
BILLS

SUPPLEMENT No. 14

28th September, 2020

BILLS SUPPLEMENT

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Bill No. 26 *Human Rights Defender's Protection Bill* **2020**

THE HUMAN RIGHTS DEFENDER'S PROTECTION BILL, 2020

MEMORANDUM

1. Policy and principles of the Bill

The Policy of the Bill is to provide a framework for the recognition and protection of the work and activities of Human rights defenders in order to guarantee a safe and enabling environment for human rights defenders to freely operate.

2. Defects with current legislation

Chapter Four of the 1995 constitution of the Republic of Uganda provides a Bill of rights which guarantees various rights and freedoms for persons in Uganda, including recognising the existence and work of Human Rights Defenders under article 50 (2) of the Constitution and empowering them to bring action against the violation of human rights and freedoms.

Objective V (ii) of the National Objectives and Directive Principles of State Policy further recognizes the existence and work of human rights defenders and enjoins the state to guarantee and respect the independence of non-governmental organisations which protect and promote human rights. Article 38 (2) further buttress the work of human rights defenders by guaranteeing the civic rights of Ugandans, including their participation in peaceful activities to influence the policies of Government through civic organisations.

The recognition and existence of human rights defenders under the Constitution of the Republic of Uganda is a realization that the promotion and protection of human rights is a shared responsibility between the state and non-state actors in form of human rights defenders who increasingly play an important role in keeping the State and other non-state actors in check and ensuring that the State and the non-state actors not only protect, but also promote human rights and fundamental freedoms of the people of Uganda.

In doing so, the individuals, or the association of individuals who qualify as human rights defenders have been increasingly victimized by those perpetrating violations of rights and freedoms guaranteed under the Constitution and are often the target of coercive measures by state and non-state actors through misinformation, fabricated criminal charges, forced disappearance, imprisonment, torture, intrusion, intimidation and unlawful restricts from the state and state organs and are not recognised a critical body of persons in the field of human rights protection to warrant special legal protection themselves.

The Bill therefore seeks to recognize, promote and enhance the protection of the work and activities of human rights defenders through—

- (a) imposing specific obligations on the Government to recognise, protect and promote the work and activities of human rights defenders in order to guarantee a safe and enabling environment for human rights defenders to freely operate;
- (b) prescribing the functions of human rights defenders beyond merely bringing action against the violation of another person's or group's human rights and freedoms but being actively engaged in the recognition, promotion and protection of human rights and freedoms of other;

- (c) the criminalisation of acts and omissions that not only hinder the safe and free operation of human rights defenders but also unreasonably restrict the enjoyment of their rights and freedoms.

3. PROVISIONS OF THE BILL

The Bill has 17 clauses divided into four parts.

PART I—PRELIMINARY

This part has three clauses. Clause 1 incorporates the application of the Bill, clause 2 deals with application of chapter four of the Constitution to human rights defender and clause 3 defines the key words and phrases used in the Bill in the context in which they are used in the Bill;

PART II—OBLIGATIONS OF GOVERNMENT AND OTHER ORGANS OF STATE

This part incorporates clauses 4 to 10, dealing with obligation to protect human rights defenders, obligation to protect human rights defenders from intimidation and reprisals, obligation to protect human rights defenders from unlawful and arbitrary intrusion and interference, obligation to protect human rights defenders' communication and cooperation, obligation to recognise participation of human rights defender in the conduct of public affairs, obligation to take measures to facilitate the activities of human rights defenders and additional Obligations on Government.

PART III—WORK AND ACTIVITIES OF HUMAN RIGHTS DEFENDERS

This part incorporates clauses 11 to 14 dealing with functions of human rights defenders, limitation of functions of human rights defenders, financial assistance to human rights defenders and assistance to human rights defenders.

PART IV—MISCELLANEOUS

This part incorporates clauses 15 to 17 dealing with offences, enforcement of obligations on Government, report on the implementation of this Act and regulations.

KOMAKECH LYANDRO,
Member of Parliament
Gulu Municipality.

THE HUMAN RIGHTS DEFENDER'S PROTECTION BILL, 2020

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1. Application
2. Application of chapter four of the Constitution
3. Interpretation

**PART II—OBLIGATIONS OF GOVERNMENT AND
OTHER ORGANS OF STATE**

4. Obligation to protect human rights defenders
5. Obligation to protect human rights defenders from intimidation and reprisals
6. Obligation to protect human rights defenders from unlawful and arbitrary intrusion and interference
7. Obligation to protect human rights defenders' communication and cooperation
8. Obligation to recognise participation of human rights defender in the conduct of public affairs
9. Obligation to take measures to facilitate the activities of human rights defenders
10. Additional Obligations on Government

**PART III—WORK AND ACTIVITIES OF HUMAN
RIGHTS DEFENDERS**

11. Function of human rights defenders

Clause

12. Limitation of powers of human rights defenders
13. Funding of work and activities of human rights defenders
14. Assistance to human rights defenders

PART IV—MISCELLANEOUS

15. Offences
16. Report on the implementation of this Act
17. Regulations

SCHEDULE: Currency Point

A Bill for an Act

ENTITLED

**THE HUMAN RIGHTS DEFENDER'S
PROTECTION ACT, 2020**

An Act to prescribe obligations of Government towards human rights defenders; to provide for powers of human rights defenders; to prescribe limitation on powers of human rights defenders; to provide for assistance of human rights defenders; to prescribe offences for violation of human rights defender; and for related matters.

BE IT ENACTED by Parliament as follows:

PART I - PRELIMINARY

1. Application

This Act applies to a human rights defender in Uganda without discrimination based on gender, race, colour, tribe, language, religion or conviction, political or other opinion, ethnic origin, birth, creed, religion, nationality, age, economic position, marital status or disability.

2. Application of chapter four of the Constitution

The rights and fundamental freedoms guaranteed under chapter four of the Constitution shall apply to human rights defenders.

3. Interpretation

In this Act, unless the context otherwise requires

“associate of a human rights defender” includes a family member, a legal or other representative, an employer, an employee or a partner of a human rights defender;

“Commission” means the Uganda Human Rights Commission established under article 51 of the Constitution;

“computer” means an electronic, magnetic, optical, electrochemical or other data processing device or a group of interconnected or related devices, performing logical, arithmetic or storage functions; and includes any data storage facility or communications facility directly related to or operating in conjunction with such a device or group of such interconnected or related devices;

“currency point” has the value assigned in the schedule to this Act;

“cyber-attack” means any kind of malicious activity or attempt to collect, disrupt, deny, degrade or destroy information held on a computer or any other information system;

“human rights defender” means an individual or an organisation which solely, or in association with others advocates for promotion, protection or realisation of another person or group's human rights and fundamental freedoms guaranteed under the Constitution.

“intimidation or reprisal means any form of violence, threat, retaliation, discrimination, pressure or any other unlawful, arbitrary or abusive action or threat related to a person's status, work or activity as a human rights defender, directed at—

- (a) the human rights defender;
- (b) an associate of a human rights defender;
- (c) a legal or other representative of the human rights defender;
- (d) a family member or relative of the human rights defender;
- (e) a group, association, organisation, community or network,

whether formal or informal, with which the human rights defender is associated; or the home, property or possessions of the human rights defender

“intrusion and interference” includes any form of cyber-attack or unlawful form of surveillance, interception of communication, digital or electronic interference, recording, search and seizure carried out against a human rights defender or an associate of a human rights defender, in connection with the human rights defender’s legitimate activity or work as a human rights defender;

“Minister” means the Minister responsible for Justice and Constitutional Affairs;

“victimization” means the unfair or less favorable treatment of a human rights defender as a result of his or her work or activity as a human rights defender;

“work and activities of human rights defenders” means the work and activities of a human rights defender prescribed under section 11 of this Act.

PART II OBLIGATIONS OF GOVERNMENT AND
OTHER ORGANS OF STATE

4. Obligation to protect human rights defenders

(1) Government shall guarantee, uphold, encourage and respect the work and activities of a human rights defender.

(2) Government and all its organs and agencies shall ensure that -

- (a) laws, policies and programs are consistent with the obligations of Government prescribed in this Act and any other law;
- (b) security personnel are adequately trained to respect, protect and promote the rights and work of human rights defenders; and
- (c) human rights defenders are able to undertake their activities and work in a safe and enabling environment, free from unlawful restrictions.

5. Obligation to protect human rights defenders from intimidation and reprisals

(1) Government shall protect and take measures for the protection of human rights defenders from acts of intimidation and reprisal.

(2) Without limiting the general effect of subsection (1), Government shall combat intimidation and reprisals aimed at human rights defenders by inquiring into the intimidation and reprisals and ensuring that perpetrators are prosecuted or dealt with under the law.

6. Obligation to protect human rights defenders from arbitrary and unlawful intrusion and interference

(1) Government shall protect and take measures for the protection of human rights defenders from arbitrary or unlawful intrusion and interference.

(2) A human rights defender may lawfully take measures to protect itself from unlawful and arbitrary intrusion or interference in its communication, home, places of work, possessions and correspondence through encryption of communication and other lawful means.

7. Obligation to protect human rights defender's communication and cooperation

(1) Government shall recognize, protect and encourage cooperation and communication between a human rights defender and a national, regional or international human rights body, including subsidiary bodies, treaty bodies, special procedures, special rapporteurs, mechanisms or experts with a mandate relevant to the protection and enforcement of human rights and fundamental freedoms.

(2) Notwithstanding subsection (1), a human rights defender shall not

- (a) cooperate or communicate with
 - (i) a person, an organisation or foreign Government which has demonstrated an intention to overthrow the lawfully established Government of Uganda or to endanger the security of citizens of Uganda; or
 - (ii) an organisation which has been declared by, statutory instrument, a terrorist organisation under the Anti-Terrorism Act, 2002;
- (b) communicate information which the human rights defender knows or has reason to believe to be false, misleading or inaccurate.

(3) For purposes of subsection (2) (a), the Minister may, in consultation with the minister responsible for internal affairs, declare a person, organisation or foreign Government as having

- (a) demonstrated an intention to overthrow the lawfully established Government of Uganda; or
- (b) acted or conducted its' affairs in a manner that endangers the security of Uganda.

8. Obligation to recognise participation of human rights defender in the conduct of public affairs

(1) Government shall recognize, protect and encourage the participation of human rights defenders in the conduct of public affairs.

(2) The participation in the conduct of public affairs by a human rights defender shall be in furtherance of the realization and protection of human rights and fundamental freedoms and may include—

- (a) the submission to any person, public authority, agency or organisation, proposals for improving its functioning with respect to the promotion and protection of human rights and fundamental freedoms;
- (b) recommending to any public authority proposals for legislative or regulatory improvements with respect to the protection and promotion of human rights and fundamental freedoms; and
- (c) drawing to the attention of any public authority
 - (i) any aspect of its work that may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms; or
 - (ii) any action or omission by any actor, private or public, that may involve or contribute to the violation of human rights or fundamental freedoms.

9. Obligation to take measures to facilitate the activities of human rights defenders

(1) Government shall take all necessary measures to facilitate the work and activities of human rights defenders.

(2) Without limiting the general effect of subsection (1), all organs and agencies of Government shall—

- (a) permit and facilitate human rights defenders access information required in the exercise of their rights and freedoms; and
- (b) develop and implement policies and measures to promote, support and enhance the capacity of human rights defenders to promote and protect human rights and fundamental freedoms.

10. Additional Obligations on Government

(1) The obligations of Government specifically mentioned in this Act shall not be regarded as excluding others not specifically mentioned.

(2) The obligations imposed on Government under this Act shall apply to organs and agencies of Government.

PART III WORK AND ACTIVITIES OF HUMAN
RIGHTS DEFENDERS

11. Functions of a human rights defenders

(1) A human rights defender may bring an action against the violation of another person's or group's human rights and freedoms guaranteed under the Constitution.

(2) Without limiting the general effect of subsection (1), a human rights defender may lawfully

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- (a) recommend to Government, its organs and agencies effective measures to promote human rights and freedoms guaranteed under the Constitution;
- (b) receive a complaint relating to the violation of human rights and freedoms of another person and
 - (i) investigate the violation of human rights and freedoms; and
 - (ii) seek redress;
- (c) visit a place of detention, whether gazetted or not, for the purpose of protecting the rights and freedoms of a person detained in the place of detention;
- (d) offer and provide legal assistance or other relevant advice to any person;
- (e) attend public hearings, proceedings and criminal trials;
- (f) monitor and report on Government's compliance with human rights and freedoms guaranteed under the Constitution;
- (g) monitor human rights compliance with national laws and other regional and international instruments;
- (h) make recommendations to Government on the appropriate measures to be taken to promote a safe and enabling environment for human rights defenders;
- (i) prepare and submit reports on the situation of human rights defenders in Uganda to Government and any other relevant government agency;

- (j) disseminate information to the public about human rights matters, including information relating to the violation and protection of human rights and freedoms;
 - (k) seek, obtain, hold and use information including
 - (i) information regarding how rights and freedoms are given effect in the legislative, judicial and administrative systems;
 - (ii) information that may be necessary for exercising or protecting or assisting in the exercise or protection of human rights or fundamental freedoms;
 - (iii) lawfully publishing, imparting or disseminating the information to any other person; and
 - (iv) studying, discussing, forming and holding opinions on the observance of human rights and fundamental freedoms and to draw public attention to those matters;
 - (l) bring action, both civil or criminal, for enforcement of rights and freedoms guaranteed under the Constitution; and
 - (m) exercise any other function necessary for the promotion and protection of human rights and fundamental freedoms.
- (3) A human rights defender shall—
- (a) carry out his or her work and activities peacefully;
 - (b) exercise his or her functions with due respect for the rights of others, public safety, ethics, morals and good conscience;

- (c) promote and protect universal human rights of all persons regardless of sex, race, tribe or religion;
- (d) promote the rule of law and constitutionalism in Uganda; and
- (e) promote social justice.

(4) The Minister may, by statutory instrument and with the approval of Parliament, regulate the functions granted to a human rights defender under this Act.

(5) Without limiting the general effect of subsection (4), in limiting the functions of human rights defenders, the Minister shall ensure that the limitations

- (a) are consistent with the Constitution;
- (b) are prescribed by law;
- (c) comply with Uganda's international human rights obligations and undertakings;
- (d) comply with international human rights standards;
- (e) are reasonable, necessary, proportionate, acceptable and demonstrably justifiable in a free and democratic society; and
- (f) are solely for the purpose of securing due recognition and respect of the human rights and fundamental freedoms of others and meeting the requirements of public order and general welfare in a democratic society.

(6) The functions of a human rights defender specifically mentioned in this section shall not be regarded as excluding others not specifically mentioned.

12. Limitation of functions of human rights defenders

In the exercise of any functions granted under this Act, a human rights defender shall not

- (a) participate, by act or omission, in the violation of human rights and fundamental freedoms of another person;
- (b) participate in or undermine democratic societies, institutions and processes;
- (c) disclose confidential information or sources of such confidential information;
- (d) engage in or encourage violence;
- (e) engage in or encourage any kind of intimidation;
- (f) encourage any non-peaceful means of advocating, protecting, promoting or encouraging the observance of human rights and fundamental freedoms;
- (g) encourage hatred, ethnic incitement, racial incitement, vilification of others or incitement to cause harm or any other unlawful conduct; or
- (h) circulate information knowing it to be false or misleading or encourage misinformation or disinformation.

13. Funding of work and activities of human rights defenders

(1) A human rights defender may solicit, receive and utilise financial resources or assistance from domestic and international sources for the purpose of promoting and advocating for the protection and realisation of human rights and fundamental freedoms.

(2) Without limiting the general effect of subsection (1), the funds of a human rights defender consist of—

- (a) any grants, gifts, donations, loans or other endowments given to the human rights defender; or
- (b) such funds as may vest in or accrue to the human rights defender in the course of the exercise of its functions.

(3) Notwithstanding subsection (1), a human rights defender shall not solicit, receive or utilise funds or assistance

- (a) from a person who, an organisation or foreign Government which has demonstrated an intention to overthrow the lawfully established Government of Uganda or to endanger the security of citizens of Uganda;
- (b) from an organisation which has been declared, by Statutory Instrument, a terrorist organisation under the Anti-Terrorism Act, 2002; or
- (c) in contravention of the Anti-Money Laundering Act 2013.

(4) For purposes of subsection (2) (a), the Minister may, in consultation with the minister responsible for internal affairs declare a person, organisation or foreign Government as having

- (a) demonstrated an intention to overthrow the lawfully established Government of Uganda; or
- (b) acted or conducted its' affairs in a manner that endangers the security of Uganda.

(5) Notwithstanding subsection (2), Government or a financial institution shall not, except with an order of court, freeze, confiscate, or seize funds or any other financial assistance belonging to a human rights defender.

(6) A human rights defender who solicits, receives or utilises funds or other assistance in contravention of subsection (2) (a) and (b) commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or imprisonment for a period not exceeding five years, or both.

(7) Where a human rights defender is convicted under subsection (5) court shall in addition to the penalty prescribed, forfeit the funds to the State and be barred from receiving funds or financial assistance for a period not exceeding five years.

(8) Nothing in this Act shall be interpreted as imposing an obligation on Government to fund the activities of a human rights defender.

14. Assistance to human rights defenders

(1) Wherever it appears to a person in authority or any other person that a human rights defender is in need of assistance, the person in authority or that other person may—

- (a) assess the needs or circumstances of the human rights defender;
- (b) provide assistance to the human rights defender or refer a human rights defender to appropriate organizations and institutions for assistance and support; or
- (c) take the human rights defender to a place of safety, if the human right defender is in danger.

(2) Subject to subsection (1), a person in authority shall provide reasonable protection to the human rights defender and prevent the human rights defender from being intimidated or becoming the object of reprisals by any person.

(3) A human rights defender shall be entitled to information on the nature of protection, assistance and support he or she is entitled to and the mechanisms of obtaining such assistance and support from any organisation.

(4) The assistance referred to in this section may include providing a human rights defender with—

- (a) safe and appropriate housing or accommodation;
- (b) legal aid services;
- (c) counselling;
- (d) information regarding his or her legal rights;
- (e) medical care;
- (f) psychological assistance;
- (g) social services;
- (h) safety; or
- (i) any other assistance which the person in authority or any other person deems necessary.

(5) In this section, “person in authority” includes

- (a) a member of the village local council,
- (b) a member of a local government council;
- (c) the Resident District Commissioner;
- (d) a social welfare officer,
- (e) a registered Non-Governmental Organisation;
- (f) an accredited legal aid service provider;
- (g) a police officer or a member of any other law enforcement agency established by an Act of Parliament.

PART VI MISCELLANEOUS

15. Offences

(1) A person who does any act prescribed in subsection (2) commits an offence and is liable on conviction to a fine not exceeding one thousand hundred currency points or a term of imprisonment not exceeding ten years or both fine and imprisonment.

- (2) The acts referred to in subsection (1) are where a person
- (a) subjects a human rights defender to any form of intimidation, reprisal, victimisation or harassment;
 - (b) attacks the honour or reputation of a human rights defender;
 - (c) unlawfully intrudes on or interferes with the premises of a human rights defender;
 - (d) unlawfully detains a human rights defender;
 - (e) carries out a cyber-attack on a human rights defender;
 - (f) unlawful carries out surveillance on a human rights defender;
 - (g) unlawfully intercepts or interferes with the communication of a human rights defender;
 - (h) intrudes or interferes in the privacy of a human rights defender or an associate of a human rights defender;
 - (i) does any act that constitutes gender based violence against a human rights defender;
 - (j) unlawfully discriminates against a human rights defender;
- or

- (k) being a human rights defender, does any act in contravention of section 13 of this Act.

- (3) Where an offence in this section is committed by a legal person, court may—
 - (a) hold a shareholder, director, employee, manager, officer or any other principle officer or natural person in authority in the legal person to be responsible for the actions of the legal person and therefore liable for the offence committed and punished as provided in this Act; and

 - (b) in addition to any penalty stipulated in this section—
 - (i) impose a penalty not exceeding twenty thousand currency points on each count;

 - (ii) order for the cancellation of the registration of the legal person as a corporate body;

 - (iii) temporarily or permanently disqualify the legal person from being a human rights defender or undertaking any other trade;

 - (iv) temporarily or permanently close the establishment which have been used by the legal person to commit the offence; or

 - (v) suspend or cancel the trading license or any other license issued under any law applicable in Uganda.

- (4) For the purpose of subsection (2) (d), a person shall be taken to have unlawfully detained a human rights defender where, without lawful justification

- (a) compels, induces, restrains or prevents the human rights defender, by any means, from leaving the premise, vehicle, vessel or any other place;
 - (b) with the intent to compel or induce the human rights defender to remain in or upon the premises, vehicle, vessel or any other place, does any act which prevents the human rights defender from leaving such premises, vehicle, vessel or place; or
 - (c) with the intent to compel or induce the other person to remain in or upon the premises, vehicle, vessel or any other place, that person withholds from the human rights defender any clothing apparel, travel document or other property belonging to the human rights defender.
- (5) For purposes of this section –
- (a) “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability;
 - (b) “gender based violence” means any harmful act directed against individuals or groups of individuals on the basis of their gender.

16. Report on the implementation of this Act

- (1) The Minister shall coordinate, monitor and oversee the implementation of this Act.
- (2) The Minister shall annually submit to Parliament a report on the implementation of this Act.

(3) The report referred to in subsection (1) shall contain information on—

- (a) the nature of complaints made by human rights defenders;
- (b) the investigation and prosecution of offences under this Act; and
- (c) The fulfilment of obligations of Government;
- (d) the effectiveness of this Act; and
- (e) the challenges faced in enforcing the Act.

17. Regulations

(1) The Minister may, by statutory instrument, make regulations for better carrying into effect the provisions of this Act.

(2) Notwithstanding the Interpretation Act, the Minister may, while exercising his or her powers under subsection (1), by statutory instrument, prescribe such fines and imprisonment as may be appropriate in the circumstances which may be in excess of the penalties prescribed by section 38 of the Interpretation Act.

SCHEDULE

Section 2

Currency Point

A currency point is equivalent to Twenty Thousand Shillings.



CERTIFICATE
OF
FINANCIAL IMPLICATIONS

(Made under S.76 of the Public Finance Management Act, 2015)

THIS IS TO CERTIFY that the Human Rights Defender's Protection Bill 2020 has been examined as required under section 76 of the Public Finance Management Act, 2015.

I wish to report as follows:

a) Objective.

The objective of the Bill is to recognize, promote and enhance the protection of the work and activities of Human Rights Defenders by:

- i. Imposing specific obligations on the Government to recognize, protect and promote the work and activities of human rights defenders in order to guarantee a safe and enabling environment for human rights defenders to freely operate;
- ii. Prescribing the functions of human rights defenders beyond merely bringing action against the violation of another person's or groups human rights and freedoms but being actively engaged in the recognition, promotion and protection of human rights and freedoms of other;
- iii. The criminalization of acts and omissions that not only hinder the safe and free operation of human rights defenders but also unreasonably restrict the enjoyment of their rights and freedoms.

b) Expected Outputs.

The major expected output is the Human Rights Defender's Protection Act 2020 that shall guarantee a safe and enabling environment for Human Rights Defenders to freely operate.

Mission

"To formulate sound economic policies, maximize revenue mobilization, ensure efficient allocation and accountability for public resources so

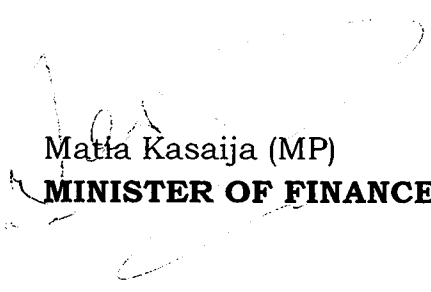
c) Funding and budgetary implications.

Implementation of the recommendations in the Bill will not have additional financial implications to Government. The associated expenditures relating to the protection and promotion of the work and activities of Human Rights Defenders are already integrated in the work plans of the relevant Government agencies and non-Government Actors.

d) Expected savings and/or Revenue to Government.

There are no expected savings or revenue to Government.

Submitted under my hand this day of 2021.



Matia Kasajja (MP)

MINISTER OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT

Received by:

Date:

Mission

"To formulate sound economic policies, maximize revenue mobilization, ensure efficient allocation and accountability for public resources so as to achieve the most rapid and sustainable economic growth and development"