



CONSTITUTIONALISM AND THE ROLE OF AUDIT COMMITTEES IN ENHANCING PUBLIC ACCOUNTABILITY

2ND PUBLIC SECTOR AUDIT CONFERENCE
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Credibility

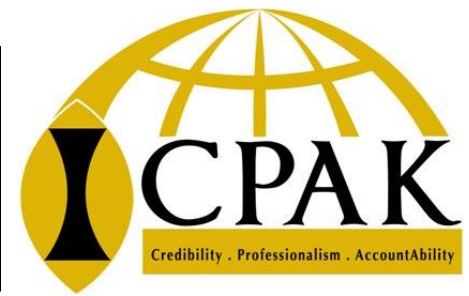
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Professionalism

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AccountAbility

Outline of Presentation



- 1) The Concept of Constitution and Constitutionalism
- 2) The Concept of Accountability
- 3) The Constitution of Kenya and provisions on Accountability
- 4) Establishment and role of Audit Committee
- 5) How Audit Committees enhance Public Accountability
- 6) Conclusion

The Concept of the Constitution and Constitutionalism



- ✓ Some legal scholars have argued that there exists a lack of consensus in defining the two concepts - Sweet, Alec Stone, Yale Law School (2009)
- ✓ The organic and [fundamental law](#) of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers. ([Black's Law Dictionary](#))

The Concept of the Constitution and Constitutionalism



- The fundamental law, written or unwritten, that establishes the character of a government by defining the basic principles to which a society must conform; by describing the organization of the government and regulation, distribution, and limitations on the functions of different government departments; and by prescribing the extent and manner of the exercise of its sovereign powers.
- A legislative charter by which a government or group derives its authority to act. ([Legal Dictionary](#))

The Concept of the Constitution and Constitutionalism



- Constitutionalism refers to the doctrine or system of government in which the governing power is limited by enforceable rule of law, and concentration of power is limited by various checks and balances so that the basic rights of individuals and groups are protected.
- A commitment to limitations on ordinary political power; it revolves around a political process, one that overlaps with democracy in seeking to balance state power and individual and collective rights; it draws on particular cultural and historical contexts from which it emanates; and it resides in public consciousness”

The Concept of the Constitution and Constitutionalism



- Constitutionalism recognizes the need for government with powers but at the same time insists that limitations be placed on those powers. It envisages checks and balances by restraining the powers of governmental organs by not making them uncontrolled and arbitrary.
- A constitution can be defined as the fundamental laws, customs, conventions, rules and regulations, stipulating how a country is governed, while constitutionalism can be defined as a principle which is not just a constitution but put limitations to the activities of individuals and government.

The Concept of the Constitution and Constitutionalism



- The implication of constitutionalism is that in exercising its powers, the government should be limited by law. Its authority over the people is dependent on its observance of the limitations under the law. Those limitations are usually enshrined in the constitution.
- A constitution is a charter of government deriving its whole authority from the governed. “Constitutionalism” means limited government or limitation on government. It is the antithesis of arbitrary powers.
- **Article 249 (1) (c)**- The objects of the commissions and the independent offices are to promote constitutionalism.

The Concept of Accountability



- Accountability derives from the practical need to delegate certain tasks to others so as to distribute delivery of large and complex workloads. In turn, those entrusted with these delegated duties must be required after the fact to *render an account* of their actions.
- When a person is given the responsibility to hold, use or dispose off resources not belonging to him, s/he must be held fully answerable to the owner of the resources for what s/he does with them. This, in essence, is the principle of accountability.

The Concept of Accountability



- Accountability can be divided into two stages. First there is *calling to account*, that is being required to provide an explanation of what has been done, or not done, and why. Then there is *holding to account*, or being sanctioned and required to put into effect remedial measures if something has gone wrong.
- Accountability may result in the allocation of praise or blame (Jones and Stewart, 2008).
- There is a wide definitional literature on accountability:
 - a) “.. the obligation to answer for what has been accomplished (or not accomplished) pursuant to a responsibility conferred (AG’s Office, Singapore, November 2011)

The Concept of Accountability



- b) ‘...accountability exists when there is a relationship where an individual or body, and the performance of tasks or functions by that individual or body, are subject to another’s oversight, direction or request that they provide information or justification for their actions.’ (Stapenhurst and O’Brien, unpublished)*

- b) ‘...the concept of accountability is ... how those entrusted with the powers of the State are held responsible for their actions.’ (OECD, 2005)*

The Constitution of Kenya and Provisions on Accountability



- a) Article 10(2)(c)** - The national values and principles of governance include good governance, integrity, transparency and [accountability](#);
- b) Article 73(2)** - The guiding principles of leadership and integrity include [accountability](#) to the public for decisions and actions;
- c) Article 153 (2)** - Cabinet Secretaries are [accountable](#) individually, and collectively, to the President for the exercise of their powers and the performance of their functions;

The Constitution of Kenya and Provisions on Accountability



- d) Article 172 (1)** The Judicial Service Commission shall promote and facilitate the independence and [accountability](#) of the judiciary;
- e) Article 201 (a)** – One of the principles that shall guide aspects of public finance in the Republic shall be openness and [accountability](#), including public participation in financial matters;
- f) Article 226 (2)** - The accounting officer of a national public entity is [accountable](#) to the National Assembly for its financial management, and the accounting officer of a county public entity is [accountable](#) to the county assembly

The Constitution of Kenya and Provisions on Accountability



- g) Article 232 (1) (e)** - The values and principles of public service include [accountability](#) for administrative acts;
- h) Article 244 (b)** - The National Police Service shall prevent corruption and promote and practice transparency and [accountability](#);

Public Finance Accountability



- ❑ **Article 225 (1)** - An Act of Parliament shall provide for the establishment, functions and responsibilities of the national Treasury.
- ❑ **Article 225(2)** - Parliament shall enact legislation to ensure both expenditure control and transparency in all governments and establish mechanisms to ensure their implementation.

Public Finance Accountability



- ❑ **Article 226 (1)** - An Act of Parliament shall provide for:
 - a) the keeping of financial records and the auditing of accounts of all governments and other public entities, and prescribe other measures for securing efficient and transparent fiscal management; and
 - b) the designation of an accounting officer in every public entity at the national and county level of government.
- ❑ Pursuant to the provisions of Articles 225 and 226, the Public Finance Management Act, 2012 was enacted

Public Finance Accountability



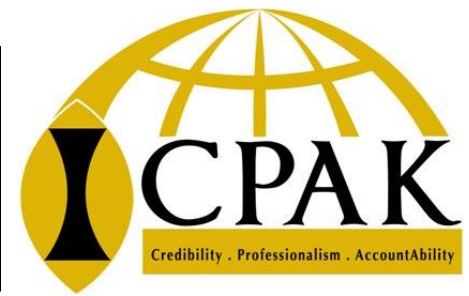
- The object of the PFM Act, 2012 is to ensure that—
- a) public finances are managed at both the national and the county levels of government in accordance with the principles set out in the Constitution; and
 - b) Public officers who are given responsibility for managing the finances are accountable to the public for the management of those finances through Parliament and County Assemblies.

Audit Committees



- Audit committees are recognized organizational units in both the public and private sectors.
- An audit committee is defined as a subcommittee of the board of directors or its equivalent structure.
- The establishment of Audit Committees in the public sector is provided for under Section 73 (5) and section 155(5) of PFM Act for national government entities and county government entities respectively.
- The composition and functions of Audit Committees is provided for by the PFM regulations and guidelines.

Role of Audit Committees



The Audit Committee Guidelines outline duties and responsibilities of ACs as follows:

- i. Obtain assurance from management that all financial and non-financial internal control and risk management functions are operating effectively and reliably.
- ii. Provide an independent review of an entity's reporting functions to ensure the integrity of financial reports.
- iii. Monitor the effectiveness of the entity's performance management and performance information.

Role of Audit Committees



- iv. Provide strong and effective oversight of an entity's internal audit function.
- v. Provide effective liaison and facilitate communication between management and external audit.
- vi. Provide oversight of the implementation of accepted audit recommendations.
- vii. Ensure the entity effectively monitors compliance with legislative and regulatory requirements and promotes a culture committed to lawful and ethical behaviour.

How Audit Committees enhance Public Accountability



❑ The nature of responsibilities played by ACs enhances public accountability in various ways:

1) Financial reporting

✓ The AC should review, and report to the board and executive management on, the significant financial reporting issues and judgements made in connection with the preparation of the entity's financial statements, interim reports, preliminary announcements and related formal statements.

How Audit Committees enhance Public Accountability



1) Financial reporting

- ✓ The AC should consider significant accounting policies, any changes to them and any significant estimates and judgements. Taking into account the external auditor's view, the AC should consider whether the entity has adopted appropriate accounting policies and, where necessary, made appropriate estimates and judgements.
- ✓ The AC should review the clarity and completeness of disclosures in the financial statements and consider whether the disclosures made are set properly in context.

How Audit Committees enhance Public Accountability



1) Financial reporting

- ✓ The AC should review related information presented with the financial statements, including the business review, and corporate governance statements relating to the audit and to risk management. Similarly, where board approval is required for other statements containing financial information, whenever practicable the audit committee should review such statements first. Where, following its review, the audit committee is not satisfied with any aspect of the proposed financial reporting by the entity, it shall report its views to the board and executive management.

How Audit Committees enhance Public Accountability



2) Narrative Reporting

- ✓ The AC should review the content of the annual report and accounts and advise the board or executive management on whether, taken as a whole, it is fair, balanced and understandable and provides the information necessary for stakeholders to assess the entity's performance, business model and strategy.

How Audit Committees enhance Public Accountability



3) Whistleblowing

- ✓ The audit committee should review arrangements by which staff of the entity or any other person may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters.
- ✓ The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

How Audit Committees enhance Public Accountability



4) Internal Audit Function

- ✓ The AC should monitor and review the effectiveness of the entity's internal audit function.
- ✓ The AC should review and approve the internal audit function's remit, having regard to the complementary roles of the internal and external audit functions.
- ✓ The AC should ensure that the function has the necessary resources and access to information to enable it to fulfill its mandate, and is equipped to perform in accordance with appropriate professional standards for internal auditors.

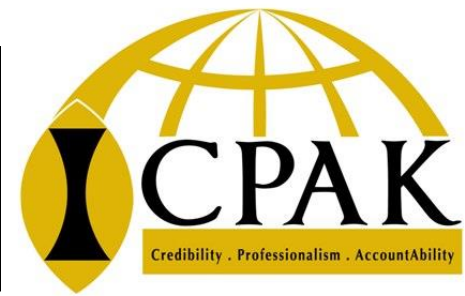
How Audit Committees enhance Public Accountability



4) Internal Audit Function

- ✓ The AC should approve the appointment and/or termination of appointment of the head of internal audit.
- ✓ The AC requires periodic written reports from the Internal Audit department. These reports should describe the audit work performed, summarize any significant issues, including internal control weaknesses, recommendations for improvements and document management's responses to each recommendation.

How Audit Committees enhance Public Accountability



4) Internal Audit Function

- ✓ Audit Committee members should ask questions on matters contained in internal audit reports until they are satisfied with the answers.

5) *External Audit*

- ❑ The AC should review, with the external auditors, the findings of their work. Accordingly, the AC should:
- ✓ discuss with the external auditor major issues that arose during the course of the audit and have subsequently been resolved and those issues that have been left unresolved.

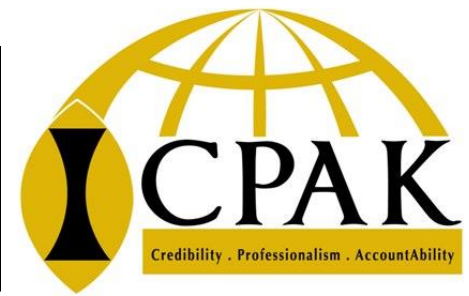
How Audit Committees enhance Public Accountability



5) External Audit

- ✓ discuss with the external auditor major issues that arose during the course of the audit and have subsequently been resolved and those issues that have been left unresolved;
- ✓ review key accounting and audit judgements; and
- ✓ review levels of errors identified during the audit, obtaining explanations from management and, where necessary, the external auditors as to why certain errors might remain unadjusted.

How Audit Committees enhance Public Accountability



5) External Audit

- ✓ As part of the on-going monitoring process, the audit committee should review the management letter and monitor management's responsiveness to the external auditor's findings and recommendations.
- ✓ At the end of the annual audit cycle, the audit committee should assess the effectiveness of the audit process and report to the board and/or executive management on the effectiveness of the external audit process.

Conclusion



- ❑ The existence of an independent audit committee is recognised internationally as an important feature of good corporate governance.
- ❑ To benefit an entity and promote public accountability
Audit committees must understand their roles, internal auditing's role and the role played by other stakeholders

END



THANK YOU