



An overview of civilian oversight in Kenya



By Anne Buluma

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What is civilian oversight?

Civilian oversight refers to measures that allow citizens to engage and supervise operations of government and public institutions.

Article 1 of the Constitution of Kenya on the sovereignty of the people provides that all sovereign power belongs to the people of Kenya and shall be exercised in accordance with the Constitution; and that the people may exercise their sovereign power either directly or through their democratically elected representatives.

Therefore the citizens can monitor law enforcement agencies for transparency and accountability. The citizens therefore contribute to the implementation of the Constitution that establishes institutions and provides for the limitation of power for the avoidance of arbitrary and excessive use of power hence ensuring observance of the rule of law and constitutionalism.

Who does civilian oversight?

Civilian oversight can be done by any citizen or group of citizens. Any person affected by or interested in public resources (government funds or projects) has a right to be involved in decision making processes.

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Why is civilian oversight important?

Civilian oversight is important as it covers a number of issues including accountability, good governance, and protection of human rights.

Civilian oversight is a means of checking how public officers' conduct themselves and their offices especially in terms of utilisation of public funds. Therefore the public officers are compelled to serve the citizens in an open and accountable manner.

In which areas is civilian oversight done/conducted?

Civilian oversight is done in four broad areas, namely: anti-corruption, human rights, public maladministration and law enforcement

Anti-Corruption: In the fight against corruption civilian oversight is critical. Citizens' supervision of public officers and public institutions is a deterrent to those with the intention of engaging in corruption and other economic crimes.

Citizens can complain about and report bribery, fraud, abuse of office, misappropriation of public funds, illegal acquisition or appropriation of a public property or a public service or benefit to the relevant institutions mandated to investigate such offences.

Human Rights: The Constitution of Kenya has adequately provided for the protection of human rights and the government is mandated to ensure equity, human dignity and social justice for all and guarantee them justice against violations by the State of private entities.

The Bill of Rights provides for the civil and political rights; social economic rights as well as rights of special groups.

Citizens have the right to audit the obligations conferred to the public institutions with regards to human rights.

All government policies and laws must take into account economic, social and cultural aspects of the Bill

“Civilian oversight is a means of checking how public officers' conduct themselves and their offices”

of Rights as provided in Article 19 of the Constitution of Kenya, otherwise such policies and laws may be null and void.

Public maladministration: Civilian oversight of public administration aims to eliminate all the malpractices in public offices. By so doing, civilian oversight improves service delivery by public agencies.

Maladministration includes abuse of office, unethical conduct, corruption, breach of integrity, delay, injustice, misbehavior, inefficiency and discourtesy.

The Constitution of Kenya, in Articles 232 establishes values and principles applicable to public service in all State organs, and these include:

- High standards of professional ethics.
- Efficiency, effective and economic use of resources .
- Responsive, prompt, effective, impartial and equitable provision of services.
- Involvement of citizens in policy making.
- Accountability for administrative acts.
- Transparency.
- Public provision of timely,

accurate information.

- Fair competition and meritocracy as the basis of appointments and promotions.

Under Article 47 of the Constitution, every person has the right to administrative action in case of maladministration.

The Constitution has empowered the person(s) to challenge any administrative action that may adversely affect their basic rights and fundamental freedoms as long as the action is expeditious, lawful, efficient, reasonable and procedurally fair. This can also be realised through petitions or a Court of Law

Law enforcement: According to Article 243 of the Constitution of Kenya, the National Police Service consists of the Kenya Police Service, the Administrative Police Service and any other police service that may be created or designated by an Act of Parliament.

These as the security forces have constantly featured in reports as the leading violators of human rights in the criminal justice system while enforcing law and order, for instance during political violence. The violations include torture, illegal invasion of privacy, extra judicial killings, murder, abduction, sexual violence and corruption.

Citizens are also given the power to report such violations against human rights to institutions with such mandates including the Kenya National Commission on Human Rights

The writer is the Programme Officer, Advocacy and Legal Advisory Centre, Nairobi

Civilian oversight in Kenya: What the law provides



By Benjamin Maina

The most effective legal framework that gives the opportunity for civilian oversight is one that provides for access to information, public participation as well as reporting of violations, lobbying and citizen advocacy.

In August 2010, Kenya promulgated a new Constitution that completely changed its governance structure to give room for civilian oversight. The Constitution as the supreme law of Kenya, contains various Chapters and Articles aimed at charting a more accountable and all-inclusive approach in the operations of government and public administration entities.

The Constitution of Kenya 2010 has a bill of rights with outstanding provisions affecting key areas like access to information, the right to basic services such as water, health, education, housing and other individual rights.

These provisions are aimed at increasing citizen participation in public affairs, widening the political space and in turn enriching

governance practices in the country for the benefit of the Kenyan citizen.

All sovereign power belongs to the people of Kenya

The idea of civilian oversight is rooted in Article 1 of the Constitution which states that all sovereign power belongs to the people of Kenya. Therefore, Executive, Judicial and Legislative authority, at national and county levels of government, is exercised on behalf of the people. Hence, the citizen has the right and obligation to supervise these public institutions.

Access to information and public participation

Article 10 of the Constitution entitled 'National Values and Principles of Governance', gives citizens the opportunity to access public information that is important in relation to governance. Article 10 further gives citizens the opportunity to effectively participate by offering citizens the oversight role.

Participation is further emphasised under Article 174 (c) on objectives of devolution. The clause gives powers of self-governance to the people and enhances participation of the people in the exercise of the powers of the state and in making decisions affecting them.

Article 184 (c) provides for participation by residents in the governance of urban areas and cities and Article 201(a) on principles of public finance provides that there shall be openness and accountability, including public participation in financial matters;

The principles of public finance under Article 201 of the constitution have been incorporated in the Public Finance and Management Act No.18 of 2012 to ensure transparency and accountability in finance, brought about by the citizens ability to effectively participate in financial matters which include the budget making and tracking process through civilian oversight.

The County Governments Act, 2012 further gives county governments powers to make laws and regulations that guarantee citizens the right to effectively undertake their oversight role. Some of the key laws that are to be put in place include access to public information and public participation acts.

The provisions within the law in essence give citizens the power to monitor the government and its agencies.

The writer of this article is the Deputy Programme Officer, Advocacy and Legal Advisory Centre, Western.

Kenyans have no choice but to engage in civilian oversight



By Anne Wagacha

With Kenya allocating over Ksh 291 billion to counties in the 2015/2016 financial year coupled with the reports that resources are not being applied as they should, the importance of civilian oversight is becoming clearer by the day.

TI-Kenya's Anne Wagacha spoke to The Institute of Social Accountability, National Coordinator, Wanjiru Gikonyo about her organisation's experience with civilian oversight in Kenya.

Anne Wagacha:

The Constitution of Kenya 2010 and related laws are deliberate in providing for citizens to oversee both National and County governments in Kenya. Various studies show that we are not doing very well. What are the reasons for us not doing very well in overseeing government both at the national level and county level?

Wanjiru Gikonyo:

Part of the challenge is enabling factors that are not operational like they

should be. For instance, there are increased avenues of public participation and oversight under the Constitution, but they are in different stages of implementation.

At the national level; there is significant reversal in transparency and public participation. Eventually, oversight weakens because the government is not open. Information is not being published; websites are not updated frequently, key documents are not uploaded on official websites, public meetings are convened on short basis as a result decisions are made too quickly and there is no civic education provided by the government for its citizens.

The current government is a closed government. Protective of information and distrustful of public input making it difficult for oversight.

At the county level, there is increased public participation, but not at the level that comes with effective oversight.

Effective oversight includes overseeing that the decisions made are implemented. Counties have set up systems, but fear difficult questions from the public if they open up to them, hence no or limited accesses to information.

Overall, for different motivations, the national government seems to be focused on controlling its staff, curbing and controlling the democratic space. County Governments are young in development and don't want criticism and of course again for different motivations, conducive environment for oversight is reduced.

The proposed Public Benefit Organizations (PBO) law has greatly impacted on the civil society's operating space. Amendments to the Kenya Information and Communication Act have curbed questioning of suspicious personalities associated with corruption by putting punitive laws on libel. By using the law, democratic space and voice is curbed which in turn will affect oversight. But the biggest barrier is the dysfunctional electoral political system that fuels political corruption. The premier oversight organisations, [Parliament and County Assemblies, are rooted in corruption. We can't ignore a much larger malaise rooted in our electoral process.

Anne Wagacha:

From your own and TISA's experience, what do you think could be done to improve civilian oversight of both national and county governments?

Wanjiru Gikonyo:

The following should be answered; Do we understand the factors promoting civilian oversight? How effective is public participation? You can't oversee unless you are engaged. How effective is transparency? Are there avenues for oversight to be exercised? Are citizens aware of these avenues? When citizens engage, what is the response?

Anne Wagacha:

From your own and TISA's experience, is there a success story in civilian oversight in places you're working? If there is, what are the factors that have driven successful civilian oversight even at a very small scale?

Wanjiru Gikonyo:

Despite all this, there are a few success stories. On the finance bill, there has been a lot of input mainly from traders’ associations, seeing as they are directly impacted. They are very engaged and they oversee government decisions on what they can tax. However, after tax collection, are we checking expenditure?

In Kitui, where The Institute of Social Accountability (TISA) is working, the youth, who were not happy with the County Integrated Development Plan aggressively engaged with the County Assembly and the assembly accepted to overhaul the plan. This is significant, because when such a crucial document, the funding plan for the county, is being reviewed because of citizen pressure, then what we need is to be more sustained in our efforts to engage government.

Anne Wagacha:

Moving forward, what are some of the civilian oversight strategies or tools that civil society organisations and citizens can make use of to improve civilian oversight in Kenya?

Wanjiru Gikonyo:

Citizens do engage, but most oversight is exercised through the court processes and petitions.

However, it is mainly professional groups e.g. civil society organisations that are able to engage because they have the awareness and resources and can assist the general public to organise themselves. Citizens are inclined not to get into social audit, if they can’t trust the institution to act.

For instance, there have been threats issued towards some of our partners doing social audit and procurement monitoring. Therefore, when effecting Civilian Oversight, we

have to presume government doesn’t want to share information and that you are compelling them to do so. We have provisions in the Constitution, but they are being overrun by government institutions who implement them half-heartedly or not at all.

We need committed, strong civil society organisations and civilian groups. Organising is very important, seeing as with devolution, interests have been dispersed. We can no longer focus our energy on one government, when we have 47 governments. Civilian oversight mechanisms therefore need to be rooted in organised groups that are strategic and focused on e.g. procurement monitoring, social auditing or track expenditure.

The Institute of Social Accountability’s (TISA), theory of change is “If you can build civilian oversight from the bottom up, then you can start to build that culture” It will take time hence we need to sustain the engagement, remain in the space, document and multiply our lessons.

Anne Wagacha:

In the event that citizens, CSOs or anyone else would like to engage in civilian oversight and they would like to access resources to help them do that. Is there a place you can point them to?

Wanjiru Gikonyo:

There is a gap here. Theoretically there are a lot of tools, to crack this problem, we must ensure these tools are owned by citizens, and motivate them to engage in what is a risky affair especially when you start doing oversight effectively on whatever level.

Document the different approaches and have them accessible to the citizens and petition processes which are provided on both county and national level.

Some civil society organisations are having talks, they call the Member of County Assembly (MCA), e.g set up an accountability cell to have ongoing

dialogue with your county assembly member so as to hold the MCA to account.

Write to the Ethics and Anti-Corruption Commission (EACC), though their response has been quite disappointing. Alternatively, write to the Office of the Director of Public Prosecutions (ODPP) who has been more successful.

Anne Wagacha:

Is there future for Civilian Oversight, will Civilian Oversight in Kenya improve in the future?

Wanjiru Gikonyo:

We need to understand that the Constitution of Kenya unseats impunity and its beneficiaries. Exercising Civilian Oversight becomes difficult because impunity is still entrenched in the system and is fighting back.

Therefore hope for me is when Kenyans recognize that it is the responsibility of each and every one of us to implement the Constitution and unseat the old negative dispensation of patronage and only then will we get the Kenya we want.

We had a resounding vote for the Constitution of Kenya, Kenyans are tired of impunity and bad governance, but there hasn’t been enough communication to Kenyans that voting wasn’t enough, we also have to implement what we voted.

The darkest hour is before dawn, now isn’t the time to be intimidated or give into silence.

The interviewer is a Communications Intern at Transparency International Kenya .

Wanjiru Gikonyo is the National Coordinator and a founder of The Institute for Social Accountability (TISA). The Institute for Social Accountability is a leading institution in devolved governance in Kenya.

Civilian oversight in Kenya: Tools available for use by Kenyan citizens

By Isaiah Mwangela

Article 1 of the Constitution of Kenya 2010 states that all sovereign power belongs to the people of Kenya and may be exercised either directly or indirectly through elected representatives and the institutions created by the Constitution.

The Constitution further creates safeguards to the delegated authority to ensure that this delegated authority is not abused and in the event the abuse occurs, the Constitution provides appropriate sanctions.

The Constitution has empowered citizens to monitor the exercise of the authority by providing various avenues for participating directly in making decisions that affect them and overseeing the excesses of the government.

So what does civilian oversight seek to cure?

Delegated authority is subject to abuse. The government may act ultra vires or abstain from acting in accordance with the law; fail to provide services to the people or the services may be inaccessible; provide poor services; disregard the rule of law and abuse human rights. Citizens are open to various channels through which they can achieve their oversight role as contemplated in the Constitution. These include:

1. Petitions
2. Public interest litigation
3. Judicial review
4. Social audits

1. Petitions

A petition is a formal written document which is submitted to

an authority in an attempt to get that authority to agree to a request. Petitions may take various forms:

1. Administrative petitions
2. Parliamentary petitions
3. Parliamentary recall petitions

Administrative petitions

This is a process of raising complaints concerning an institution, government ministry or department. Members of staff or the public may express their grievances through a petition internally through a designated officer in an institution/department or to the highest authority in a ministry/institution.

Where internal mechanisms do not provide appropriate remedies, the petitioners may refer the petition to an external institution. There is no prescribed format for an administrative petition, it must however disclose who the petitioners are and communicate their grievances clearly.

Parliamentary Petition

Article 119 of the Constitution empowers citizens to petition Parliament to consider any issue in its authority, including enacting, amending or repealing any legislation.

Parliamentary Recall Petition

Article 104 of the Constitution provides for the right to recall a Member of Parliament (MP) or Member of County Assembly (MCA) before the end of their term on the grounds of violation of Chapter Six of the Constitution on leadership and integrity.

An MP or MCA may be recalled if he/she is found to have mismanaged public resources or is convicted of an electoral offence under the Elections Act.

A petition under Article 104 is guided by the procedure provided under section 45 of the Elections Act, which further provides for the form and content of the petition.

2. Public Interest Litigation (PIL) Public

Interest Litigation is the legal action for the protection of public interest. It is introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party.

It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation is the power given to the public by the Constitution of Kenya 2010 under articles 22 and 258.

3. Judicial Review

Judicial review is the principle under which legislative and executive actions are subject to review by the judiciary. The High Court may invalidate laws and decisions that are incompatible with the Constitution. Judicial review is one of the checks and balances in the separation of powers: the power of the judiciary to check the excesses of the legislative and executive arms.

Three orders are available in court under Judicial Review.

- Prohibition - issued where a public official or body is about to act contrary to the law/procedure.
- Certiorari - an order to quash an administrative decision.
- Mandamus - An order to compel a public official or body to act in a particular manner.

4. Social Audits

Social auditing is a process through which all stakeholders, both the service provider(s) and the beneficiaries systematically conduct an independent evaluation or assessment of the performance of an institution or

government department as it relates to the attainment of its goals of service delivery. Social audits can take different forms and cover a range of

actors and practices. They can be undertaken individually or jointly by the government, civil society and/or community. Social audits use participatory techniques to involve all

relevant parties/stakeholders. **The writer is the Programme Officer, Advocacy and Legal Advisory Centre, Eldoret**

Integrity cleanup in Eldoret



Participants collecting garbage during the cleanup exercise. PHOTO/ TI-KENYA



A section of the procession during marching on the streets of Eldoret.

The Advocacy and Legal Advisory Center (ALAC) Eldoret and the North Rift Coalition for Good Governance (NRCGG) took the integrity message to the streets of Eldoret town through a cleanup exercise dubbed The Integrity Cleanup.

Held on 24th April 2015, The Integrity Cleanup was employed as an opportunity to empower residents of Eldoret town to monitor service delivery and identify corrupt practices both in national and county government offices.

Members of civil society groups and

other stakeholders from the public and private sectors armed with brooms, rakes, gloves and disposable garbage bags set off to clean up the streets of Eldoret namely Nandi road, Kenyatta road and Oloo street.

The success of the Integrity Cleanup was attributed to the stakeholders taking the cleanup exercise as an activity in service to the community.

Participating stakeholders included the Ethics and Anti-Corruption Commission (EACC), the County Government of Uasin Gishu, Kenya Red Cross Team-Uasin Gishu Branch,

National Management Environment Authority (NEMA), Aberdeen College and North Rift Coalition for Good Governance (NRCGG) all of whom pledged continued support to similar activities.

ALAC also set up a mobile legal aid clinic that ran concurrently with the public forum where free legal assistance on corruption cases was given. The North Rift Coalition for Good Governance (NRCGG) is a coalition of over 40 civil society organisations working on governance issues in the North Rift region.

ALAC Eldoret sensitises Uasin Gishu, Trans Nzoia residents on the importance of reporting complaints



ALAC Eldoret sensitises Uasin Gishu, Trans Nzoia residents on the importance of reporting complaints. PHOTO/TI-KENYA

The Advocacy and Legal Advisory Centre (ALAC) Eldoret carried out two public forums in Uasin Gishu and Trans Nzoia Counties to empower citizens with the knowledge and tools to guide them in monitoring service delivery and identifying corrupt practices.

The forums focused on the importance of reporting and registering complaints against poor service delivery.

During the forum, citizens were informed about the Sema! Piga Ripoti service, which is a partnership bringing together the Ethics and Anti-Corruption Commission (EACC), the Kenya National Commission on Human Rights (KNCHR), the National Cohesion and Integration Commission (NCIC), the Commission on Administrative Justice (CAJ) Transparency International Kenya (TI-Kenya), and the National Anti-Corruption Campaign Steering Committee (NACCSC).

Sema! Piga Ripoti is a complaints referral service that enables citizens

to submit their complaints on corruption, discrimination and hate speech, administrative injustice, and human rights violations.

In Matunda, Uasin Gishu County, ALAC used participatory theatre on the 16th of April, 2015, to educate and entertain through a drama troupe that performed different skits on corruption issues.

The forum in Sibanga, in Trans Nzoia County, was held on 16th April, 2015 and was attended by Sema! Piga Ripoti partners including Franklin Lilabo from CAJ, Denis Korir from KNCHR and Silas Makanzi of GIZ.

ALAC also conducted legal aid clinics at both forums. This provided opportunity for people to report corruption related cases, get legal advice, know more about ALAC, and get more information on corruption.

“Advocacy and Legal Advisory Center (ALAC) is a walk-in, call-in centre or mail in center where a citizen can obtain free and confidential assistance on corruption cases.”

Sensitising stakeholders on reforms affecting basic education



Participants at a past forum on education governance in Kisumu County. PHOTO/TI-KENYA

By Edwin Otichillo

Transparency International Kenya conducted public forums on political, policy and administrative reforms in the basic education sector in Kisumu County in April 2015..

The forums targeted parents of school going children, youth acting as agents to disseminate information within their communities and families, County Government officials, the Ministry of Education and other education stakeholders including civil society organisations, churches, union members.

The main objective of these forums was to disseminate important information that would assist parents, youth and parents to actively participate in the governance of Basic Education.

By so doing, imparting knowledge that will help promote constructive

oversight, accountability and transparency in the basic education sector.

Additionally, the forums were designed to promote attitude change and address ways in which residents could best start the process of de-conditioning themselves from past frameworks of education governance.

The forums also sensitised participants on the various avenues through which they could participate and project their voices as well as redress standards of education notwithstanding access to education.

The forums provided a platform for residents to understand the environment that they are living in with regards to basic education management, their rights and responsibilities with regard to effectively participating and exercising oversight on school resources and learning;

“Transparency International Kenya works with partners and stakeholders in Kisumu, Kwale and Trans Nzoia counties to improve integrity, transparency and accountability in the education sector, for better delivery of service in the education sector.”

TI-Kenya, Pawa 254 and Fojo Media Institute launch accountability project in Nairobi



TI-Kenya's Executive Director and the Swedish Ambassador to Kenya, Seychelles and the Comores Johan Borgstam during the launch of Action for Transparency (A4T) in Nairobi. PHOTO/ Brian Inganga

Transparency International Kenya, Pawa 254 and Fojo Media Institute launched a project to enhance service delivery in the health and education sectors in Embakasi District, Nairobi County.

The project dubbed Action for Transparency (A4T), was launched in a colourful event at the Kariobangi North Social Grounds in Embakasi in May 2015.

The Action for Transparency project will train journalists, activists, community leaders and civil servants on public finance, how to use the A4T app to monitor the flow of public funds to primary schools and health centers and report any suspected loss of funds.

Suspected mismanagement can be reported through the A4T app using a mobile phone with Internet access. Anyone will then be able to check the actual amount of government money pledged to each school and health clinic – and the amount actually spent. If this does not match reality, it can be reported to Transparency International Kenya, via the App, website, text messages (sms) or a toll free line. A4T purposes to put the

power of change in the hands of the citizens.

The Guest of Honour at the launch was the Swedish Ambassador, Johan Borgstam, who reiterated that the fight against corruption is a fight for a better future for all Kenyans and that development, will not happen in Kenya unless the battle against corruption is won.

Transparency International Kenya's, Executive Director, Samuel Kimeu emphasised that every person in the public and the private sector has a responsibility to report suspected wrongdoing."

Head of Pawa254, Boniface Mwangi appealed to everyone to have courage, because the future of our children will be defined by the choices we make today.

The A4T programme is already up and running in Uganda and Zambia. The project in Kenya is run by Pawa Initiative and Transparency International Kenya (TI-K), managed by Fojo Media Institute and funded by the Embassy of Sweden

“The Action for Transparency (A4T) project fights corruption and mismanagement of government funds by putting the power to change in the hands of citizens.

Using a mobile phone with Internet access, anyone is able to check the amount of government money pledged to each school and health clinic – and the amount actually spent. If you don't have a smart phone, the same application can be used from any computer.”



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rasilimali zetu*



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