

Oversight Role of PARLIAMENT

Abridged Version





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Introduction

This summary of the main report seeks to highlight and simplify the findings of a study on the oversight role of Parliament. The study should particularly be significant at this time when Kenya is transiting to both a devolved system of government and a bicameral house. The study should be useful in ensuring that the role of parliament in the new dispensation is well understood, which is key if it is to be an effective oversight institution. The report is mainly an overview of the oversight framework in Kenya and a demonstration of how parliament has evolved from what was once regarded as a weak institution to the current formidable organ that appears to have strong structures for holding the executive to account. It is the outcome of a study that examined challenges that parliament faced over the years as it tried to assert itself as an effective oversight body. Citing empirical examples of how parliament has in the past exercised its oversight role in the management of devolved funds and projects at the grassroots, the report provides insights into the role a bicameral parliament could play under the devolved structure expected to fully come into operation after elections.

1.1 Methodology

The study employed two main methods. First, an extensive desk review of relevant literature was conducted. Secondly, a qualitative inquiry entailing in-depth interviews with key

informants from 25 institutions at the national level, among them being informants from civil society, government and parliament, was done. Data was also collected at the constituency level. This included, one, interviews with government and CDF officials in Mumias, Alego Usonga, Dagoretti, Narok South, Kitui West and Tinderet constituencies and, two, six Focus Group Discussions in each of the constituencies.

1.2 Objectives of the research

The broad objective of this study was to help understand and therefore articulate the oversight role of legislators with regard to development at the grassroots level. But more specifically, the study had the following objectives:

- a) Evaluate the historical role of MPs in improving accountability and local development through oversight.
- b) Examine the legal framework, processes or infrastructure for enhancing oversight, including accountability structures created by the 2010 Constitution at county level.
- c) Evaluate challenges to the fulfillment of oversight role of the MPs.
- d) Comparatively assess performance of oversight function of legislatures in other devolved systems.
- e) Make policy proposals for the national and county oversight framework.

Addressing Challenges in Parliamentary Oversight

2.1 Barriers to effective Fulfillment of Parliament's role

Parliament in Kenya still faces numerous challenges that have undermined its potential to effectively perform its oversight functions. The challenges include:

2.1.1 Lack of Political will

Legislation on accountability is weak. This is to be seen in how otherwise strong Bills get progressively weakened through the various stages of debate due to either vested interests or self interest by legislators.

Parliamentary Committees or Commissions set up to investigate corruption have seemed rather pacifist with no capacity to address root causes or following through with the findings.

2.1.2 Enforceability of Parliamentary Oversight Reports:

For long, there was no Implementation or Assurance Committee (eventually introduced by the tenth Parliament) that could track the implementation of decisions of the House by the Executive.

Formation of the Implementation Committee was meant to address the problem of the Executive failing to implement recommendations of Committees. But the Implementation Committee still does not have sufficient powers to enable it compel a reluctant Executive to implement recommendations of Committees.

There is no statutory provision on time limits within which government should respond to Committee reports.

Failure by the treasury to abide by the requirement that it should table memorandum indicating to what extent it has implemented queries raised by the auditor general.

Prevalence of impunity, which has inhibited the fight against corruption.

2.1.3 Resource constraints

Failure to strengthen the technical capacity of parliament to enable it to undertake its oversight functions effectively. Key areas requiring attention are:

Inadequate technical and support staff

Inadequate technical staff particularly for PIC, PAC, Finance, Budget and LAFAC Committees to undertake high level budget assessment.

Infrastructure and technology

Facilities: The rooms used by the Committees are not tailor made for public participation or even for the media.

Parliament's report production mechanisms are not well developed, as it still does not use up to date technology.

2.1.4 Lack of Transparency

The nature of reporting done by government, especially in management of funds devolved to local levels and in procurement often does not give parliament enough information

to track expenditures and thus provide oversight.

Parliament's oversight role is undermined by government insistence on secrecy in areas such as defense and security.

2.1.5 Oversight capacity and individual members' competence

There is need to build the capacity of legislators and parliamentary staff to enhance effectiveness in oversight.

Poor attendance of training sessions by MPs due to time constraints and also due to their prioritization of allowances as a prerequisite for attendance.

2.1.6 Time/Commitment and discipline

First, it is a worldwide phenomenon that legislators devote little time to their oversight responsibilities. Instead, they pay more attention to their constituents and other legislative activities that are more visible and thus contribute to their re-election. Further, where the standing committees are numerous, there is a tendency for legislators to enlist in more than one. This compromises the quality of oversight.

High demands and expectations from public leave MPs with little time for oversight.

2.1.7 Weak extra-parliamentary support systems

Other non parliamentary offices need to co-operate with parliamentary committees, especially in investigation of corruption cases and prosecution. Delays in investigations hinder effective oversight.

Weak party systems, vested interests and sectarian politics have potential to undermine the objectivity of members and thus affect their oversight role.

2.1.8 Risk of overstepping mandates

There is need to provide mechanisms for checking powers of parliament, since under the 2010 Constitution there will be no oversight in plenary, which will instead be left to committees.

Parliament has been elevated to the same level as the Executive, as it can now propose significant amendments to the budget. If not checked, parliament could make budgetary

adjustments that are not in line with fiscal priorities.

2.1.9 Parliamentary accountability

Highly partisan positions sometimes taken by legislators have resulted in the tendency to dismiss even critical issues offhand. This lack of objectivity and failure to be faithful to facts has greatly affected parliament's oversight function.

2.2 Recommendations

2.2.1 Improving Political will and support for oversight

First, it is important to institutionalize the oversight role of parliament rather living it to the individual whims of MPs. Further, with the 2010 Constitution expanding the oversight function of Committees, and in view of failure of the Executive to implement findings of Committees, there is need to deal with challenges of lack of political will to tackle corruption.

2.2.2 Enforceability

The 2010 Constitution, which now requires cabinet ministers to be drawn from outside parliament, has strengthened parliament as an oversight institution and enables it to demand compliance with recommendations.

The Implementation Committee should be resourced and its capacity enhanced.

There is need for a limit on the time within which compliance and enforcement with parliament's recommendations should be undertaken. This should include penalties and sanctions in the event that the Executive fails to implement recommendations.

There is need for a tracking mechanism on the implementation of Committee recommendations when the life of parliament ends after general elections.

2.2.3 Strengthening arliamentary Committees

Government needs to allocate sufficient resources to support oversight. Parliamentary and County government committees will need to be particularly strengthened.

Strengths of the current committee system

need to be benchmarked, documented and preserved by Parliamentary Service Commission for adoption by Counties.

Capacity building of legislators and the technical staff need to be prioritized and made mandatory for all to attend. It should be scheduled as part of the agenda at the start of the next parliament.

Clerks assigned to Committees need to have expertise in the thematic areas of those particular Committees.

The research office needs to be strengthened so that it can support Committees.

There is need for Committees to develop Strategic Plans based on the mandate of the committees. This should then guide their activities.

2.2.4 Strengthen transparency and accountability

There is need for oversight on the hitherto highly secretive government business in areas of defense and security. This should begin with removing the suffocating secrecy that characterize such transactions.

2.2.5 Time, discipline and commitment:

Legislators should be restricted to serving in not more than two Committees to ensure focus, effectiveness and thus high impact oversight in a given field.

There should be special oversight measures in an election year to stem election related embezzlement of public resources.

There is need to educate the public on the importance of oversight as a key function of their representatives.

2.2.6 Strengthen extra-parliamentary offices

The offices of the Controller of Budgets and the Auditor General should be strengthened at both the national and county level. There should also be a special unit of both offices within the Ethics and Anti-Corruption Commission to specifically deal with audit issues at both levels of government.

The fact that the Constitution accords the Controller of Budgets and the Auditor General independence should help improve oversight.

2.2.7 Staying within prescribed powers

The Executive and Civil Society with relevant expertise need to be firm in guiding parliament so that it only makes budgetary amendments that are in line with macro-economic policy.

2.2.8 Citizen Participation

Mechanisms for public participation in legislative oversight are inadequate. The public ought to be able to access Committee decisions.

There is need for a framework of cooperation between parliament and civil society on research and oversight. Continuous engagement between CSOs and Committees also needs to be encouraged.

Citizens need to elect people of integrity who can exercise oversight with impartiality. CSOs could help in the vetting of those seeking political office.

The CSOs could also help develop a strategy for holding party leaders to account on the implementation of their manifestos.

CSOs also need to develop a strategy for monitoring devolved funds in the counties.

CSOs should be empowered to analyze and disseminate audit reports. At the moment, audit reports are not easily understood by the public.

Need for caution to ensure citizen participation does not override technical advice from the executive.

Need to implement integrated development planning where citizens identify their needs, without having to entirely influence local projects.

2.2.9 The local development arena: what role should parliament play?

a) The 2010 Constitution allows MPs to concentrate on their oversight role, as it emphasizes separation of powers between the executive, legislature and Judiciary. In view of this, and considering challenges posed by the fact of MPs playing both implementation and oversight roles, this study recommends that:

- Both Senate and National Assembly should be removed from the management of county government funds. The two houses should instead

focus on improving their oversight function over the management of devolved funds.

- Parliament will need to re-engineer its oversight mechanism.

With strengthened institutional capacity, what specific oversight roles should parliament (National Assembly and Senate) at the devolved government level?

1. Exercise budgetary oversight to ensure revenue allocated to counties is sufficient.
2. Ensure revenue allocated to counties reflect development priorities of constituencies.
3. Monitor whether government agencies are spending as per approved budgets and, where necessary, establish reasons for under-spending
4. Hold national and county governments accountable for realization of Vision 2030 and County strategic plans.
5. Committees to increase public outreach through increased public hearings and consultation at the county level. This is to assess:
 - Whether development programmes are properly implemented,
 - Whether there is evidence of corruption or mismanagement of funds and
 - Whether funds are reaching populations at the grassroots.
6. Legislators to exercise oversight effectively through public hearings by use of parliamentary committees.
7. Support groups or networks advocating for good governance, accountability and transparency. Consider new accountability systems that allow funds to be tracked and results monitored more effectively.
8. Scrutinise reports of the Auditor General
9. Develop and strengthen innovative partnerships with civil society organizations at national and county level.
10. Enact legislation on financial reporting of devolved funds. The financial reports should be comprehensive and should

have supportive documentation.

11. Ensure sufficient resources are allocated to parliament for oversight

b) Providing Leadership in HIV/AIDS: What Parliamentarians can do:

MPs are now required to relinquish their role in the Constituency AIDS Fund. But the role of MPs in the fight against HIV/AIDS cannot be gainsaid. There are specific actions that MPs can take in respect to the fight against HIV/AIDS:

- Shape supportive laws and policies
- Establish a parliamentary committee on HIV/AIDS
- Facilitate the creation of parliamentary networks focusing on HIV/AIDS
- Ensure budgetary allocations for HIV/AIDS are sufficient for the regions.

2.3 Proposals to improve overall oversight of devolved funds

2.3.1 Procurement in the counties

- There is need to set up Public Procurement Oversight Authority offices as well as those of the Complaints Tribunals in the counties to deal with cost and time implications of trying to access such offices in Nairobi.
- Need to incorporate CSOs in the procurement review processes and should thus be members of the Administrative Review Board. The same should apply in the tendering and award of tenders where CSOs and professional bodies could be observers.
- There is need to provide oversight for the public works engineer who currently evaluates the Bill of Quantities, inspects and evaluates alone. This provides opportunities for corruption.
- Need for electronic procurement and e-purchase to deal with small quotations of up to one million shillings.
- Procurement is not well understood by both Communities and parliament and thus the need for CSOs to step in to sensitize citizens on procurement regulations and their rights.

- Need to create strong linkages between oversight bodies and parliamentary committees.
- There is need for an omnibus procurement law that applies both to the national government and the Counties, but with specific provisions for Counties.
- There is need for public participation in the tendering process in the Counties. Tenders in the Counties should be processed centrally.
- There is need to ensure that projects initiated by governors are implemented to the end even when they run into the term of the next county government.
- There is need to revise the Procurement Act to require smaller funds like CDF to report on how they manage their procurements.
- There is need for procurement bodies to develop procurement plans to allow for the analysis of contracts against the initial procurement plan.

2.3.2 Recommendations for improving oversight in the secondary education sector

- The Constituency Bursary Fund would be best managed by schools because they are better acquainted with the financial needs of students.
- The MPs could be allowed to still make contributions through school boards and District Education Boards.
- Under the county system, a cash substitute transfer should be made to the needy through the schools.

2.3.3 To strengthen oversight in the primary school sector

- The government expects that school

boards will take up greater supervisory roles in the counties in line with constitutional requirement on citizen participation.

- There is therefore need to empower school boards to be able to evaluate and approve expenditures, monitor performance of school heads and appoint auditors.
- There would be need to specify responsibilities of board members, define their duration of service and terms of the contract and also for the ministry of education to help build their capacity.
- Need for parliament to demand timely, transparent and comprehensive information on aid flows from donors.

2.3.4 Some lessons from the management of the local authorities

- It would be important for County governments to be given sufficient resources to enable them operate efficiently.
- The terms and remunerations of employees of the Counties should be assessed and determined by the Salaries and Remuneration Commission.

2.3.5 Proposals on Social Audits

- Enact legislation to facilitate social audits as a mechanism through which citizens can interrogate public expenditures. The legislation will enable public officials to recognize Social Audits and thus minimize resistance.
- Sensitize Communities so that they can support and participate effectively in social audits.



