

## **The Politics of Transparency in Kenya and Tanzania**

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**September 2011**

### **Abstract**

Financial transparency in Kenya and Tanzania has improved greatly over the past two decades. Nevertheless, both countries have struggled with turning increased transparency into enhanced accountability. Moreover, even though both countries have similar levels of transparency across a range of indicators, because the political forces that led to it were quite different in each country, the actions needed to consolidate gains to date and advance on them are dissimilar. In Kenya, demand for greater transparency has come largely from domestic sources in the context of eroded institutions, increasingly personalistic and repressive rule under ex-President Moi, and the flawed 2007 election. The violence the election catalyzed led to the adoption of a new Constitution in 2010 and the main challenge is to institutionalize the sweeping reforms in it. In Tanzania, by contrast, efforts to improve transparency typically (but not exclusively) have come from top-down decisions of an entrenched ruling party, often due to external pressure. For greater transparency to lead to more accountability in Tanzania, domestic demand for reform must be more strident and widespread than currently exists.

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# **The Politics of Transparency in Kenya and Tanzania**

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## **Introduction**

Budget transparency in Kenya and Tanzania has improved greatly since each country transitioned to democracy in the early 1990s. Nevertheless, it remains a problem in both countries, especially in transforming greater transparency to improved accountability. In addition, while the two nations fare equally as well across a range of measures of financial transparency, because the political dynamics which produced greater information and, to a lesser extent, oversight in each country were highly dissimilar, each one faces a different set of challenges to securing and advancing on gains it has made.

In Kenya, greater transparency was primarily the result of actions individuals in government, parliament, and civil society took to reduce the power of the executive branch in the context of ex-President Moi's waning legitimacy and control in his final years in office and during the politically fluid period that followed under President Kibaki. Thus, efforts to improve transparency in Kenya emerged in the context of a weakening executive and disintegrating institutions. By contrast, in Tanzania, it has typically been the result of deliberate top-down efforts in the powerful executive branch, often due to external demands from donors to improve governance in exchange for foreign aid. Political competition - manifested by rifts

within the ruling party - also have been a source of greater openness, but played far less of a role than in Kenya, especially in catalyzing institutional reforms.

Because the political dynamics that created greater transparency in Kenya and Tanzania were highly dissimilar, the mechanisms that support it operate far differently in each country. In Kenya, since these reforms emerged in the context of a weakening presidency, eroded institutions, and greater political competition, they have manifested themselves in the actions of specific individuals who were able to take advantage of the country's weak formal institutions and political fluidity in order to reduce the power of an increasingly unaccountable, opaque, and repressive executive branch. As a result, advances in openness in Kenya have advanced in *ad hoc* ways in parliament, civil society, and, to a lesser extent, in the executive branch under presidents Moi and Kibaki. While these reforms culminated in a more systematic manner in the passage of the 2010 Constitution, the path to it was circuitous, chaotic, and violent as the new Constitution was a direct result of the flawed 2007 election and the instability it produced.

In Tanzania, by contrast, gains in transparency mainly came about through deliberate actions of a powerful president sitting on top of a fairly disciplined and hegemonic party. Greater political competition, manifested through rifts within the ruling party, also has been source of improvements to transparency, but a much less significant one than in Kenya. As a result, advances in transparency occurred in a more systematic method, primarily through the creation of executive branch offices

and agencies accountable to the president. Genuine institutional reform to increase the power of independent oversight bodies and parliament, and the development of a more forceful media and civil society, by contrast, have advanced far less.

Due to the differing routes to greater transparency that Kenya and Tanzania have followed, each country possesses distinct obstacles to securing and advancing on the gains it has made. In Kenya, the chief challenge is to institutionalize transparency reforms key individuals secured during a period of executive branch weakness and general political disarray. While the 2010 Constitution formalizes and advances many of these changes in law, rules do not enforce themselves. Numerous threats exist to consolidating these reforms, most prominently Kenya's fragmented and clientelistic political parties, the unstable governing coalitions the party system produces, and lingering instability from the 2007 election. Tanzania faces a very different set of impediments. Because parliament, civil society, and oversight agencies still remain institutionally weak, they are generally unable to hold the executive branch accountable for its actions. Greater domestic demand for reform must occur to remedy these institutional weaknesses.

One principal finding of this paper is that external pressure is not a substitute for internal demand. Because political reforms that resulted in greater transparency in Kenya came about through the actions of domestic actors, abetted by external ones, they have been far more institutionalized in law than in Tanzania and enjoy a firm base of domestic support. In the latter, reforms in these areas mainly have been the

result of external pressure and advances, to date, remain largely limited to executive discretion.

The second significant finding is that increasing budget transparency in Kenya and Tanzania has not easily led to greater accountability in either country. For example, both countries have observed massive corruption scandals over the past two decades. An enormous amount of detail exists on the crimes committed and the perpetrators of them. To date, those at the center of them have not been held accountable and little evidence exists to suggest that this will happen anytime in the near future. More broadly, while both countries have created relatively autonomous Supreme Audit Institutions (SAI) and other oversight agencies, they tend to lack any significant enforcement power.

A third main finding of the paper is that opportunism, rather than sincere demands for reform, tends to link greater political competition and increased budget transparency. In Kenya, and to a lesser extent Tanzania, more intense political competition has been a source of reforms to improve transparency. However, in both countries, politicians who advocate for it tend to view greater financial openness as a mechanism for reducing the political strength of their rivals. Politicians that view efforts to improve financial transparency as an intrinsic objective exist, but are in the minority.

This paper analyses the politics of budget transparency in Kenya and Tanzania. The next section discusses the distinct routes each country took over the past two decades to secure the gains it has made. The subsequent one compares the current levels of transparency in both countries. The following section identifies the challenges to securing and advancing reforms each country has made. The last section provides concluding observations.

### **Divergent Political Trajectories**

This section discusses the divergent political trajectories in Kenya and Tanzania that led to improvements in budget transparency in each country. It also focuses on the contemporary influence of oversight mechanisms in each country, specifically the powers of parliament, executive branch and autonomous agencies, and civil society.

#### ***Kenya***

##### *Increasing Concentration of Power under Kenyatta and Moi*

Increasing concentration of power in the office of the president, a weakening of formal oversight institutions, and more opaque personal rule characterized political development in Kenya during its first three decades of independence. While Kenya's first president, Jomo Kenyatta, inherited a parliamentary form of government based on the British (Westminster) model, soon after taking power, he instituted a

presidential form of government, abolished the post of prime minister, created a *de facto* one party state under the Kenya African National Union (KANU), and subordinated the role of parliament compared to the executive branch (Barkan and Matiangi 2009; Nakamura and Johnson 2003; Sundet, et al. 2009). Numerous Constitutional changes marginalized the role of parliament in budget oversight, and informal patronage networks that rewarded loyalty to Kenyatta further reduced its incentive to act as a check on the executive branch. While Kenyatta permitted debate in parliament, the legislative branch of government became more of a talking shop than a check on the executive branch as it held little institutional power and evinced little desire to acquire it.

Government performance deteriorated even further under Kenya's second president, Daniel Arap Moi (Barkan and Matiangi 2009; Mueller 2008; Nakamura and Johnson 2003; Sundet, et al. 2009). Lacking the resources to govern primarily through doling out favors, Moi's rule was far more repressive than Kenyatta's.<sup>1</sup> He created a *de jure* one-party state, vastly increased the powers of the presidency, and ruled through the manipulation of personal relationships, not institutions (Barkan and Matiangi 2009; Kagwanja and Southall 2009; Mueller 2008; Sundet, et al. 2009). Increasingly opaque budgets were one of the many deleterious consequences of Moi's style of governing.

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<sup>1</sup> Kenyatta hailed from a large and fairly prosperous ethnic group, the Kikuyu, while Moi belonged to a much smaller and marginal one, the Kalenjin. Kenyatta thus had a larger natural base of support than Moi and the Kikuyu's prosperity was not a political threat to him. As a result, Kenyatta had the resources to create and rule through a relatively benign - but unaccountable - patronage system.

The end of the Cold War upset Moi's increasingly authoritarian control over Kenya (Barkan and Matiangi 2009; Foreshee 2006; Mueller 2008; Sundet, et al. 2009). Even though Moi could not tap into indigenous sources of wealth in Kenya to distribute patronage as easily as Kenyatta had, as a loyal ally of the West, donors rewarded him with foreign aid and did not monitor very closely his use of it. This lack of oversight evaporated after the collapse of the Soviet Union. In the early 1990s, in the context of widespread domestic demands for democracy, Kenya's foreign patrons became increasingly critical of Moi's repressive rule and conditioned aid on political reform, including a resumption of multi-party elections and presidential term limits, to which Moi grudgingly assented.

Moi won the 1992 and 1997 multi-party elections but only through intimidation, vote rigging, and gerrymandering (Foreshee 2006; Mueller 2008; Sundet, et al. 2009). The latter election was particularly flawed, and the level of blatant violence and fraud Moi employed to win the contest lent him a severe loss of legitimacy as Kenyans now understood that coercion was Moi's only remaining method of securing political control. In addition, Kenya's 1992 Constitution limited presidents to two terms and Moi was in second one. The knowledge that he would be stepping down in 2002 eroded Moi's power further. Due to Moi's preference to govern through the manipulation of personal relationships rather than formal institutions, his visible political weaknesses created a power vacuum that allowed reformers, opportunistic politicians, and civil society organizations to reduce the power of the executive branch. Improved transparency was one of the results.

### *Rise of the Reformers*

Starting in the late 1990s, a small number of MPs, led by a former loyal Moi supporter, Peter Oloo Aringo, began to assert more power and passed a range of bills to increase the influence of parliament. Gaining greater control over Kenya's budget was one of their primary objectives (Barkan and Matiangi 2009; Nakamura and Johnson 2003; Sundet, et al. 2009). These reforms included amending the Constitution to assert parliament's financial and administrative independence from the executive branch, making the Speaker of Parliament accountable to the legislature not the president, and raising MP salaries. These measures were necessary because hitherto, parliament's budget and staff were under the control of the executive branch. The reformers viewed financial and administrative autonomy as a necessary first step in order to gain more formal political power for the legislative branch of government. Parliament also began to design a committee system and developed a strategic plan to modernize the legislature through the creation of a full system of committees, professionalizing the staff working in parliament, and improving parliament's physical infrastructure. Although modest steps at the time in terms of improving formal oversight of the executive branch, they would have a subsequent substantial impact on it.

Two unlikely allies, Mwai Kibaki, and Raila Odinga, unexpectedly joined the reformers in parliament in the run-up to the 2002 election (Barkan and Matiangi 2009; Whitaker and Griesch 2009). The impetus was Moi's choice of Uhuru

Kenyatta, son of Jomo Kenyatta, to succeed him as KANU's candidate in the 2002 election. The decision prompted Odinga, Minister of Energy during Moi's last term in office, to leave KANU. Subsequently, Kibaki and Odinga joined forces under the National Rainbow Coalition (NARC). Kibaki, another former minister and vice president under Moi, was the principal opposition candidate in the 1992 and 1997 elections, having been forced out of KANU earlier by Moi. To secure Odinga's support, Kibaki promised to create a position of prime minister for Odinga as well as allocate his party a number of ministerial portfolios (Sundet, et al. 2009; Whitaker and Griesch 2009). Although Kibaki had not been among the group of assertive reformers in parliament, NARC ran as the modernizing party, critical of the corruption that Moi permitted and promised to create a new constitution that would reduce the power of the president, increase the powers of parliament and sub-national governments, and improve government accountability.<sup>2</sup> NARC swept the elections, winning with 61% of the vote.

Kibaki's commitment to technocratic economic reform led to a number of positive changes in public financial management. Kibaki significantly improved macroeconomic performance and discipline (especially tax collections), privatized a number of failing state-owned enterprises, and began to regulate the private sector more effectively (Kagwanja and Southall 2009). The IMF's 2008 report on fiscal transparency in Kenya lauded these changes, stating, "Kenya has made significant progress since 2003 in improving transparency and accountability" (IMF 2008: 1).

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<sup>2</sup> At the end of Moi's last term in office, Kenya ranked seventh from the bottom in Transparency International's Corruption Perceptions Index.

During Kibaki's first term, parliament passed and Kibaki signed a number of new laws in this area, such as:<sup>3</sup>

- *The Government Financial Management Act.* This law covers oversight of withdrawals from Kenya's Consolidated Fund, which Parliament appropriates.<sup>4</sup> The act created the offices of the Accountant General, the Budget Director, and the Internal Auditor General. The act does not cover budget formulation or execution.
- *The Public Audit Act.* This act increased the independence of the Controller and Auditor General (CAG) and created the Kenya National Audit Office (KNAO). The act enhanced the CAG's autonomy by defining the circumstances under which a president can remove the officeholder, including assent from a tribunal created for this purpose. The act attempts to isolate KNAO from political interference by creating a Kenya National Audit Commission to approve KNAO's budget and handle its human resources management. Finally, it expanded the CAG's mandate to cover all central government affairs, including public corporations of which the government is the majority shareholder and extra-budgetary expenditures.

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<sup>3</sup> See IMF (2008) for more detail on these laws.

<sup>4</sup> The Consolidated Fund covers all expenditures of revenues except those designated for specific purposes.

- *The Public Procurement and Disposal of Public Assets Act*. This act improves oversight, regulation, and transparency in government procurement. It declares open tendering as the preferred method for procurement, creates strict outsourcing rules, and outlines stringent guidelines for the disposal of government assets. The act also stipulates penalties for interference in the procurement process. In addition, it permits the Director General of the Public Procurement Oversight Authority (PPOA) to investigate all procurement issues.

Kibaki's reform rhetoric also allowed civil society and the media to operate in a more open manner than existed under Moi. Unlike Moi, Kibaki was generally unable or unwilling to employ blatant intimidation and punishment (in most cases), and civil society and the media seized the space this created to investigate the actions of politicians and raise pressure on holding them accountable for their actions.<sup>5</sup> For example, in 2003, shortly after Kibaki came into office, the Institute for Economic Affairs (IEA) documented the state of budget transparency in Kenya (Mwenda and Gachocho 2003). Its analysis was bleak. According to the report (Mwenda and Gachocho 2003: 18-19), "lack of accountability in public finance management has contributed to economic policy failures, huge public debt, and the withdrawal of the necessary external financing." Budget information problems included:

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<sup>5</sup> It is important to note that this is generally speaking. This does not mean that Kibaki did not countenance threats and intimidation in certain circumstances, as his treatment of John Githongo, which the paper discusses in great detail below, demonstrates. Another example was the raid on the offices of the Moi-owned Standard Media Group after the Standard newspaper ran a series of articles about the Anglo Leasing scandal.

- Poor accessibility of budget information
- Untimely budget information
- Inaccurate budget information
- Poor presentation of budget information

The report also found budget oversight lacking in numerous areas, including:

- Weak monitoring and evaluation systems
- Inadequate human and financial resources
- Limited opportunities for stakeholder oversight
- Lack of independent checks

In addition, think tanks, such as the Centre for Governance and Development (CGD), the IEA and the Kenya Institute for Public Policy Research and Analysis (KIPPRA), began to work with Members of Parliament and the public to inform them on how to participate in budget formulation more effectively and to press for greater transparency more broadly. Civil society organizations, such as Muslims for Human Rights (Muhuri), the National Taxpayers Association (NTA), and the Institute for Social Accountability (TISA) that focused on monitoring budget execution at the local level, also began to emerge. These organizations concentrated primarily on grass-roots mobilization and training communities how to oversee government performance at the local level, especially around issues of service delivery.

Kibaki's promises to undo the economic and political damage Moi caused also permitted genuine and opportunistic reformers in parliament and the executive branch the capacity to try to improve governance in Kenya. However they were able to achieve more in the area of transparency than accountability because, despite campaign assurances, Kibaki's commitment to political reform, unlike the aforementioned economic reforms, proved insincere (Kwanja and Southall 2009; Sundet, et al. 2009; Wrong 2009).

The most clear-cut example of Kibaki's limited commitment to political reform was his treatment of John Githongo, the head of the Kenya Anti-Corruption Commission (KACC). A Kikuyu with impeccable credentials as a reformer (he founded the Kenya chapter of Transparency International and was one of the leading investigators of the Goldenberg scandal), Githongo seemed a shrewd choice.<sup>6</sup> To the outside world, Githongo's appointment appeared to embody the reform credentials on which Kibaki campaigned. However, as a fellow co-ethnic whose family was part of the Kikuyu elite, Kibaki and his supporters felt secure that Githongo would consign his efforts to investigating abuses of power under Moi or, at a minimum, could be persuaded by ethnic loyalty not to investigate abuses of power under Kibaki. Githongo surprised Kibaki, however and became a forceful watchdog of Kibaki's government, exposing an even greater scandal than Goldenberg, Anglo Leasing, despite encountering an immense amount of pressure not to do so from the highest

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<sup>6</sup> The Goldenberg scandal was a massive fraud involving state subsidies for fictitious gold exports. The government is estimated to have lost \$600 million and Moi was implicated in it.

levels of the Kibaki administration (Wrong 2009).<sup>7</sup> Although eventually intimidated into resigning, Githongo compiled detailed reports of misconduct and abuse of office that occurred during Kibaki's first few years in office and publicly released many of them.

### *The Consequences of Weak Institutions*

Lack of institutionalized parties or formal governing structures, a legacy of the Moi era, was both an obstacle and opportunity for reformers during Kibaki's first term (Barkan and Matiangi 2009; Mueller 2008; Sundet et al. 2009; Wrong 2009). It was an opportunity because Kibaki's lack of firm institutional control over his governing coalition allowed reformers - both genuine and opportunistic - the capacity to curtail further the power of the executive branch. This was most evident through parliament's continued efforts to secure greater authority, independence, and oversight over the executive branch, especially the budget. Kenya's 9<sup>th</sup> parliament (2002-2007), following the reforms that occurred under the previous one, initiated large increases in its financial resources, increased its control over the budget (for example through the creation of Constituency Development Funds), continued to create specialized committees to monitor the executive branch more effectively, and eliminated the backlog in reviewing reports from the Auditor General's office (Barkan and Matiangi 2009). Budget transparency was not necessarily a principal

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<sup>7</sup> Anglo Leasing is umbrella term for a number of fraudulent security-related contracts that began under Moi and continued under Kibaki. Over an approximately 10-year period, the state is estimated to have lost \$1 billion.

objective in and of itself, but more typically a mechanism for or consequence of curtailing the power of the executive branch and increase if for parliament. The creation of Constituency Development Funds (CDFs) is a good example. Members of Parliament pushed for them to gain partial budgetary control of government expenditures in their districts. Advocating for them under the broad goal of political reform however has forced MPs to accept far more scrutiny of CDFs than many other areas of government spending.

Many have criticized increasing parliament's budget (especially MP compensation) and the creation of Constituency Development Funds (CDFs) as being largely self-serving. While there is no doubt some truth to this claim, it is also important to understand the context in which the creation of CDFs and the rise in MP salaries occurred. Moi's personal rule meant that the executive branch often allocated funds in a non-transparent manner, through pure discretion, based on perceived loyalty or opposition to the president. By the same logic, Moi purposely kept MP salaries low in order to encourage parliamentarians to remain loyal to him in return for selective, discretionary, and opaque patronage. In order to create a more assertive and independent parliament, MPs needed to put an end to these practices. In addition, genuine reformers in parliament recognized the necessity of creating selective incentives to garner the votes they needed to secure the more collective benefits (i.e., greater oversight over the executive branch) they also desired (Barkan and Matiangi 2009; Nakamura and Johnson 2003). Finally, while Kenyan MPs may

be unusually well compensated, the information on the amount they earn is public as are the CDF allocations.

If lack of institutionalization permitted the political space for reformers to operate, the obstacles it created were also clear (Barkan and Matiangi 2009; Mueller 2008; Wrong 2009). Most prominently, lack of institutionalization has hindered efforts to translate transparency into political accountability. Githongo's reports are a clear example. He documented in extensive detail the massive corruption in the Anglo Leasing scandal, parliament held numerous debates about it, the auditor general produced a report on it, and the media covered it extensively, yet the evidence failed to lead to even one prosecution as Kenya's Attorney General, Amos Wako, appeared to be motivated more by personal than constitutional loyalty and no other branch or agency of government - save Kibaki - could hold the Attorney General accountable (Wrong 2009).

Weak institutional capacity in parliament, such as a budget office, also required MPs to seek outside assistance from external donors and domestic think tanks in their desire to create a more effective role for parliament in executive branch budget oversight (Barkan and Matiangi 2009). Due to the marginalization of parliament under Kenyatta and Moi, MPs lacked these basic skills and thus needed to turn to outside experts to gain them.

More broadly, because of Kenya's weak formal and party institutions, improved transparency and oversight in Kibaki's first term occurred in *ad hoc* ways, with reformers and opportunists taking advantage of circumstances as they emerged and often addressing peripheral issues (Barkan and Matiangi 2009). This piecemeal approach to oversight is most evident in the enormous amount of attention civil society organizations have devoted to monitoring a relatively small part of the budget, the implementation of CDFs, which constitute just 2.5% of total spending. While the poor record of MP use of these funds no doubt constitutes part of the explanation for why civil society organizations monitor use of them so carefully, their very small share of the budget means that even the most rigorous scrutiny of them will do little to improve overall financial transparency. Rather, to secure this broader accountability requires an effective legislature and set of oversight bodies, a promise Kibaki made in his 2002 campaign, but failed to keep.

### *The 2007 Election*

The coalition between Kibaki and Odinga began showing strains immediately following the 2002 election (Kwanja and Southall 2008; Mueller 2008; Whitaker and Giersch 2009; Wrong 2009). Kibaki reneged on his offer to create the office of prime minister for Odinga and allocated far fewer ministerial posts to Odinga's allies than he promised. In addition, the draft constitution Kibaki brought to referendum in 2005 did not go nearly as far in reducing the power of the executive branch as he promised in his campaign. Odinga and his supporters, still nominally in a coalition

with Kibaki, opposed the referendum and voters defeated by an embarrassing margin of 16 points, 58% to 42%. Soon after, Kibaki threw Odinga's supporters out of their cabinet positions and Odinga began his campaign against Kibaki for the 2007 election. Drawing on the momentum of the defeat of the 2005 Constitutional referendum, Odinga formed the Orange Democratic Movement (ODM<sup>8</sup>), campaigning on the themes of change, Kibaki's failed promises, and charges of Kikuyu ethnic favoritism.<sup>9</sup> Many believed that Kibaki's failure to pass the Constitutional Referendum was a clear signal that he was not sufficiently popular to win a second term.

While Election Day went smoothly, the counting of the ballots was suspicious and the results were less than credible (Wrong 2009). In particular, there were long delays in the presidential returns from the Kikuyu strongholds, especially in Central Province, but not for the parliamentary ones. In addition, while Odinga held a substantial lead in the early returns, later ones were far more tilted towards Kibaki. Finally, the official results produced a highly improbable outcome: while Odinga's ODM won early twice as many seats as Kibaki's Party of National Unity (PNU) in parliament, Kibaki emerged the victor in the presidential election through a very narrow margin. Shortly afterwards, the country exploded into violence that killed at approximately 1000 people and displaced hundreds of thousands (Kwanja and Shouthall 2009; Mueller 2008; Wrong 2009).

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<sup>8</sup> The name ODM demonstrates the momentum Odinga created in his fight to kill the Constitutional referendum as orange was the symbol of a no vote.

<sup>9</sup> The 2007 election was rife with irresponsible ethnic rhetoric. Many called Kibaki's cabinet the Mt. Kenya Mafia and framed the election as "41 against 1," a euphemism for everyone against the Kikuyu.

## *The 2010 Constitution*

Due to immense external and internal pressure, the flawed election and violence it catalyzed, Kibaki and his supporters agreed to draft and present for referendum the type of constitution he promised in the 2002 campaign. In 2010, voters in Kenya overwhelmingly approved it.<sup>10</sup> Among other sweeping changes, the new Constitution has the capacity to bring greatly enhanced transparency and accountability to the Kenyan Government<sup>11</sup>:

- The Constitution formally separates the executive and legislative branches by forbidding executive branch appointees from concurrently serving in parliament. This will end the practice of presidents appointing members of parliament to executive branch positions as a mechanism for creating a compliant legislature.
- The Constitution places the capacity to raise revenue, appropriate expenditures, and borrow money in the hands of parliament, not the executive branch.

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<sup>10</sup>The panel of experts that drafted the Constitution left little time for public input and Kibaki consented to it under an immense amount of external pressure. Nevertheless, the constitution broadly reflects the types of changes Kibaki promised Odinga in seeking his support in the 2002 election. Kibaki and Odinga strongly supported the new Constitution, and voters passed by a vast margin, 67% to 30%.

<sup>11</sup> See Akech (2010) and Kirira (2010) for a comprehensive discussion of these changes.

- It requires the executive branch to submit its budget to parliament at least two months before the start of the fiscal year and provides the Budget Committee and relevant departmental committees with the mandate to review and recommend changes to the budget. It also requires the Ministry of Finance to provide quarterly budget monitoring reports to parliament.
  
- The Constitution mandates that at least 15% of total revenue go to local governments, the 47 counties the new Constitution created. The Constitution also demands that parliament distribute it in an equitable manner, taking into account population size and level of poverty.<sup>12</sup> Thus, the new Constitution forbids the type of favoritism to loyal constituencies pervasive under Kenyatta and Moi, and introduces a new level of transparency by mandating the transfer formulas.
  
- The Constitution creates a number of oversight agencies and mechanisms to monitor that the executive branch and county governments expend funds in the way that parliament intends. It even provides for enforcement capacity in some areas. These new bodies and procedures include:
  - The Commission on Revenue to monitor allocations between the central and new country governments.

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<sup>12</sup> Apart from the 15% floor, the Constitution also created an equity fund of at least 0.5% of total revenue that distributes funds to counties employing these criteria.

- The Controller of the Budget to oversee budget implementation and provide quarterly reports to parliament on the status of the budget.
- A Parliamentary Budget Office now exists in law that will permit parliament to hire its own experts in order to fulfill its new budgetary mandate.
- The Auditor General is required to submit its audit reports to parliament no more than six months after the end of the fiscal year.
- Parliament has the ability to withhold transfers to local governments if they are not following correct financial procedures

Perhaps the most far-reaching transparency reform in the Constitution concerns transfers from the central government to local ones, an area that hitherto has been rife with opacity. As Moi's rule became more personalistic and repressive, allocations from the central government to local ones became increasingly informal, based on perceived loyalty to Moi. In Moi's last term in office and during Kibaki's first one, MPs sought to increase the transparency and equity of these flows through creating a number of earmarked transfers, such as CDFs, the Local Area Transfer Funds (LATFs), primary and secondary school funds, HIV/AIDS funds, and water and roads funds (KHRC and SPAN 2010). While these measures were a vast improvement over the previous opaque and discretionary system Moi implemented, the large number of them makes following flows from the center to local

governments cumbersome, and allows for an enormous amount of double counting of projects across funds (especially between the CDF and the LATF) to free up funds for other - less transparent - uses, such as MP personal enrichment (KHRC and SPAN 2010).<sup>13</sup> The new Constitution envisions a more unified system of transfers with greater discretion at the local level. While it has the potential to create greater transparency, we will not know for certain until the new system is in place.<sup>14</sup>

Recent signs on implementing the new Constitution have been ambiguous. One encouraging signal of the government's commitment to budget transparency is the website on its Economic Stimulus Program (ESP).<sup>15</sup> The government initiated the \$260 million program in 2009 as a response to Kenya's recession. The program funds a range of projects, primarily relating to health, education, sanitation, and agriculture. Largely an entrepreneurial effort by Anne Waiguru, the head of the Governance Unit in the Ministry of Finance when she was director of the ESP, the interactive website contains extensive detail about all of the projects under the program, including their status, the amounts allocated to them, and the officials and contractors responsible for implementing them. Through its companion websites on Facebook and Twitter, it also allows Kenyans to provide feedback on ESP projects.

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<sup>13</sup> Specifically, because the mandates of these two initiatives overlap, but they have separate accounting systems, it is not easy to detect double counting of project expenditures between the two funds.

<sup>14</sup> One example of this lack of clarity is the future of CDFs. These are very popular with MPs because they ultimately control the allocation of them. Moreover, the new Constitution isn't entirely clear about the level of discretion country governments will have with central government transfers. Parliament is currently debating the legislation that will govern county government finance and it is not yet certain what the outcome will be.

<sup>15</sup> <http://www.economicstimulus.go.ke>

Following this innovative example by a single civil servant, the government embraced the idea of data transparency on the Internet even more ambitiously by creating Kenya Open Data.<sup>16</sup> The website contains a vast amount of data on government budgets, project expenditures, in areas such as schools, health clinics, and improved access to water and sanitation, and budget implementation performance, both at the national and local levels. The website also contains a immense amount of additional economic, political, and social data, such as those contained in the census. Finally, the website is partially interactive. For example, it contains a mobile phone application, Msema Kweli, for sharing information on the status of CDF projects.<sup>17</sup>

At the same time, parliament and the executive branch did not enact the 2011 budget in line with the guidelines the Constitution stipulates. According to the Constitution, parliament is to receive the executive's budget at least two months before the start of the fiscal year. In 2011, however, the Budget Committee in Parliament granted the Minister of Finance a lengthy extension, thus reducing substantially the amount of time the legislature had to debate the budget. More broadly, the Constitutional Implementation Committee, the body charged with implementing the new Constitution noted numerous impediments to executing the new constitution (CIC 2011). Among the most worrying are:

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<sup>16</sup> <http://www.opendata.go.ke>.

<sup>17</sup> Msema Kweli is Swahili for Truth Teller.

- Resistance to change and the inclination to operate with a business-as-usual attitude
- Some government ministries perceive themselves immune from needing to executive the changes the Constitution demands
- Lack of understanding of the constitutional implementation process at all the levels of government ministries
- Misinterpretation (often deliberate) of the new Constitution
- Deliberate misinformation to members of the public by some members of the Executive and the Legislature

Could greater external pressure improve financial transparency in Kenya? Aid agencies have long had a difficult relationship with the Government of Kenya and direct confrontation often backfires. Numerous examples exist:

- In 2002, parliament rejected the anti-corruption bill the IMF demanded the country pass to restart its financial assistance program with Kenya. Although parliament refused to pass it for a number of reasons, including a desire to embarrass a weakening and increasingly unpopular President Moi,

complaints about the IMF's interference in the country's politics was one of the opposition's rallying cries.

- While Moi agreed to donor demands for multi-party elections in 1992, he employed enormous amounts of violence and manipulation to win it.
- When former British High Commissioner to Kenya Edward Clay publicly criticized Kibaki's government for its corruption in 2004, the government lashed out at him. Minister of Justice Kiraitu Murungi called him "an enemy of the government" (BBC 2005) and Vice President Moody Awori declared, "we refuse to be dictated to. We do not want foreigners to run our anti-corruption campaign" (Kbukuru 2005: 32). Clay subsequently apologized for the remarks, although defended the veracity of them.

At the same time, donors have been able to support the process of political reform, including greater transparency, when they have been able to work with domestic actors who share the same interest. Donors placed a significant amount of pressure on Kibaki to draft a new constitution and, unlike the aforementioned examples, were able to facilitate democratic reform at that time in Kenya because a substantial amount of domestic demand existed for those changes, including from Odinga, the person whom many Kenyans believed won the 2007 election. Similarly, external agencies have been able to provide effective assistance to reformers in parliament, such as supporting their efforts to gain more effective control over the budget. They

have also been instrumental in providing support for effective civil society organizations, such as IEA, NTA, and TISA. Thus, external assistance could be particularly effective at this time by providing foreign support for the domestic actors are seeking to institutionalize the new Constitution.

Kenya's new Constitution has raised expectations that government will now be more transparent and accountable. Immense challenges exist to securing this desirable outcome. The paper returns to them and how foreign aid agencies can support consolidation of these reforms in a later section.

### ***Tanzania***<sup>18</sup>

Tanzania's political trajectory and the context in which improvements in transparency occurred there are vastly different than in Kenya. Unlike the personalistic rule and political instability that Kenya has experienced since independence, Tanzania's political leaders created a hegemonic and effective ruling party, the Chama Cha Mapinduzi (CCM), or Party of the Revolution.<sup>19</sup> The party's strength has been both the principal source of and obstacle to reforms to improve budget transparency in Tanzania.

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<sup>18</sup> This analysis applies only to mainland Tanzania, not Zanzibar, the country's semi-autonomous archipelago, except where specified.

<sup>19</sup> CCM formed in 1977 in a merger between the mainland-based Tanganyika African National Union and the Zanzibar-based Afro-Shirazi Party, although the two had governed *de facto* as one party after Tanganyika and Zanzibar merged in 1964, following the Zanzibar revolution.

## *Building the Party*

Tanzania was a multi-party democracy at independence, but did not remain one for long. The Tanganyika African National Union (TANU) under the leadership of Julius Nyerere swept the country's first election in 1962 and the 1965 Constitution created a one-party state. The 1977 Constitution subordinated the role of the state compared to the party by placing latter under the jurisdiction of the former.

Although Jomo Kenyatta and Tanzania's first president, Julius Nyerere, both created one party states that centered political control in the executive branch, their methods of governing could not have been more different. Whereas Kenyatta chose patronage as a mechanism of political control, Nyerere built a party with accountability mechanisms. To understand politics in Tanzania, one must begin with CCM. Under Nyerere, the party became a mechanism of control and remains today the only organization - including the government - that has the capacity to exert power from the political centers of Dar es Salaam and Dodoma to the remotest villages in the country (Tucker, et al. 2010).<sup>20</sup>

Nyerere built a hegemonic party, with accountability pointing upwards to the president and the CCM central committee. Regional chairs were accountable to CCM leaders; district chairs reported to regional ones; ward chairs reported to district

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<sup>20</sup> Dodoma is the official capital of Tanzania and Parliament meets there, while the State House and most government ministries operate out of Dar es Salaam.

ones all the way down to ten-cell leaders in urban areas and village chairs in rural ones. Although touted by the CCM leadership as a means to ensure broad-based participation, it also functioned as a mechanism of control: CCM leaders dispatched orders down the chain of command and lower-level party officials reported upwards to the president. Similarly, Nyerere centered power in the executive branch, relegating parliament to the status of a debating chamber. Although its discussions were often lively, the body lacked substantive political power.

### *Transition to Democracy*

The structures that Nyerere built survive, albeit in a more attenuated form, to this day because the CCM leadership preemptively transitioned to democracy, under the advice of Nyerere, ahead of strong domestic calls for it (Hoffman and Robinson 2009). In the late 1980s, Nyerere observed the demands for democratic transitions sweeping Africa and other parts of the world, and understood that one day they would come to Tanzania. Nyerere also realized that if Tanzania transitioned to a democracy ahead of sustained domestic demand for it, the party could put in place rules and institutions that were highly favorable for CCM to retain control long after Tanzania became a multi-party democracy. Due to weak internal demand for political reform, Tanzania's transition to democracy and the constitutional changes that guided it deliberately left an incomplete separation between the party and the

state<sup>21</sup>, did little to reduce the power of the executive branch, and did not encourage the development of an active media or civil society. Unlike in Kenya, demands for greater transparency were neither a strong cause nor consequential result of Tanzania's democratic transition.

Tanzania's transition to democracy did little to increase the formal power of parliament or encourage an active civil society (Tucker, et al. 2010). While parliament has become more assertive, due both to rifts within CCM and a more forceful opposition, which the paper discusses in more detail below, institutional changes that provide parliament with greater authority have not occurred (Mukandala, et al. 2008; Tucker, et al. 2010). Two decades after Tanzania's democratic transition, civil society remains a weak advocate for political reform in Tanzania as well (Engel 2010; Hyden and Mmyua 2008; Tucker, et al. 2010). While a few organizations have been successful in challenging the government in a very small number of areas, by and large, civil society has failed to cohere as an effective mechanism for generating greater accountability. According to Hyden and Mmyua (2008: 102):

Civil society is weak in Tanzania. Strong organizations representing the views of particular interest groups are few and far between. Only some of these are ready to take on a political role in the sense of voicing independent opinions in public...The majority of these are primarily involved in delivery of services in social development contexts. Many would be what are called community-based

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<sup>21</sup> The effect of these blurred distinctions is most evident at the regional and district levels. As existed during the one-party era, the highest regional and district authorities - the Regional Commissioner (RC) and the District Commissioner (DC) - are appointed directly by the president rather than elected. At the same time, the CCM Constitution explicitly states that the RCs and DCs are the party's representatives in the region and the district respectively, thus obscuring where the party ends and the state begins.

organizations. These types of organizations generally do not take a political position but regard themselves as non-political and involved in development.

The blame is not civil society's alone. Rather, reflecting Tanzania's top-down transition to democracy, the government deliberately discourages civil society from engaging in advocacy by placing restrictions on the types of activities NGOs can undertake, casting a wide net on what it perceives to be prohibited political activity (Hyden and Mmyua 2008; Tucker, et al. 2010). Despite these constraints, a small number of NGOs, almost exclusively in Dar es Salaam, are working to increase financial transparency:

- Research on Poverty Alleviation (REPOA) places budget data and audit findings at the national, regional, and district level on its website.
- Haki Elimu has gained an enormous amount of attention for its acerbic radio and television advertisements on the government's shortcomings in education.
- Sikika performs a similar function to Haki Elimu in health as well as documents wasteful government spending.
- Twaweza operates across a range of sectors, such as education, health, and water, and works to disseminate information in ways that ordinary people

can grasp easily, including expenditure tracking. The organization also seeks to empower people by conveying the message that families and communities have the ability to solve problems and the right to demand greater accountability.

Nevertheless despite the efforts of these organizations to raise demands for greater transparency, they have yet to catalyze a broader range of efforts among other civil society organizations and/or among the public, and there is little evidence this will occur in the near future.

### *Rifts at the Top*

CCM's hegemony notwithstanding, increasingly, rifts within it constitute a governance challenge within the party and the government because they reflect the former's weakening formal structures. They have also been an indirect cause of greater transparency. There are numerous sources of these rifts. Hyden and Mmyua (2008) identified three factions:

- Reformers, mainly composed of younger MPs, who realize that growing governance problems are threatening the party's control and reputation.
- The old guard, composed of senior members, who believe the party needs to protect its external image through solving problems quietly within the party.

- Opportunists who have joined the party to secure privileged access to state resources.

Others see the rifts in more prosaic terms, as purely struggles for control of the party and the resources it commands, and as a result of the weakness of Tanzania's current president, Jakaya Kikwete. Many see him as a president who is keener to remain popular than to take difficult choices (Mukandala, et al. 2008; Tucker, et al. 2010).

Debates exist around the nature of these rifts and the consequences of them largely because of the lack of transparency in CCM's internal operations. According to Hyden and Mmyua (2008:105), this results from CCM being formally a private organization as well as a hegemonic governing party:

This allows CCM because of its dominance, to bring contentious issues under its own roof and make policy decisions without further debate in the legislature or in public. Consequently many important issues are decided without consultation with other stakeholders, be they government ministries, civil society organizations or private sector operators....its internal party politics are also Byzantine. Decisions are often announced without any advance information or warning. How the inner circle operates is largely covered in cloud.

One important source of these rifts is the 1991 Zanzibar Declaration. The 1967 Arusha Declaration prohibited members of CCM from participating in private economic activities. The Zanzibar Declaration revoked this rule. Although a necessary decision because the economy was changing from socialism to capitalism,

it also created the opportunity for CCM leaders to become active in the private sector as well as established a new route to party prominence, employing wealth to gain power, both by giving money to the party and to individual candidates (Tucker, et al. 2010). This alternative route to power within CCM has weakened internal party governance, as generous party financiers have become prominent political forces in the party due to their financial influence. Because no law exists requiring disclosure of campaign contributions to individual candidates, tracing these links is not easy.

The practical consequence of these rifts is that while CCM remains in firm control, fights within it limit the effectiveness of its internal governance. For this reason, to date, they have been the most visible domestic force for increases in transparency. This was most evident during Tanzania's ninth parliament (2005-2010). Speaker Samwel Sitta, a member of a rival CCM faction to Prime Minister Edward Lowassa, revised Parliament's Standing Orders to allow it far greater capacity to perform executive branch oversight (Tucker, et al. 2010). These reforms included:

- Strengthening Parliamentary committees, including creating a Planning Committee to discuss budget proposals and priorities
- Increasing the number of committees chaired by opposition MPs

- Empowering standing committees to organize public hearings to discuss bills and policy proposals
- Introduction of Prime Minister Questions and Answers Sessions

Under Sitta, parliament actively debated the budget far more than in previous ones. Although the scrutiny began over issues of corruption (specifically the Richmond scandal<sup>22</sup>), investigations widened to many other areas of the budget. The vigorous budget debates that emerged in Tanzania's 9<sup>th</sup> Parliament (2005-2010) have continued in its 10<sup>th</sup> one. Prominent recent examples include:

- Parliament refused to pass the initial 2011/2012 budget for the Ministry of Energy and Minerals as a rebuke over the country's ongoing electricity crisis, the failure of the budget to address the country's energy needs, and allegations that individuals in the ministry attempted to bribe MPs to pass the budget (Kisembo 2011).
- Parliament has been debating corporate taxation, and specifically, why some very large Tanzanian companies with close ties to CCM are not among the list of the country's largest corporate taxpayers (The Citizen 2011).

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<sup>22</sup> The Richmond scandal involved the improper award of a contract to supply energy. Three ministers and an MP on the CCM central committee were implicated in it. It cost the government approximately \$170 million and Richmond failed to deliver the quantity of energy the contract demanded. Sitta's faction in the cabinet saw the scandal as an opportunity to bring down Lowassa's.

Nevertheless, while party rifts and a president with comparatively weak control over the party have been a source of transparency, they have failed to generate demand for institutional reform. Although the body discusses the budget energetically, the only initiatives to increase parliament's power have been Sitta's revisions of its Standing Orders. Rather, parliament's lively debates tend to serve as a platform for disgruntled CCM MPs to embarrass rivals in the executive branch and position themselves for the 2015 election (Kaijage 2011).

Rifts within CCM have occurred numerous times in the past and the party has been able to reform itself internally after each one. While it is far too early to tell whether this will happen again and even more speculative to believe the party will fracture because of them, it is important to understand the different context in which they are occurring today (Hyden and Mmuya 2008):

- As the party transforms from an ideological one to a more pragmatic one increasingly inhabited by people viewing it as a vehicle for wealth accumulation, structures of internal discipline are necessarily weakening. Factions, in part, coalesce around gaining access to state resources, not over ideology as previous rifts were.
- Structural changes, such as urbanization and the growth of the private sector, are undermining many of CCM's economic mechanisms of control that existed in the one party era under a socialist economy.

- The creation of political spaces outside of CCM as a result of Tanzania's transition to democracy, such as private media, civil society and opposition parties, while weak, nevertheless limit the extent of CCM's political control and has eroded its monopoly over flows of information and social organization.

It is far too early to tell whether the party will be able to reform internally or will eventually split because of the factions in it. However, in the near-term CCM's hegemony is secure. For example, while CCM's internal governance may be fractured at the moment no viable breakaway party has formed.

#### *External Sources of Reforms to Increase Transparency*

If domestic demands for greater transparency in Tanzania have been generally weak and not resulted in significant institutional reforms, what was the impetus for the range of policies the government has implemented that are supposed to improve financial openness over the past two decades? For the most part, they have come from donor pressure (Mukandala, et al. 2008; Tucker, et al. 2010). In the early 1990s, after two decades of economic stagnation, CCM's leaders concluded that central planning and socialism had become a failed economy policy. They decided to undertake reforms to create a more capitalistic economy and reduce the country's

debt.<sup>23</sup> After a number of failed attempts to design their own economic reform programs, the government turned to bilateral donors and international financial institutions for assistance (Harrison 2001; Stein 1992).

Soon after the country began its economic transition under a series of donor-designed structural adjustment programs, corruption began to explode during the term of Tanzania's second president, Ali Hassan Mwinyi. In retrospect, this should not have come as a surprise for two reasons. First, Tanzania's path of economic transition was essentially liberalization without regulation (Hyden and Mmyua 2008; Tucker, et al. 2010). This combination permitted well-placed public servants and political leaders to benefit enormously from privatization of government properties and enterprises because they could undervalue the assets and determine who could buy them. Second, corruption was emerging as a problem even prior to the onset of economic reforms as the structural deficiencies the command economy created, such as shortages of basic commodities and disincentives to sell to state-run agricultural bodies, caused citizens to circumvent the system (Hyden and Mmyua 2008). Tanzania's transition to capitalism rapidly accelerated these nascent trends.

As the extent of corruption became more evident (especially with the release of the Warioba Report in 1996<sup>24</sup>), donors demanded that the country put in place

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<sup>23</sup> In the early 1990s, Tanzania's external debt was close to 160% of GDP and external debt service was 40% of exports.

structures to ensure more transparency and accountability in the budget and the government's regulation over the economy, and successive governments have acquiesced in these demands, but generally in only a *pro forma* manner (Hyden and Mmyua 2008; Tucker, et al. 2010). Thus, over the past two decades a vast array of relatively ineffective oversight and regulatory agencies have emerged in Tanzania, such as:

- *Prevention and Control of Corruption Bureau (PCCB)*. The PCCB serves four functions: train government agencies on detecting and preventing corruption; advise the public on ways of preventing corruption; cooperate with international organizations in preventing corruption; and investigate and, subject to dictates from the DPP, prosecute individuals suspected of corruption.
- *Public Procurement Regulatory Authority (PPRA)*. The PPRA mandate covers five areas: ensure fair and competitive procurement standards; harmonize procurement processes across government ministries, departments, and agencies (MDAs); set procurement standards; monitor compliance with procurement procedures; and improve procurement capacity.
- *National Audit Office (NAO)*. The NAO is “the appointed statutory auditor of revenue and expenditure of all ministries, departments of the government,

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<sup>24</sup> Warioba, Joseph. 1996. *The Report of the Presidential Commission of Inquiry Against Corruption*. Dar es Salaam: United Republic of Tanzania.

public authorities and other bodies or authorities, which receives funds from the Consolidated Fund.”<sup>25</sup>

The country has also embarked on a number of reform programs, such as:

- *Public Sector Reform Program (PSRP)*. The broad purpose of the PSRP is to improve transparency, accountability, and resource management in service delivery. The program contains five core elements:
  - Performance improvement through decentralizing and expanding key MDAs
  - Facilitate private sector participation in service delivery through privatization and contracting out non-critical services
  - Introduce results-orientated management
  - Modernize information and communication systems, including an integrated computerized human resources management system
  - Design a meritocratic civil service

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<sup>25</sup> <http://www.nao.go.tz/aboutus.php>

- *Local Government Reform Program (LGRP)*. The overarching objective of the LGRP is to facilitate administrative, fiscal, and political decentralization in Tanzania. It also seeks to improve service delivery at the local level, create more effective local government, and encourage public participation in local government.
- *Public Financial Management Reform Program (PFMRP)*. The PFMRP is Tanzania's main program for improving public financial management. The central objective of the program is to "achieve and maintain sound financial management, resource mobilization and allocation, public debt management, Government asset management through developing robust fiscal and monetary policies, efficient and effective provision of Treasury Services and enhancing professionalism." The ultimate objective of the PFRMP is more effective and efficient allocation of resources to achieve more equitable and better service delivery.

These agencies and programs have an enormous amount of potential to increase budget transparency and it has occurred in a number of areas. For example, aggregate budget data are accessible, timely, and reasonably accurate. Despite these efforts, transparency in general, and its impact on accountability more specifically, remains a problem and perhaps has been deteriorating over the past few years. Creating agencies and reform programs has been far from sufficient for ensuring their effective operation. The rest of this section attempts to explain why investing

large sums of money and effort into increasing financial transparency in Tanzania has achieved only limited success, especially in terms of greater financial accountability.

### *Design Flaws*

How are we to explain why top-down reforms the powerful executive branch in Tanzania designed and implements have been only partially successful? On the surface, it would appear that faulty institutional design is the problem. For example, the autonomous and semi-autonomous agencies the government has created to improve its capacity to regulate the economy lack enforcement power and many, like the PCCB and the PPRA, are politically compromised because they fall under the Office of the President. These agencies can investigate wrongdoing, but only the Directorate of Public Prosecutions (DPP) under the Attorney General has the power to prosecute. The DPP is a severely under-resourced office and the attorneys that work in it earn only a small fraction of what they could earn in the private sector.

Similar structural deficiencies exist across the government:

- The National Audit Office (NAO) has significant autonomy, but lacks enforcement capacity.

- The Business Registrations and Licensing Authority (BRELA) refuses to release information on the owners, directors, and major shareholders of Tanzania's corporations, thus making it difficult to trace the links between politicians and the private sector.
- The LGRP and PFMRP have been ongoing for over a decade, yet most local governments still have inadequate financial management systems. In the 2009/2010 NAO report on local government authorities (LGAs), for example, less than half of received an unqualified audit and the NAO reported performance of LGAs in general was deteriorating.

Numerous studies suggest that capacity constraints constitute the main challenges to improving the effectiveness of these programs and agencies. Nevertheless, this superficial explanation, while partially true, is misleading as a more thorough political economy analysis suggests intentional design flaws are also part of the problem (Hyden and Mmyua 2008; Mukandala, et al. 2008; Tucker, et al. 2010).<sup>26</sup> The central point to ascertain is that the branch of government that has implemented the numerous reforms to make budget information more transparent, such as releasing budget proposals, implementation progress, and audit reports to the public - the executive branch - is the same branch of government that designed programs to ensure accountability for the use of these funds, yet the former

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<sup>26</sup> The glaring lack of resources allocated to the Directorate of Public Prosecutions (DPP), the only agency in the Tanzanian government with the capacity to prosecute, compared to the generous funding investigative agencies such as the PCCB and PPRA receive, is the most obvious example (see Tucker, et al. 2010).

operates far more effectively than the latter.<sup>27</sup> It is difficult to understand how capacity constraints alone can explain why some offices and agencies accountable to the president operate far more effectively than others. To understand this situation requires seeing the problem through the lens of a big picture. Only then can we ascertain the appropriate details and contextualize the significance of them.

### *Placing Transparency in its Proper Political Context*

CCM has managed to undertake tremendous political and economic reforms over the past two decades without losing political and economic control of the country (Hoffman and Robinson 2009; Hyden and Mmuya 2008; Mukandala, et al. 2008; Tucker, et al. 2010). As little as two decades ago, Tanzania was a one-party state, with no meaningful distinction between the civil service and the party bureaucracy, and the government presided over a command economy. Today, Tanzania is a multi-party democracy with a distinction (albeit at times blurred) between the party bureaucracy and the civil service, and the economy is in private hands. Yet at the very top of all of these structures sits the CCM leadership. It presides over two vast bureaucracies, the party and the civil service, and most of the country's leading business people are either members of CCM or have close ties to them. To be able to

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<sup>27</sup> Tanzania's most recent Public Expenditure and Financial Accountability (PEFA) assessment starkly makes this point. According to the report (URT 2010: 4), "Tanzania has a good record of overall budget performance... However, the processes of the PFM system face a number of shortcomings... Predictability and control of budget execution are weak... In general, accounting, recording and reporting remain weak... Internal audit is poor... There is little available information on the delivery of resources to service delivery units."

executive such far-reaching political and economic reforms without losing control of either realm can only happen through strategic planning and strong capacity.

We thus need to treat the claim that capacity constraints and/or unforeseen pathologies in institutional design are the principal reasons Tanzania's oversight authorities fail to perform their functions with skepticism. Due to CCM's clear ability to secure its priorities, even if institutional failures were not deliberately designed, the government could easily rectify them. Many of the weaknesses in financial transparency this paper has identified appear less plausibly as unforeseen problems in program design, than features of it (see Hyden and Mmuya 2008 and Tucker, et al. 2010).

For these reasons, examining data from periodic public expenditure reviews, monitoring progress in implementing financial management systems, such as the Integrated Financial Management Information System (IFMIS), or scouring the audit reports of the Comptroller and Auditor General is an unlikely place to find evidence of commitments to reform (Hyden and Mmuya 2008). Middle and lower level civil servants in charge of these areas are not the obstacles to greater transparency and accountability in Tanzania. Rather, the chief problem stems from the top. An entrenched political and economic oligarchy governs Tanzania that is deeply content with the *status quo* as they are the prime beneficiaries of it. It is hard to imagine reform coming to Tanzania from the civil servants who are accountable, ultimately, to this elite, especially since many of them hold their jobs through

clientelistic relationships with more powerful individuals in the government and/or CCM. Similarly, it is also difficult to believe the transparency that has resulted from rifts within the ruling party will be a source of genuine reform in the near future. Leaders of CCM's disgruntled factions have employed transparency primarily as a weapon to bring down rivals. While it is possible that opportunistic motives could lead to genuine reform - as happened in Kenya - evidence for this does not yet exist in Tanzania.

Top-down economic and political reforms, rifts within CCM, and increasingly assertive - yet still comparatively weak - opposition parties, media outlets, and civil society organizations all account for part of the increase in transparency that has occurred in Tanzania over the past two decades. Yet, for the most part, greater transparency has not led to improved accountability. While information is problematic in Tanzania, especially at the local level (e.g., whether a school has received the capitation grants that cover school fees), focusing on these aspects of Tanzania's governance challenges misses the larger picture (Hyden and Mmuya 2008). Survey data show that Tanzanians are well aware of the country's transparency problems (PCCB 2009). Tanzanians possess sufficient information to understand the government's shortcomings. Tanzania's challenge is not transparency. It is accountability.

While greater internal demand for accountability is almost certainly necessary for reforms in this area to occur, it is nevertheless not clear how the party would

respond to such calls. In particular, the party possesses and has employed two other mechanisms for addressing pressure for political reform, patronage and repression. The paper explores the type of internal demand that seems most propitious for enhanced financial transparency and how foreign aid agencies can support it in a subsequent section.

### **Comparative Analysis**

This section provides a comparative analysis of the current state of budget transparency in Kenya and Tanzania. The first part examines quantitative measures of budget openness. It shows that while the data reasonably reflect the problems in each country, they fail to demonstrate adequately the larger picture of their principal problems. The second part of the section provides this political economy analysis in more detail.

### ***Comparative Data***

Below, the paper compares financial transparency in Kenya and Tanzania according to a range of current quantitative measures. It begins with data from the Open Budget Index (OBI), and then turns to the information contained in recent Public Expenditure and Financial Accountability (PEFA) assessments and the Global Integrity Scorecard ratings.

### *Open Budget Index Data*

The table below examines trends contained in the most recent Open Budget Index (OBI) ratings. Kenya and Tanzania score remarkably closely on OBI data. For the 2010 index, Kenya and Tanzania receive an unimpressive 49 and 45 out of 100, respectively. The data also show no clear trend over time in either country, as Kenya's performance improved from 48 in 2006 to 57 in 2008, before dropping back in 2010. Tanzania's performance shows nearly the reverse, falling from 48 in 2006 to 36 in 2008, before rising in 2010. In the most recent survey, Kenya scored higher than Tanzania in publishing a pre-budget statement and the enacted budget. In all other six categories, they scored exactly the same. The only area where a clear difference exists between the two, as the previous section would suggest, is the involvement of the legislature in the budget process where Kenya doesn't so much show an impressive result, scoring only 57 out of 100, but because Tanzania receives a rather dismal 25 out of 100.

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**2010 Open Budget Index Results for Kenya and Tanzania**

	Availability		Comprehensiveness	
	Kenya	Tanzania	Kenya	Tanzania
<b>Pre-Budget Statement</b>	Published	Produced, Not Published	A	E
<b>Executive's Budget Proposal</b>	Published	Published	C	C
<b>Enacted Budget</b>	Published	Produced, Not Published	B	E
<b>Citizen's Budget</b>	Not Produced	Not Produced	E	E
<b>In-Year Reports</b>	Published	Published	B	B
<b>Midyear Review</b>	Produced, Not Published	Not Produced	E	E
<b>Year-End Report</b>	Produced, Not Published	Not Produced	E	E
<b>Audit Report</b>	Published	Published	C	C
<b>Performance</b>			49	45
<b>Strength of Legislature</b>			58	25
<b>Strength of Audit Institutions</b>			57	50
<b>Overall Performance</b>			49	45
<b>Memo</b>				
<b>Performance 2008</b>			57	36
<b>Performance 2006</b>			48	48

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Below, the paper analyzes OBI data in greater detail by examining information on the quality of budget estimates, the strength of the legislature and Supreme Audit Institutions (SAI), and additional critical information for budget transparency. The data largely confirm the divergent political trajectories in Kenya and Tanzania the previous section of the paper documented.

The OBI covers twelve measures of the quality of budget estimates. Overall, Tanzania performs better in these areas of budget transparency than Kenya. The latter outperforms the former in only two, reporting of extra-budgetary funds and extent of classified

expenditures, while Tanzania scores higher than Kenya in five areas. The extent and quality of the budgets the government produces are largely an executive branch function. Considering that transparency reforms in Tanzania largely have been a result of executive discretion, while it has emanated mainly outside the executive branch in Kenya, it is perhaps not surprising that Kenya does not carry out these functions as well as Tanzania.

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**2010 Open Budget Index Data for Quality of Budget Estimates  
for Kenya and Tanzania**

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	<b>Kenya</b>	<b>Tanzania</b>
Budget Classification by Administrative Unit	A	A
Budget Classification by Function	C	B
Economic Classification of Budget	A	A
Individual Program Budget	B	A
Sources of Tax Revenue	A	A
Sources of Non-Tax revenue	A	A
Extra-Budgetary Funds	B	D
Inter-Governmental Transfers	C	B
Transfers to Public Corporations	C	B
Quasi-Fiscal Activities	D	D
Extent of Classified Expenditure	C	D

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OBI data on legislative strength in the budget process for Kenya and Tanzania, as the previous section of the paper suggests, demonstrate that the former performs much stronger in this area than the latter. With the exception of when the legislature receives the budget and, to a lesser extent, the degree to which the legislature can amend it, Kenya's legislature is far more involved in the budget process than Tanzania's, according to OBI. Moreover, Kenya's performance is likely to improve even further in this area over the next few years as the 2010 Constitution grants parliament control of the budget, while there have been no recent changes in Tanzania in this area.

**2010 Open Budget Index of Legislative Strength  
for Kenya and Tanzania**

	<b>Kenya</b>	<b>Tanzania</b>
Legislature's Receipt of Budget	C	C
General Committee Hearings	A	D
Specific Committee Hearings with Government	A	D
Specific Committee Hearings with Public	B	D
Release Reports of Hearings	A	D
Breadth of Information Legislature Receives	A	B
Legislature's Legal Ability to Amend Budget	C	D
Comprehensiveness of Information Legislature Receives	B	D

Data below on the strength of the SAIs in Kenya and Tanzania also are consistent with recent political trends in the two countries. The data make clear that in neither Kenya nor Tanzania has greater transparency led to improved institutional accountability for SAIs to enforce proper use of government funds. While SAI's have significant autonomy in both countries and while the legislature actively reviews their reports, in neither country does it appear that SAI reports are having a strong impact on government performance. This is most evident in the low scores both countries receive in executive branch reports addressing audit findings, and legislative and/or SAI progress tracking on implementing SAI recommendations.

**2010 Open Budget Index of Strength of Supreme Audit Institutions (SAI)  
for Kenya and Tanzania**

	<b>Kenya</b>	<b>Tanzania</b>
Timing of Audit Release	C	B
Autonomy of SAI Head	A	B
Ability of SAI to Undertake Audits	A	A
Budget Autonomy of SAI	C	B
Ability of SAI to Audit Security Sector	A	A
SAI Public Outreach	D	D
Legislative Scrutiny of Audits	A	A
Executive Report on Addressing Audit Findings	C	D
SAI or Legislature Progress Tracking Report	D	D
Legislature Review of Security Sector Audits	B	B

The final set of OBI data the paper examines concerns additional critical information that facilitates budget transparency. Unsurprisingly given that political change in Kenya largely has come from the legislature and civil society, not primarily from the executive branch as in Tanzania, the former outperforms the latter along these dimensions, specifically in right to information in law and, more dramatically, on public ability to access data on program expenditures and progress.

<b>2010 Open Budget Index for Additional Key Information for Kenya and Tanzania</b>		
	<b>Kenya</b>	<b>Tanzania</b>
Public Budget Summary	A	B
Citizens Budget	D	D
Non-Technical Budget Definitions	D	D
Right to Information In Law	C	D
Public Access to Program Expenditures	B	D
Public Access to Program Progress	B	D

Overall, the OBI data largely support the discussion in the previous section concerning the divergent paths to reforms in budget transparency that have occurred in Kenya and Tanzania over the past two decades. While the countries look similar overall, the disaggregated data suggest more nuanced reform trajectories:

- Tanzania performs better in areas the executive branch controls
- Kenya is stronger in areas of legislative control and citizen access to information

- Both countries have created relatively autonomous oversight agencies, such as SAIs, but they lack enforcement powers

### *Public Expenditure and Financial Accountability Data*

The table below shows recent PEFA assessment ratings on budget transparency for Kenya (2006 and 2008) and Tanzania (2005 and 2009). As with the OBI data, both countries receive remarkably similar scores, especially in their most recent assessments, although Tanzania performs slightly better than Kenya overall. The average score in Kenya was a C, while in Tanzania it was a C+. Of the twelve headline measures relating to transparency, Kenya outperformed Tanzania in two, Tanzania scored better than Kenya in five, and they received identical marks in five.<sup>28</sup>

The data suggest that while Tanzania currently performs slightly better than Kenya in budget transparency, it has been stable in Kenya over the past few years, but may be deteriorating slightly in Tanzania. In Kenya, rankings remained the same in nine out of the twelve main indicators between the two time periods, fell in two (extent of unreported government operations and availability of information on resources received by service delivery units), and improved in one (scope and nature of external audit). In Tanzania, by contrast, performance deteriorated in four areas (extent of unreported government operations, transparency of intergovernmental fiscal operations, oversight of aggregate risk from other public sector entities, such

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<sup>28</sup> Note that the table includes indicator and sub-indicator scores.

as state-owned enterprises, and legislative scrutiny of audit reports), improved in one (scope and nature of audits), and remained the same in seven.

PEFA data are not completely consistent with OBI results in three areas. First, Kenya and Tanzania received identical scores on public access to key fiscal information in the PEFA ratings (PI-10), while Kenya tended to outperform Tanzania in the OBI results in this area. Second, Tanzania received a higher score than Kenya in the PEFA analysis of legislative participation in the budget (PI-27), while OBI data suggest the opposite. Three, Tanzania performs better than Kenya on audit effectiveness according to PEFA data (PI-26), while OBI data show both countries performing at a similarly low level, and scores Kenya's SAI as slightly more effective than Tanzania's (57 versus 50).<sup>29</sup>

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<sup>29</sup> The discrepancy between the two SAI scores for Tanzania derives from differences on how they evaluate follow-up of SAI recommendations. OBI rates Tanzania a D (produces no report) in this category (without explanation), while the PEFA assessment gives Tanzania a B in this area claiming (URT 2010: 43), "Formal responses by MDAs and MOFEA [Ministry of Finance and Economic Affairs] on the audit reports are submitted to the NAO. There is also evidence of a structured response to audit findings, and some evidence of systematic follow up by the MDAs." Why the two measures disagree in this area is not clear.

**Public Expenditure and Financial Accountability Ratings Relating to Transparency  
for Kenya and Tanzania**

Indicator	Kenya		Tanzania	
	2006	2008	2005	2009
PI-5 Classification of the budget	C	C	C	C
PI-6 Comprehensiveness of information included in budget documentation	B	B	A	A
PI-7 Extent of unreported government operations	D+	D	B	C+
PI-7 (i) Extra-budgetary spending	D	D	B	C
PI-7 (ii) Grant and loan financed operations	C	D	B	B
PI-8 Transparency of inter-governmental fiscal relations	B	B	C+	C
PI-8 (i) Transparency and objectivity in sub-national government allocations	A	A	A	C
PI-8 (ii) Timeliness and reliable information on sub-national government allocations	A	A	D	C
PI-8 (iii) Extent of sectoral fiscal consolidation	D	D	C	C
PI- 9 Oversight of aggregate fiscal risk from other public sector entities	C	C	C	D
PI-9 (i) Central government monitoring of parastatals	C	C	C	NR
PI-9 (ii) Central government monitoring of sub-national government fiscal position	C	C	C	D
PI-10. Public access to key fiscal information	B	B	B	B
PI-23 Availability of Information on Resources Received by Service Delivery Units	B	D	C	D
PI-24 Quality and timeliness of in-year budget reports.	C+	C+	C+	C+
PI-24 (i) Scope of Reports	B	B	C	C
PI-24 (ii) Timeliness	C	B	B	A
PI-24 (iii) Quality of Information	C	C	B	C
PI-25 Quality and Timeliness of Annual Financial Statements	D+	D+	B+	B+
PI-25 (i) Completeness	D	D	B	B
PI-25 (ii) Timing	B	B	A	A
PI-25 (iii) Accounting Standards	C	C	B	B
PI-26 Scope, nature and follow-up of external audit	D+	C+	D+	B
PI-26 (i) Scope	C	B	C	B
PI-26 (ii) Timeliness	D	B	C	B
PI-26 (iii) Follow-Up on Recommendations	D	C	D	B
PI-27 Legislative scrutiny of the annual budget	D+	D+	C+	C+
PI-27 (i) Scope of Scrutiny	C	B	C	C
PI-27 (ii) Effectiveness of Procedures	C	B	B	B
PI-27 (iii) Time for Legislature to Respond	D+	D	B	B
PI-27 (iv) Amendment Rules	C	C	B	B
PI-28 Legislative scrutiny of external audit reports	D+	D+	C+	D
PI-28 (i) Timeliness	D	D	A	D
PI-28 (ii) Extent of Hearings	C	B	B	B
PI-28 (iii) Recommendations and Follow-Up	C	C	C	C

### *Global Integrity Scorecard Data<sup>30</sup>*

The final data the paper analyses are those from the 2010 Global Integrity Scorecard that relate to transparency. The Global Integrity data suggest that transparency is less of a problem in Kenya than in Tanzania. Out of a total score of 100, Kenya received a 77 in these areas, while Tanzania achieved a 64. Kenya outperformed Tanzania in eight areas, including access to information, legislative and citizen input into the budget, and audit effectiveness. Consistent with the PEFA ratings but unlike OBI data, Tanzania outperforms Kenya in the effectiveness of legislative oversight. By contrast, as with the OBI data, but unlike the PEFA assessment, Global Integrity perceives Kenya to have a slightly more effective SAI.

<b>2010 Global Integrity Scorecard Data for Kenya and Tanzania</b>		
	<b>Kenya</b>	<b>Tanzania</b>
Legal Right to Information	33	0
Effective Right to Information	42	13
Legislative Input into the Budget	75	25
Citizen Access to Budget Process	75	50
Legislative Oversight of Public Funds in Law	100	100
Effectiveness of Legislative Oversight of Public Funds	42	50
Effectiveness of Public Procurement Process	90	75
Citizen Access to Public Procurement Process	92	100
Effectiveness of Privatization Process	92	67
Citizen Access to Privatization Process	90	80
Supreme Audit Institution in Law	100	100
Effectiveness of Supreme Audit Institution	81	72
Citizen Access to SAI Reports	92	100

<sup>30</sup> <http://www.globalintegrity.org/report>

The table below summarizes the results from the three sets of measures. In general, OBI and Global Integrity ratings are somewhat more consistent with each other than the PEFA ones. Overall the results suggest that Kenya performs slightly better than Tanzania in financial transparency, although this is not true across sub-sectors and the differences between the countries are small in many areas. While the three sources are not in complete agreement, it is difficult to know if differences derive from dissimilar methodologies, slightly distinct questions, subjective biases, and/or conducting the surveys at different points in time.<sup>31</sup>

**Comparison of Kenya and Tanzania across Agencies and Categories**

	<b>OBI</b>	<b>PEFA</b>	<b>Global Integrity</b>
<b>Overall</b>	Nearly Equal	Nearly Equal	Kenya
<b>Budget Content</b>	Tanzania	Nearly Equal	Not Rated
<b>Legislative Strength</b>	Kenya	Tanzania	Nearly Equal
<b>SAI Strength</b>	Kenya	Tanzania	Kenya
<b>Access to Information</b>	Kenya	Nearly Equal	Kenya

The problem with these data is not necessarily their accuracy. In fact, the data generally correspond to perceptions about the status of financial transparency in Kenya and Tanzania today. Rather, the difficulty lies in interpreting what the data imply about the process of reform in this area. If the most efficacious reform process constitutes incremental changes in the capacity of government agencies, these data would be helpful. However, if these data reflect broader political forces, not simply

<sup>31</sup> Asking dissimilar questions is certainly one reason results differ across sources. To cite one example, OBI and PEFA assessments have very different sets of questions concerning the legislature's involvement in the budget. OBI asks a diverse range of questions: four on hearings, two on the quality of information, and one each on timing and the legislature's legal authority to change the budget. By contrast, the PEFA assessment in this area is far narrower, asking only about the legislature's scrutiny of the law, but not its legal authority to change it.

capacity constraints in the areas they assess, working to improve these indicators directly is an unlikely route to greater openness reforms. Indeed, that these data show similar levels of transparency in Kenya and Tanzania, despite each country achieving improvements in financial openness as a result of highly divergent trajectories, suggests the need to contextualize this information in a more comparative political analysis of reform in these two countries. This understanding is also necessary in order to determine what opportunities for greater reforms in this area exist and how they might emerge if they do not.

### ***Divergent Paths to the Same Place***

While Kenya and Tanzania have made substantial progress in political and economic reform over the past two decades, as the previous section described in great detail, each took a highly divergent path, spurred by very different political dynamics. Muck and Leff (1997: 345) argue that, “the mode of transition affects the form of post-transitional regime and politics through its influence on the pattern of elite competition, on the institutional rules crafted during the transition, and on key actors’ acceptance or rejection of the new rules of the game.” Moreover, democratic transitions did not produce clean slates on which new forms of government could form in either country (Sundet, et al. 2009; Tucker, et al. 2010). Rather, social and economic structures and transition paths continue to affect performance in each one. Below the paper examines how these factors affected reform trajectories in each country.

## *Economy and Society*

Economic structures in Kenya and Tanzania were highly distinct following each country's independence. Kenya's economy has largely operated along capitalist lines, while Tanzania operated a socialist economy until the mid-1990s. Nevertheless, over the past two decades, Tanzania's economic structure has rapidly converged towards Kenya's. Today, politicians and politically well-connected elites with privileged access to state resources constitute much of the private sector in both countries. For this reason, in neither country has the private sector emerged as a coherent interest group pressing for greater transparency.

In Tanzania, many of the largest businesses people are either members of CCM or have close ties to it. In addition, the government is one of the largest consumers of the products the private sector creates. In particular, state contracts and distorted regulatory structures, both at the local and national level, are a particularly crucial element of Tanzania's political economy. Given the incomplete separation between the party and the state, much of the private sector sees cooperation with CCM as the most efficacious mechanism for generating profits, not opposition to it. CCM encourages these links because of the party's need for campaign finance and because allocating economic resources through ties to the party is an effective mechanism for political control of the private sector.

The dynamics in Kenya are somewhat more complex, but the outcome - a private sector that sees cooperation with the government, not opposition to it as the most efficacious mechanism for generating profits - remains the same. The Kikuyu have been the country's economic elite since independence. In 2002, economic reform was one of the central elements of Kibaki's platform and wealthy Kikuyu supported his candidacy. Thus, one could plausibly claim that the private sector supported reforms to increase transparency in the 2002 election because they backed Kibaki. However, since coming to office, the Kikuyu business elite in Kenya appear to prefer striking private deals with the government to broader economic reforms to increase transparency. Thus, despite Kibaki's promises of reform, corruption remains nearly as large a problem today as when he took office.<sup>32</sup> As a result, the private sector has not emerged as a coherent interest group calling for economic reform.

By contrast, Kenya and Tanzania possess distinct ethnic legacies that remain today. A number of studies argue this factor accounts for a significant part of their divergent political trajectories (e.g., Barkan 1994; Miguel 2004). While there is validity to this claim, it is nevertheless difficult to draw any broad conclusions about how differences in the politicization of ethnicity between the two countries have affected reforms to financial transparency.

Kenya and Tanzania had highly distinct colonial experiences and the current roots of ethnic tension in Kenya today predate independence. While some studies

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<sup>32</sup> In 2002, Kenya scored a 1.9 (on a scale from 1 to 10 from most corrupt to least corrupt) in Transparency International's Corruption Perceptions index. In 2010, it scored a 2.1.

attribute the lack of ethnic tension in the latter compared to the former to the differing governing styles of Kenyatta and Nyerere, colonialism politicized ethnicity far more in Kenya than in Tanzania. Their differing leadership approaches thus reflect these distinct circumstances as much as - and perhaps more than - they created them.

Ethnicity has been a source of political instability, compromise, and repression in Kenya. The country has vacillated between periods of Kikuyu dominance (under Kenyatta and Kibaki), Kikuyu repression (under Moi), and periods of instability. These phases do not clearly align with political reform as democracy has both flourished (i.e., Kibaki) and withered (i.e., Kenyatta) under Kikuyu rule. While it is true that lack of deep ethnic rifts in Tanzania has permitted presidents of that country the capacity to govern without the repression Kenya witnessed under Moi, ethnic divisions also have served as a basis of political mobilization for multi-party politics and democratic reform in Kenya.

While it is difficult to predict with certainty how greater ethnic frictions would impact politics in Tanzania, evidence from Zanzibar suggests it would not create a propitious condition for the emergence of political conditions that can enhance transparency. Ethnic rifts in Zanzibar between the Arab and African populations on the islands run deep. Due to these tensions, CCM control has been far less secure and more repressive on Zanzibar compared to the mainland. Recent political compromise to address the archipelagos' ethnic tensions, specifically the power-

sharing agreement between CCM and the Civic United Front (CUF) in 2010, did not introduce more transparency into the Government of Zanzibar, unlike power sharing in Kenya.<sup>33</sup> Thus, while ethnic cleavages explain political rifts in Kenya and Zanzibar, in neither country does it clearly indicate the type of political structure that will emerge to mediate them.

### *Transition Paths*

Kenya's transition to democracy occurred in the context of a weakening repressive and unpopular regime that ruled through coercion and personalistic ties to the presidency. By contrast, Tanzania's transition towards democracy corresponds to what Munck and Leff term "transition from above," a ruling power that initiates a transition in the context of a weak opposition so that it can establish rules favorable to its retention of political control. These divergent paths strongly affected the types of reforms each country took to improve financial transparency, the way they implemented them, and the consequences of those reforms.

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<sup>33</sup> The CCM-CUF rift roughly dates back to the Omani rule of the archipelago in the 19<sup>th</sup> century. During this period, the Arab settlers on the islands began importing large numbers of slaves from the mainland to work on plantations in Zanzibar. Britain made the archipelago a protectorate in 1890 and Zanzibar became independent in 1963. At that time, Britain handed power back to the Sultanate, the Arab ruling family in power when Britain took control. Soon after independence, the Zanzibar revolution, led by the primarily African Afro-Shirazi Party (ASP), overthrew the sultan. In 1964, Tanganyika and Zanzibar formed a political union, the United Republic of Tanzania, yet Zanzibar has significant autonomy of its internal affairs. In 1977, the ASP formally merged with CCM. The CUF traces its lineage to opposition to CCM rule (but not necessarily support for the sultanate). Zanzibari of Arab descent tend to support CUF, while CCM's supporters are predominantly African.

Reforms to increase transparency in Kenya came in the context of the disintegrating power of a president who chose to govern through personal relationships, not institutions. Loss of presidential power in a weakly institutionalized system created a political space for genuine and opportunistic reformers in parliament, civil society, and, to a lesser extent, the government, to reduce the power of the executive branch. Greater transparency in many cases was a mechanism they employed and/or consequence of their actions. Because reforms that created openness occurred in a period of political fluidity, they manifested themselves largely through individual initiative, and thus followed an erratic pattern. While the 2010 Constitution formalizes and advances many of these reforms, the institutions to implement them remain weak and thus the changes the constitution envisions remain incomplete.

By contrast, reforms to increase transparency in Tanzania emerged largely due to external demands on the country's powerful executive in the context of a firmly entrenched hegemonic party. The result was the creation of a series of reform programs and agencies to implement the reforms. Yet, Tanzania's reform programs in this area contain structural deficiencies to ensure they are not sufficiently effective to upset the ruling party's control. Increased openness has also resulted from rifts within the ruling party. However, because these individuals have employed transparency as a mechanism to gain power within CCM, not replace the party or reduce the influence of the executive branch, their efforts have not resulted in institutional reforms.

The differing roles of civil society in Kenya and Tanzania in pressing for greater financial transparency provide another useful comparison of how transition paths affect processes of political reform. Civil society was a leading force in Kenya's democratic transition and since the beginning of Moi's second term, a number of civil society groups have capitalized on the country's institutional weakness to press for greater transparency and accountability (Sundet, et al. 2009). For example, the IEA and the CGD have worked very closely with reformers in parliament to devise strategies for increasing the power of Kenya's legislature, especially with regard to budget issues (Barkan and Matiangi 2009). Others, such as NTA, Muhuri, and TISA have poured an enormous amount of effort into monitoring performance of Constituency Development Funds (CDFs) and have confronted MPs accused of misusing them. Finally, the Social Development Network (SODNET) implements service delivery and budget tracking accountability programs that combines citizen reporting and monitoring (via cell phones), community radio, and interactive social media, such as Huduma and Uगतuzi.<sup>34</sup>

Reflecting Tanzania's very different political realities, civil society there, by contrast, can point to far fewer achievements and exhibits much less dynamism (Engel 2010; Hyden and Mmuya 2008; Tucker, et al. 2010). Perhaps its greatest accomplishment to date was the efforts of Haki Elimu to hold the Mkapa administration accountable for its promises on primary education. In 2005, the organization placed a number of radio and TV ads criticizing the government for not living up to its commitments in

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<sup>34</sup> <http://www.huduma.info>; <http://www.utaguzi.info>

this area. The government, and specifically Minister of Education Joseph Mungai, denounced Haki Elimu and banned it from undertaking studies or publishing information on the education sector for 18 months, arguing the ads were a violation of guidelines that prohibit NGOs from engaging in political activity. The government's overreaction caused a huge outcry in civil society and the media, and it eventually backed down.

The episode was a clear success as the ads Haki Elimu currently runs are even more critical of the government. It also opened the space for others, such as Sikika, Twaweza, and Policy Forum to criticize the government, as the paper described earlier. However, the lesson to take from the NGO's banning is that what caused the government to allow civil society to be more assertive was not necessarily Haki Elimu's actions, but the government's overreaction to them. Had the Mkapa administration acted with more restraint, it probably would not have needed to cede the ground it did. In addition, while the government is more accepting of criticism from civil society today than it has been in the past, its tolerance manifests itself in lax enforcement of laws that regulate the operations of civil society organizations, not changes to them.

The contrasting examples demonstrate the very different paths of reforms to financial transparency have occurred in Kenya and Tanzania over the past two decades. In Kenya they have occurred in an *ad hoc* and piecemeal manner as individuals in the government, and more commonly in civil society and parliament,

addressed specific issues during a period of political fluidity and institutional weakness moving haphazardly towards the broad goal of reducing the power of the executive branch (Barkan and Matiangi 2009; Nakamura and Johnson 2003; Wrong 2009).

In Tanzania, the overwhelming majority of reforms have come from inside the government at the highest levels. Presidents Mwinyi, Mkapa, and Kikwete have all made very calculated bets about how much reform they need to achieve (or to be perceive achieving) to address the concerns of their mainly external critics and ensure that donors continue to provide the country with significant amounts of foreign aid (Hyden and Mmuya 2008; Mukandala, et al. 2008; Tucker, et al 2010). What all three administrations have learned is that they can undertake what seem to be wide-ranging reforms without sacrificing political control due to CCM's entrenchment and the government's capacity to engineer reforms that often appear to have design flaws limiting their effectiveness. Thus, Tanzania's gains in financial transparency over the past two decades has done little to improve political accountability as CCM strategically embraces reforms in such a way as to ensure they do not achieve this result.

For these reasons, it is not accurate to view Tanzania as behind Kenya in its reforms to transparency. KANU never possessed the type of hegemonic control that CCM enjoys. KANU's primary governing modes were patronage for Kikuyu (under Kenyatta and Kibaki) and repression of them with patronage to others (under Moi).

While CCM employs selective patronage and repression as well, its political control, institutionalization, and mobilization capacity far exceed KANU's, even at the height of Kenyatta's power. Moreover, CCM does not need to disintegrate in the manner that KANU did for genuine multi-party politics to emerge in Tanzania. Countries with hegemonic parties have witnessed peaceful democratic transitions, such as Mexico. In 2000, the Partido Accion Nacional (PAN) beat the Partido Revolucionario Institucional in a free and fair election, after ruling the country for over seventy years.

For similar reasons, it is difficult to state with any certainty the impact of political violence on democratic reform in general and greater transparency in particular. While the post-election violence in 2007 forced Kibaki to live up to the promises he made on constitutional reform in the 2002 election, this outcome was far from certain and occurred only in the context of immense external pressure. By contrast, following the flawed 2000 election in Zanzibar, the Government of Tanzania cracked down hard on CUF protestors and committed numerous human rights violations.<sup>35</sup> In addition, while the 2010 power-sharing agreement was positive political reform to reduce ethnic tensions in Zanzibar, it did little to improve transparency.

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<sup>35</sup> The October 2000 election descended into chaos. In the context of numerous election irregularities, the Zanzibar Election Commission (ZEC) declared the CCM candidate, Amani Abeid Karume, the winner. Subsequently, CUF supporters mounted a series of escalating protests, which reached an apogee on January 27, 2001 when the Tanzanian army and police opened fire on a crowd of protestors, killing forty and injuring 600. Following the incident, Tanzanian security forces, backed by CCM officials, went house-to-house arresting, beating and sexually abusing suspected CUF agitators. More than 2,000 CUF supporters fled to Kenya, fearing political persecution. See Hoffman (2008) for a thorough analysis of the election and the violence that followed it.

What is crucial to appreciate about reforms to transparency in Kenya and Tanzania is not that they have wound up in the same place according to measures of it. Rather, the central point to ascertain it is that each country took a distinct route to achieve it. Securing and advancing on the gains each country has made requires not only understanding the status of reforms, but, more importantly, the political dynamics that produced them. The next section examines this issue in greater detail.

### **Consolidating and Advancing on Gains**

This section discusses what must occur in Kenya and Tanzania in order for each country to consolidate the gains in transparency it has made to date and secure further progress in this area, especially in transforming greater openness into improved accountability, and what could set back these efforts. Despite the fact that both countries have similar levels of transparency today, because they took very different routes to achieving them and because they occurred in highly dissimilar political contexts, the changes that must take place are quite distinct in each country.

Khemani (2006) argues that transparency alone is unable to lead to greater government accountability. Rather, she maintains that for this to occur, greater openness must coincide with changes the incentives politicians encounter to act on it. An active media and civil society are important components of this political structure. However, the most effective one is creating powerful oversight bodies,

such as a legislature and/or independent agencies that have the capacity to hold the government accountable for its actions, working alongside media outlets and/or civil society organizations who share this objective. Thus, below the paper discusses the changes that need to occur in Kenya and Tanzania to reach this outcome and the challenges to achieving it.

### ***Kenya***

Somewhat surprisingly, given the chaos and violence that accompanied Kenya's 2007 election, the 2010 Constitution creates institutions designed to facilitate transparency and accountability (Akech 2010; Kirira 2010). Kenya's legislature has financial, administrative, and political independence, power over expenditures and revenue, and the institutions needed to develop expertise in order to oversee the executive branch effectively, such as permanent specialized committees and a budget office. The Constitution contains laws that mandate the executive branch present budget information, such as audits and implementation reports, to parliament. It also created a very transparent formula for transfers to local governments. Nevertheless, rules don't enforce themselves and there are a number of factors that could lead to Kenya's 2010 Constitution falling short of reaching the goals many hope it will.

The positive democratic changes that have occurred over the past twenty years in Kenya came in the context of reform-minded and opportunistic politicians, abetted

by an active civil society and media, in a weak institutional and politically unstable environment. These pressures will need to remain for some time in order to consolidate the reforms Kenya's new Constitution envisions. Numerous factors could impede it.

First, Kenya's governing institutions are weak. Extending greater budgetary power to parliament and, to a lesser extent, sub-national governments (i.e., the new counties) thus is not necessarily a solution to the country's problems with poor financial management (Kirira 2010). The same problems with public finance that has occurred in the executive branch in Kenya since independence, such as patronage, corruption, and lack of transparency, could easily materialize when control of finance shifts to the legislature and county governments. In fact, there is a significant amount of evidence that this is already occurring with CDFs and LATFs. Moreover, while we do not yet know whether county governments will be effective at managing their finances, ample evidence from other countries suggests that fiscal decentralization can increase problems of financial mismanagement as it leads to a rise in the number of places in government where impropriety can occur (e.g., Bardhan 2002; Treisman 2006). Given the historical weakness of local government in Kenya, this is a distinct possibility (Kirira 2010). Consequently, extending greater control over public finance to parliament and county governments is far from an effective mechanism for ensuring transparent and effective public financial management.

Formal charges from the International Criminal Court (ICC) are another potentially large factor that could derail implementing the new Constitution and increase political instability more broadly. After the Government of Kenya failed to take sufficient action to investigate the causes of the post-election violence in 2007, ICC prosecutor Luis Ocampo decided to investigate six individuals. Two of them, Deputy Prime Minister and Minister of Finance Uhuru Kenyatta and MP William Ruto, are possible 2012 presidential candidates. The investigations have been very contentious and many of Kenya's leading politicians claim that Ocampo's investigations are politically biased. Whether true or not, the 2007 election demonstrated that politicians in Kenya have the capacity to mobilize their supporters in damaging ways and guilty verdicts against any of the six under investigation could catalyze such efforts. The ICC has already started hearings on charges of murder, forced relocation, and persecution for three of the six, including Ruto.

A third factor that is likely to inhibit institutionalization of the 2010 Constitution is Kenya's weak party system and the unstable political alliances it produces (Mueller 2008; Sundet, et al. 2009). Political coalitions in Kenya have been very fluid for the past two decades and the various parties under which its leading politicians have run and governed lack any clear ideology or longevity. The shifting alliances of just four of the country's leading politicians - Kenyatta, Kibaki, Moi, and Odinga - since the 1992 election is dizzying. Over the past two decades, each of these politicians have been rivals and allies:

- Kibaki served under Moi for over two decades, including 10 years as Vice President and 12 as Minister of Finance. He subsequently ran against Moi in 1992 and 1997.
- Odinga broke with Moi when the latter supported Kenyatta in the 2002 election and formed an alliance with Kibaki.
- Kibaki and Odinga ran against each other in 2007.
- Kenyatta first supported Odinga in 2007, but later endorsed Kibaki.
- Moi backed Kibaki in 2007, even though Moi had forced Kibaki out of KANU fifteen years earlier.

Parties as organizations in Kenya, for all intents and purposes, do not exist. Rather, they are typically little more than the creations of popular politicians, whose backing usually (but not exclusively) comes from their co-ethnics<sup>36</sup>, allying with each other to form loose electoral coalitions and even weaker governing ones (Mueller 2008; Sundet, et al. 2009). Institutionalizing the reforms embodied in the

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<sup>36</sup> It is important to stress that shared ethnicity is not a perfect predictor of political alignment. For example, Kenyatta and Kibaki are both Kikuyu, but were rivals in the 2002 election. In addition, in 2002, despite the historical rivalry between the Kikuyu and the Luo, Kibaki and Odinga, a Luo, ran on a unity ticket.

2010 Constitution will be difficult in a political system that lacks coherent and stable parties and governing coalitions.

Finally, the anti-reform coalition in parliament remains strong. Groups of self-interested politicians have attempted to interfere with the ICC's investigation of post-election violence, block changes that would make more of MP's generous benefits and income subject to taxation, and hindered efforts to implement many parts of the new Constitution. The glue that holds the anti-reformers together in each of these fights is resistance to greater transparency and accountability. Whether the coalition of reformers will be sufficiently strong to overcome the efforts of their adversaries is far from certain.

Foreign aid agencies can play a supportive role in consolidating the reforms in the 2010 Constitution. As this paper has explained in detail, despite the difficulties donors often encounter with various governments in Kenya, they have been very effective in assisting reformers for the past two decades in the government, and more often in parliament and civil society. These individuals and organizations still exist and the reforms the Constitution mandates are unlikely to emerge without strenuous effort from these individuals. Support for them is thus a wise investment.

## ***Tanzania***

If the fluidity of Kenya's political system is one of the main obstacles to greater reform in Kenya, the stubborn satisfaction of the *status quo* among CCM's leaders is the main one in Tanzania. Politics in Tanzania is highly institutionalized in the CCM structure and the party's leadership has countenanced nearly all of the reforms to increase transparency that have occurred there. Not surprisingly, as this paper has explained in great detail, none of them have resulted in greater accountability in any meaningful (i.e., institutionalized) sense. Rather, the top leaders in the CCM have managed to ensure that the structures they created to give the appearance of greater accountability as a result of these changes have failed to perform that function effectively (Hyden and Mmuya 2008; Mukandala, et al. 2008; Tucker, et al. 2010). Dislodging this *status quo* will not be easy.

The depth of CCM's entrenchment presents an enormous challenge to breaking the *status quo* in Tanzania. To date, the party has won with overwhelming majorities in all of the country's multi-party elections, without having to resort to overt intimidation, and vote rigging, except in cases of specific parliamentary constituencies (Hoffman and Robinson 2009; Tucker, et al. 2010).<sup>37</sup> Whether the party would engage in such practices is difficult to know, but the levers it has to ensure its hegemony falling well short of overt intimidation and fraud are quite clear. Not only is the government the country's largest employer, many Tanzanians

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<sup>37</sup> It is important to note that this refers only to mainland Tanzania, not Zanzibar.

work for companies that are owned by members of CCM or are allied with them. These individuals often face pressure to support CCM (Hoffman and Robinson 2009; Tucker, et al. 2010). Moreover, the country's largest media houses are also under the control of CCM members. Thus, large parts of the private sector, the media, and the country's formal sector workforce, both public and private, have an interest in seeing CCM remain in power. While the opposition party CHADEMA did unexpectedly well in the 2008 election, it occurred in the context of a perceived weak president and without widespread overt intimidation. For these reasons, CCM's power seems secure for the near future.

One possible route to shaking this *status quo* would be the unlikely event of a split within CCM. The factions that have grown in the party since the 2005 election have deepened and show no signs of healing soon, as this paper has explained in great detail. Yet, even in the unlikely case that the party would split, it is far from certain this would improve transparency and accountability in Tanzania, at least in the short run, as the fights within the various CCM factions that have formed over the past few years have been over access to power rather than over issues of governance. While greater transparency has been a consequence of KANU's collapse, it is not at all clear that the disintegration of CCM would lead to reforms in this area, even as a opportunistic mechanism for waging political battles. CCM has ruled Tanzania since independence and it is thus very difficult to make any predictions for what governance would look like in the country if they part fractured.

A reasonable, but unlikely scenario, for greater reforms to transparency is an alliance between frustrated CCM MPs, opposition ones, and a more forceful civil society. For reasons the paper has detailed, evidence to support such an occurrence does not exist. Parliament is a doubtful place for a coalition of reformers to emerge in the near future. While CCM MPs joined forces with those in the opposition over Richmond, cooperation in other areas to hold the executive branch more accountable has rarely occurred and not achieved institutional reform. Moreover, the opposition's share of seats in parliament - just over 25% - is not sufficiently large to force through reforms against CCM's interest. Although it is possible that popular opposition MPs, such as Zitto Kabwe and Wilbrod Slaa could ally with frustrated CCM MPs, such as January Makamba, such a coalition does not appear likely any time soon. Civil society and more widespread citizen demand, for reasons the paper also has detailed, seems an implausible area for a serious challenge to the *status quo* to originate in the near-term.

Could CCM reform itself? This is certainly possible, especially if party elders and younger reformers come together to weaken the power of the party's more opportunistic members. However, the current trajectory is not encouraging, given that governance indicators have been weakening in Tanzania over the past few years. Whether this reflects a growing sense of impunity among CCM's leaders or is only evidence of Kikwete's weak leadership over the party is not clear. CCM suffered a setback in 2010, and a number of CCM MPs lost their seats to members of opposition parties. Fear of losing power might make these changes possible,

although a more disciplined CCM would have many other channels of regaining popular support, such as patronage.

Fifty years after the country's independence, CCM's power remains as secure as it ever has. For these reasons, the *status quo* - generally unthreatening reforms stemming from the top - is likely to remain in the absence of more forceful demands for change than currently exist.

What role, if any, can donors play to advance reforms to transparency? This is not an easy question to answer. While they have been the primary force for the top-down reforms various governments have implemented over the past two decades, these changes have fallen far short in transforming transparency into demands for accountability. In particular, the small number of civil society organizations working in this area encounter immense challenges as the paper has described in detail. Support for these groups is worthwhile and almost certainly necessary to ensure that transparency leads to greater accountability, although such an outcome does not seem imminent.

By contrast, working with parliament is far more difficult. During the investigations over Richmond, for example, many donors expressed strong support for the MPs, including those in CCM, who were at the forefront of exposing the scandal. President Kikwete rebuked these organizations for taking sides in internal CCM fights. Since

parliament's oversight of the executive branch often exists in the context of wider battles within CCM, it is not an area where donors can easily play a supportive role.

## **Conclusion**

Kenya and Tanzania have both undertaken genuine improvements in financial transparency over the past two decades. Budget data are far more available and credible than they were in the past. Enterprising politicians, members of civil society, and the media are utilizing it to attempt to hold politicians and government officials more accountable for their actions than in the past. These changes notwithstanding, what citizens in both countries have also learned is that transparency does not easily lead to accountability.

Due to the different paths of reform each country has taken, it is not surprising that each has a very different set of challenges to consolidating them. Kenya must strengthen the institutions the 2010 Constitution created, while Tanzania still needs institutional reform - and much more domestic demand for it - to create more effective oversight. The challenges are daunting in both countries and it is too early to tell what will happen in each.

In Kenya, the 2010 Constitution is an encouraging development. At the same time, the social tensions that gave rise to the 2010 election violence still exist, politics remains highly clientelistic, even a rudimentary set of coherent parties does not

exist, and numerous MPs are actively attempting to undermine implementation of the new Constitution. Achieving greater accountability under such conditions is not easy.

In Tanzania, the *status quo* seems firmly entrenched. While rifts within CCM, and growing assertiveness in the media, opposition parties, and civil society are bringing a greater level of transparency than hitherto existed, the ruling party remains firmly in control and it is far from evident whether a stronger or weaker CCM would be a more propitious circumstance for greater accountability. On the one hand, faced with weakening control, fear of losing power could be an effective means of exercising discipline. Yet, on the other hand, only a strong party can impose effective institutional reform. What is clear is that for greater institutional reform to occur in Tanzania, these demands must occur from within the country, as decades of donor-led reform have not achieved this outcome.

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