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Institutionalising Social Accountability in Devolved Governance

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Institutionalising Social Accountability in Devolved Governance

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Written by

Chrispine Oduor

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Edited By

Jonathan Tanui

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5th Floor ACK Garden House

1st Ngong Avenue

P.O. Box 53989-00200

Nairobi, Kenya

Tel: 242-20-2721262, 2717402

Fax: 254-20-2716231

Cell: 0724-256510, 0733-272126

Email: admin@ieakenya.or.ke

Website: www.ieakenya.or.ke

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Jacqueline Omutimba

Sunburst Communications Ltd.

Tel: +254 (0) 722 374 226

Email: info@sun.co.ke

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P. O. Box 48238 - 00100 Nairobi

Tel: +254 020 2215005/6

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1 The production process of this book has been informed by accountability work undertaken by the Institute of Economic Affairs Kenya and relevant literature and other publications within the field of social accountability and devolved governance

2 This does not include all the officers in the counties from categories listed.



Foreword

Kenya's adoption of the devolved system of governance places citizens at the core of governance and with elevated hopes for improvement in the delivery of public services. Being cognizant that among the objects of Kenya's devolution are: to give powers of self-governance to citizens and enhance their participation in the exercise of the powers of State and in making decisions affecting them; to recognise the right of communities to manage their own affairs and to further their development; and to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya. A fundamental principle of democracy is that citizens have the right to exact accountability and public officials have a duty to be accountable.

While the constitution makes a resounding call for these hopes, we are conscious that devolution may not immediately lead to more accountable government at the County level. This handbook aims at providing easy to read information to leaders and citizens on social accountability. We define social accountability as the engagement of civil society or other non state actors to exact accountability from government and public service providers with the aim of improving quality and transparency in public processes. Social accountability is important in enhancing democratic governance and improving service delivery at both levels of government: the National and the County. It is therefore important to strengthen the voice of citizens to hold their leaders accountable.

This publication seeks to answer four questions regarding social accountability: What, Who, How and Why? It also provides policy recommendations on how County Governments can make social accountability the norm. The IEA-Kenya hopes that this publication will be a utilized as a guiding instrument for policy makers and public officers in the Counties to improve the outcomes of public policy through greater accountability, transparent and efficient operation of public affairs and in turn make programmes launched by respective County governments more responsive and accessible to the citizens who use public services.

A handwritten signature in black ink, appearing to read 'Kwame Owino'.

Kwame Owino

Chief Executive Officer IEA



Acronyms and Abbreviations

| | |
|---------|---|
| ASDS | Agricultural Sector Development Strategy |
| BROP | Budget Review and Outlook Paper |
| CAJ | Commission on Administrative Justice |
| CDF | Constituency Development Fund |
| CFSP | County Fiscal Strategy Paper |
| CGA | County Government Act |
| CIC | Commission for the Implementation of the Constitution |
| CIDP | County Integrated Development Plan |
| COK | Constitution of Kenya 2010 |
| CPU | County Planning Unit |
| CSC | Community Score Card |
| CSO | Civil Society Organization |
| DFID | Department for International Development |
| EACC | Ethics and Anti-Corruption Commission |
| KENAO | Kenya National Audit Office |
| KNCHR | Kenya National Commission on Human Rights |
| KSG | Kenya School of Government |
| MTP | Medium Term Plan |
| OCoB | Office of the Controller of Budget |
| PAC | Public Accounts Committee |
| PETS | Public Expenditure Tracking Survey |
| PFM | Public Finance Management |
| PFMA | Public Finance Management Act |
| PIC | Public Investments Committee |
| PSC | Public Service Commission |
| UNDP | United Nations Development Programme |
| UNESCAP | United Nations Economic Commission for Asia and the Pacific |
| VAT | Value Added Tax |
| WB | World Bank |



Executive Summary

This handbook provides reference material for stakeholders in devolved governance, including policy makers at the county level and citizens, on social accountability and its relevance in devolved governance and the attainment of the objects of Kenya's devolution as highlighted in Article 174 of the Constitution of Kenya 2010. The involvement of citizens and civil society in exacting accountability from public officers can contribute to, among others, enhanced transparency, reduced corruption, citizen empowerment, improved governance, and increased development effectiveness through enhanced public service delivery.

Critical to the success of social accountability initiatives at the county level, however, is the capacity of civil society and that of county governments, and the synergy between the two. The effectiveness and sustainability of social accountability mechanisms is enhanced when they are institutionalized. This will, however, require the willingness by county governments to render their internal mechanisms in a way that opens them to public scrutiny. County governments also need to facilitate and strengthen public engagement and citizen voice in governance as envisaged by the constitution and the legislative framework on devolution.

The handbook is divided in seven chapters. Chapter one examines the opportunities provided by Kenya's devolution that are likely to contribute to, among others, economic efficiency and development, reduction of poverty, enhanced delivery of public services, and curbing poor management of public funds. These challenges in governance have, over time, resulted in meagre returns of public investment. This manifests in the inability by successive regimes in Kenya to significantly address the challenge of unemployment and poverty close to five decades since the country gained independence in 1963.

Chapter two looks at the conceptual underpinnings of accountability. Leadership being a contract between citizens (the governed) and leaders (those entrusted with leadership positions) require that the latter, including politicians and public officers, account for their actions and decisions that they make. The public have entrusted their leaders, whether elected, appointed or nominated, and public officers with public resources and positions so that they may be able to deliver for the common good. The chapter examines three forms of accountability, namely, horizontal, vertical and diagonal. The chapter further examines the ineffectiveness of periodic elections as a means of ensuring accountability.

Chapter three provides highlights of the legal and institutional framework for accountability in Kenya. The chapter also highlights some of the challenges faced by formal accountability institutions established by the government in effectively delivering on their mandates. Some of the challenges highlighted in the chapter include lack of independence, bias, inadequate budgetary allocations, understaffing, and lack of the power to prosecute.

Chapter four delves into the main subject of social accountability: a form of accountability that relies on civic engagement to exact accountability from public officers and governments. Because countervailing power has been lacking, some public officials have ended up serving their own interests without fear of being held accountable. Of concern to the citizens is the tendency of individuals, politicians and bureaucrats, to build up networks of influence rather than hold the government accountable. A situation that is incapable of supporting a vibrant economy as envisioned in the Kenya Vision 2030. The chapter also highlights the benefits of social accountability mechanisms to county governments, the citizens and Kenya in general.

The Constitution of Kenya 2010 and the legislation anchoring devolution protect the rights of all citizens to engage in governance processes, including, among others, county planning and budgeting. Chapter five examines provisions on social accountability in the constitution and the legal framework on devolution. The chapter looks at provisions in, among other laws, the County Government Act 2012, the Public Finance Management Act 2012, and the Urban Areas and Cities Act 2011.

Chapter six introduces the reader to various social accountability tools and mechanisms. Social accountability in devolved governance can be enhanced through participatory public policy making, participatory development planning, participatory budgeting, participatory policy analysis, and social audits, among other mechanisms. Some of these tools and mechanisms seek accountability with regard to the quality, relevance and accessibility of public services, while some initiatives aim at improving public oversight. The chapter further highlights the benefits and strengths of social accountability mechanisms. It further proposes what county governments may consider doing to ensure successful implementation of the tools.

The final chapter has the conclusion and policy recommendations for county governments on institutionalizing social accountability mechanisms in devolved governance. The chapter observes that the quality of public service in the forty-seven counties may not be optimal if citizens are not allowed to engage in decision making, and if citizens do not actively and meaningfully engage in governance. County Governments can make social accountability the norm by: making social accountability one of the principles in the delivery of devolved services; enacting and where already available enforcing policies and legislation on accountability; partnering with independent agencies that engage in social accountability work to ensure that public officers and institutions adhere to laid down norms and guidelines; enhancing access to public information; building capacity of public officers on social accountability; leveraging on Information Communication Technology and increased use of the same by the public to open the government to the public; creating an enabling environment for citizens and civil society to engage in social accountability initiatives; establishing and operationalising decentralization structures; developing and disseminating accountability reports; and developing policies for the protection of whistle blowers.



Devolved Governance: Economic Growth, Responsive and Accountable Governance

1.1 The promise of devolution

Kenya, in a shift from the centralized system of governance that had been in place for close to five decades since attaining independence in 1963, adopted the Constitution of Kenya 2010 effectively establishing a two-tier devolved system of governance comprising of the national government and forty-seven county governments. Both levels of government are distinct but interdependent³ and work on a mutual ground on the basis of consultation and cooperation. Both the Executive and the Legislative arms of county governments are responsible for county revenues and the delivery of public service in the devolved units.

Global demand for devolution⁴ has been justified on economic and efficiency grounds. One can, however, not rule out political motivations in the push towards the system of devolved governance. Klugman (1994) observes that, advocates of decentralized⁵ governance from both political and economic schools of thought attribute their support for a greater transfer of authority towards sub-national tiers of government to the inability of centralized system of governance to deliver public services efficiently. Enhancing the delivery of public services through better transparency and accountability has been a motivation behind the inclination towards decentralized governance in a number of developing countries.

The devolution of financial resources and service delivery to county governments in key sectors, including health, water, and agriculture, among other functions as provided in Schedule Four of the Constitution, presents county governments with opportunities of enhancing the delivery of public services at the local level. Devolution ensures this by improving the efficiency of resource allocation as it is expected and/or assumed that local leaders in the counties, including both politicians and the bureaucrats, have better understanding of local challenges, needs and preferences, and can therefore better discern the needs of local communities and provide public goods and services in a more cost-effective manner.

3 Both levels of government serve the same clients and policies formulated by one level of government affects the other level.

4 Devolution is one form of decentralized governance. The others are delegation and de-concentration. Devolution involves the distribution of political, administrative and fiscal powers between the central government and semi-autonomous territorial and sub-national units with authority to make public policy decisions. Under de-concentration, the central government office transfers responsibilities to a field officer who is fully accountable to the said national office. Delegation involves the transfer of both administrative and fiscal powers to sub-national units.

5 Decentralization is the process of dispersing powers from the centre to other or lower levels of government.

According to the constitution, county governments will, in each year, receive at least fifteen per cent of the most recent audited accounts of revenue received nationally. The constitution further provides that county governments may also be given additional allocations from the national government's share of revenue, either conditionally or unconditionally. Article 209 (3) of the constitution further empowers county governments to impose property rates, entertainment taxes, and any other tax as authorized by an Act of Parliament. County governments may also impose levies on services provided at the local level.

Marginalized counties have been catered for in the constitution through the Equalization Fund established by Article 204 (1). One half per cent of all the revenue collected by the national government shall be paid into the Equalization Fund each year, calculated on the basis of the most recent audited accounts of revenue received. The fund will be used by the national government to provide basic services including water, roads, health facilities, and electricity to the marginalized areas so as to bring the quality of services in those areas to the same level as generally enjoyed by the rest of the country.

Kenya's devolution enhances the opportunities for participation by all citizens, as well as the civil society⁶ in governance processes. This includes: participation in policy formulation; participation in development planning; participation in budgeting; and participation in monitoring the implementation of public-funded projects, programmes, and activities. The elaborate structure established by the County Government Act 2012, right from the village level, the village councils, the ward level, the sub-county, towns with their respective administrators provide all citizens with equal opportunity to engage with their respective county government in devolved governance processes through designated officers at the most appropriate level.

Devolution further enhances productive efficiency by promoting accountability in the management of public affairs, including public finances, reducing corruption, and improving cost recovery. The close proximity of local policy makers and bureaucrats to citizens enables the public to monitor, and to hold to account county government officials.

Each of the forty-seven county governments, given their smaller jurisdictions, are also able to formulate more responsive policies that are likely to impact better the lives of citizens. County governments will be able to do this by tailoring their policies to specific preferences of local populations. The close proximity of government to the people allows county governments greater flexibility to match the delivery of public services to local demand.

Devolution has empowered local communities to manage their own resources more effectively. The devolved system of governance is more inclusive and, therefore, effectively promotes productivity and efficiency in the delivery and use of public services and the allocation of resources. Through devolution, the majority who are poor at the local level and marginalized groups in the counties,

⁶ Includes: non-governmental organizations, non-profit organizations, and civil society organizations that have an organized structure or activity, and are typically registered entities and groups, online groups and activities including social media communities that can be "organized" but do not necessarily have physical, legal or financial structures, social movements of collective action and/or identity, which can be online or physical, religious leaders, faith communities, and faith-based organizations, labour unions and labour organizations representing workers, social entrepreneurs employing innovative and/or market-oriented approaches for social and environmental outcomes, grassroots associations and activities at local level, cooperatives owned and democratically controlled by their members – World Economic Forum, 2014.

including the disabled, the women and the youth, are able to better participate in governance and influence decisions in the areas of policy development, planning and budgeting. Since the majority of the poor live in the rural areas, county governments are more likely to advance pro-poor policies. This will ultimately impact on poverty indicators nationally.

Devolved governance is also likely to generate opportunities for cost recovery as citizens will be more willing to pay taxes, rates, levies and fees charged by their respective county governments if services that are being provided respond to their needs. This is also likely to happen as a result of citizens being involved by their county governments in decision making, including planning and budgeting. This has the benefit of creating a sense of ownership amongst the citizens.

Other benefits of public participation in devolved governance that are likely to contribute to the growth of counties and the country in general include: better planning; better prioritization of projects, through projects that better target citizen needs; better monitoring of government activities, contributing to better governance; and increased development effectiveness, resulting in better quality of public services. Kenya's devolution, therefore, if well implemented, can contribute to poverty reduction and sustainable development of the country.

1.2 Reason for caution

There is, however, need for caution as devolution may not necessarily result in greater local government responsiveness, enhanced participation by citizens in governance, better delivery of public services, and accountability. This is especially in the absence of accountability mechanisms at the local level, and in situations where the public is not fully aware of its role in governance, and is, therefore, not actively and meaningfully participating. This may well be supported by the fact that the management of decentralized funds, including the Local Authority Transfer Fund (LATF) and the Constituency Development Fund (CDF) in the now defunct local authorities and in the constituencies, respectively, was in some instances questionable despite the close proximity of those managing the funds to local communities, even with the requirement for public participation.

Devolved governance may exacerbate corruption and could also lead to inefficient utilization of public resources and lack of accountability (IEA, 2010). This has so far been observed in some counties as highlighted in reports that have been released by independent oversight institutions including the Office of the Controller of Budget (OCoB) and the Office of the Auditor General (OAG).

Though decentralized governance has the ability of bringing about equity, devolution, if not well implemented, may exacerbate inequalities as a result of the marginalization of minority communities counties based on ethnicity, clan or religion, among other considerations. This is most likely to be the case if public participation requirements, provided in the Constitution and subsequent legislation on devolution, are not adhered to.

In the political economy of devolved governance⁷, policy decisions, including expenditure patterns by individual county governments, if not well checked, might end up focusing more on patronage

⁷ There are different actors in county governance with varying interests, incentives and wielding different levels of power and who might want to use the same to their advantage.

or providing targeted benefits to a few as opposed to the provision of public goods, effectively going against the intentions of programme-based budgeting. This is likely to happen in the event of elite capture of county governments. Though devolution is meant to enhance the delivery of public services and the provision of public goods at the local level, local politicians who happen to be keener on re-election are likely to focus on policies and emphasize expenditure in areas that will maximize their chances of being re-elected. Politicians may do so as it is easier to credit the development of a local road to the effort of an individual politician as it would be to credit better delivery of health services or early child hood education to the same politician.

Improvements in the delivery of devolved services, and better management of devolved resources, require a strong relationship of accountability between the different actors in the service delivery chain. Citizens, on their part, must be able to hold policy makers in the counties accountable while the policy makers should be able to hold service providers accountable. Critical to the success of the efforts of county governments to deliver devolved services is the inter-governmental framework between the national government and county governments, especially in regard to the flow of financial resources to the counties as delays are likely to impact on the delivery of public services.



Accountability: Conceptual Underpinnings

The expansion of democratic systems of governance worldwide has led to an increased focus on the accountability of governments to citizens, and the role of citizens in decision making processes. Accountability, one of the principles of good governance, is considered a key determinant of the state of governance.⁸ Other principles of good governance are transparency, responsiveness, inclusiveness, participation, equity, effectiveness and efficiency, adherence to the rule of law, and consensus. A combination of these principles is critical for the success of county governments, and Kenya's devolution in general.

The concept of accountability in governance involves answerability and enforcement. Under answerability, government and public officers⁹ are obliged to be answerable toward the public in regard to the management of public affairs. This includes, among others, the management of public finances, the delivery of public services, and decisions and actions taken. Under enforcement, the public or institution responsible for accountability, for example the Kenya Ethics and Anti-Corruption Commission, can sanction the offending party or correct the contravening behaviour. Judiciary also plays a critical role in making sure that those officers involved in corruption, both at the national level and at the county level, face the law. This makes county public officers accountable to citizens in building effective county governments with the ability to deliver on their promises to the citizen, and also the ability to deliver their respective visions.

Accountability in governance exists when there is a relationship where a public officer or public institution, and the performance of assignment or function by that officer or institution, are subject to oversight by another individual or institution. Lindberg (2009) observes that, when decision making power is transferred from a principal (e.g., citizens in county governments) to an agent (e.g., county leaders including politicians and bureaucrats), there must be a mechanism in place for holding the agent to account for their decisions, and if necessary for imposing sanctions. Oakerson (1989) concurs by observing that, to be accountable means to have to answer for one's action or inaction, and depending on the answer, to be exposed to potential sanctions, both positive and negative. Dele Olowu (1993) asserts that accountability is the requirement that those who hold public trust should account for the use of the trust to citizens or their representatives. He further observes that, public accountability signifies the superiority of the public will over private interests.

8 "Governance is the manner in which power is exercised in the management of a country's economic and social resources for development". "...the manner in which public officials and institutions acquire and exercise the authority to shape public policy and provide public goods and services"- World Bank.

9 Anyone employee or member including of the government or its department, in service or undertaking any activities within a public institution set up for the administration of public finances - Public Officer Ethics Act, Section 2.

Accountability, according to Mulgan (2000), includes three central elements. First, it is external, in that the account is given to some other person or body outside the person or body being held accountable; second, it involves social interaction and exchange, in that the side calling for the account, seeks answers and rectification, while the side being held accountable responds and accepts sanctions; and third, it implies rights of authority, in that those calling for an account are asserting rights of superior authority over those who are accountable. What emerges above is that accountability ensures that the public is supreme in every activity and conduct of a public official.

Mbai (2003) observes that, holding public officers accountable will require that there must be values and norms that public officials shall be required to adhere to. This, in present day Kenya, is well articulated in Chapter Six of the Constitution on Leadership and Integrity, the Public Officer Ethics Act 2003, the Leadership and Integrity Act 2012, and the Civil Service Code of Regulations of 2006. He further observes that, holding public officers accountable will also require clarity on the kind of retribution that can be applied when the prescribed values and norms are not observed. Holding a county government and its public officers accountable ensures that those entrusted with leadership positions, public offices, and public resources adhere to publicly agreed norms, standards and goals.

2.1 Forms of Accountability

Accountability in governance may be classified as horizontal, vertical, or diagonal. Horizontal accountability consists of formal relations within government whereby an actor in government has the official authority to command explanations or impose penalties on another. A case in point would be the Office of Controller of Budget exacting accountability from county governments on the utilization of county funds and the implementation of county budgets, and the county assembly exacting accountability from the county executive on the implementation of development. Horizontal accountability involves scrutiny by government institutions on misuse by other public agencies and branches of government.

Vertical accountability involves the holding of public institutions and government into account by the general public. This form of accountability is concerned with the power relations between government and actors outside government. It refers to the means whereby ordinary citizens and civil society actors seek to enforce standards of good behaviour and performance by public officers and service providers. This has been done through the application of social accountability tools and mechanisms such as social audits and the development of community score cards on the delivery of services by public health facilities.

The third category, diagonal accountability, refers to direct citizen engagement with horizontal accountability institutions such as parliament, county Assemblies, the police, the Office of the Controller of Budget, the Auditor General or the Ethics and Anti-Corruption Commission, among others, when provoking better oversight of government actions.

2.2 Elections as a Tool for Ensuring Accountability

Periodic elections held in Kenya, like in other democracies worldwide, is the traditional way by which citizens have been able to hold their leaders and the government accountable for their

performance. Elections provide citizens with the opportunity to vote out of office and power individuals or governments that are not, or have not been accountable or that are underperforming. Elections do not however necessarily guarantee accountability in governance as newly elected individuals with good credentials and ethics have ended up disappointing the electorate by engaging in corruption and other vices.

Another limitation of periodic elections as a means of ensuring accountability is linked to lack of credibility in the electoral process, especially in the African continent. It has been observed that, at times influential and corrupt individuals have ended up using their influence by rigging themselves back in political offices. Such individuals have also compromised the election process by bribing voters, who due to poverty or ignorance end up re-electing them. There is likelihood that such individuals may opt to share out public jobs based on patronage with the danger of those given such jobs not being accountable to the public but to their masters. There is also the assumption that the public is always motivated by values and principles of good governance while electing leaders.

Elections, as a tool of exacting accountability, is also limited as it can only hold politicians accountable, whereas the majority of public officials are bureaucrats and hence not subject to electoral process. Some of these public officers who are not subject to elections, have gone through vetting processes which have approved them to be fit to hold public offices but have failed to be transparent and accountable in exercising their responsibilities. Citizens and the civil society who are key stakeholders in governance should be able to curb mismanagement of public affairs in between elections. The implementation of government programmes and the utilization of public funds are just but two among numerous transactions that take place between elections and it is important that there exist mechanisms through which the public can hold public officials and governments accountable in the event that the discharge of functions or provision of services by the government agencies fails.



Legal and Institutional Framework for Accountability in Kenya

Successive governments in Kenya have since independence put in place mechanisms with the objective of promoting and ensuring accountability of public servants in the management of public affairs, including public finances and public service delivery. These include: constitutional and legislative constraints; the separation of powers between the arms of government; parliament and its investigative committees; formal systems of auditing and financial accounting; public service codes of conduct; legislation, anti-corruption agencies and commissions; and the judiciary. This section provides a highlight of the legal and institutional frameworks that have been put in place by the government in ensuring accountability.

3.1 Legal Framework for Accountability in Kenya

The legal framework for accountability in the management of public affairs in Kenya consists of the Constitution of Kenya 2010, laws, policies and guidelines with regard to the way public affairs are to be conducted, and how public officers are expected to conduct themselves. These include:

3.1.1 The Constitution of Kenya of 2010

The supreme law of Kenya, the Constitution of Kenya 2010, dedicates an entire chapter, Chapter Six to Leadership and Integrity. The Constitution obliges all public officers to make objective and impartial decisions with unqualified integrity and honesty in order to bring honour and pride in the offices held. Article 233 (1) of the Constitution establishes the Public Service Commission (PSC) with the mandate of ensuring high standards of professional ethics among public servants; efficient, effective and economic use of public resources; and accountability for administrative acts. The Commission also has the mandate of ensuring transparency in the provision to the public of timely, accurate information, good governance, integrity, transparency, and accountability.

3.1.2 Public Officer Ethics Act of 2003

The Public Officer Ethics Act (Cap. 183) of 2003, reviewed in 2009, provides for the general code of conduct and ethics for public officers. The Act requires that the members of the public, and fellow officers alike, be treated professionally and within the law. In the service to the public, and in matters to do with human rights of people, the Act makes reference to Chapter Four of the Constitution on the Bill of Rights as the standard on which adherence to human rights should be based. Adherence to the rule of law by public servants is expected to facilitate the development of high moral ideals with regard to transparency and accountability in public service.

3.1.3 Civil Service Code of Regulations of 2006

The Code of Regulations, 2006 provides the behavioural standards for all public servants during and after their service. Public servants are forbidden from engaging in businesses that may bring disrepute to the offices that they hold and the government in general. The Vision articulated in the preamble of the Code of Regulations is that “The Public Service in Kenya will be an efficiently performing institution; committed to serving the public with integrity and utmost courtesy and giving value to the tax payers’ money”. Section G of the regulations states that. “...each civil servant ought to ... ensure that his conduct both in public and in private life does not bring the service into disrepute”.

3.1.4 Leadership and Integrity Act of 2012

The Leadership and Integrity Act, 2012 aims to actualize Chapter Six of the Constitution on Leadership and Integrity. The Act is meant to ensure that public officers respect the values, principles and requirement of the Constitution as set out in various legislative provisions. The Act requires public officers to demonstrate honesty of public affairs subject to the Public Officer Ethics Act, 2003. The Act further requires that public officers desist from engaging in activities that amount to abuse of office, misuse of public funds or falsification of documents in order to defeat justice. Public officers are required to respect the Bill of Rights and also abstain from committing criminal acts.

3.1.5 Anti-Corruption and Economic Crimes Act (Cap. 65) of 2003

The Anti-Corruption and Economic Crimes Act (Cap. 65) of 2003, and reviewed in 2009, establishes the Ethics and Anti-Corruption Commission. The Commission has the mandate of investigating any matter that constitutes economic crimes or any conduct liable to allow or encourage commission of economic crimes. Its other functions include: assisting law enforcement agencies to investigate economic crimes, provide advice to parties that may be involved in the prevention of economic crimes, institute civil proceedings against any person for the recovery of such property or for compensation and to recover public property that has been determined to have been acquired corruptly. This Act aims at deterring public servants from committing economic crimes.

3.1.6 Public Procurement and Disposal Act of 2005

The object of the Public Procurement and Disposal Act of 2005, reviewed in 2010, is to guide the process of public procurement in order to minimize underhand deals between public officials and parties within the private sector. The Act establishes procedures for procurement and the disposal of unserviceable, obsolete or surplus stores and equipment by public entities. The Act aims at ensuring maximization of economy and efficiency, promotion of competition and fairness to each competitor, integrity and fairness of procurement procedures, increasing public confidence in the procurement procedures, and facilitating the promotion of local industry and economic development. The Act aims at ensuring transparency in public procurement procedures.

3.1.7 Public Finance Management Act of 2012

The Public Finance Management Act (PFMA) in Section 48, 123(3), 139 and 166(4c) makes it a requirement that budget documents, including the Budget Estimates and approvals, County Fiscal Strategy Paper (CFSP), Audited Accounts, Annual Reports, and Quarterly Report, should be published and publicized within laid out times in user-friendly formats so the citizens can provide meaningful input and engagements. Accountability of public officers is discussed in Section 79 of the Act. The national and county governments have the responsibility of ensuring accountability in resource use. The Act provides that the Cabinet Secretary responsible for finance has the power to stop the transfer of funds to a State organ or any other public entity, as mandated under Section 225 of the Constitution. The Act proposes that the Accounting Officer should directly report to Parliament which is required to play an oversight role of directly questioning any misuse of funds.

3.2 Institutional Frameworks for Horizontal Accountability in Kenya

Successive governments of Kenya have over the years established horizontal accountability institutions with the objective of ensuring that ethical codes for public servants actually work. These include: supervisory or managerial positions in the executive arm of government, agents of law and order and quasi legal agents, the judiciary, and constitutionally established offices and commissions as highlighted below.

3.2.1 The Kenya National Audit Office

The Kenya National Audit Office (KENAO), also known as the Office of the Auditor General, is an independent office established under Article 229 of the Constitution of Kenya 2010. The mandate of the Auditor General's office is to audit and report on the accounts of any entity that is funded from public funds. Audit reports by the office shall confirm whether or not public money has been applied lawfully and effectively. The Auditor General audits and reports in respect of a financial year, on the accounts of: the National and County governments; all funds and authorities of the National and County governments; all courts; every commission and independent office established by the Constitution; the National Assembly, the Senate and the County Assemblies; political parties funded from public funds; the public debt; and any other entity as required by legislation. The Office of the Auditor General submits its reports to Parliament with clear recommendations on the gaps identified by the auditors.

3.2.2 The Ethics and Anti-Corruption Commission

The Ethics and Anti-Corruption Commission is established under Section 3 (1) of the Ethics and Anti-Corruption Commission Act, 2011. The Commission has the powers of ensuring compliance with and enforcement of Chapter Six of the Constitution on Leadership and Integrity.

In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall in relation to State officers: develop a code of ethics and promote standards and best practices in integrity and anti-corruption for State officers; work with other State and public offices in the development and promotion of standards and best practices

in integrity and anti-corruption; receive complaints on the breach of the code of ethics by public officers; investigate corruption or violation of codes of ethics; recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct; oversee the enforcement of codes of ethics prescribed for public officers; advise on any person on any matter within its functions; raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption; monitor the practices and procedures of public bodies to detect corruption and secure the revision of methods of work or procedures that may be conducive to corrupt practices; and institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.

3.2.3 The Commission on Administrative Justice

The Commission on Administrative Justice (CAJ), also known as the Office of the Ombudsman, is an independent commission established by the Commission on Administrative Justice Act, 2011. The Commission has the quasi-judicial mandate to deal with maladministration; ensuring compliance with leadership, integrity and ethics requirements; promotion of constitutionalism and human rights advocacy; and oversight on implementation of recommendations of task forces, commissions of inquiry and other specialized agencies on matters of improvement in public administration. The Commission investigates any conduct in State affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice. The Commission may; investigate any matter arising from the administrative conduct of a public officer, State Corporation or other government agency or organ including summoning and enforcing attendance of any person for examination; require the discovery or production of any document; and requisition any public record from any public officer.

3.2.4 The Office of the Controller of Budget

The Office of the Controller of Budget (OCoB) is an independent office established under Article 228 of the Constitution with the core mandate of overseeing implementation of the budgets of the national and county governments by authorizing withdrawal from public funds. The mission of the OCoB is “To guarantee prudent public financial management, overseeing implementation of the Government budgets by controlling and monitoring the use of public funds, and reporting on budget implementation for the benefit of all Kenyans”. The Controller of Budget is expected to prepare, publish and publicize statutory reports, conduct investigations based on their own initiative or on a complaint made by a member of the public, and conduct alternative dispute resolution mechanisms to resolve disputes. The office is mandated under Article 206 (4) of the Constitution to ensure that the Consolidated Fund is utilized in accordance with the law.

3.2.5 The Commission for the Implementation of the Constitution

The Commission for the Implementation of the Constitution (CIC) is established under Section 5 (6) of the Sixth Schedule of the Constitution. The CIC thematic area on Public Finance is about guiding and coordinating the constitutional implementation activities relating to matters of

Public Finance. Reforms in Public Finance Management, as per the Constitution and the Public Finance Management Act 2012, aim at making the process of public finance management more participatory, and equitable. The role of CIC in the public finance process is to oversee the development of legislation and administrative procedures that reflect the letter and spirit of the Constitution.

3.2.6 Parliament

Chapter Eight of the Constitution establishes the Legislature. Article 93 of the Constitution states that “There is established a Parliament of Kenya,” “which shall consist of the National Assembly and the Senate.” Among other functions, Parliament approves the budget and also assesses the integrity in the execution through involvement in the audit process. It also receives audit reports by the Auditor General. Within three months after receiving an audit report, Parliament debates, considers, and take appropriate action on the report.

3.2.7 National Assembly Public Accounts and Public Investment Committees

The National Assembly Public Accounts Committee (PAC) and the Public Investments Committee (PIC) are established pursuant to the provisions of Standing Orders No. 205 and 206, respectively. The Public Accounts Committee is responsible for the examination of the accounts showing the appropriations of the sum voted by Parliament to meet the public expenditure and of such other accounts laid before Parliament as the Committee may think fit. The Public Investment Committee is responsible for the examination of the working of the public investments. Its functions include: examining the reports and accounts of the public investments; examining the reports, if any, of the Auditor General on the public investments; and examining, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.

3.2.8 County Assembly

One of the functions of a County Assembly, the legislative arm of a county government, is to play oversight over the County Executive in the implementation of development. Its other functions include: review of the County Fiscal Strategy Paper, and making recommendations to County Executive Committee (CEC); approve the budget estimates for County government, urban areas and cities; provide overall oversight over public finances at the County level; approve the establishment of other County public funds; monitor County budgets and public finances and related matters; and approve the CFSP and the County Budget Review and Outlook paper (BROP).

The mandate of the accounting officer of a County Assembly (i.e., the Clerk of the Assembly and the Public Service Board) include, among others: evaluate and oversee the management of their public finances, including promoting and enforcing transparency, effective management and accountability with regard to the use of their finances; ensuring that accounting standards are applied; ensuring proper management and control of, and accounting for, their finances in order to promote the efficient and effective use of budgetary resources; monitoring the management of finances and financial performance; reporting regularly to the County Assembly

on the implementation of the budget; and taking such other action, not inconsistent with the Constitution.

3.3 Challenges Facing Formal Institutions of Accountability

Despite the elaborate legal and institutional framework put in place by successive governments of Kenya towards promoting accountability, ethics and integrity are still issues of great concern in the public service of Kenya as corruption and related malpractices still persist. Reports by the Ethics and Anti-Corruption Commission reveal that corruption has substantially compromised public service delivery in the health sector as health care fraud, conflict of interest, and other malpractices take root. In its 2012 Corruption Index Report, Transparency International (TI) ranks Kenya among the ten most corrupt out of the 176 countries scored.

Unethical practices by public officers such as bribery, corruption, patronage, embezzlement, the use of positions for self-enrichment, and the leakage and misuse of public funds, among others that constitute lack of accountability in governance, have continued to characterize the public sector in Kenya. It is also important to note that the continuous county leadership wrangles has, not only slowed down service delivery, but also impact on accountability by those in leadership positions in counties.

Arguably, the most reliable sources from which one can acquire evidence on the state of public accountability include, among others: Parliament's Public Account Committee and Public Investment Committee Reports, the Office of the Controller of Budget Reports, Reports of the Auditor General, Reports by the Ethics and Anti-Corruption Commission, the Hansard, Court proceedings, and other authoritative studies on the subject. Of concern, however, is the failure of these conventional mechanisms to ensure prudent utilization of public finances, tame corruption and improve quality and access to public services. The failure of existing mechanisms for ensuring public accountability to resolve a country's governance and accountability challenges help to entrench vicious circles thereby generating more impunity.

A major challenge facing formal institutions of accountability is the ability of powerful individuals in the public sector and the private sector to circumvent these institutions or even use their power, wealth and connections to influence decisions in their favour. Anti-corruption commissions and other specialized agencies are usually constrained by the power of officials whose abuses should make them the agencies' prime targets, but who mostly escape charges (DFID, 2008).

Horizontal accountability institutions established by government are also at risk of capture by those in power (elite capture). There is also the danger of these institutions being biased, thereby raising concern with regard to how much they may be objective while undertaking their mandates.

The World Bank (2004) observes that electoral systems can fail to create incentives for representatives to promote the interests of the poor. Electoral systems are also infested with fraudulent practices or legally permissible avenues for influence peddling.

Legislatures are often open to capture where Members of Parliament can receive inducements from the Executive if they refrain from discharging their duty to demand information and seek explanations.

Judicial proceedings can provide little direct or indirect protection for the poor, especially if they rely on investigative machinery of biased executive agencies. The judiciary has also been accused of being compromised through bribery of judicial officials. It remains common to see courts in poor countries failing to enforce laws against public officials found to have abused power.

The underfunding of the Auditor General's office is undermining its capacity to prevent and expose misuse of funds in the government. This needs to be addressed as understaffed and underfunded oversight institutions that lack independence tend to be pervious to political interference with little chance that those wielding executive or political power will be held accountable. The Auditor General has also not been granted enough independence to perform its duties as it is directly funded by Treasury.

Public expenditure management systems established by government suffer from capture when they fail to insist on connections between the spending proposals of line ministries and actual spending patterns, or fail to prevent extra-budgetary spending on the military or perks for top politicians.

The question confronting all systems of checking mismanagement, fraud, and concern in situations where the culture of bureaucratic probity is unreliable is: Who will watch the watch dog?¹⁰

¹⁰ Department for International Development. Accountability Briefing Note. A DFID Practice Paper. Available at: <http://www.gsdc.org/docs/open/innovations-in-accountability/IA4.pdf>



Social Accountability: The Conceptual Framework and Rationale

Accountability of public officers is the cornerstone of good governance and democracy.¹¹ The key to making services work for poor people in the counties is to strengthen relationships of accountability between public officers charged with the duty of making decisions and providing public services, and citizens. Though Kenya's devolved system of governance, with its elaborate decentralization structure running down to the village level, provides county governments with opportunities to enhance public service delivery at the local level, the quality of service delivered in the devolved units will largely be determined, to a large extent, by the ability of citizens to exact accountability from public officers.

Social accountability is an approach towards building accountability that relies on civic engagement. Social accountability involves participation by ordinary citizens and/or civil society organizations either directly or indirectly in exacting accountability from public officers and governments. In the devolved governance context, social accountability refers to mechanisms and actions that citizens, communities, and civil society can use to hold public officials and by extension their respective county governments accountable on the utilization of public funds or the delivery of public services. Social accountability focuses on the demand-side of good governance. Demand-side approaches to governance focus on increasing the voice and capacity of citizens to demand greater accountability from public officials and service providers and to improve responsiveness in service delivery. (Macharia, 2015)

Social accountability mechanisms can be initiated and supported by governments, citizens or civil society. Of importance is that, formal accountability mechanisms instituted by government and external mechanisms of accountability instituted by citizens and civil society should be mutually reinforcing, given that social accountability efforts by non-State actors aim at improving the effectiveness of government's internal accountability through enhanced transparency and public engagement in governance.

Poor people are the greatest beneficiaries of effective social accountability initiatives as they are the "most reliant on government services and least equipped to hold government officials accountable" (Malena et al., 2004). The World Bank observes that social accountability initiatives can contribute to empowerment, particularly of poor people, poverty reduction and sustainable development. Strengthening citizen voice, including the marginalized and the poor in the counties,

¹¹ Public sector governance section of the World Bank website. Available at: <http://www1.worldbank.org/publicsector> and <http://www.worldbank.org/wbi/governance>

and active and meaningful engagement of civil society operating in the counties in governance is important to responsive governance mechanisms, reducing corruption and more efficient delivery of public services.

Whereas each of the forty-seven county governments has the mandate of delivering public services within their jurisdiction, county public officers have a duty to be accountable to citizens in the management of public affairs, including the use of public funds and the delivery of services. Citizens in the counties, not only have the right to have their socioeconomic rights realized within available resources, they also have the right to exact justifications for how public resources are used in realizing these rights.

The ability of citizens and civil society in the counties to engage in social accountability work will depend largely on, among other factors, whether those in leadership positions¹² facilitate them to do so by providing adequate opportunities to engage in governance processes, and relevant timely release of information that will enable meaningful participation. It is also dependent on the level of information held by the citizens and their understanding of their role in devolved governance, and whether the citizens and civil society organizations are well organized to participate in governance processes.

An independent media is also critical to the success of social accountability initiatives. There is need to enhance the capacity of media practitioners to understand and report in a useful way governance matters, particularly citizens' social accountability work.

Successful delivery of service by counties requires relationships in which citizens and civil society organizations can have a strong voice in decision making with politicians and bureaucrats. Social accountability mechanisms can make an important contribution to more informed policy design and improved public service delivery as it enhances citizen voice, introduces incentives for downward accountability and creates mechanisms for dialogue between citizen and governments.

4.1 Benefits of Social Accountability

The setting up of social accountability mechanisms, where power holders (Duty bearers) report to citizens (Right holders), is an important method of ensuring sustainable governance. A key argument for promoting social accountability mechanisms in governance is the ability of these mechanisms to have the potential of increasing the cost-effectiveness of investments by governments in public service delivery.

Involving the public in devolved governance processes is likely to benefit county governments as it will result in better planning, better prioritization through projects that better target citizen needs, more objective and better monitoring of government activities, better access and quality of public services, better governance, and increased development effectiveness.

Citizen monitoring of the utilization of public funds and the delivery of public services can ensure the rational use of public resources and provide a safeguard against leakages. Evaluations

¹² This includes those elected, nominated or appointed.

undertaken by independent actors outside government can also provide vital feedback to a county government and its departments on the challenges or inadequacy in public service delivery.

Social accountability has the potential to empower social groups that are under-represented in formal political institutions. These groups include the women, youth and the poor who also constitute a large percentage of people in the rural areas.

Social accountability can contribute towards addressing the limitations of formal accountability mechanisms initiated by government with the objective of promoting better delivery of public services and better management of public finances. This is attained through sustained monitoring by citizens of government performance, increased demand for accountability from public officers and the exposure of failures by public officers and government.

By enhancing citizen information and voice, introducing incentives for downward accountability and creating mechanisms for participatory monitoring and citizen-government dialogue, social accountability mechanisms can result in the formulation of more informed policies and better delivery by county governments of public services.

Social accountability initiatives can contribute to community empowerment, especially for the poor, those under-represented in formal political institutions and the marginalized. Social accountability does this by providing important information on rights and entitlements and introducing mechanisms that enhance the voice of citizens and citizen influence in relation to the government. This in turn contributes to poverty reduction and sustainable development.

Social accountability is beneficial to government as it can also lead to increased government resources. By understanding the budgets of a county government, the citizen may begin appreciating the financial challenges or limitations facing their respective governments in delivering on its promises and they may begin to appreciate importance of paying up on taxes, fees, charges and levies which account for a large portion of county government revenue.



Constitution and Legislative Provisions on Social Accountability

The devolution of resources and powers to the county level provide an important enabling environment for the realization of socioeconomic rights and public participation in development and governance. Meaningful citizen participation in governance processes is a key plank of the public reforms that were instituted by Kenya's 2010 Constitution. Article 1 (1) of the Constitution states that all sovereign power belongs to the people of Kenya. This power can be expressed through direct participation by the people or indirectly through elected representatives. Generally, public participation seeks and facilitates the involvement of those potentially affected by or interested in a decision. The principle of public participation holds that those who are affected by a decision have a right to be involved in the decision making process. Public participation is a vital part of democratic governance.

The Constitution has given prominence to public participation in governance by including it among the national values and principles of governance (Article 10 (2, a)). Article 118(a) and 196 (a) of the Constitution requires Parliament (both at the national level and county assemblies) to conduct their business and those of its committees in an open manner to the public, it further requires Parliament in Article 118 (b) and 196 (b) to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

One of the objects of devolution (Article 174 (c)) is to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them. It is also important to note that, the Constitution highlights principles of public finance, one of which being openness and accountability, including public participation in financial matters. Various pieces of legislations developed by Parliament highlight the principles of citizen participation.

From the constitutional, legislative, regulatory and practical perspectives, citizen participation is a two-way process, where the government provides opportunities for citizen involvement in governance and the citizens choose whether or not to utilize these opportunities. The Constitution and the legislative framework on devolution envision a situation where citizens are actively engaging in governance at the various levels right from the village level, and that those in leadership positions facilitate the participation. This includes participation and engagement in policy formulation, development planning including the identification of projects and activities for implementation, budgeting, and monitoring the implementation of public-funded development projects, activities and programmes. Commitment to citizen participation in the planning, delivery of services, budgeting, and monitoring is well articulated in the constitution and across the legislation as highlighted in the sub-sections below.

5.1 Legal, Regulatory, Institutional Framework for Social Accountability at the County Level

The constitution and legislation anchoring devolution have provisions meant to ensure the dissemination of information to the public, as well as facilitate public participation in governance at the county level. These include:

- County governments should conduct their business openly and publicly and facilitate citizen involvement in their business and committees. (*Constitution Art. 196*)
- Members of the county assemblies should maintain close contact with the electorate and consult with them on issues under discussion in the county assemblies. (*CGA, Section 9 (1)*).
- Governors are responsible for promoting and facilitating citizen participation in the development of policies and plans, delivering services, and for submitting an annual report to the county assembly on citizen participation in the affairs of the county government (*CGA, Section 30 and 92*).
- County government should establish mechanisms to facilitate public communications and access to information with the widest public outreach using media, which may include: television stations, information communication technology centres, websites, community radio stations, public meetings, and traditional media (*CGA, Section 94 and 95*).
- County government and its agencies shall designate an office or officer for purposes of ensuring access to information and shall enact legislation to ensure access to information for which reasonable fees may be imposed (*CGA, Section 96*).
- County governments should develop city-level interactive websites on which planning information will be posted and feedback received (*Urban Areas and Cities Act, 2011*).
- County governments should establish County Budget and Economic Forums as a means for consultation by the county government on plans and budgets (*PFM Act, Section 137*).

5.2 Legislative Requirements on Participatory County Planning

The requirements for public participation in county planning as per the County Government Act include:

- County planning should serve as a basis for engagement between county governments, citizens, other stakeholders and interest groups (*Section 102*).
- The County Planning Unit (CPU) will be responsible for ensuring meaningful citizen engagement in planning processes through a 5-year County Integrated Development Plan (CIDP); a 10-year County Sectoral Plan; a 10-year County Spatial Plan; and a Cities and Urban Areas Plan (*Section 105*).

- County governments should create legislation to provide the institutional framework for facilitating civic education and establish a civic education unit (*Section 100-101*).
- County Governors are responsible for ensuring citizen participation in the planning and delivery of services (*Section 115*).
- Each county assembly shall develop laws and regulations giving effect to the requirement for effective citizen participation in development planning and performance management within the county and such laws and guidelines shall adhere to minimum national requirements (*Section 115*).
- Public participation in the county planning processes shall be mandatory (*Section 115 (1)*).

The requirements for public participation in county planning as per the Urban Areas and Cities Act, 2011 include:

- Citizens should be engaged in preparation of integrated development plans. Citizens should be represented in the boards of cities and municipalities, including representatives of professional associations, private sector, registered associations of informal sector, neighbourhood associations and associations of urban areas and cities (*Urban Areas and Cities Act (Section 22 and Second Schedule Clauses 1 and 2)*).

5.3 Legislative Requirements on Participatory County Budgeting

The Public Finance Management Act has the following provisions on participatory budgeting:

- The public should be consulted in preparation of the County Fiscal Strategy Paper (*PFM Act, Section 117*).
- The County Executive Committee Member for Finance should ensure citizen participation in planning and budgeting (*PFM Act, Section 125*).
- The County Budget Circular should prescribe the manner in which the public will participate. Participation could take various forms, including but not limited to direct participation, written comments, and through representatives (*PFM Act, Section 128*).
- The relevant Committee of the County Assembly should take into account public views in considering budget estimates (*Urban Areas and Cities Act, Section 21*).
- The accounting officer of an urban area or city should ensure that the public participates in the preparation of the annual budget estimates/strategic plan (*Urban Areas and Cities Act, Section 175*).



Social Accountability Tools and Mechanisms

Growing concern regarding accountability in the management of public affairs including public finance management and the delivery of public services at the county level¹³ may be attributed to, among other factors, dissatisfaction with public service delivery, poor matching of programmes and local needs as a result of inadequate public involvement in governance processes, and corruption.

Poor management of public funds, at both the national and county levels of government, has been attributed to, among other factors, lack of transparency and accountability in the way public resources have been used, corruption, patronage¹⁴, poor rule of law and outright embezzlement of public funds. This is in turn resulting in meagre returns and low output from public investments that aim at enhancing public service delivery and the provision of public goods, and the inability by governments to achieve significant poverty reduction.

The loss of public funds by county governments through corruption, inefficiency, implementation by county governments of national government functions (duplication of duties), and lack of prudence translates into lost opportunities in regard to the provision of public goods, the delivery of public services and the general economic growth of the country. Ensuring accountability in devolved governance is critical if county governments are to achieve their respective visions and for Kenya to achieve the Vision 2030 that aims at creating “a globally competitive and prosperous country with a high quality of life by 2030”.

Attaining accountability at the county level requires active and meaningful participation by the public and synergy between those in leadership, citizens and the civil society. The constitution and the legislative framework on devolution stress transparency, participation and accountability in devolved governance. Strong emphasis on these three principles is a means to improving the efficiency, accountability, equity and inclusiveness of government and public service delivery (KSG, 2015).

Social accountability involves the use by citizens or civil society of a range of tools to engage with the government and to exact accountability from governments and public officers. The use of social accountability tools and mechanisms in governance aim at: improving citizen participation in decisions that affect them, ensuring transparency in the management of public affairs, checking

¹³ It should, however, be noted that the ability of county governments to effectively deliver services is influenced by the allocation of expenditure between county governments and the central government and fiscal flows between the two levels of government.

¹⁴ Providing targeted benefits to a few, as opposed to providing public goods.

corruption, generating information for policy advocacy, generation of information for lobbying, capacity building, enhancing citizen awareness, mobilizing citizens to access information on aspects of public service delivery, monitoring outcomes of government activities and checking compliance with laid down procedures such as procurement procedures.

Accountability in public service delivery, and in the management of public finance in the counties, can be enhanced through citizen and/or civil society participation in the formulation of policies and development plans. This can be done through citizen participation in the formulation of public policy, development planning and budgeting as envisaged by the Constitution and the legislative framework on devolved governance.

Social accountability initiatives may also seek accountability with regard to the quality, relevance and accessibility of public services. Such initiatives may include citizen involvement in the monitoring and evaluation of priority services, e.g. health service delivery by county health facilities using indicators that citizens themselves have developed. This may involve the use of Community Score Cards or Citizen Report Cards.

The citizens and civil society may also undertake initiatives that aim at improving public oversight. This may include the establishment of independent citizen oversight committees or watchdog groups. The civil society, in such instances, plays an intermediary or facilitating role between citizens and government institutions such as the Ombudsman’s Office, the Ethics and Anti-Corruption Commission, and boards of public health facilities at the local level.

The choice of an ideal tool or mechanism in social accountability initiatives is largely informed by the problem or the challenge that one seeks to address. Poor or failing service delivery may require the application of the Community Score Cards or Citizen Report Cards whereas Public Expenditure Tracking Surveys (PETS) may be useful in tracking the flow of resources from the central government to the frontline service provider by examining how things actually work in order to assess why resources are not contributing to improved delivery of services. Poor implementation of public-funded development projects may require social audit of such projects.

6.1 Benefits and Strengths of Social Accountability Tools and Mechanisms

| Tool/Mechanism | What it Entails | Benefits/Strengths |
|---|--|---|
| <i>Participatory Policy Formulation</i> | <ul style="list-style-type: none"> Direct participation by citizens or civil society in the formulation of public policy. | <ul style="list-style-type: none"> Enables determination of local community challenges, priorities and arriving at solutions in collaboration with community representatives. |
| <i>Participatory Planning</i> | <ul style="list-style-type: none"> Direct involvement by beneficiaries of government programmes in the planning and design of programme components. | <ul style="list-style-type: none"> Creates local level partnerships between communities and government officials. Helps determine local needs and priorities. Facilitates the adaptation of government programmes to contexts. |

| | | |
|---|--|---|
| | | <ul style="list-style-type: none"> • Promotes transparency and accountability by promoting immediate and continuous information flow between service providers and citizens. • Enables the poor and the marginalized to influence government decisions related to planning. • Enables citizens to monitor implementation of development plans. |
| <i>Participatory Budget Formulation</i> | <ul style="list-style-type: none"> • Direct participation by citizens in the different phases of budget formulation, decision making, and the monitoring of budget execution. • It may involve the preparation of alternative budgets with a view to influencing budget formulation. | <ul style="list-style-type: none"> • Improves targeting of public spending. • Enhances equity through targeted allocations to the poor and the marginalized. • Improves citizen understanding of budget and budget constraints. • Promotes transparency and reduces corruption. • Help create local level partnerships between communities, elected representatives and government officials. • Helps avoid duplication of projects at the local level. • Enables citizen to negotiate with government on the distribution of resources. • Ensures budgets that are more responsive to local needs. |
| <i>Participatory/ Independent Budget Analysis</i> | <ul style="list-style-type: none"> • Review of budgets in order to assess whether allocations match the government's announced social commitments. • May also involve analysing the impact and implication of budget allocations. | <ul style="list-style-type: none"> • Enhances public understanding of the budget. • Enables non-State actors influence budget allocations. • Improves targeting of funds for vulnerable groups. • Improves information sharing between government and citizens. • Initiates debates on sector-specific implications of budget allocations. • Influence revenue policies by making trade-offs explicit. • Can help improve effectiveness of public spending. • Helps inform citizens on the impact of budget allocations on their daily lives. |

| | | |
|---|---|--|
| <i>Participatory Policy Analysis</i> | <ul style="list-style-type: none"> • Involves the review, critique and building public awareness about government policies in key areas such as poverty reduction. | <ul style="list-style-type: none"> • Better and more responsive public policies. • Understanding of other perspectives on policy issues thus more informed views. |
| <i>Participatory Public Expenditure/Input Tracking (PETS)</i> | <ul style="list-style-type: none"> • Quantitative surveys that track the flow of funds to determine how governments use public funds, and whether resources actually reach the target beneficiaries. • Involves tracking how the government actually spends funds, with the aim of identifying leakages and/or bottlenecks in the flow of financial resources or inputs from the centre to the frontline service providers. | <ul style="list-style-type: none"> • An investigative tool in the absence of reliable financial and administrative data. • Help highlight and track the use and abuse of public resources. • Help identify specific gaps and problems in fund allocations. • Help identify leakages and misuse and also gives insight into cost-efficiency of government programmes. • Understanding problems in budget execution and service delivery. • Helps detect problems of service delivery, e.g., absenteeism. • Helps improve efficiency in budget execution. • Ensures resources reach frontline service providers. |
| <i>Citizen Report Cards</i> | <ul style="list-style-type: none"> • Surveys that directly aims to obtain feedback from consumers of public services. • Involves the rating by citizens of public service providers. • Involves awareness-raising and advocacy based on the results of the survey. | <ul style="list-style-type: none"> • Enhances accountability of the public sector by supplying systematic feedback from users of services to the service providers. • Enables assessment of the impact of public policies and programmes. • Provide a platform for communities and civil society to engage in dialogue with public service providers to improve the quality of services. • Provides feedback from consumers to service providers, resulting in services being citizen-oriented. • May result in prompt and practical improvements in service delivery. |

| | | |
|--|---|--|
| <i>Community Score Cards</i> | <ul style="list-style-type: none"> • Combines participatory quantitative surveys and focus group discussions at the community/ local level bringing together consumers of public services and providers to jointly analyse and resolve service delivery problems. | <ul style="list-style-type: none"> • Provides institutions and individuals providing services with perspectives, suggestions and complaints from citizens about the quality of these services. • Contributes to reform in service delivery. • Provides feedback from the consumers of service on a regular basis. |
| <i>Participatory Output Monitoring</i> | <ul style="list-style-type: none"> • Method through which local actors can monitor the achievement of stated project or policy outputs against identified indicators. | <ul style="list-style-type: none"> • Helps focus attention on tracking the impact of different service delivery initiatives, as opposed to merely tracking the inputs. |
| <i>Social Audits</i> | <ul style="list-style-type: none"> • Process whereby a government programme is audited with the active participation of the intended beneficiaries of the programme. • It consists of an open and participatory review of official reports of works and expenditure. | <ul style="list-style-type: none"> • Enhances transparency and accountability at the local level. • Helps in identifying gaps and leakages in programme or project implementation. • Provide local communities with a platform to express their ideas, views and grievances. • Empowers beneficiaries to better engage with the service providers. • Can foster stronger linkages between local communities, elected representatives, and government officials. |
| <i>Public Revenue Monitoring</i> | <ul style="list-style-type: none"> • Involves tracking and analysis of the type and amount of revenue received by the government. | <ul style="list-style-type: none"> • Detection and prevention of corruption or the waste of revenue sources. • Enhances awareness among citizen of government revenue. • Informs citizen on how government has mobilized resources. • Enables citizen effectively monitor government expenditure. |
| <i>Citizen Charter</i> | <ul style="list-style-type: none"> • Public notice displayed by the government institutions which provide information to the consumers of service. It mentions, among other things, the types of services available, service fee, service quality, duration for providing the service, the terms and procedures of service delivery. | <ul style="list-style-type: none"> • Provides citizen with information about the services of a particular office. • Reduces corruption. • Enhances accountability and transparency of service providers. • Ensure speedy provision of services, quality services. • Prepares consumers of public services well beforehand. |

6.2 Things that County Governments can do to Ensure Successful Implementation

| Tool | What can be done to Ensure Successful Implementation |
|--|---|
| <i>Participatory Planning, Participatory Budgeting</i> | <ul style="list-style-type: none"> • Mobilize the public to facilitate informed and meaningful participation in processes at the various levels. • Establish and operationalize County Planning Units. • Establish and operationalize County Budget and Economic Forums. • Strengthen local level governments through capacity building of county officials at local officials. • Avail information on allocated funds, patterns of expenditure and service delivery units. • Establish structures of participation at the village, ward, sub-county, city, town, and other decentralized levels. • Capacity building of citizens and providing them with tools that enhance their engagement. |
| <i>Public Expenditure Tracking Surveys</i> | <ul style="list-style-type: none"> • Regular reporting on expenditure as required by law. • Avail to the public expenditure reports. • Provide easy access to government records including vouchers, audit reports, etc. • Support the linking and networking of county-based citizen formations with national level formations that have experience and expertise in doing this kind of work. |
| <i>Social Audits</i> | <ul style="list-style-type: none"> • Provide easy access to relevant government records. • Partner with local civil society to facilitate mobilization of citizens to participate, and interact with county government officials. • Follow-up on grievances exposed in the social audit. • Take corrective action in a time bound manner. |
| <i>Citizen Report Cards and Community Score Cards</i> | <ul style="list-style-type: none"> • Partner with civil society organizations who have the technical expertise to design, execute, and analyse the survey. • Ensure proper dissemination of findings through media and civil society organizations. • Ensure follow-up on findings. |



Policy Recommendations on Institutionalizing Social Accountability

The Constitution of Kenya 2010 and subsequent legislative framework on devolution emphasize public engagement in devolved governance processes. The Constitution and laws on devolution envision the embracing by county governments of social accountability mechanisms, including, among others, participatory policy making, participatory planning, participatory budgeting and participatory monitoring. County governments, therefore, need to identify, adopt and implement mechanisms that will facilitate and strengthen public voice and engagement in decision making and governance.

Efforts involving the public to strengthen accountability in governance are in most occasions ad-hoc initiatives initiated by civil society. The effectiveness and sustainability of social accountability mechanisms in Kenya's devolved governance will only be enhanced if they are institutionalized. Institutionalizing¹⁵ social accountability mechanisms and public participation in devolved governance creates spaces for the public to mobilize and participates in expressing their voices. This will require that county governments render their internal mechanisms open to accountability.

Critical factors for attaining social accountability in devolved governance include, among others, mechanisms that link the public to their respective county governments; willingness and ability of citizens and civil society to engage in social accountability work; attitudes and capacities of State actors; an enabling environment for meaningful engagement; willingness and ability of leaders, both bureaucrats and politicians, to account to the public; and the willingness and ability of State actors to share information in a timely manner, listen to and engage with the public. Some important steps that county governments can take to make social accountability the norm include:

a) Making social accountability mandatory in policy design

County governments should consider making social accountability mandatory in policy design. Counties should make it a requirement that social accountability be one of the principles in the delivery of devolved services such as health, agriculture, water and early childhood education among others. County government can emulate the National Government that, for instance, has through the Kenya National Health Policy identified participatory approach to delivery of interventions as one of the policy principles.

¹⁵ May be defined as establishing something, e.g., a practice or activity as a principle or norm in governance, in the social system, or society as a whole.

b) Enactment and enforcement of empowering policies and legislation

Enabling policy and legislative frameworks are important for social accountability initiatives to flourish. County governments should consider developing policies on social accountability. County governments should also consider, if not already available, enacting legislation on social accountability as this will facilitate civic actors demanding explanations and justifications for decisions made by government and its officers. Entry points of individuals or organizations engaging in social accountability work should have the support of legislation that allows them access to information held by government and/or public officers to enable them ask questions that strengthen accountability. The law should provide penalties for those found to have interfered with the social accountability process or mismanaged the county resources. These initiatives are likely to contribute to the delivery of public services within the resources available to the county government.

c) Engagement with independent agencies that engage in social accountability

County governments should consider partnering with independent agencies that engage in social accountability work to ensure that public officers and institutions adhere to laid down norms and guidelines. Participatory mechanisms should therefore be embedded into the sectoral plans of county departments. County governments may also consider putting in place rules and procedures that obligates public officers to engage with societal actors.

d) Enhancing access to information

Information is the bedrock of accountability. For citizens to effectively participate in devolved governance and hold government and public officers to account, they first need to know what to expect from their government so that they can judge the performance for themselves and exact accountability. Availability, accessibility¹⁶ and reliability of public documents, including but not limited to County budgets, County Integrated Development Plans, County Fiscal Strategy Papers, Budget Review and Outlook Papers, is critical to building social accountability as such information forms the basis for activities engaged in by social accountability practitioners. The quality and accuracy of such information is also a key determinant of the success of social accountability mechanisms. Access should not be limited to documents but should also include access to public officers and their offices. County governments should also put in place information sharing platforms such as resource centres or information repository centres at the Sub-county and Ward levels. Counties can collaborate with non state-actors in simplifying the information and making them user friendly as this is important in achieving quality participation by citizens.

e) Enhancing accountability of Public Officers

The willingness and ability of public officers and politicians to account to the public is a critical factor in achieving social accountability. County governments should take important steps such as training public officers towards enhancing the capacity of their officers to share information and engage with the public. Such actions may be undertaken in collaboration with civil society

¹⁶ Physical access to documents, and their availability in a format that is understandable to inquirers.

actors. County governments may consider using rewards and sanctions to promote transparent and responsive behaviour among public officers. In addition, Counties may also consider carrying out information campaigns on accountability policies or the rights of citizens.

f) Capacity building of public officers and citizens

Capacity building for collective action is vital to social accountability efforts, and networking and collaboration with non-State actors. Creation of non-monetary¹⁷ incentives for participation in meetings organized by county public officers towards ensuring public engagement in governance processes needs to be taken up much more seriously. This may include, among other things, holding meetings in easily accessible venues and giving equal opportunities for all to participate in deliberations, as well as providing feedback. County governments should consider building the capacity of public officers on social accountability. This can be done in partnership with non-State actors who have the expertise and at times have at their disposal financial resources for such initiatives. County governments should also work towards institutionalizing social accountability in the society by contributing towards building the capacity of citizens to engage with government and hold it to account. Institutions such as the Kenya School of Government can provide short trainings on the same and accompany public officers in institutionalisation of the identified mechanisms. Exchange of information among Counties and cross-learning sessions can be facilitated as a way of enhancing capacity and sharing good practices.

g) Leveraging on Information Communication Technology

County governments should take advantage of Information Communication Technology (ICT) and increased use of ICT by the public to open the government to the public. Information Communication Technology provides citizens a better ability to enhance their interaction with each other and with the government. This may include the use of Short Message Service (SMS) via mobile phones on impending meetings, e.g., forums to deliberate on county budgets. The County Assemblies and County Executive, through its departments, should consider providing information on legislation and programmes being developed online. This will have the effect of making government more transparent, accessible and accountable. Counties should also consider uploading public documents, including, among others, their County Integrated Development Plans, County Fiscal Strategy Papers, Legislation, Budget Review and Outlook Papers, Annual Plans and other policy documents on their websites to enable as many people as possible access the same for wider engagement. Counties should consider including summaries of popular versions of these documents. Technology that is relevant and friendly to the wider citizens in the Counties can also be adopted. This can include the development of mobile phone applications.

h) Creating an enabling environment

An enabling environment is a prerequisite for the success of social accountability initiatives. The opportunities for social accountability programmes are clearly greater where basic political and civil rights are guaranteed. Rule of law and the existence of legal guarantees of the freedom of information, expression, association and assembly, among others, are crucial.

¹⁷ This will ensure sustainable participation by citizens.

i) Establishing and operationalizing decentralization structures

Decentralization lies at the heart of social accountability as citizen action is best harnessed at local level. County governments should establish and operationalize decentralization structures up to the village level as required by the constitution as this will enable the public at the different levels engage in governance processes. Decentralized structures and offices should be empowered and well resourced for effective discharge of its mandate. It is also important that county governments determine mechanisms for fund flows through the devolved governance system. The fund flow system should be designed such that all bodies at the various levels of decentralization have access to resources for implementing services. County governments should also ensure that rules and norms of implementation are developed accordingly.

j) Developing and availing accountability reports

County governments should consider developing, publicizing, and communicating accountability reports in an open and understandable manner appropriate to the public; this may include reports on the implementation of the county budget. Counties should provide detailed information to the public in easily understandable language devoid of jargon and in formats or forums that can easily be accessed by all, e.g., local media stations or county newsletters to satisfy transparency demands. Such information may be disseminated through the social media, the internet, local vernacular media, or any other appropriate media.

k) Protection of whistle blowers

County governments should consider developing policies for the protection of whistle blowers who expose corruption in government and poor service delivery by public officers as this will instill confidence among individuals to overcome possible fears of suppression by powerful vested interests both within and outside the government apparatus. Counties may also consider setting up help lines, where citizens who have suffered threats or coercion from vested interests can safely report their grievances.



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5th Floor, ACK Garden House | P.O. Box 53989 - 00200 Nairobi, Kenya.

Tel: +254-20-2721262, +254-20-2717402 | Fax: +254-20-2716231

Email: admin@ieakenya.or.ke | Website: www.ieakenya.or.ke

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