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COMPARATIVE EVIDENCE PAPER

# Horizontal Accountability through the Lens of State Owned Enterprises: A Comparative Study of Argentina and Kenya



Centre for Implementation of Public Policies promoting Equity and Growth (CIPPEC)  
Argentina

Organization for Social Science Research in Eastern and Southern Africa (OSSREA)  
Ethiopia

# COMPARATIVE EVIDENCE PAPERS

Comparative Evidence Papers are an output of the ELLA Programme. They contain comparative research on the experiences of two regions, Latin America and Africa, on economic, social and governance topics. The purpose is to facilitate lesson-learning between the two regions. The data for the comparative research is largely drawn from two Regional Evidence Papers, one on Latin America and the other on Africa, on the same topic. This Comparative Evidence Paper draws on "[Horizontal Accountability of the Executive to the Legislature in Africa: A Case Study of Kenya](#)", authored by the Organisation for Social Science Research in Eastern and Southern Africa (OSSREA) in Ethiopia; and "[The Deficits in Horizontal Accountability in Argentina: A Tale of two worlds](#)", authored Centre for the Implementation of Public Policies that promotes Equity and Growth (CIPPEC) in Argentina. All publications can be found on the [ELLA Programme website](#).

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## ABOUT THE ELLA PROGRAMME

ELLA is a south-south knowledge and exchange programme that mixes research, exchange and learning to inspire development policies and practices that are grounded in evidence about what works in varied country contexts. The programme has been designed and is coordinated by [Practical Action Consulting Latin America \(Soluciones Prácticas Consultoría\)](#), in line with the objectives agreed with the funder, the [UK Department for International Development \(DFID\)](#), UK Aid. The [Institute for Development Studies \(IDS\)](#), [Sussex University, UK](#), supports on research design, methods and outputs. To learn more about ELLA go to [our website](#), where you can also browse our other publications on Accountability and other ELLA development issues.

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# EXECUTIVE SUMMARY

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The importance of maintaining horizontal accountability (HA) between different branches of government is well understood. It has been shown to enhance the performance of state institutions through the provision of effective oversight and a valuable check against the concentration of executive power. However, relatively little is known about the drivers and challenges of horizontal accountability. This paper aims to provide understanding about the determinants of the performance of horizontal accountability in Argentina and Kenya and the institutional conditions under which we could expect to see more or less horizontal accountability.

We examine some of the key drivers believed to affect HA outcomes. In particular, we analyse the mechanisms through which formal and informal institutions shape the incentives of state actors to fulfil their HA mandates, as well as the capacity of the legislature to make use of constitutionally mandated HA processes. Although Argentina and Kenya have implemented reforms meant to strengthen the role of parliament vis-a-vis the executive, both countries continue to exhibit low levels of horizontal accountability. Identifying the forces shaping HA is therefore crucial because current gaps between the behaviour prescribed by formal institutions and accountability practices are undermining policy outcomes that affect the lives of millions of citizens.

We have chosen to compare HA outcomes in Argentina and Kenya because these countries exhibit similar conditions in terms of their formal institutions and because they have both faced challenges in recent years concerning legislative oversight over State-owned enterprises.

We find that creating incentives through regulation and formal institutions is necessary but not sufficient for improving horizontal accountability. Changes in informal institutions and strengthened capacities are also required to achieve better outcomes in Argentina and Kenya. Only after profound reforms in these two aspects, will it be possible to foster the effective use of HA mechanisms. In the long run, better incentives will improve the functioning of HA mechanisms, which we believe is critical to improving the quality of governance.

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# LIST OF ACRONYMS

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AA	Aerolíneas Argentinas
AGN	Auditoría General de la Nación (Audit Committee)
ANSES	Administración Nacional de la Seguridad Social (The National Pension Fund)
CAG	Controller and Auditor General
CPMRC	Comisión Parlamentaria Mixta Revisora de Cuentas (Mixed Committee of Public Accounts)
HA	Horizontal Accountability
ILO	International Labour Organisation
INTOSA	International Organization of Supreme Audit Institutions
KENAO	Kenya National Audit Office
MP	Member of Parliament
NAO	National Audit Office
NCPB	Kenyan National Cereals and Produce Board
OECD	Organisation for Economic Co-operation and Development
PE	Principal Executives
PIC	Public Investment Committee
SIGEN	Sindicatura General de la Nación (General Trustee of the Nation)
SOE	State-owned Enterprises
UAI	Unidades de Auditoría Interna (Internal Auditing Units)

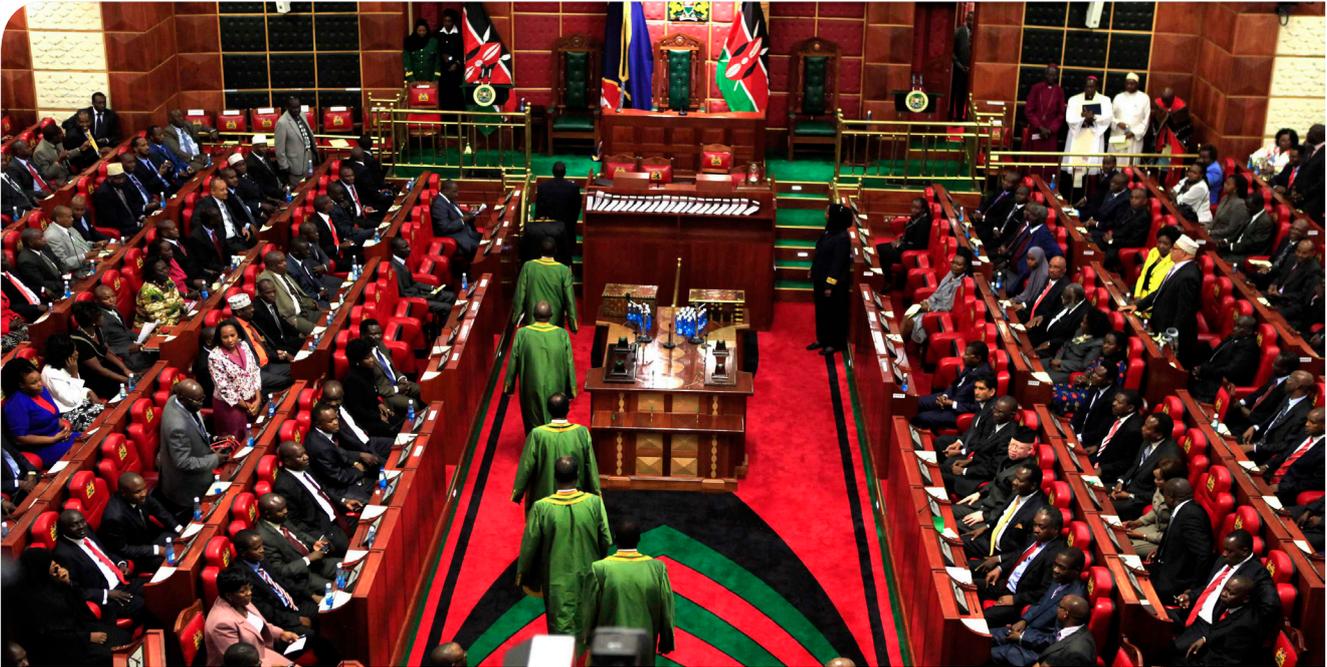


Photo 1: Kenya's National Assembly in Session  
Credit: [Kenya Today](#)

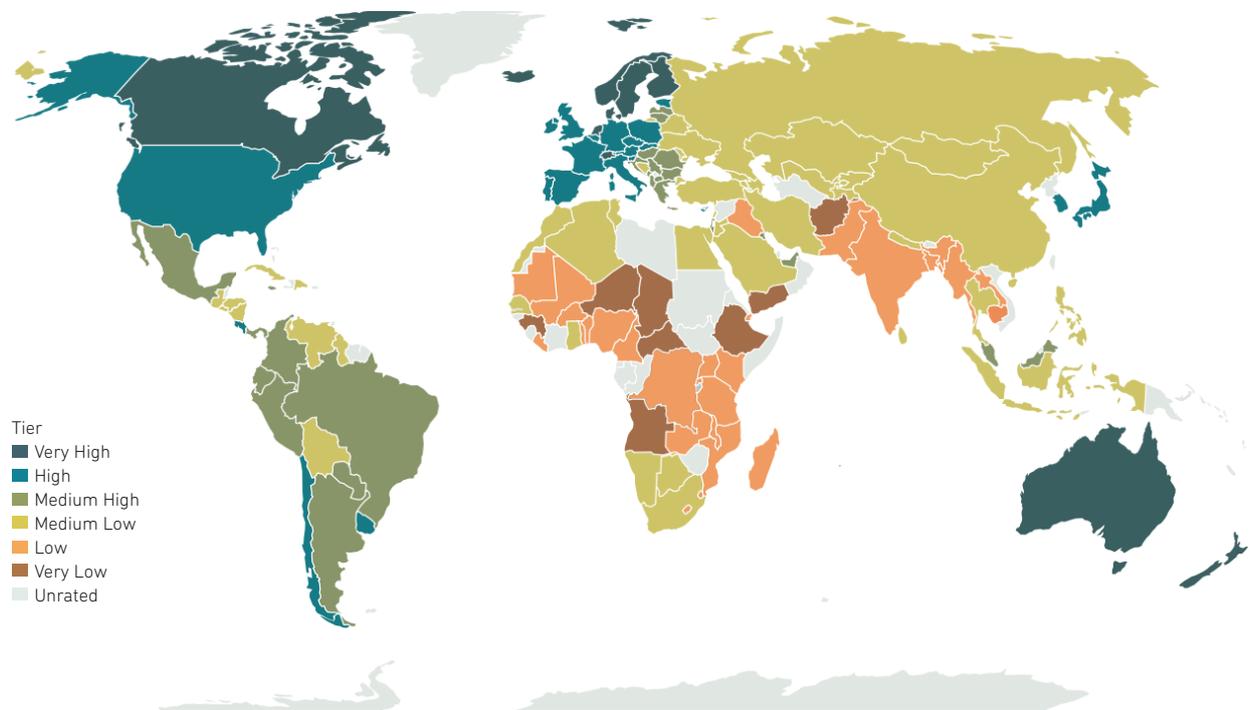
## INTRODUCTION

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In the early nineties Mainwaring and O'Donnell (1992) stated that democratisation processes involve two types of transitions. The first is a substantive transition from previously authoritarian regimes to emerging democracy. The second is a qualitative transition from a new democratic government to effective functioning of a democratic regime. The challenge is for political democracy to develop alongside wider economic, social and cultural democratisation (Mainwaring and O'Donnell 1992). Countries in Latin America and Africa are at different stages of these two transitions with some countries having implemented reforms to enhance the quality of democracy. As Mainwaring and Welna (2003) argue, *"one of the important emerging challenges for improving the quality of democracy revolves around how to build more effective mechanisms of accountability. A widespread perception prevails in much of the region that government officials are not sufficiently subject to routinized controls by oversight agencies"*.

The political history of Kenya and Argentina during recent decades has been shaped by struggles to establish and consolidate democratic rule. However, Argentina and Kenya are at different stages of development. According to the 2015 Social Progress Index developed by Porter and Stern (2015) (see Figure 1 below), while Latin America is mostly located in the middle-high range of development, most African countries present low levels of social progress. As for our case study countries, in 2015 Argentina ranked 38th with a social progress score of 73 points, which translates into a medium-high level of development. In the same study, Kenya presented low development, ranking 104th with a score of 52 points. The Social Progress Index has three main components: basic human needs, foundations of wellbeing and opportunities. In all three dimensions Argentina performs better than Kenya with the biggest difference found in the basic human needs component (42 points).

Figure 1: Social Progress Index 2015



Source: Porter and Stern 2015

The two cases under analysis have democratic governments. However, the institutionalisation of those democracies is distinct. With Argentina having experienced a longer period of democratic transition, it is not surprising that it demonstrates stronger institutional capacities than Kenya. In 1983, Argentina returned to democracy and since then the country has held free and transparent elections while Kenya held its first free election process in 2002 (EU 2002). Yet elections in Kenya have been accompanied by violence and the results have been contested. The worst incidents of violence occurred in 2007 generated by feelings that the election was neither free nor fair (Mara 2009).

Argentina and Kenya also demonstrate important differences in terms of violence. The situation in both countries is quite contrasting and could have an important impact on how democracy works. While Argentina has a homicide rate that is similar to developed countries (between 2 and 6 people per 100,000), Kenya presents one of the highest rates in the world at more than 20 homicides per 100,000 (Institute for Economics and Peace 2015). Violence levels in Kenya tend to affect politics. According to the Institute for Economics and Peace, Kenya presents high levels of conflict in the political arena, which in some cases leads to the violation of civil and political rights. The same organisation found that in Argentina it is very unusual for people to be imprisoned for their views.

Although Argentina and Kenya are immersed in very different social contexts, both countries have a presidential system and bicameral parliamentary systems and both recently underwent constitutional reforms aimed at strengthening democracy and balancing power among government branches.

Besides these similarities, the political history of Kenya and Argentina during recent decades has been shaped by struggles to establish and consolidate democratic rule, including the separation of powers and mechanisms for carrying out checks and balances. The constitutional histories of both countries reflect these struggles, the most salient examples being the constitutional reforms of 1994 in Argentina and of 2010 in Kenya. In both cases,

the reforms consisted of the establishment of new institutions and horizontal accountability mechanisms, some of which demonstrate similarities in their design, which aimed at guaranteeing good governance and a balance of power.

Consequently, similar horizontal accountability mechanisms exist within the Kenyan and Argentinean institutional structures whereby the executive branch - through the President and ministries - reports regularly to congress. The institutional architecture of enforcement mechanisms within the legislature also share similarities such as the existence of mechanisms that entitle parliament to request information from the executive branch as well as the role of the National Audit Offices and the Public Account Commissions within parliament. The constitutional reforms that took place in Kenya and Argentina led to the creation or re-design of national audit bodies. Nevertheless, recent studies show that these new institutions haven't proven insufficient to improve the performance of horizontal accountability (Aquilino et al 2016; Mihyo et al 2016).

The 2010 Kenyan Constitution vests sovereign power to:

- i. Parliament and the county assemblies in the county governments;
- ii. The national executive and the executive structures in the county governments; and
- iii. The judiciary and independent tribunals.

The Kenyan Constitution includes in its 10th Article good governance, integrity, transparency and accountability among the "national values and principles of governance". The emphasis put on achieving balance and control of power as well as transparency represents a major shift in the constitutional history of the country. According to Murray (2010), "*the 1963 Constitution had been amended over the years to centralize power in the executive (...) in the early 1990s, Parliament and the courts remained weak and the President retained enormous power*". In contrast, the author states that the 2010 Constitution includes provisions for formal institutions "*geared to constraining the power of the presidency and introducing accountability*". Specifically, Murray points to several constitutional features intended to limit the power of the President, among which: i) fixed terms for the President and parliament mean that the President is not able to prorogue parliament; ii) key government appointments need to be confirmed by parliament; iii) removal of executive control over budgetary process and; iv) removal of power of the President to delegate law-making powers

Furthermore, the new constitution strengthens parliament by giving it a role in controlling the executive. This can be seen in the 95th Article, which states that the "*National Assembly a) reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office; and b) exercises oversight of State organs*" and in Article 96, which states that "*The Senate participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145*". The Constitution also establishes that: i) bills must be introduced by members of parliament; ii) the executive is not entitled to block the passage of financial bills; and iii) parliament's budget is dealt with independently from that of the executive.

In Argentina, the Constitution divides power between the three branches of government to "*control the exercise of power and guarantee the freedom and rights of people*" (Gelli 1994). In terms of the institutional architecture of horizontal accountability in Argentina, most of the mechanisms present in the Constitution were introduced in the 1994 reform. Said reform had the joint objectives of:

- i. Consolidating and perfecting the democratic system;
- ii. Generating a new equilibrium in the functioning of the three branches of government;
- iii. Strengthening the role of Congress and the independence of the Judiciary; and

- iv. Attenuating the presidential system and counterbalancing the legislative powers constitutionally granted to the Executive, which include: the president's capacity to sanction decrees (Bonvecchi and Zelaznik 2012); the power of federal intervention over provincial authorities and the prerogative to form a cabinet.<sup>1</sup>

New institutions introduced in the 1994 reform include the figure of Chief of Cabinet within the Executive and the National Audit Office, a institution based in Congress.

All in all, with different socio-political contexts yet similar institutional reforms Kenya and Argentina serve as two useful case studies for conducting a comparative analysis focused on understanding the determinants of the low performance of horizontal accountability and the institutional conditions under which we could expect to see more or less HA. For the purpose of this paper, we will not explore all existing horizontal accountability mechanisms. As our aim is to capture how horizontal accountability works in the day-to-day performance of the State administration, this study focuses on those mechanisms that have to do with routine oversight and that depend directly on the executive or the legislature.

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<sup>1</sup> To read more on the subject see Gelli 1994.

# METHODOLOGY

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Even though Argentina and Kenya have implemented reforms meant to strengthen the role of the legislature vis-a-vis the executive, both countries still have low levels of Horizontal Accountability between these branches of government (Aquilino et al 2015; Mihyo et al 2015). In light of this fact, we focus on legislative oversight of State-owned enterprises (SOEs) and their management by the executive branch.

The main question addressed in this study is: what are the determinants of the low performance of horizontal accountability (HA) in Argentina and Kenya? The underlying assumptions are, first, that there are gaps between formal institutions and actual accountability practices conducted by the executives and the legislatures and, second, that informal institutions prevent better policy outcomes. Using State-owned Enterprises as a case study, we evaluate whether these factors have a critical role to play in HA in Kenya and Argentina.

Based on a comparative approach, we begin by contrasting the performance of formal HA institutions and mechanisms in both countries. We provide a summary of existing knowledge of how HA mechanisms work and the determinants of their effectiveness. We then develop a profile of the institutional design of SOEs in Argentina and Kenya before comparing two episodes that challenged the HA systems. By examining these case studies, we show how informal institutions interplays with formal ones resulting in low HA performance. The first relates to Aerolíneas Argentina (AA) in Argentina during 2014 when the National Audit Office produced a special report on the company. This report received a lot of media attention and triggered a response from the Chief of Cabinet during his monthly visits to Congress. The second episode concerns the National Cereals and Produce Board (NCPB) in Kenya and took place in February 2009 when a Ministerial statement was requested about the allocation of maize to maize milling companies. The debates on this issue continued till 2013. In order to gain a better understanding of similarities and differences between the regions and to test our hypotheses, the study employs a mixed methods research approach with a case study research design.

Mixed methods research recognises the importance of traditional quantitative and qualitative research but also offers a powerful third paradigm that often will provide the most informative, complete, balanced and useful research results (Johnson et al. 2007). It allows researchers to improve the accuracy and validity of the research findings, predict trends, add to the existing knowledge base, measure change, understand complex phenomena as well as test and generate new ideas (Newman et al. 2003).

To analyse these cases, we undertook a desktop review of government documents such as the constitution, Hansard reports, State of the Nation speeches and media reports. We reviewed these documents using a tracing process whereby we checked for cause-effect relationships and dug deeper to get meanings and answers to questions that the various themes elicited.



Photo 2: African experts visit the Argentinian Congress  
Credit: Rodrigo de la Fuente / ELLA Programme Archive

## TWO VERY SIMILAR COUNTRIES: FORMAL HORIZONTAL ACCOUNTABILITY INSTITUTIONS IN ARGENTINA AND KENYA FOLLOWING CONSTITUTIONAL REFORMS

Accountability, as a core dimension of governance, ensures that actions and decisions taken by public officials are held to account, so as to guarantee that government initiatives meet their stated objectives and respond to the needs of the community they are meant to be benefiting, thereby contributing to better governance and poverty reduction. Accountability can refer to two dimensions as conceptualised by O'Donnell (1998): the means through which citizens, mass media and civil society seek to enforce standards of good performance on officials (vertical accountability); and the capacity of state institutions to check abuses by other branches of government, that is, the requirement for agencies to report sideways (horizontal accountability). It follows that different types of accountability link different actors.

Horizontal accountability (HA) is all about checks and oversight, as well as surveillance and institutional constraints on the exercise of power. As a broad concept, it involves several ways of preventing and correcting the abuse of power. It opens up power to public inspection, forcing it to explain and justify its actions, with the possibility of sanctions when power is abused. Therefore, horizontal accountability carries two basic connotations: (i) answerability, or the obligation of public officials to report what they are doing, and (ii) enforcement, that is, the capacity of oversight agencies to impose sanctions on power-holders who have violated their duties (Schedler 1999). Table 1 below provides a summary of answerability and enforceability mechanisms in our case study countries (Aquillino et.al 2016; Mihyo et al. 2016).

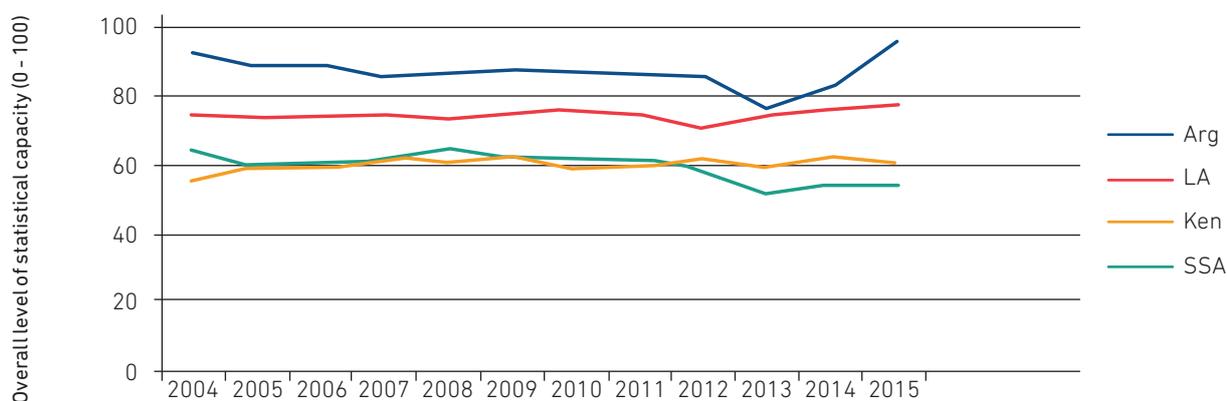
**Table 1 . Answerability and Enforceability Mechanisms for Routine Legislative Oversight of the Executive Branch in Argentina and Kenya**

	Argentina	Kenya
Answerability	<ul style="list-style-type: none"> <li>• President reports to Congress</li> <li>• Chief of Cabinet (obligatory) and Ministries (on legislative demand) report to Congress</li> </ul>	<ul style="list-style-type: none"> <li>• President reports to parliament</li> <li>• Cabinet Secretary and Ministries (on legislative demand) report to parliament</li> </ul>
Enforceability	<ul style="list-style-type: none"> <li>• Information requests submitted by legislators</li> <li>• Public Accounts Commission</li> <li>• General Audit</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence and information requests submitted by parliamentarians</li> <li>• Office of the Controller and Auditor General</li> </ul>

### Answerability Mechanisms

Despite the similarities we have described, the governments of Kenya and Argentina demonstrate different levels of institutional capacity for answerability, the first component of HA. If we take the statistical capacity of the state as a proxy for general capacity to produce and use data to inform decision-making - answerability - then the capacity gap between these two democracies is quite big. The Statistical Capacity Index produced by the World Bank is used for monitoring social and economic indicators. The index includes scores for overall capacity, methodology, sources of data and periodicity shows that that the Argentine government outperforms the Kenyan government (see Figure 2 below). The data also shows that while the index has been moving upwards (i.e. improving) for Argentina since 2013, the Kenyan index has remained below the average for sub-Saharan Africa. Overall, high levels of capacity in methodology, data sources and periodicity suggests that Latin American governments have on average stronger capacity in this regard than their sub-Saharan African counterparts. Even though these indicators do not guarantee better performance in terms of horizontal accountability, it is clear that the answerability component is strengthened by good quality data production. Hence, it will be important to pin point what Kenya can learn from this clear divergence in order to strengthen its capacity in terms of answerability.

**Figure 2: World Bank 2015 Statistical Capacity Index**



Source: World Bank, 2015

Answerability mechanisms in Argentina and Kenya include reports presented by the head of the executive branch to Parliament at least once a year, as mandated by both National Constitutions.

Article 132 of the Kenyan Constitution establishes that the President shall: (a) address the opening of each newly elected Parliament; (b) address a special sitting of Parliament once every year and may address Parliament at any other time; and (c) once every year, report, in an address to the nation, on all measures taken and progress achieved in the realisation of the national values, referred to in Article 10, and publish this information in the Gazette; and (d) submit a report for debate to the National Assembly on progress made in fulfilling the international obligations of the Republic. In Kenya, Article 153 of the Constitution states that a Cabinet Secretary may be summoned to appear before the National Assembly or Senate to answer questions or offer explanations. Moreover, Cabinet Secretaries must provide parliament with complete and regular reports concerning matters under their control (Republic of Kenya 2010).

Similarly in Argentina, the executive branch is responsible for the annual opening of Congress. Each year the President delivers the State of the Nation report which is expected to include information on social and economic indicators, reforms mandated by the Constitution and on other measures which the President deems necessary. The figure of Chief of Cabinet (*Jefe de Gabinete de Ministros*) was introduced as an instrument to counterweigh presidential powers. According to Article 101 of the Constitution, the Chief of Cabinet is obliged to visit both Chambers of Congress (alternating between them) at least once a month in order to report on the government's latest actions. This visit is mandatory during the period of ordinary sessions between March and November. In addition, the Chief of Cabinet may be questioned if a censure motion is put on the table (this requires an absolute majority vote of all the members of either House) or may be removed (this requires an absolute majority vote by the members of both Chambers). Further, Ministers can be requested to testify to Congress based on the 71st Article of the Constitution, which stipulates that "*each Chamber can call Ministers with the objective of receiving the explanations and information it deems appropriate*".

## Enforcement Mechanisms

If we consider some of the capacities linked to enforceability, one indicator that can shed light on this is the Open Budget Index, cited as the only global independent measure of government transparency. The most recent data from 2015 shows that Argentina scored better than Kenya, with 59 and 48 percentage points respectively, however both countries are categorised as demonstrating limited openness (International Budget Partnership 2015). A second basis for a comparative analysis on enforceability is the Global Integrity Index (Global Integrity 2010 and 2011) which assesses the accountability of governance and provides a guide to anti-corruption institutions and mechanisms around the world. The most recent indices from the Global Integrity Reports for Argentina and Kenya are for 2010 and 2011, summarised in Table 2 below. The reports are produced 12 months apart so the divergence in scores provides a basis for comparison. Table 2 shows that the Budget Process Oversight and Transparency indicator is comparable for Kenya and Argentina, both with a score of 77. The overall score for Kenya in 2011 was weak at 66 points, with the country demonstrating a strong legal framework (85) yet very weak implementation (53). Argentina has an overall score of 87, with a very strong legal framework (97) and moderate implementation (77). The disparities in law enforcement between the two countries are significant and worrying; Argentina has a score of 77 while Kenya scores a mere 6. In terms of whistle blowing, Argentina scored 75 and Kenya 46. It is interesting to note the score of the National Ombudsman which in Argentina was 95 and in Kenya 57. These are all indicators of additional factors that impede horizontal accountability. What is more, these scores show that even if both countries are relatively weak at implementation, Kenya could learn from Argentina in terms of strengthening its legal framework for horizontal accountability, as corroborated by the findings of the present study described in subsequent sections.

**Table 2 . Global Integrity Indices for Kenya and Argentina**

Indicator		Argentina	Kenya
Government conflict of interest check and balances	Executive	88	54
	Legislative	73	53
Budget process oversight and transparency		77	77
	Whistle blowing	75	46
Government procurement transparency and fairness		99	88
Government oversight and controls		88	75
	National Ombudsman	95	57
	Supreme Audit	95	90
	State-owned enterprises	88	70
Anti-corruption		85	78
Law enforcement		77	6

Source: Global Index Reports 2010 and 2011

The institutional architectures of enforcement mechanisms within the legislature in both countries demonstrate similarities. This can be seen, for example, in the existence of oversight mechanisms that entitle parliament to request information from the executive branch.

In Argentina, Congress can exercise oversight through making requests for information to officials of the executive branch. This mechanism is regulated by Article 71 of the National Constitution and by the rules and procedures of the Chamber. The Argentine Constitution establishes that deputies and senators can send a request for information to the executive in order to gain knowledge of government decisions, policies or a particular subject of interest. However, according to the law, the executive branch is not held to a deadline for answering such requests nor is it sanctioned if the request is not answered at all. Chamber regulations also offer alternative mechanisms that allow for direct approval of the request for information without it having to be debated on the floor of the Chamber.

Similarly, Article 125 of the Kenyan Constitution establishes that *“either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.”* Members of parliament exercise political representation through various mechanisms including questions by private notice, motions, ministerial statements, private member motions and general government statements, all meant to increase the frequency and level of disclosure of information on government activities.

As it can be seen, congressional requests for information in Argentina and questions by private notice in Kenya share similar institutional designs and purposes. These mechanisms are employed to ensure the executive is answerable and accountable for its actions or failure to act on policies and laws.

In this study, we assessed questions made by private notice in Kenya based on their content, whether they were properly articulated and presented in a manner that they could elicit an actionable response, whether they reflected previous research on the problems raised and knowledge of alternative solutions, whether the executive provided evidenced-based responses, and whether there was follow-up or feedback to parliament on action taken. Articulation capacities were assessed in terms of how questions were framed and posed. Most private notices asked whether the government was aware of a particular issue and if so what action had been taken on the matter. Such questions allow members of the executive to say they are aware and are in the process of taking action without giving additional details. Some private notices were not backed by data and were quickly dispelled by ministers who challenged the person raising them to provide adequate evidence. Constituency consciousness also tended to undermine the value of some questions, meaning that when issues

were raised as constituency-specific questions, the answers given were that they are general problems and there are no funds to address them at the moment. Another limitation of the private notice mechanism is the lack of a link between the questions and existing budgets. For example, when a member asked when the government would support a project in a particular area, the answer was easy: there is no budget for that at the moment. We found that most questions and answers did not reflect serious research and were not backed by data, and that representatives of the executive did not seem to be well-prepared to respond. A review of parliamentary reports indicates that neither government nor the members attempt to follow up on the answers that are given or the promises made to remedy situations.

The roles of the National Audit Offices and Public Account Commissions within parliament are similar in Argentina and Kenya where constitutional reforms led to the creation or re-design of these institutions.

The Argentinean National Audit Office (*Auditoría General de la Nación* - NAO) provides technical assistance to Congress and is in charge of the external control of national public sector bodies. In other words, it is responsible for auditing the financial and managerial operations of the ministries, secretariats and other government agencies. The President of the National Audit Office is proposed by the largest opposition party group in Congress. The NAO's directorate is composed of its President and six other General Audit Officers who are designated by Congress (three per Chamber, two representing the majority party and the remaining officers representing the largest minority party). The NAO is responsible for overseeing the management and legality of public expenditures and for carrying out audits of centralised and decentralised public administrations. It produces public reports containing the results and findings of the audits and must provide a legal and financial audit report on each year's budget spend. The NAO's proposed plan of action for auditing national public sector agencies, together with every audit report, is presented to a special committee in Congress, composed of both deputies and senators. The Mixed Committee of Public Accounts (*Comisión Parlamentaria Mixta Revisora de Cuentas* - CPMRC) is responsible for looking into the details of public sector finances and administration, and facilitates fluid communication between Congress and the NAO. The NAO provides technical support for oversight by conducting audits, but it cannot impose sanctions or file a case in the criminal courts. Neither can the NAO force agencies to provide information. If irregularities are spotted suggesting ill-management or fraud, all the NAO can do is report them to Congress. It is then the CPMRC's prerogative to decide how to proceed. The CPMRC can adopt a series of measures that range from filing a report, to requesting further information from the corresponding agencies, ordering an assessment of responsibilities and fiscal damage, informing the anti-corruption agencies or filing the case before the Criminal Court of Appeals.

With respect to Kenya, Article 229 establishes that the Kenyan Auditor General is nominated by the President with the approval of the National Assembly. At the end of each financial year, the Auditor General must audit and report on the accounts of: i) national and county governments; ii) all funds and authorities of the national and county governments; iii) all courts; iv) every commission and independent office established by the Constitution; v) the National Assembly, the Senate and the county assemblies; vi) the accounts of political parties funded with public monies; and vii) public debt. The Auditor General may also audit and report on the accounts of public-funded entities and confirm whether or not public money has been applied lawfully and effectively. Finally, the Auditor General must submit its reports to parliament or the relevant county assemblies who in turn should debate the issues and take appropriate action within three months. Under the Standing Orders of the Kenyan Parliament, Order 205 (2), the Public Accounts Committee within parliament is responsible for examining the accounts showing how the funds approved by parliament for public expenditure have been used. It is responsible for oversight of public expenditure to ensure it is in line with financial regulations and procedures. It receives and analyses audit reports from the Kenya National Audit Office (KENAO). In its work, the Auditor General is guided by Article 201 of the Kenya Constitution which provides for accountability for public expenditure through openness, prudent and responsible management and clear reporting. Annual audit reports of local authorities, independent commissions, political parties and state owned enterprises are submitted first to the relevant parliamentary committees whose chairpersons then present them to the National Assembly.



Photo 3: Casa Rosada, Argentina  
Credit: [David \(longhorn Dave\)](#)

## SIMILAR INSTITUTIONAL DESIGN IN TWO DIFFERENT COUNTRIES: STATED-OWNED ENTERPRISES AS SUBJECTS OF HORIZONTAL ACCOUNTABILITY IN ARGENTINA AND KENYA

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In the realm of legislative oversight of the executive branch, the challenge of holding State-owned Enterprises (SOEs) to account has proven to be remarkably vexing for the public sector. SOEs gained prominence in Africa and Latin America during the era of import substitution and export-led growth in the seventies and eighties. They were created to provide services and goods that the private sector was deemed unwilling or ill-prepared to deliver. Yet in the majority of cases they turned out to be just as ill-prepared and too inefficient and unaccountable to continue being relied upon. After two decades of playing a prominent role in the economies of many developing countries, SOEs began to lose momentum and credibility. One reason for their failure to meet expectations was the so-called 'soft budget constraint' - raised by Kornai (1979) and expanded upon by Rowthorn and Chang (1993) - which arose from the insulation of these enterprises from pressures of the market by grants, loans and subsidies from the state. Coupled with monopolistic powers bestowed upon them by their establishing statutes or explicit public policy, SOEs in almost all developing countries suffered from the curse of endless and unaccountable support from their governments. At the end of the eighties it was undeniable that although SOEs were still performing their roles and being relied upon to achieve development goals, the rates of return on resources invested in them were not commensurate with these investments (Nellis 1986).

In Africa, Latin America and Asia, SOEs became centres of power and redistribution and on the African continent they became part of patrimonial and faltering state systems (Sandbrook 1988). Generally in the developing world, SOEs became rallying points for interest peddling by organised groups such as trade unions and private sector networks of service providers and rent seekers linked to the state (Karayalcin et al. 2011). In Kenya, SOEs became a big drain on the economy, sustaining losses from year to year between 1992 and 2002, as shown in Annex 1. In Argentina, SOEs make up a large proportion of the public sector, totalling 53 in 2015 (see Annexes 1 and 2 for an overview of selected SOEs in Argentina and Kenya).

#### *Four Common Challenges Amongst State-owned Enterprises in Latin America and Africa*

Unlike in former British colonies in Africa where the model of SOEs has remained almost the same if not exactly the same, in Latin America SOEs demonstrate different degrees of centralisation and decentralisation<sup>2</sup>.

Argentina uses a decentralised model<sup>3</sup> under which corporate governance is exercised through the National General Audit (*Auditoría General de la Nación* - AGN) under the aegis of the legislative branch, a monitoring committee and the General Trustee of the Nation (*Sindicatura General de la Nación* - SIGEN) under the aegis of the executive branch. Ownership is exercised by ministries directly supervising each of the SOEs (OECD 2012). The OECD (2012) has identified the following five accountability challenges arising from the Argentinean model:

- i. The absence of an explicit ownership policy leads to confusion as to which body is mandated to appoint directors of SOEs and this enables supervisory ministries to perform that role;
- ii. Ministries have not agreed on common criteria to be used in financial statements and audit reports;
- iii. Although commercial SOEs face bigger obstacles to governance than the non-commercial ones, there has been a tendency for oversight institutions to avoid day-to-day interference in operations;
- iv. The National Pension Fund (*Administración Nacional de la Seguridad Social* - ANSES), which is listed on the Argentine stock market, holds shares in some Argentinean companies. Through the ANSES the state has the power to appoint board members on these companies without consulting the three agencies that are in charge of SOEs;
- v. The involvement of ANSES in the private sector without regulation from state bodies has raised concerns about the potential for abuse of transactions between the state and the companies of which it is an owner by proxy.

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<sup>2</sup> The OECD (2012) typology of models for the continent shows that Chile and Peru use a centralised model, Brazil and Ecuador use a dual model while Argentina, Costa Rica and Mexico use a decentralised model. In the centralised model control and oversight are vested in one ministry. The OECD has indicated this model to be best suited for oversight and transparency because: a) It establishes clear lines of responsibility between the SOE and the government; b) It provides room for closer fiscal oversight; c) It is more likely to lead to the development of coherent SOE policies and d) It allows for more efficient allocation and use of limited human resources. Risks identified include the possibility that sectoral expertise would be provided by the same experts in the ministry who are in charge of supervising the SOE.

<sup>3</sup> The OECD describes the decentralised model - also known as the sector model - as one in which more responsibility is vested in the supervisory ministry which appoints the board and staff while other ministries only perform advisory roles. The OECD (2012) has hailed this model as the most suitable for better oversight and transparency because: a) Oversight is located in one specific ministry with others having limited advisory responsibilities on matters relevant to them; b) The model allows easy access to the expertise available in other ministries; c) It provides a clear indication of ownership over strategic issues; d) Appointments are the exclusive domain of the supervising ministry. The main challenge pointed out by the OECD is that in this model the separation between ownership and regulatory roles of government is likely to be blurred and it may be prone to frequent political interference. According to the OECD (2012) in a dual model the functions of government as an owner are separated from its functions as a regulator. Hence responsibilities are shared between the sector ministry which exercises the ownership functions and the central ministry which exercises regulatory and supervisory functions. The SOE remains a separate entity with an independent board and management. The OECD (2012) has indicated that the dual model has several advantages: a) It separates the role of government as owner and regulator; b) This separation subjects corporate policy to "more rigorous checks and balances than would a single ministry"; c) It facilitates technical and fiscal oversight. On the other hand, the dual model could lead to the blurring of responsibilities and the SOE may view this as 'triple oversight' which may reduce management and procedural productivity.

Kenya has also adopted the decentralised model however regulations are more dispersed than in Argentina. Although parent or supervisory ministries are notionally in charge of the SOEs under them and ministers are responsible for appointing officials, under the State Corporation Act Cap 446, the President also has powers to give guidelines of a general nature, dissolve any board and appoint a new one without consulting the ministry (Section 7 of the State Corporations Act). The President is therefore part of the governance structure which is not the case in Argentina. The oversight functions are exercised by the Ministry of Finance within which an Inspector of State Corporations works under the Minister. Under Section 18 of the State Corporations Act Cap 446, it is stated that the Inspector reports both to the Auditor and Controller General<sup>4</sup> and the Minister of Finance.

There are four common challenges in the accountability behaviour and patterns of SOEs in Argentina and Kenya, most of which emanate from the relationship between these enterprises and governments.

First is the issue of **multiple principals with multiple control agencies**. The problem is well explained by Trivedi (2005) in that parliament must hold Principal Executives (PE) accountable on behalf of the people; the sectoral ministry supervises PEs in the sector; the Finance Ministry has financial oversight over PEs; the Auditor General must ensure all processes and procedures are followed; and the Planning Ministry supervises PEs to ensure they execute national plans. This should be the case for State-owned Enterprises around the world. As for Latin America, Musaccho et al. (2015) explain the dilemma in terms of information asymmetries between SOE managers and controlling agencies. They argue that managers have more information than their superiors and they use their discretion as to how much information to disclose and how. They also argue that in Latin America SOEs are monitored by sectoral ministries whereas SOE finances are monitored by Ministries of Finance and this dual monitoring worsens the problem of multiple principals. While this dilemma is found in both Argentina and Kenya, in the latter it is more complicated because accounting officers within the sectoral ministries are also board members of the SOEs they supervise, parallel audit institutions exist within the Ministry of Finance and the President has powers that can override these HA mechanisms. The impact of multiple agencies and control institutions is that accountability procedures are lengthened and as long as the ministries and agencies are not coordinated, there is a risk that SOEs use the system to give only a partial picture of the state of affairs to each control agency without one organisation taking responsibility for capturing the full picture.

The second and related challenge is that of **multiple goals and conflicting stakeholder expectations**. In some statutes in Kenya SOEs are explicitly to perform commercial activities and generate profits from time to time. At the same time, some SOEs are required to ensure they perform their obligations bearing in mind the values of efficiency, equity and profitability. Examples can be found in the sugar industry (Otieno 2009) and the National Cereals and Produce Board (CGD 2002), both of which are frequently asked to sell produce at prices below the market rates for political and welfare reasons. Sometimes equity and efficiency are not mutually inclusive and profitability may be difficult to achieve when political considerations are supposed to be taken into account.

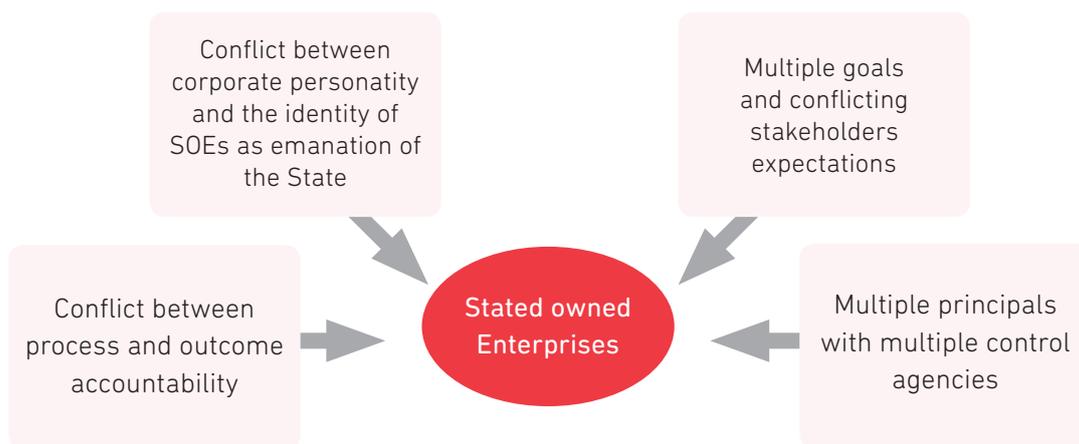
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<sup>4</sup> Although the Auditor and Controller General oversees expenditure, in 1985, the Office of the Auditor General of Corporations was established. Section 12 of the State Corporations Act which established this Office was repealed in 2002 returning auditing functions to the Auditor and Controller General. The effect was to put the Ministry of Finance back in charge of auditing the expenditure of SOEs which it was supervising and on whose boards it was represented. Under the State Corporations Act (Section 8) a ministry in charge of each corporation is represented on its board by the ministry's chief accounting officer and by the Permanent Secretary as a full and voting member. Parliament exercises oversight on SOEs through the Public Investment Committee (PIC) which scrutinises reports from the Auditor and Controller General and compiles them into a synthesis report on all SOEs which is submitted to parliament. The involvement of the President in appointing board members and dissolving boards at his/her discretion weakens horizontal accountability within the executive system. In addition, the presence of Permanent Secretaries on the boards of SOEs weakens horizontal accountability because the same boards are supposed to be accountable to the supervisory ministries. If they are involved in SOE decisions through boards, they cannot exercise independent oversight of the same boards. Because the boards can also be dissolved by the President, they may feel more directly accountable to the President than to the Ministry.

The third challenge is the **conflict between corporate personality and the identity of the SOEs as emanations of the state**. While in the case of SOEs with private or mixed share ownership, which are regulated by company law, it is clear that corporate personality means that even where the state is a majority owner, these SOEs cannot shirk responsibility for poor performance in terms of horizontal accountability. Wholly state-owned SOEs, on the other hand, tend to use the identity of the state to do just that. More often than not, state ownership gives SOEs undue advantage because in the case of poor performance they have a scapegoat in the state itself. In this sense, corporate managers sometimes encourage state intervention because it becomes handy when they are called to account by legislative bodies.

The fourth challenge is the **conflict between process and outcome accountability**. The supervisory bodies, such as ministries, pay more attention to processes and procedures because when they account to the Auditors General in both Argentina and Kenya they are grilled more in parliament and senate on these aspects. This creates a culture of SOE managers struggling all the time to ensure that multiple objectives are delivered even if the means of doing so are not right. If multiple objectives were reduced or removed such conflicts would also be reduced (Trivedi 2005).

**Figure 3: Four Common Challenges for SOEs in Kenya and Argentina**



### *A Profile of SOEs in Argentina and Kenya*

Latin American countries have consistently coordinated efforts to harmonise horizontal accountability practices among SOEs with the support of the Inter-American Development Bank (IDB), the Organization for Economic Co-operation and Development (OECD), the World Bank and some SOEs. In the process, they have developed common approaches to address the various challenges described above or they have agreed to take action on the issue over the course of time (OECD 2011; OECD 2015; OECD and CAF 2014; World Bank 2014). In Africa, coordinated efforts at continental or sub-regional levels have not happened. The only effort that has been undertaken at the continental level is by the Centre for Corporate Governance (CCG 2012) based at the University of Stellenbosch Business School in South Africa but it has only focused on Southern Africa. Therefore the practices and policies of Latin American SOEs, and especially those in Argentina, provide valuable lessons for African policy makers managing or exercising oversight of SOEs.

### *Formation of SOEs and Ownership Policies*

In Argentina and Kenya SOEs are created by the President under statutes governing these enterprises, namely the State-owned Enterprises Regime (*Régimen de Empresas del Estado*) in Argentina and the State Corporations Act (Cap 446) of Kenya. SOEs fall into four main categories: those created to achieve public policy objectives through service delivery (health, education, welfare, social protection etc.); those created to manage public utilities (transport, energy, water and sanitation etc.); those responsible for producing goods or providing services specifically for government agencies (for example, military materials) and; those formed exclusively to generate income and profits (commercial and financial institutions) (OECD 2011; Government of Kenya 2005). Kenya has not established any new wholly-state owned SOEs. The Kenyan Privatization Act of 2005 and the Companies Acts of both Argentina and Kenya provide for shared ownership and rights of shareholders in companies partly owned by the governments.

Neither of the two countries has an explicit ownership policy. At the 2014 Meeting of the Latin American Network on Corporate Governance of State Owned Enterprises held in March 2014 and hosted by the General Trustee of the Nation (SIGEN) in Buenos Aires and funded by Energía Argentina in collaboration with OECD and the Latin American Development Bank (CAF), it was reported that all member countries of the network were in the process of developing SOE ownership policies in line with the OECD Guidelines of 2002. Although Argentina did not have a policy on the issue at that time, Paraguay was more advanced and other countries were keen to share experiences and move towards adopting explicit ownership policies for their SOEs (OECD and CAF 2014).

### *Neutrality of SOEs*

SOEs are affected by the market structures within which they operate and this is more the case in Latin America than in Africa. While Latin American enterprises are also expected to achieve multiple objectives, such as providing services equitably while achieving profitably (OECD 2011), in Kenya non-market controls are more the norm. While some Kenyan SOEs are expected to generate profit, informally they are expected to meet social and political objectives as well. Government control of prices frequently forces the National Cereals and Produce Board, the National Agricultural Corporation and the National Sugar Board to sell products at prices below market rates or to pay higher prices for sugar cane and cereals to farmers forcing them to incur deficits and huge debts (CGD 2002). These state interventions normally occur before or close to elections in Kenya. During periods when elections are not close, these corporations are directed to import cereals or sugar and sell them at prices lower than those charged for local products (CGD 2002). At the Buenos Aires meeting of the Latin American Network on Corporate Governance for SOEs mentioned above, it was reported that Argentina did not have an explicit policy requiring the separation of commercial from non-commercial objectives and functions of its SOEs<sup>5</sup>.

### *Separation of Functions and Powers*

Both Argentina and Kenya use a similar decentralised model of SOEs. But as noted earlier the practices and systems differ. In Argentina, oversight is exercised through the National General Audit (AGN) which depends on the legislative branch, a Monitoring Committee and the General Trustee of the Nation (SIGEN). The system in Kenya is different with inter-locking relationships between regulators and SOEs. Under Section 6 of the State Corporations Act, on each board the Minister in charge of an SOE is represented by the Permanent Secretary

<sup>5</sup> In contrast, Chile, Ecuador, Mexico and Peru all reported that some SOEs are required to fulfill public policy or public service objectives, and that costs for providing these services will be covered by the state. They did not indicate how such costs should be computed. Brazil's constitution requires that the same law that creates an SOE must also define its social function and that such functions should sit within the law and not contrary to public order or beyond the objectives of the law and the Constitution. Colombia reported that its SOEs are expected to produce certain goods or services under market conditions without political intervention but noted that if the state requires SOEs to do more it has to meet the costs (OECD and CAF 2014).

of the Ministry who is the chief accounting officer and directly responsible for supervising the SOE. In essence, therefore, the Permanent Secretary is part of the SOE governance structure and bound by all decisions made by the board which he/she may have to review in his/her capacity as the regulator. While the President in Argentina has no explicit role in the corporate governance of SOEs, in Kenya the President is able to establish a state corporation without consulting parliaments using powers conferred under the Act. In addition, although Section 5 provides that the boards are empowered to appoint officials of the SOEs; in practice such officials are appointed by the ministers and in some organisations deemed very sensitive by the President. The Public Investment Committee (PIC) has noted this ambiguity in relations between the presidency, ministries and boards (CGD 2002) however the practice remains unchanged.

With regards to the appointment and dissolution of boards, the provisions are conflicting. The President is empowered to appoint chairs of the boards and board members are supposed to be appointed by the minister [Section 6 (1)]. Yet section 7 (3) gives power to the President to dissolve any board he/she thinks has failed to perform its functions and replace it with a new one. In this case, the President would appoint the entire board not only the chairperson. This power also extends to companies in which the government owns shares because the section states that the power can be exercised by the President, *"notwithstanding the provisions of any other law or the articles of association establishing a governing board"* [Section 7(3)].

### ***Answerability and Aggregate Reporting on Performance***

In the decentralised model found in Argentina and Kenya, performance reports are channelled through line ministries which prepare composite SOE reports. In Argentina, SOEs send their reports directly to the Ministry of Economy and Public Finance which prepares a consolidated report and sends it to the Senate<sup>6</sup>. In Kenya, each SOE sends a report to its line ministry which sends it to the Ministry of Finance which, in turn, prepares a consolidated report for the Public Investments Committee (PIC). Finally, the PIC analyses the report and presents a summary to parliament. The difference between the two systems of aggregate reporting is that in Kenya the process is longer and reports become diluted as they go through the system.

### ***External Monitoring***

To avoid arbitrary decisions about SOE performance, a systematic system for monitoring activities and performance is indispensable. Both Argentina and Kenya have such systems. In Kenya, Section 18 of the State Corporations Act establishes the office of the Inspector of State Corporations who reports directly to the Minister of Finance and the Auditor and Controller General on the management of public funds in SOEs. The Inspector has the power to call for and inspect books, records, returns and documents related to accounts; can enter and inspect premises, plants and facilities of any SOE; can attend meetings held by any body of any SOE; and can carry out an investigation if requested by the State Corporations Advisory Committee or the Auditor and Controller General. Section 19(1) stipulates that after such an investigation the Inspector may disallow any expenditure item found to be contrary to procedures, order the violators to pay back amounts misused and recommend legal measures to be taken against violators. The main limitations on these powers are, first, that the Inspector is an ordinary civil servant appointed by the Minister of Finance who also determines his/her terms and conditions of employment. Secondly, the Inspector is not independent and can be overruled by the Minister. Third, there are no penalties prescribed against anyone who may choose to ignore the Inspector's surcharge orders. Fourth, the Inspector is not required to submit a report to legislative bodies and in fact no records are publicly available on the work of the Inspector or action taken over the years. Finally the

<sup>6</sup> Similarly in Chile, Ecuador and Mexico, SOEs prepare their own individual performance reports and send them to the supervisory ministry. There is no standard format for these reports. In Ecuador they are presented to the line ministry and the coordinator and then posted immediately on SOE websites (OECD and CAF 2014).

Inspector's powers only relate to financial issues and not to performance in other areas within the mandate of SOEs. Therefore although the Inspector seems to have a lot of powers, as an ordinary civil servant these powers are not robust enough. Weak supervisory mechanisms, such as these, seem to be based on formal rules however those rules are designed in such a way that they give higher authorities leeway and discretion to use them in the manner they want. In other words, formal rules create room for informal action, decisions and interventions.

Latin American countries have started adopting the OECD Guidelines (2002) which recommend reporting systems that consist of regular monitoring and assessment of SOE performance. Such mechanisms include *ex ante* reports (on objectives, in strategic or annual plans), *ex post* reports (performance reports) and consolidated reports combining both elements. In Latin America, SOE performance monitoring systems differ from country to country. Argentina uses quarterly reports to monitor SOE achievement of financial and non-financial targets<sup>7</sup>. In Africa in general and in Kenya in particular, performance contracts are used only for managers of SOEs and not for SOEs.

### *Internal and External Auditing*

In order to produce accounts and audit reports that reflect the true state of public expenditure internationally agreed standards need to be followed. The International Organization of Supreme Audit Institutions (INTOSA), of which all Latin American and African countries are members, has agreed upon standards to be used by national audit bodies (INTOSA 2004). The OECD has also developed related guidelines. Both sets require SOEs to be subjected to the same rigorously high quality accounting and auditing standards as listed companies; to disclose financial and non-financial information; to provide clear statements on enterprise objectives and their fulfilment; to give details on ownership, risks and risk mitigation measures taken; and to disclose support received from the state and any transactions involving other public bodies. In Argentina wholly-owned SOEs have no obligation to follow these standards however listed SOEs follow them to remain competitive. As shown earlier, disclosure in line with the INTOSA and OECD standards is severely limited in Kenya.

The difference between the Latin American SOE auditing system and that of Kenya is that in Kenya internal audit departments are not mandatory and are therefore non-existent. In Latin America they are mandatory, meaning that the process of horizontal accountability starts at SOE level with management accounting properly to the board and regulatory agencies before being sent to the supreme auditing agency.

In Kenya there is no provision in the State Corporations Act requiring SOEs to establish internal audits departments or committees. However, due to convention each SOE has an internal auditor because in sound financial management accountants and officers in charge of authorising payment and expenditure cannot audit expenditure. On the contrary, in most countries of Latin America internal audits are mandatory. The SOE law in Argentina requires SOEs to establish internal auditing departments, known as Internal Auditing Units (*Unidades de Auditoría Interna* - UAI) which report to the boards and are coordinated by the General Trustee of the Nation (SIGEN). Some specific SOEs are required to set up Audit Committees, staffed by three independent directors, a representative from the UAI, and another from the SIGEN. Audit Committees are not deemed to be part of the organisational structure of SOEs; instead they are regarded as consultancy agencies with specific mandates (OECD and CAF 2014).

<sup>7</sup> In Colombia each ministry uses its own mechanism to gather performance data on its SOEs. Brazil uses a balanced scorecard for SOEs to report on financial and non-financial indicators which are agreed upon annually between the boards, the supervising ministry and the regulatory agency. SOE performance in Chile is monitored through quarterly and annual reports while Paraguay uses performance contracts for SOEs which are agreed with the regulatory agency. These contracts run for three years after which time performance is assessed with monitoring in between (OECD and CAF 2014).

In Argentina, the National Audit Office (AGN) provides technical assistance to Congress and is responsible for auditing economic, financial and managerial operations of ministries, secretariats and other government bodies including SOEs. The President of the AGN is proposed by the largest opposition party group in Congress. The NAO's directorate is composed of the President and six General Audit Officers designated by Congress (3 by each Chamber, 2 representing the majority party group and the remaining officer representing the largest minority party). The NAO is expected to control the legality of public expenditures, as well as the management and audit of centralised and decentralised public sector agencies. The NAO publishes public reports presenting the results and findings of the audits and must provide a legal and financial audit report on the execution of each year's budget. The NAO's proposed plan of action for auditing public sector agencies, as well as every auditing report, are presented to a special committee in Congress, composed of deputies and senators. The Mixed Committee of Public Accounts (CPMRC) is responsible for looking into the details of public sector finances and administration, and for maintaining fluid communication between congress and the NAO. The NAO provides technical support for oversight by conducting audits but cannot impose sanctions or file a case in criminal courts. Neither can the NAO force agencies to provide information. If irregularities suggesting ill-management or fraud are found during auditing, all the NAO can do is report them to congress. Then, it is the CPMRC's prerogative to decide how to proceed. It can adopt a series of actions that range from filing away the report, demanding further information from the agencies involved, or ordering an assessment of responsibilities and fiscal damage, to informing anti-corruption agencies or filing the case before the Criminal Court of Appeals.

In Kenya the Office of the Controller and Auditor General (CAG) is established by the Constitution like the NAO in Argentina. Under the Exchequer Act, the CAG is required to audit public funds authorised by law and parliament at least once a year. In the performance of this function the CAG is required to ascertain expenditures and withdrawals of public funds. Any unauthorised withdrawal or expenditure has to be reported to parliament through the Ministry of Finance. If the Ministry fails to do so, the CAG can submit a report after seven days. Once submitted to parliament, the report of the CAG is passed on to the Public Investments Committee which analyses it and prepares a report for submission to parliament. Previous experience in Kenya indicates numerous challenges related to the reporting mechanism for audited accounts.

The first challenge is that from 1985 to 2002 an office of the Controller and Auditor General Corporations was functioning. This office was established by Act No. 12 of 1985 which in essence was illegal because it purported to amend the constitution by establishing a parallel system of auditing for state corporations without following procedures for amending the constitution. The CAG was not only unconstitutional; it was also led by an ordinary civil servant working under the Ministry of Finance without adequate job security or terms and conditions of employment. Neutrality and application of international standards were out of question for such an officer. The second challenge comes from Section 2(b) (vii) of the State Corporations Act under which the President may declare a state corporation not to be a state corporation for the purposes of the Exchequer and Audit Act. In Annex 1, we summarise losses incurred by the 12 worst offenders, amongst which are three agricultural enterprises including the National Cereals and Produce Board plus the National Social Security Fund and the Kenya Posts and Telecommunications Corporation, all of which were exempt from the Act several times between 1992 and 2002 (CGD 2002). The presence of formal laws that allow audit and disclosure to operate alongside laws that facilitate suppression of audit and disclosure in effect undermine the whole purpose of audits. The third challenge is that the Controller and Auditor General is only required to undertake financial audits and does not have the mandate to undertake value-for-money audits covering non-financial matters.



Photo 4: Argentinian Senate in session  
Credit: Sofía Basile/ Comunicación Senado Argentino

## INFORMAL INSTITUTIONS AND HORIZONTAL ACCOUNTABILITY: THE CASES OF AEROLÍNEAS ARGENTINAS AND THE KENYA NATIONAL CEREALS AND PRODUCE BOARD

Aerolíneas Argentina is a flagship airline created by the Argentinean government back in the 1950's. The company was privatised and nationalised back and forth, with the last nationalisation taking place back in December 2008. This decision attracted a lot of media coverage and the opposition parties scrutinised the activities of the company very closely. The specific example we draw on relates to 2014 when the National Audit Office produced a special report on AA. The release of the report in 2014 coincided with one of the Chief of Cabinet's monthly visits to congress when the company was discussed and questions were raised and answered. Subsequent discussions led to a debate amongst parliamentarians about the effectiveness of the Chief of Cabinet's role and the reporting procedure as an HA mechanism. This unusual series of events provides a great opportunity to assess whether this formal HA mechanism is sufficient to improve the accountability of a SOE.

The National Cereals and Produce Board was chosen as a case study for several reasons. First, it has been on the ground for over 60 years since the 1950s. Secondly, the NCPB handles food and therefore caters to the needs of all segments of the population. Third, while there have been frequent food shortages and food price fluctuations in East Africa over the last two decades, Kenya tends to be hit more frequently than its close neighbors Tanzania and Uganda, in spite of its long history of large-scale commercial farming and a dynamic smallholder farming sector. Most importantly, with the cereals trade increasingly becoming a monopoly

controlled by a small group of grain trading multinational corporations, cereals are going to be scarcer and less accessible to the poor in the future (Murphy et al. 2012). Therefore bodies such as the NCPB need more control and guidance by both the government and parliament to ensure food security in Kenya. The principal characteristics of both companies are summarised in Table 3 below.

**Table 3 . Principal characteristics of Aerolíneas Argentina and the National Cereals and Produce Board**

	Aerolíneas Argentina	National Cereals and Produce Board
<b>Vision</b>	To be the flagship company and pride of the Argentine Republic, renowned for its efficient and transparent public management.	A world class corporation in agricultural commodity trade and grain management.
<b>Mission</b>	To connect Argentines and contribute towards the integration and economic and social development of Argentina, promoting the national territory as a tourist, cultural and business destination.	Trading in quality grains, agricultural products and related services.
<b>Board of directors</b>	Run by a board of directors whose President is appointed by the President of the Republic.	Run by a Board of Directors whose Chairman is appointed by the President of the Republic. Reporting to the Board of Directors there is the Managing Director, who is in charge of the day-to-day running of the institution.

Source: Company websites

In terms of formal horizontal accountability institutions, as SOEs both Aerolíneas Argentinas (AA) and the Kenyan National Cereals and Produce Board (NCPB) have a relatively autonomous structure and functioning rules which are subject to regular oversight by the legislature. Both companies also have a separate legal personality to that of the government. They account through their parent ministries which submit the record and reports to the Auditor General in Kenya and to the NAO in Argentina. In turn, these agencies prepare audit reports and submit them to parliament. The latter passes these reports on to the committees responsible for preparing analytical reports for presentation to and discussion by the legislature.

Although formal institutions are in place, we agree with Helmke and Levitsky (2003) that HA outcomes cannot always be explained strictly in terms of constitutional design. For example, analyses of “neo-patrimonial” democracies in Africa and Latin America have shown how unregulated private presidential control over state institutions may result in a degree of executive dominance over the legislative and judicial branches, which far exceeds that prescribed by the constitution.

By comparing the case studies of AA and NCPB, we intend to show how informal institutions interplay with formal one resulting in weak HA outcomes. *“Informal institutions are socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels”* (Helmke and Levitsky 2003). Helmke and Levitsky classify informal institutions by the extent to which they co-exist and interact with formal institutions and develop a four-fold typology based on a) the effectiveness of formal institutions and b) compatibility between political actors’ goals and their expectations about the outcomes of formal institutions. ‘Complementary’ informal institutions include the many norms, routines and operating procedures that fill the gaps in the formal system and allow bureaucracies and other complex organisations to function effectively. ‘Substitutive’ informal institutions are employed by actors seeking to achieve outcomes that formal institutions are expected to generate, yet have failed to do so. ‘Accommodating’ informal institutions consist of the “second best” strategy for actors who dislike outcomes produced by formal rules yet are unable to change them. ‘Competing’ informal institutions structure actor’s incentives in incompatible ways with formal institutions.

According to Helmke and Levitsky (2003), "*the case for taking informal rules seriously hinges on the impact that those rules can be shown to have on formal institutional outcomes.*"

### ***Answerability Under Similar SOEs Institutional Design Contexts: The Role of the Executive in Horizontal Accountability***

Aerolíneas Argentina (AA) was mentioned in three out of eight of the Chief of Cabinet's addresses to congress in 2014. During the special session, the Chief of Cabinet only addresses verbally some of the questions asked by the legislators. Thus not all topics are covered during the visit, leaving some of them for the written report. The issue of the public airline company was debated on three occasions when members of parliament requested information on the economic sustainability of the company and on overall performance (passengers, routes, aircrafts and employees, among other topics). The Chief of Cabinet responded to all these questions. However there was one particular session where an interesting discussion emerged about the HA formal mechanism of monthly visits to Congress by the Chief of Cabinet. In March, during a visit by the Chief of Cabinet to the senate, one senator asked for further clarification on some questions. The Chief of Cabinet provided these clarifications and the conversation led to a small debate in the Chamber about how the HA monthly visit mechanism was working. Some members of parliament demanded a change in the procedures, saying that the visits take up too much time and do not improve accountability to the desired level.

Previous studies (Aquilino et al 2015) noted that Argentinean legislators recognise that an unlimited number of questions and topics can harm the effectiveness of the Chief of Cabinet's presentations to Congress. Furthermore, the number of very similar questions asked by the legislators about AA is a key indicator of the low level of coordination between political groups. This issue can be seen clearly in the only session held in the Chamber of Representatives during 2014 where the company was discussed. That day members of parliament asked the Chief of Cabinet 747 questions yet less than 20 were related to the company. Of those questions that were related, around half were about the amount of subsidies that the company receives regularly from the federal government. This also indicates a low level of coordination among legislators and high level of dispersion of the topics that are treated during an informative meeting.

Unable to change the rules set by the Constitution, the Chief of Cabinet chose to respond verbally to some of the questions and legislators chose to make an excessive and uncoordinated use of the questions made to the Chief of Cabinet in a set up that can be qualified as '*como si*' in Spanish. The '*como si*' is a sort of strategy that makes institutions appear to be functioning on the surface when they really are not. This accommodating informal institution is a second best strategy for conflicting goals in an effective formal institution.

As for the President at that time, Cristina Kirchner, she made some mention of AA in her annual speeches to Congress on the State of the Nation (formal HA mechanism). In the 2014 State of the Nation she mentioned one indicator - the total value of the fleet in US dollars. In the 2015 State of the Nation, nine indicators related to the company were mentioned; in particular, process and product indicators that demonstrate company performance. Even when the President addressed some concerns raised by legislators during the Chief of Cabinet visits, the indicators she provided did not directly respond to the queries raised by legislators. Since public speeches are seen as a mechanism for informing society about what the government is doing, the indicators Kirchner chose to share reflected more social and media concerns related to the functioning of the company.

In Kenya, the National Assembly exercises formal oversight by receiving annual audited reports from local authorities, independent commissions, political parties and SOEs. They have to be audited by the Auditor General and submitted to parliament under Article 229(4) of the 2010 Constitution. The reports are submitted first to the relevant parliamentary committees whose chairpersons present them to the National Assembly. It should be noted, however, that most of the reports are presented very late, some as many as four years after

the relevant financial year, and in most cases the reports are not discussed at all. In our view, they are merely for noting and their impact is minimal.

On 4<sup>th</sup> February 2009, a ministerial statement (formal mechanism) was requested on the allocation of maize to maize milling companies by the NCPB. This request for a statement was being presented in parliament for the third time, seeking clarifications. The member requesting the statement wanted to know why the minister had denied that maize had been exported to Southern Sudan when the Prime Minister had indicated that the export was taking place. He also asked why the Minister had indicated that there were 1.6 million bags of maize in the NCPB when there were in fact 2.6 million bags. He also wanted to know why orders were issued from the Ministry of Agriculture to managers of NCPB for the release of maize to individuals and companies. The member tabled a note from the Cabinet Secretary and a letter from the personal assistant of the Minister, with the ministerial letterhead, enforcing the notice as evidence of this ministerial order. The member further demanded clarification on why the Managing Director and trustees of NCPB signed and released maize to a host of companies, some of which were not titled. A letter signed by the trustees and Managing Director was tabled in the house. This letter had been signed by the Permanent Secretary, the Minister of State for Special Programs, the Permanent Secretary, the Minister of Agriculture and the Managing Director. The questions were not fully answered. The Minister said the ministry had asked consultancy firm Deloitte and Touche to undertake a review and that parliament would be informed as soon as the report was published. This answer in a way made it seem as if the matter was *sub judice* and parliament could not be given further details. Unable to properly follow the HA rules and fully answer questions posted by MPs, the ministry choose to delay responses seeking to counteract its effect.

At that time in Kenya, ministers and heads of the SOEs were appointed by the President. In most cases, they belonged to the majority party in parliament. The Minister had a lot of say on who heads a SOE and all the activities of the SOE were under the Minister. The professionalism of the heads of SOEs did not matter then. Parliament's relations with SOEs and ministries as well as existing parliamentary oversight mechanisms are presented in its Rules of Procedure, which include reviewing annual reports submitted by the executive and by SOEs. Members of parliament and parliamentary committees can use existing mechanisms that enable parliamentary oversight. According to the Kenyan Constitution, the President nominates members of the cabinet (the executive) and the heads of SOEs. Their names are published in newspapers and official government documents. The President then presents these names to parliament for vetting and scrutiny. Parliament usually organises public hearings with qualified candidates in advance so that members of civil society, media and citizens have the opportunity to familiarise themselves with their platforms. Once approved, the names are published in the Kenya Gazette. However, the opposition parties often complain of not being able to get fully involved because of the "tyranny of numbers", that is the majority party in parliament always approves motions unhindered. Media reports also revealed that ethnicity, kinship cleavages, regionalism and lobbies by interest groups are a big factor here too (Jonyo 2003). Again, we see the difficult interplay between formal and informal mechanisms of HA in Kenya.

### *Enforceability Under Similar SOEs Institutional Design Contexts: The Role of Parliament in Holding the Executive Accountable*

In the case of Aerolineas Argentinas, requests for information were seldom lodged by legislators in order to find out about the company. Eight requests were introduced during 2014. This number is similar to the historical average (about seven requests for information mentioning Aerolineas Argentinas have been made per year since 1984). The approval rate of requests for information about Aerolineas Argentinas in 2014 (25%) is also similar to the average since 1983 (28%), however both rates are below the general average of approval

of requests of information (33.5%). Therefore, it is possible to see that legislators who are interested in this topic – and many of them are – look for some other way to obtain the information they seek such as the public access to information mechanism which forces the executive to release solicited information in 10 days. Therefore, the access to information procedure acts as a substitutive informal institution for legislators who want to obtain responses. As we pointed out before, this happens because it is easy for the executive branch to elude this mechanism of control, so the legislators have few incentives to use them.

Out of the eight requests for information introduced in 2014, two were approved. Both share two particular characteristics. First, neither of them was signed by particular legislators because they were lodged by the Special Committee that links congress with the NAO, the CPMRC. Second, both requests asked for information about AA accounts between 2009 and 2011.

The Chambers did not approve the other requests for information by legislators. The six non-approved requests were about more immediate topics, such as current accounting processes or the financial deficit registered by the company in 2013 according to public statements made by its President Mariano Recalde. This shows that the time that elapses between the presentation of a request for information and its (eventual) response is deliberate. The delay method is a tactic (informal mechanism) used by the executive to comply with the formal rules while at the same time modifying HA processes to suit their purposes. As for Kenya, as explained in the previous section, at first the Kenyan Minister for Agriculture and Livestock used the excuse that the matters raised were being investigated in order to postpone debate on the maize issue. However, MPs did not give up. For example, one MP asserted that the Clerk of the National Assembly of Kenya wrote to the Permanent Secretaries requesting further clarification on the issue of maize and the role of NCPB and its officials in what looked to be a scandal. The Chair of the Public Accounts Committee also sought further clarification from the Minister to confirm that all the companies that received maize from NCPB were deserving cases. The list of the companies was also tabled before the House. The Minister was asked to clarify to the House why, on 29<sup>th</sup> September 2008, the managers of the NCPB approved and released 182,000 bags of maize to companies without the authority of the trustees. This fact was also tabled before the House. The Minister was asked to state why he had not sacked the Managing Director of NCPB, the Marketing Manager and the Financial Controller, and to clarify how a Managing Director of his insurance company fronted for gunny bags when the Minister knew that within his ministry, there were plans for purchasing grain and this person requested that they buy gunny bags worth Ksh 574 million. This document was also tabled.

The Chairperson of the Departmental Committee on Agriculture, Lands and Natural Resources requested permission for his committee to investigate all of the points mentioned before the Minister of Agriculture made his clarifications. The Speaker, however, allowed the Minister to go ahead and clarify. Among the clarifications with regard to the idea of firing the Managing Director and other managers, the Minister of Agriculture told the House that the ministry had contracted the firm Deloitte and Touche to provide an assessment of how to restructure the NCPB. Deloitte and Touche had presented a report and the ministry engaged the Criminal Investigations Department, the Inspectorate of State Corporations and officers of the Kenya Anti-Corruption Commission to work on the matter. The Minister promised the House that once the reports were available they would be reviewed and the Managing Director, Marketing Manager or any other board official would be taken to court if suspected of having committed any impropriety. He also added that if the House felt that the Chairperson of the Board was not fit to hold the office and allegations against him were confirmed, then using the constitution and by standing orders, the government would take action.

The dynamics of the maize case involving the Minister of Agriculture, who was a prominent leader with aspirations for higher office, indicate that he felt he was being targeted by a witch hunt. On 11th February 2009, the Assistant Minister in the Office of the Deputy Prime Minister and Ministry of Local Government stated in

parliament that most of the accusations raised were based on newspaper reports implicating him and other MPs in the maize saga (Hansard Report 11 February 2009). He informed the House that the factory which was alleged to have received 3,000 bags of maize illegally had closed business a long time before the saga began and had remained closed during the whole period during which the issue was being discussed in parliament. The Minister for Agriculture also claimed that the reports in the Standard Newspaper alleging that some MPs had colluded in the illegal sale of maize and including their pictures, were false. He stated that any transfer of maize had been done with the consultation and involvement of District Development Committees in the mentioned areas. He added that he had reported the same to the House after which he had written to the NCPB asking it to work with these committees to ensure the maize was sold to the right groups. He produced a copy of the letter he had sent to the NCPB and he cited the report he had made to the House in the Hansard.

The Minister also reported that three weeks before the issue was raised, the NCPB had started selling maize and the residents were buying maize at KSH. 20 per kilo instead of 50. He called upon the Standard Newspaper to apologise. However, after this explanation another MP raised the issue of the shortage of maize flour and the hike in the prices of the flour in the country (Hansard Report 11 February 2009). In response, the Assistant Minister for Agriculture promised to provide a report after a week. On the 18th February the issue came up again. The Member who had raised it earlier produced cuttings from the Standard Newspaper as evidence together with pictures from the same paper showing children allegedly starving. The discussion then shifted to the issue of whether newspaper cuttings can appropriately be used as evidence in proceedings before parliament under the Standing Orders and whether it was ethical to produce pictures from newspapers without clear indication of their authenticity and actual date when they were taken.

It transpired that there were rules of procedure to be followed in parliament with regards to tabling evidence and the Speaker ruled that the articles were *"inadmissible in the House and cannot be used laid on the Table of the House"* and could only be tabled following procedure. The MP made further claims which he averred to be based on facts but he did not produce evidence leading the Speaker to rule that *"...indeed the rules of the House are very clear, if you make a clear statement of facts or what you assume to be a statement of fact, you must have the ability to substantiate or prove it. In the absence of that, would you please withdraw and apologize, then proceed?"* The Member subsequently apologised (Hansard Report 18 February 2009). Other instances involving answerability and enforceability of decisions made by the National Assembly between 2010 and 2013 involving the National Cereals Produce Board are summarised in Annex 3.

From the account given above, many observations can be made that shape competitive and substitutive informal institutions in Kenyan Parliament. First, several MPs failed to solicit appropriate responses because they based their claims on inadmissible evidence such as newspapers cuttings or pictures taken from unsubstantiated sources. Secondly, although most were very experienced MPS they did not follow the correct procedures in tabling questions or motions. Third, although some of them had a legal background or had advisors and research assistants, they did not adhere to the rules requiring fair and balanced comment and against making assertions for which there is no proof. Fourth, the MPs did not bear in mind ethical considerations such as use of pictures whose authenticity may be questioned. Fifth, most of them kept avoiding tackling policy issues. For example, the issues of price control and trade liberalisation were really affecting farmers' livelihoods and many questions sought to raise these issues, however most MPs avoided these topics. Sixth, media and civil society highlighted the issue and due to public outcry were able to force a member to table this bill in parliament. This might indicate that legislators do not believe they are responsible for policy or can question policies. They seem to believe this is the sacred domain of the executive branch of government.

A summary of informal institutions operating in routine legislative oversight of the executive branch is provided in Table 4 below.

**Table 4 . Informal Institutions Operating in Routine Legislative Oversight of the Executive Branch**

	Argentina	Kenya
<b>Answerability</b>	<p><u>Accommodating</u></p> <ul style="list-style-type: none"> <li>• Dispersion of debates with other issues</li> <li>• Chief of Cabinet procrastinating during visits to Congress</li> <li>• <i>'Como si'</i> strategy: Lack of coordination amongst MPs leading to a high number of similar questions posed to the Chief of Cabinet</li> </ul>	<p><u>Accommodating</u></p> <ul style="list-style-type: none"> <li>• Very late reporting</li> <li>• Overall, minimum usage of reports</li> <li>• Weak laws that work against HA, for example, the auditor who supervises the audit is a civil servant and is answerable to the Minister and therefore his reports are not independent.</li> </ul>
<b>Enforceability</b>	<p><u>Substitutive</u></p> <ul style="list-style-type: none"> <li>• Using public access to information right rather than requests for information</li> </ul> <p><u>Accommodating</u></p> <ul style="list-style-type: none"> <li>• Low volume of requests for information by MPs</li> <li>• Low number of requests approved</li> <li>• Considerable time elapsed before requests were answered</li> </ul>	<p><u>Accommodating</u></p> <ul style="list-style-type: none"> <li>• Lack of capacity amongst MPs to engage in collective action or present evidence-based arguments</li> <li>• The inspector of audits has no powers to report malpractices to legislative bodies</li> <li>• No penalties for offenders-</li> <li>• The reports are not open to public scrutiny</li> <li>• The Auditors report is limited to financial issues only</li> </ul> <p><u>Competing</u></p> <ul style="list-style-type: none"> <li>• Tug of war between ruling and opposition parties</li> <li>• The failure to follow the rules and procedures in parliament, for example, tabling false evidence</li> <li>• The cabinet minister came from the ruling party that was the majority in parliament. Claims were made that clientelism, regionalism and ethnicity played a role</li> </ul>
<b>Vertical Accountability</b>	<p><u>Substitutive</u></p> <ul style="list-style-type: none"> <li>• Media presence based on evidence coming from NGA</li> </ul>	<p><u>Substitutive</u></p> <ul style="list-style-type: none"> <li>• Media presence not based on evidence. Although the media and civil society pushed parliament to debate this issue and expose the maize scandal, MPs should have dealt with it themselves. The government had denied claims that hunger was real and that many people were dying.</li> </ul>

It is clear that in the case of Aerolíneas Argentinas, the senate only accepted questions which were raised by the Special Committee. The question about company accounts was only accepted because it related to activities that took place more than three years ago. A similar situation occurred when requests about the administration of AA during 2009 and 2011 were lodged in 2014 and approved during 2015. One might think the information would not be relevant, or would be difficult to actually use, given the time that had elapsed, however the NAO report about the administration of AA during 2011 and the first half of 2012 was critical in forcing the SOE's President Mariano Recalde (invited by the Committee on State Reform and Follow-Up of Privatizations) to defend his work in front of congress. In this context, the NAO formal reports played a key, although delayed, role in horizontal accountability despite the fact that there were no consequences for AA.

In the case of the NCPB, the informal HA mechanisms adopted by MPs reflected a tug of war between the ruling party and the opposition and were incompatible with the formal rules. Formal HA mechanisms reflected a tug of war between the ruling party and the opposition alerting for a competing informal institution that structures actors incentives in ways that are incompatible with the formal rules. The case of the NCPB shows a several weaknesses worth noting. First, MPs lack capacity for coming together, developing adequate arguments, networking and initiating collective action on policy issues. What is more, the Kenyan MPs were not ready to question existing policies. The policies that were causing problems for farmers arose out of trade liberalisation and the removal of price controls over the purchase of agricultural produce from farmers. The MPs did not question these policies because either they thought they were irreversible or they were untouchable because they had been passed by the government (Hansard Report 18 February 2009). This gives the impression

that Kenyan MPs may feel they do not own or cannot influence policy. Third, it was clear that MPs from constituencies unaffected by the problems of the NCPB were less enthusiastic about the motions and debates on these problems. Fourth, it can be seen from the Parliamentary Reports that the alarm about the cereals shortages and the mishandling of the problem by the NCPB was raised by the media. Yet instead of carrying out further research and generating their own independent information, the MPs who took up the issue relied on the media reports and pictures whose authenticity had not been verified. This weakened their arguments so much that in response they were called liars. In Kenya each MP has a research assistant and the Secretariat of Parliament is not short of research capacity. However, it seems MPs do not adequately use this resource to enable themselves to make evidence-based claims. Finally, the parliamentary committee which was supposed to take the issue forward ignored taking the matter to the judiciary for further investigations.

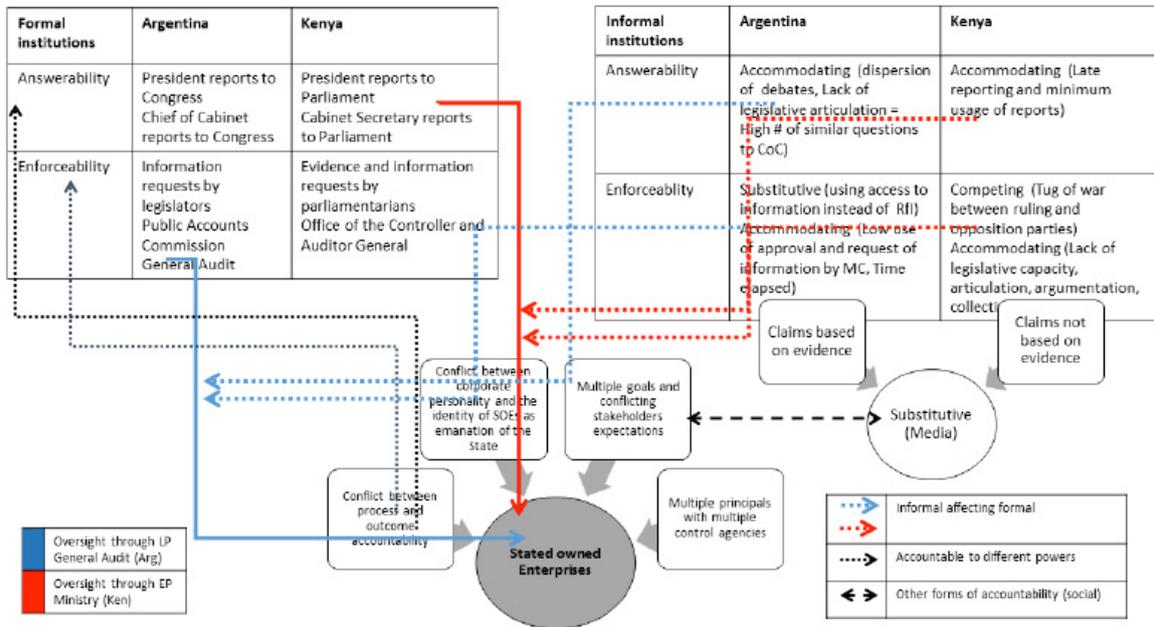
In both the Argentina and Kenya cases the media played a significant role as a substitutive informal institution in shaping discussions and shedding light on the issues at hand, thereby pressurising MPs into action. In Kenya, the media alerted parliament about the plight of poor Kenyans who were starving to death and this put the National Cereals and Produce Board under the spotlight. There were reports in the daily newspapers of civil society organisations and philanthropists donating food to save the starving citizens. The media reports also alleged that senior government officials were involved in a scandal of hoarding maize and exporting it to other countries while the NCPB silos stood empty. In cases where farmers had sold their produce, they had not been paid. This sparked public outcry and hence the issue was brought before parliament. What the MPs ought to have done was to build on the media reports by gathering more evidence, then packaging and presenting it before parliament within the framework of formal HA rules of procedure. Given that this was not the case, most of their evidence was thrown out. In Argentina, the NAO reports on AA took a centre stage after extensive media coverage in national newspapers such as Clarin<sup>8</sup> and Ambito Financiero<sup>9</sup>, which also contributed to the call for Recalde to present before Congress.

One contrast between Argentina and Kenya is that the Argentinean media based its coverage on concrete evidence provided in the NAO report while in Kenya MPs built their case on media reports which were less rigorous. Besides this, it is clear that delays in channeling reports back and forth is also a key challenge that seems to minimize the potential impact of evidence and findings, as in the case of AA, and hinder the dynamics of HA mechanisms, as seen in the Kenyan case. Figure 3 below provides an overview of how formal and informal institutions affect HA performance in SOEs in both countries.

<sup>8</sup> Clarin's [En un año y medio, Aerolíneas perdió casi mil millones de dólares \(In a year and a half, Aerolineas lost almost a billion US dollars\)](#), accessed 9 December 2016.

<sup>9</sup> Ámbito Financiero's [Recalde aseguró que "es un mito que Aerolíneas pierda cada vez más plata" \(Recalde insisted that "it is a myth that Aerolíneas Argentinas keeps on losing money"\)](#), accessed 26 March 2015.

Figure 3: Formal and Informal Institutions Affecting HA Performance in SOEs in Argentina and Kenya



# CONCLUSIONS: WHAT ARE THE DETERMINANTS OF THE LOW PERFORMANCE OF HORIZONTAL ACCOUNTABILITY IN ARGENTINA AND KENYA? HOW PERFORMANCE CAN BE IMPROVED?

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A vast array of literature exists about how answerability and enforcement actually work in the HA process. These theories highlight different determinants of the process, but in general studies explaining weaknesses in horizontal accountability can be grouped into two broad types or hypotheses. The first looks at institutions and the incentive structures for HA (Mainwaring and Shugart 1997) and the second focuses on cultural factors<sup>10</sup> and stresses the absence of a “culture of accountability”.

Our hypothesis argues that positive incentives transmitted through the mechanisms of formal institutions are necessary but not sufficient for improved horizontal accountability. Informal institutions and strengthened capacities are also required to improve HA outcomes in Argentina and Kenya. Understanding informal institutions as determinants of low HA opens up a completely new agenda for reform.

Although they have different contexts, histories and social development backgrounds, Argentina and Kenya have implemented comparable constitutional reforms relating to formal HA institutions and mechanisms. Besides this, the institutional design of State-owned Enterprises also demonstrates similarities and SOES in both countries are subject to HA processes. However, our case study research shows that the mere presence of a rule or a particular institutional design do not necessarily lead to the correct enforcement of HA. On the other hand, political commitment is key to the success of HA processes.

As our analysis of State-owned enterprises shows that Argentina and Kenya both demonstrate low performance in terms of Horizontal Accountability. This is due, in part, to the fact that in both countries responsibilities for HA are shared across two different branches of government and that formal procedures are often mixed with informal institutions, thereby preventing the process from being effective. Given that successful HA depends on fluid communication between the legislative and executive powers, the performance of any country in terms of HA depends on actions taken by these actors in the context of how institutions work across the board.

The cases of HA in Aerolíneas Argentinas and the National Cereals and Produce Board shows the role that informal institutions play when they interact with formal institutions and result in poor HA outcomes. The formal HA process is determined by accommodating and substitutive informal institutions in the case of Argentina and by accommodating, competing and substitutive informal institutions in the case of Kenya.

According to Helmke and Levitsky (2003), in a similar formal institutional context (FI) different informal institutions (II) can be shown to produce similar outcomes.

$$FI (+ II \text{ b, c}) = X$$

$$FI (+ II \text{ b, c, d}) = X$$

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<sup>10</sup> Under the second group, Oszlak (2003 and 2006) and Bovens (2010) argue that the sense of obligation forms part of the subject’s values and culture. It is an element that tends towards the standardisation of how subjects perceive each other, thus reducing uncertainty in personal interactions. Culture is composed of the way in which reality is perceived and categorised; existing beliefs regarding the capacity of certain instruments achieve objectives in an efficient manner, and the prevalent criteria to assess legitimacy of different actions. Therefore, accountability is not simply a matter of system design, but rather a cultural predisposition that should be assimilated by individuals in order not just to respond when being held accountable but to be accountable as a result of a moral imperative.

This provides an important lesson and starting point from which to further analyse institutional reforms in other countries. Our analysis tells us that much greater attention needs to be given to informal institutions for improving Horizontal Accountability. It is clear from the cases of AA and the NCPB that untimely and inaccurate reporting by the executive as well as low capacity amongst the legislative to coordinate between parties, present evidence-based arguments and engage in collective action, severely limited the effectiveness of HA formal mechanisms. It is also clear that using mechanisms outside the legislative (i.e., the right to access public information) to request information substitute's formal HA institutions and persisting tug of war between ruling and opposition fosters competing institutions. Finally, the presence of informal substitutive institutions such as media presence, negatively affects formal institutions.

Both Argentina and Kenya show room for improvement, including strengthening the capacity of the executive so that answerability mechanisms are properly implemented and minimises existing informal accommodating institutions (such as *'como si'*). This includes developing appropriate regulations, procedures and timeframes within which the executive has to respond to requests for information and making sure these are adhered to. Another area for improvement is building capacity among legislators to generate and use reliable data, statistics and other information, so that HA processes can be based on firm, trustworthy evidence.

Enforceability mechanisms also require strengthening, and this could be achieved by: (a) greater cooperation between political parties in terms of articulating requests for information and obtaining fuller responses from the relevant agencies; (b) assigning powers to the supreme audit bodies to assess the contribution of executive actors to poor accounting and recommend actions to anti-corruption authorities and courts; and (c) appointing chairpersons of public accounts committees by a coalition of opposition parties and not merely by the Speaker from one of the opposition parties.

Additional factors affecting HA that are particularly relevant for Kenya also need to be addressed such as ethnic rivalries undermining national cohesion and encouraging racial diversity within parliament.

In general terms, the way that formal and informal institutions perform differs. While formal HA mechanisms may shape the behaviour of key institutions and actors by setting expected outcomes (through design) or by enforcing rules (through legislation), informal HA mechanisms demonstrate a 'tenacious survival ability' (Helmke and Levitsky 2003). An effective reform agenda for Argentina and Kenya should take these characteristics into consideration and provide a wide path for action that considers both formal and informal sources of institutional change.

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# ANNEXES

## Annex 1: Losses Incurred by Kenyan SOEs from 1992 to 2002, in Kenyan Shillings

Between 1992 and 2002 the country lost KSHS 155, 202, 292, 993 through wasted funds, dubious or illegal procurements, direct embezzlement, unpaid loans to the treasury and national banks, pilferage and other unauthorised expenditure. A study supported by USAID in 2002 on accountability for public expenditure by SOEs in Kenya between 1992 and 2002 revealed that the country lost an equivalent of almost 2 billion dollars within one decade (Table 5). The breakdown is indicated in the table below.

**Table 5 . Losses incurred by Kenyan SOEs from 1992 to 2002 in Kenyan Shillings (1US\$= KSHs75 in 2002)**

Amount of wasted funds by 12 most wasteful SOEs	54, 200, 307, 574
Losses by a sample of 50 out of 300 SOEs including the 12 most wasteful	20, 165, 036, 006
Un-serviced loans and liabilities by SOES	80, 836, 889, 413
Total losses in one decade	155, 202, 292, 993

Source: CGD 2002

This study carried out by CGD Kenya provided insights into the governance and accountability challenges that led the Kenyan SOEs to that level of loss-making and waste, indicating that:

- a. Reports required from SOEs were not being regularly submitted and some were three years old or more.
- b. The auditing regulations required the audit authority to undertake only financial audits based on a small sample of expenditure documents and did not require value for money audits.
- c. On the average, every year out of 100 SOE reports only 8 managed to get a clean bill of health and *"the general story is one of loss, fraud, theft and gross mismanagement"*.
- d. The Exchequer and Audit Act allowed the Treasury to exempt some corporations from audit and some of the 12 biggest offenders were exempted from time to time.
- e. The twelve corporations with the worst record of waste accounted for 93% of the total SOE waste. The worst six of them accounted for 85% of waste.
- f. Based on the sample - just 20% of all corporations – total estimated loss by all 300 SOEs was close to KSHS 220 billion.
- g. Unauthorised investments were made by some big corporations in weak banks which collapsed without paying back the investing corporations.
- h. Some officers allocated to themselves plots of land set aside for use by their corporations.
- i. In almost all the cases the Public Investment Committee made recommendations which the Treasury acknowledged as 'noted' but no action was taken. The Office Attorney General indicated that without initiation of action by the Treasury it was incapable of taking any action.
- j. Impunity was the main constraint to accountability.

## Annex 2: Stated Owned Enterprises in Argentina: Some Critical Notes

During 2015, CIPPEC's Public Administration Programme undertook a major study of Argentina's national public sector. This Annex provides a summary of the main findings.

In the 2003-2015 period, the number of public companies increased from 45 to 53. The new companies that were created are mainly concentrated in the energy and transportation sector which positions the public sector as a producer of goods and services. Some of the companies that were created or re-nationalised are AySA (water and sanitation), Aerolíneas Argentinas, YPF (petroleum), Nuevos Ferrocarriles Argentinos (railways) and Correo Argentino (postal service).

In terms of human resources, this meant a 350% increase in the amount of people employed in these companies, which represents roughly 93,540 new workers. While in 2003 there were 26,819 individuals working in public companies, in 2015 the number ascended to 120,359. The expansion of human resources in public companies represents 32% of the increase of human resources in the whole of the public sector (294,454 new workers).

The public companies that hired the most new workers are:

- YPF S.A. (22,000)
- Administradora de Recursos Humanos Ferroviarios (20,000)
- Correo Argentino S.A. (17,000)
- Aerolíneas Argentinas (10,700)
- Aguas y Saneamiento S.A. (6,000)

In 2004, SOEs received 1.86% of national budget and by 2014 this percentage had increased to 10.18%. The overall increase in the budget assigned to SOEs between 2004 and 2014 was 9210.5%. Thus, SOEs experienced the largest growth amongst all public sector agencies in the stated period.

## Annex 3: Kenya's Hansard Reports

Table 6 . Issues Involving the NCPB and Government Responses 2010–2013

Year	Issue	Response	Remarks
2010	<ol style="list-style-type: none"> <li>Why there were delays in payment to maize farmers and why prices were reduced from KSh.2300 to 1500</li> <li>Why government had delayed opening maize depots forcing farmers to sell cereals at low prices?</li> </ol>	<ul style="list-style-type: none"> <li>Market forces were behind the fall in prices as the market was liberalised</li> <li>Government was subsidising inputs to offset losses by farmers</li> <li>NCPB had payment schedule to farmers. It was not paying on delivery</li> <li>Government was not aware farmers were selling at a loss</li> <li>Price controls have been abolished due to liberalisation</li> </ul>	<ul style="list-style-type: none"> <li>The MPs wanted restoration of prices to KSh. 2500 but did not succeed</li> <li>The Ministry of Agriculture and the Prime Minister's Office gave contradictory statements on policy</li> <li>The issue the MPS were questioning concerned the liberalisation of trade however they were not articulate about this issue.</li> </ul>
2011	<ol style="list-style-type: none"> <li>How much food was projected to be harvested in 2011 and what price was planned to be offered to farmers?</li> <li>Why the amount to be purchased was small?</li> </ol>	<ul style="list-style-type: none"> <li>29.3 million Kg of maize planned with 1.053 earmarked to be purchased by NCPB, and</li> <li>333,000 bags to be put into the Strategic Grain Reserve</li> <li>Due to the limited amount of money NCPB was allocated to buy produce from farmers</li> </ul>	<ul style="list-style-type: none"> <li>MPs were concerned that the planned harvest was 29.3 million Kg but only 1.053 would be bought.</li> <li>The main issue was who would buy the remaining produce and at what price. However they never got to discuss the issue because of vested interests within government and among some MPs.</li> </ul>
2012	<ol style="list-style-type: none"> <li>Why the price of maize flour remained high when that of maize went down?</li> <li>What measures were being taken to ensure schools get enough maize flour?</li> <li>Why was government allowing duty free importation of maize while there was enough maize in the country</li> </ol>	<ul style="list-style-type: none"> <li>Maize flour prices have also gone down</li> <li>NCPB has been given special funds to buy maize to be sold to schools</li> <li>The measure was temporary and its time had expired</li> </ul>	<ul style="list-style-type: none"> <li>MPs wanted to bring up the issue and impact on trade liberalisation but the issue was not dealt with.</li> </ul>
2013	<ol style="list-style-type: none"> <li>Tabling of a Special Report Involving a contract between NCPB and M/S Erad Supplies and General Contracts Ltd., which had been awarded a contract to supply maize worth KSh. 800 million but it was technically insolvent and without capacity to supply the contracted maize leading to losses by the NCPB</li> <li>Why had the NCPB delayed opening some of the maize buying centres?</li> </ol>	<ul style="list-style-type: none"> <li>One MP raised a point order to block the debate on the grounds the matter was before the court</li> <li>The Speaker ruled there was no proof before the House, the matter was before the court and Parliament had spent six months and a lot of money on the inquiry</li> <li>After a long discussion the matter was debated and the Special Report adopted censuring the company and the officials that had allowed the contract</li> <li>Because the prices at which the maize would be bought was yet to be decided</li> </ul>	<ul style="list-style-type: none"> <li>There was evidence that some members were lobbied to block the debate</li> <li>The Majority Leader in the House took lead in insisting the report be discussed</li> <li>It is possible if the Majority Leader had not been supportive of the debate it may not have happened</li> <li>The opening of purchase centers may have been delayed so that farmers could be forced to sell their produce to private buyers other than the NCPB, however this issue did not come out clearly.</li> </ul>

Source: Hansard, Kenya Parliamentary Reports 2010–2013