laws will result into transparent and effective institutions of public accountability remains to be seen. There is need, however, to ensure that the constitutional reforms are honestly carried out in a way that prevents impunity and empowers citizens by giving them voice over leaders, ensures the impartiality and independence of the judiciary, separates the state from the ruling party, and creates an impartial electoral commission that manages both national and local government elections without fear or favor.

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