

RESEARCH PAPER SERIES

ELLA Area: Governance

ELLA Theme: Executive Accountability



ELLA
Evidence and lessons
from Latin America

POLICY BRIEF

NEEDED: A LEGAL FRAMEWORK FOR STRENGTHENING OVERSIGHT ROLE OF THE KENYAN PARLIAMENT



ETHIOPIA

This brief was developed by the authors as part of the ELLA Programme. It was developed based on a Regional Evidence Paper [Horizontal Accountability of the Executive to the Legislature in Africa: A Case Study of Kenya](#) by the same authors, which contains an overview of regional evidence, as well as original data collection and analysis, on a particular research topic. All publications can be found in the [ELLA programme website](#).



POLICY BRIEF

ELLA Programme

April 2016

NEEDED: A LEGAL FRAMEWORK FOR STRENGTHENING OVERSIGHT ROLE OF THE KENYAN PARLIAMENT

Paschal B. Mihyo; Truphena E. Mukuna and Herman Musahara

Executive Summary

This policy brief is drawn from a research paper on Horizontal Accountability of the Executive to the Legislature in Africa: A Case of Kenya (<http://ella.practicalaction.org>). The research adopted a mixed methods approach that was QUAL-Quan, in-depth interviews were held with Members of the County Assemblies (MCA) and officers at the National Cereals and Produce Board. We also carried out desk top reviews of the Parliamentary Debates Reports (Hansard), parliamentary accounts committee report, the state of the nation address document and media reports. Key questions revolved around: the mechanisms used by parliament to get information on the performance of the executive, responses to questions and requests for reports and statements, legislative outputs in terms of bills and types of bills and the work of PAC. The evidence gathered revealed gaps in the horizontal accountability of the Executive to the Legislature. This brief explains this and proposes a framework of optimizing horizontal accountability in the Kenyan parliament.

RECOMMENDATIONS

- Strengthen the link between Parliamentary oversight and anti-corruption efforts;
- Assess and strengthen the capacity of the Parliamentary Accounts Committee's Secretariat to enable it to adequately support its committees;
- Make the consultation process more inclusive by bringing together MPs, representatives of Government, state owned enterprises, CSOs, the private sector and other actors to deepen democracy;
- Introduce strict penalties and sanctions for executive breach of policies and for contempt of Parliament;
- Introduce direct implementation of Parliament's decisions through a special agency;
- Review rules and procedures of appointing heads and boards to increase the role of Parliament in their appointment and assessment of their performance;
- Harmonize legal frameworks across all arms of government and review Parliamentary Standing Orders to ensure they support and do not reduce accountability; and
- Search for mechanisms for increasing interparty cooperation on issues of accountability

Parliamentary Oversight Role in Kenya

A focus on the oversight role of parliament to hold the executive accountable is quite timely. The research informing this policy brief analysed the existing practice of the Parliamentary Accounts Committee in Kenya. The brief looks into main challenges and policy options related to effective parliamentary oversight of State Owned Enterprises, government departments and agencies.

We proceeded from the premise that successful accountability depends on members of the executive feeling obliged to inform parliament about the performance of tasks and policy outcomes. The conduct that is to be explained and justified can vary enormously, from budgetary scrutiny in case of financial accountability, to administrative fairness in case of legal accountability. Secondly, there needs to be a possibility for the forum to interrogate the executive and to question the adequacy of the information or the legitimacy of the conduct.

Key to this process is the need for members of parliament to have adequate tools at their disposal to uncover and interpret the activities of the executive. As the only directly elected public institution, parliament is tasked with ensuring that optimal standards of political and administrative accountability are consistently achieved.

Oversight is a constitutionally-mandated function of Parliament and of the national and County legislatures. Parliamentary oversight, as prescribed by the Constitution of the Republic of Kenya (RoK 2010), is directed at 'scrutinizing and overseeing' executive and administrative action. It provides insights into the mechanisms of accountability in general and oversight in particular.

Kenya has developed mechanisms that meet the standards set by the Inter-Parliamentary Union and the African Parliamentary Index 2011 on accountability. Certain loopholes in the past, have given room to the Executive to reduce the autonomy of Parliament, but the tendency has reduced over time. As regards oversight, the Parliamentary Accounts Committee (PAC) has drawn its membership from experienced MPs led by chairpersons from the Opposition party.

The Committee has managed to point out strengths and weaknesses in the management of public finances and other resources. However, it has been noted that there are several weaknesses with regards to horizontal accountability that merit attention. First, there is big gap between efforts of the PAC on transparency and increasing rise of corruption in Kenya. The PAC is overwhelmed by a backlog of work caused by submission of delayed, incomplete and sometimes

faulty reports. Additionally, there is a lack of harmonization of legal frameworks by institutions of government, which hampers enforcement of Parliamentary decisions. Also, Parliamentary Standing Orders are so complicated that in some cases they reduce the effectiveness of accountability mechanisms. Finally, political party alliances within Parliament tend to reduce the effectiveness of accountability mechanisms. We recommended strengthening of PAC, ensuring that parliamentary recommendations are enforced and making presidential appointments less dependent on informal mechanisms.

What is parliamentary oversight?

According to Inter-parliamentary Union, parliamentary oversight is defined as 'review, monitoring and oversight of government and public institutions, including implementation of policies and laws' (Yamamoto 2007). For realisation of the oversight role, the Parliament utilizes tools, some of which are determined in the Constitutions, while others are detailed in Kenya's Parliament's Rules of Procedure.

These include:

- Parliament can ask the government to provide information through written and oral parliamentary questions;
- Parliament can ask for further clarifications from the Government for public policies through interpellations;
- Parliament can secure information from sources outside the Government through public hearings, creation of investigative parliamentary committees and field visits;
- Parliament can express its stance vis-a-vis the Government and citizens through confidence motion for Prime Minister, laws, resolutions, statements etc.; and
- Parliament can discharge heads of public institutions that have been appointed by it if it considers that they are not implementing their duties and mandate accordingly.

Key Findings Related to Parliamentary Oversight of Kenya

1. *Limited impact on corruption*

The procedure provided for under the Constitution meets most of the indicators of the African Parliamentary Index (2011). However, parliamentary oversight has not managed to reduce corruption in

Kenya (Kivuva 2013: 23). Investigations into some suspected corruption scandals have taken decades and the reports have never seen the light of the day. Attempts to prosecute suspects have ended in vain (Mirugi-Mukundi, 2006). This has resulted in Kenya consistently faring badly on transparency perceptions between 2010 and 2015.

2. Technical Limitations of Parliamentary Accounts Committee (PAC)

An examination of the Reports of the PAC for the period 2011, 2012 and 2013 indicated that the PAC had limited capacity for editing and polishing reports in the clerk's office, conducting research and information sharing. It was unable to transcribe copies of Hansard. Some of the limitations resulted from the limited number of officers in the Auditor's General's Office that led to delayed submission of the audit reports. However, some of the reports submitted by ministries and government agencies were either late or were not well prepared. In some cases, key supporting documents were missing. The PAC reported on disturbing practices of ministries failing to pay contractors and returning funds to treasury. There were instances of illegal procurement and limited capacity for monitoring and evaluation.

3. Annual (work, financial and audit) reports of independent agencies

The annual work reports of independent agencies are the most comprehensive documents that the Parliament receives. They provide information about the agencies' operations and general conditions in the public sector. The National Assembly exercises oversight by receiving annual audited reports of local authorities, independent commissions, political parties and state owned enterprises. They have to be audited by the Auditor General and submitted to parliament under Article 229(4) of the 2010 Constitution. These are submitted first to the relevant Parliamentary Committees whose chairpersons present them to the National Assembly. It was noted that most of the reports presented come very late some even four years after the relevant financial year and in most cases they are not discussed.

4. Lack of enforcement mechanism

In the reports of parliamentary committees such as the PAC, local authorities, political parties etc, recommendations are made on remedial action. The

interviews indicated that there was lack of mechanisms to enforce these recommendations.

5. Use of Parliamentary Questions

The most frequently used mechanism is the questions and answers. It is aimed at eliciting responses on how policies and programmes were implemented and how administrative powers were used. The interviews with MCAs indicated that although this is frequently used, some of the executive members do not give adequate answers while some fail to appear altogether to answer the questions. From the year 2013, this mechanism of accountability was abolished in the Kenyan Parliament.

6. The impact of numbers on accountability

The effectiveness of motions, questions and answers depend on the composition of legislative bodies. When there are no party alliances, there is a higher chance for many challenging questions and issues being raised. When the ruling party forms alliances with other parties, there is evidence of use of numerical strengths to reduce questions and motions. It was established from the Parliamentary Reports that after the 2013 elections that the party or alliance of parties in power has reduced the effectiveness of debates and questions in parliament. This is due to the rise and 'tyranny of numbers' in parliament.

7. Appointments of persons in bodies managing independent agencies

Parliament's relationships with state owned enterprises (SOEs) and ministries and the existing parliamentary oversight mechanisms are provided in its Rules of Procedure which include receiving and reviewing the annual work reports of the Executive and SOEs. According to the Kenyan Constitution, the President nominates members of his Cabinet (Executive) and the Heads of SOEs. Their names are published in newspapers and official government documents. The President then presents these names to parliament for vetting and scrutiny. Parliament usually organizes public hearings with qualified candidates in advance so that members of civil society, media and citizens have the opportunity to familiarize themselves with their qualifications. Once approved, the names are published in the Kenya Gazette. However, the opposition parties often complain about not getting fully involved because of the 'tyranny of numbers' thus the majority party in Parliament always approves motions unhindered. The media reports also revealed that ethnicity, kinship

cleavages, regionalism are a big factor in influencing appointments. This is an area where formal mechanisms

are used but informal ones exert more influence on outcomes.

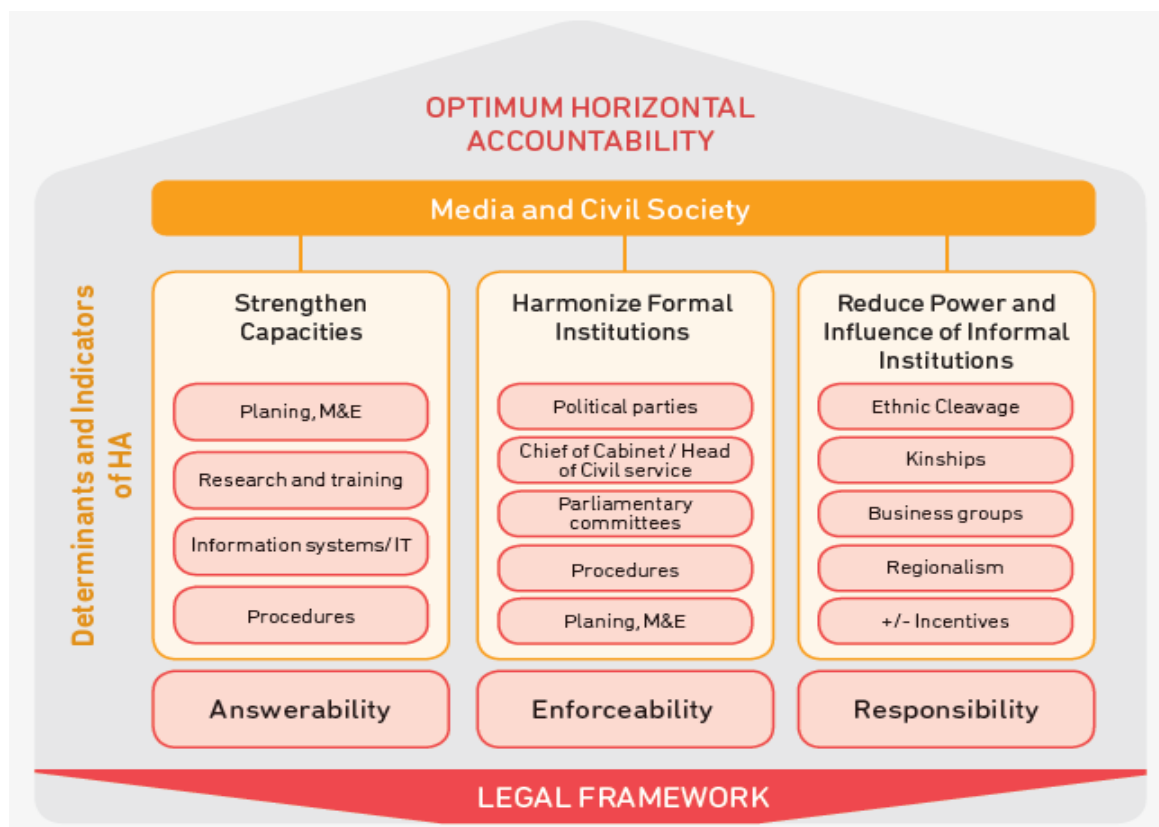


Fig 1: Model Legal Framework for Optimizing Horizontal Accountability in the Kenyan Parliament

Source: Authors’ Own Conceptualization

References

Kivuva, J.M. 2013. Reforms without Change: Kenya’s Unending “War on Corruption” in P. Chanie and P.B Mihyo, *Thirty Years of Public Sector Reforms in Africa: Selected Country Experiences*. Fountain Publishers, Kampala.

Mirugi-Mukundi, G.T. 2006. The Impact of Corruption on Governance: An Appraisal of the Practice of the Rule of Law in Kenya. LLM Dissertation, University of Pretoria, Unpublished.

ROK .2010. The Constitution of Kenya. Nairobi: Kenya Law Reports.

About the Authors The authors are affiliated to OSSREA. [Paschal Mihyo](#) is the former Executive Director of the OSSREA and a professor of Politics and Administrative Studies, his expertise and research interests include public sector reform, economic reforms, social issues, law, human rights and politics in Africa. [Herman Musahara](#) is the Acting OSSREA Executive Director. His research interests and expertise are in Development Economics, Development Studies, Poverty Analysis, and Research Methodology and Human development among others. [Truphena E. Mukuna](#) is the Acting Director of Research and Capacity Development of OSSREA. Her research interest expertise are in Education, Curriculum Development and Instructional Design, Climate Change, Disaster Risk Reduction, Social Protection, Gender Studies, Research and Capacity Building.

This policy brief is developed as part of the ELLA programme. More info available at <http://ella.practicalaction.org/>

