

The Role of Civil Society Organisations in enhancing Social Accountability in Tanzania

1.0 Introduction

The role of Civil Society Organisations (CSOs) including NGOs in Social Accountability Monitoring and enhancing transparency at the local level is recognised as shown in a number of important policy papers including the Constitution, national framework on good governance, PMO-RALG/LGRP Medium Term Plan, speeches made by senior Government officials including the President. The National Framework for Good governance recognises (CSOs) as constituting a strong instrument for the effective participation and involvement of people in decision making and social, political and economic activities. It is further stated that CSOs have a crucial role in informing and sensitising the people. Among other things the framework requires that CSOs to be involved deliberately in carrying out activities of civic education, as well as sensitisation on issues of law, health, agriculture, environment, gender, accountability, transparency, integrity and human rights.

Furthermore, in the PMO-RALG/LGRP Medium Term Plan the role of CSOs in promoting good governance is also emphasised. Section 6.8.5 which covers cooperation agreement between PMO-RALG and CSOs states that ‘ areas for collaboration such as public expenditure tracking surveys (PETS) where users are encouraged to monitor the use of public finances, will be identified. An inventory of CSOs will be prepared and cooperation agreement entered into with those organisations identified as having sufficient competence in PMO-RALG areas of interest’.

In addition, the Government has also developed an NGO policy paper. The policy recognises that CSOs are important partners in the development process. In section 9 of the policy, the Government states that it recognises the contribution of CSOs in society and regards them as important partners in the development processes. Thus, the government undertakes to create a conducive environment to ensue that the potential of the CSOs is fully exploited by the government.

2.0 The legal and policy context for financial transparency in LGAs

There is a number of laws and regulations that govern or have impact on financial Transparency practices in the LGAs in Tanzania and are anchored on the Constitution of Tanzania of 1977 as amended from time to time and Local Government laws of 1982. The Local Government Finance Act No. 9 of 1982 is the key law that covers financial transparency in LGAs. The Local Authority Financial Memorandum of 1997 operationalized this Act. In addition to the Act and the financial memorandum there are other pieces of laws and directives including guidelines by MOF and PO-RALG that have a bearing on transparency in the LGAs. They include the Medium Term Planning and Budgeting Guidelines issued by PO-RALG, the Procurement law and regulations, the LGRP annual assessment manual, the National Security Act No.3 of 1970, the Newspaper Act of 1976, the Civil Service Regulations, and the Broadcasting Services Act No. 6

of 1993. The National Framework on Good Governance also addresses the issue of transparency in LGAs. These various laws, regulations and policy pronouncements are provides the needed benchmark to start with in conducting SAM.

2.1 The Constitution of the United Republic of Tanzania

The Constitution provides for the right to access and disseminate information. Some of the key Articles include:

- Article 8 (1) (c): the Government shall be accountable to the people; (d): the people shall participate in the affairs of their Government in accordance with the provisions of this constitution.
- Article 18 subsection 1; Without prejudice to the laws of the land, every person has the right to freedom of opinion and expression and to seek, receive, and impart or disseminate information and ideas through any media regardless of national frontiers and also the right of freedom from interference with his communication.

Though the above stated Articles in the Constitution provide for the basic access to information, there are limitations to applying these Articles arising from provisions in other Articles of the same Constitution. For example Article 30 provides exceptions to the fundamental right. The Article states that:

- Article 30 (1): the human rights and freedom, the principles of which are set out in this Constitution, shall not be exercised by a person in manner that causes interference with or curtailment of the rights and freedoms of other persons or of the public interest.
- Article 30 (2): it is hereby stated that the provisions contained in this part of the Constitution which set out the basic human rights, freedoms and duties, do not invalidate any existing legislation, or prohibit the enactment of any legislation or the doing of any lawful act in accordance with such legislation for the purpose of: (a) ensuring that the rights and freedoms of other people or of the interests of the public are not prejudiced by the wrongful exercise of the freedoms and rights of individuals.

These two provisions in Article 30 can potentially be used to deny the people access to information including of financial information. This is because terms such as ‘public interests’ are so open to various interpretations that they can be used for the purpose of limiting access to information.

2.2 The Local Authority Financial Memorandum 1997

The Local Authority Financial Memorandum has been prepared pursuant to sec. 42 of the Local Government Finance Act no. 9 of 1982)¹. This Memorandum provides details of responsibilities of the various Council officers and Council organs including the Full Council with respect to financial management in a council. It also provides for ways in which financial reports prepared at the Council will be shared among the various stakeholders/users. The different key Orders in the Memorandum are summarised in Table 1

¹ This memorandum replaced earlier 3 memoranda issued under the Act. Important documents to go with the Local Government Financial Memorandum is the Local Authority accounting manual of 1993 and the finance training manual written to illustrate the LAAM.

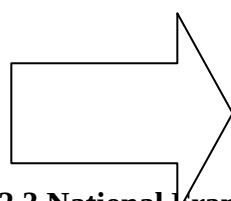
Table 1: Financial orders and their descriptions

Order No.	Details
ORDER 89	After the audit, the Controller and Auditor General (CAG) shall prepare the audit certificate on the final Accounts and forward one copy of the report together with a copy of the final accounts and supporting schedules to the Minister, one copy to the Proper Officer, one copy to the Director who shall table the report before the Finance Committee and later before the Council.
Order 90	The Council shall undertake to publish at its own offices and in the local newspaper within its area the following: i. The audited consolidated balance sheet and statement of income and expenditure (abstract of Accounts); and ii. Any signed audit reports on the accounts. Publication of the accounts and audit report shall be made within six months of the receipt of the report of the auditor in compliance with the requirements of section 49 of the Local Government Finance Act no. 9 Act of 1982.
ORDER 91 (<i>In relation to Village Council Accounts</i>)	The Director shall ensure that each Village Council within the Local Authority's jurisdiction and in receipt of funds from the Local Authority either directly through grant payment or indirectly through a lien on certain Council revenues, shall maintain the following books of Accounts; • A receipt and payments cash book, one for cash payments and receipts; and one for each bank account the Village Council may keep. • A Subsidiary ledger account for each debtor and creditor
Order 92	At the end of the each Local Government financial year, the director shall ensure that final financial statements are prepared for each village Council consisting of: • A statement of income and expenditure for the year, prepared on a modified accrual basis to include debtors and creditors • A balance sheet showing debtor, creditor, cash and accumulated surplus balances.
Order 93	Such village accounts shall not be consolidated with each other; or with the main accounts of the Local Authority; and shall not be included in the published accounts of the Local Authority. They shall however upon request be made available for inspection by staff of the CAG.
Order 94	In accordance with section 45 (3) of the Local Government Finance Act no. 9 of 1982, the accounts of a village Council shall be audited by such public officers or organisations as the proper officer may in writing direct.
Public Finance Act, 2001	• Nothing on releasing information to the public, and nothing on Local Authorities • Reference is the presentation of audited financial statements and audit report to the president and the National Assembly.

As can be seen from table 1, the law does not encourage the publication of village accounts and it clearly states that the village accounts should not be consolidated into the District account. Yet we find inconsistencies between the law and regulations. The Local Government Finance Act, 1982 as amended in 2000 s. 49 states that: every Local Government Authority shall at its own offices and in such other manner as may be directed by the Regional Commissioner publish within its area:

- a) The annual balance sheet and statement of abstract, and
- b) Any report on the accounts made and signed by the auditor within six months after the close of the receipt of the report of the auditor, as the case may be.

Thus, while the main law encourages publication of the reports, albeit in a limited manner, the Financial Memorandum has not been updated to reflect this fact.²



It need to be noted here that, the Financial Memorandum provides details of responsibilities of the various Council officers and Council organs including the Full Council with respect to financial management in a council; it does neither replace nor rule over the Act.

2.3 National Framework on Good Governance

The National Framework on Good Governance (NFGG) underscores the importance of accountability, transparency and integrity in the management of public affairs. It covers a wide range of issues, which have a bearing on good governance, and sets out the conditions under which accountability, transparency and integrity can prevail. These include:

- Procedures and regulations which ensure transparency in the conduct of official affairs through adherence to requirements of open and transparent reporting of administrative decisions;
- A system and practice of recruitment of public managers which ensures selection and appointment of qualified and skilled people whose integrity can respect public funds and property and who are dedicated to serving the public;
- Strong, effective and efficient institutions, procedures and regulations which are capable of enforcing accountability, transparency and integrity;
- Effective and efficient management and administrative systems and practices that can ensure adequate supervision, control, evaluation, and discipline in the running of public affairs so as to prevent and check abuse;
- A population that is aware of its rights and ready to defend them, that abhors corruption, and where everyone knows that public servants and other leaders are employed to serve and not to rule or be served; and
- A strong, capable and responsible media that can carry out investigative journalism and inform the public about the conduct of their leaders.

Overall, the National Framework on Good Governance provides a basis to progress and enhance transparency and accountability. However, the challenge lies in implementing these stated principles and declarations and calls for the institution of effective mechanisms and structure for operationalising these principles.

² It is understood that this is in the process of being reviewed.

2.4 Medium Term Planning and Budget Guidelines

The Medium Term Plans and Budget Guidelines for preparation of Plans and Budgets for 2005-2008 issued by PMO-RALG to LGAs provides for elements of transparency. These guidelines encourage Local Governments to become transparent through the planning and budgeting process by sharing plans and budgets with a number of stakeholders including civil society organisations. The specific provisions of the guidelines touching on transparency are presented in the Table.

Table 2: Sections in the Medium Term Planning and Budget Guidelines that Promotes Social accountability in LGAs

Section No.	Details
S. 15 Fiscal decentralisation	This section is on fiscal decentralisation including the introduction of the LGCDG system, but also emphasizes the issue of improved financial management at local level as pursued through a number of interventions including the introduction and implementation of the EPICOR –based IFMS in 32 councils.
s. 44 <i>Governance and Accountability</i>	Reference is on misuse of office and mistreatment of citizens in offices. To stamp out this vice, the LGAs are urged to: • Design and implement campaigns to educate people of their rights, responsibilities and address all forms of abuse, intolerance, discrimination and stigma. • Enhance and strengthen efforts to fight corruption in all areas and spheres.
S. 56 PLAN AND BUDGET PROCESS FOR LGA	Heads of Department, following a participatory planning process from the grassroots level to the District level, submit proposal of the projects and estimates of the costs for delivery of services to the relevant Council Committee meetings in which stakeholders and the Civil Society Organizations operating in the council’s area of jurisdiction should participate.
S. 59 <i>Process of approving the plan and the budget by Full Council:</i>	The Council Director is required to publicize widely the date of the meeting of the Council that shall approve the plan and the budget in order to facilitate attendance to those who want to listen to the intentions and targets of the Council for the following year. This will provide transparency, accountability and ownership of the Council plan and budget.
s. 60 Reports to Stakeholders	Copies of the plan and budget that have been approved by the Council should be sent to: Regional Administrative Secretariat (RAS), District Commissioner (DC) and major stakeholders at the regional/Council levels such as NGOs, CBOs etc.
s. 61 <i>Publicising the plan and budget</i>	The approved plan and budget be posted at public places of the Council offices and extracts of the plan and budget should be posted in public places at the Wards, Villages and Mitaa.

Section No.	Details
S. 69 <i>About PlanRep:</i>	PMO-RALG will work closely with Central and sector ministry reporting systems in order to harmonize information and consistency with the PlanRep.
Reference: Policy paper on Local Government Reform (1998)	
	Local Government Authorities will be transparent and accountable to the people. This will be the basis for justifying their autonomy from undue Central Government interference.

Overall the government intention to improve transparency through the guidelines is clear and positive. MTP guidelines are a clear directive to the LGAs to share plan and budgets within the government system itself especially the district and regional administrative system. Emphasis is also placed on sharing information with non-governmental organisations/agencies. The MTP encourages the use of the public notice board whereby summarised plans and information should be posted.

2.5 The Procurement Act and Regulations

The Procurement Act and regulations govern the procurement of goods and services in the public service including in Local Governments. These laws and regulations create an environment in which the procurement of goods and services is performed in a transparent way in order to encourage accountability, efficiency and effectiveness in the use of public funds.

Furthermore, the Act and regulations encourage the use of tender boards for purposes of approving procurement transactions and the formation of Procurement Management Units in the public entities responsible for checking and ensuring that the laid down procedures are followed. In addition to the tender boards, the law establishes a regulatory agency – Public Procurement Regulatory Agency (PPRA) whose main tasks are to regulate, monitor and report on procurement activities in the public sector. The Acts and regulations have minimized discretionary procurement by officers in the public entities, which in the past was a source of poor governance and weak transparency. In the cases in which procurement is authorized by senior officers of a government institution within their allowed thresholds further endorsement from some members of the tender board is still mandatory.

Another major development through the Act is the removal of the Chief Executive Officer from being the chairperson of the tender board. Further transparency is encouraged through advertisement of tender invitations. Specific sections in these laws and regulations, which have a direct bearing on transparency, are presented in Table 3.

Table 3: Sections in Procurement Law having a bearing on transparency

Section No.	Details
	Transparency and fairness (Regulations on Goods and Works)

11	(1) Procuring entities and tender boards shall maintain adequate written records of all procurement or disposal proceedings in which they are involved, including any procurement conducted other than by competitive tendering. Such records shall show which suppliers, contractors, service providers or buyers responded to advertisements or were approached to tender, who was chosen, and the reasons. (2) A procuring entity shall ensure that payments due to suppliers, contractors, service providers or due to the procuring entity by the buyer of a public asset are made properly and promptly in accordance with the terms of each procurement or disposal contract entered into, so as to maintain the credibility and creditworthiness of a public authority and the procuring entity shall ensure that commitments are recorded against voted funds before any contract is signed.
Public notice of procurement or disposal contract awards and completion	
21	(1) Where an award of contract is made, the secretary to the tender board shall notify the Authority stating who has been awarded the contract, the contract amount and the date when the award was made. (2) After completion of contract, the accounting officer or chief executive officer of the procuring entity shall notify the Authority, the name of the supplier, contractor, service provider, or buyer who executed the contract, the original contract period, the final contract period, original approved contract sum and the final contract amount paid to the supplier, contractor or service provider, or paid by the asset buyer to the disposing entity. (3) The Authority shall publish in the <i>Gazette</i>, local newspapers of wide circulation in United Republic of Tanzania, and in its journal and website the names of those who have been awarded the contract, the contract amount, the date when the award was made, contract period, and the final contract amount paid to the supplier, contractor, or service provider and the price at which the assets disposed of by tender have been sold. The limits in terms of amounts will tend to vary depending on Council decisions as laid down in the LG Financial Memorandum 1997. See also notes on procurement procedures below.
Invitation to tender and advertising	
80	(5) The approved tender notice shall be advertised by the procuring entity at least twice in one or more newspapers of national circulation and in the case of international tendering, a similar notice may be published in appropriate foreign or international publications or professional or trade journals which are likely to be seen by the greatest number of potential suppliers, contractors, service providers, or asset buyers. (6) A tender notice shall be published in sufficient time, to enable prospective tenderers to obtain tender documents, prepare and submit their responses before the deadline for receipt of tenders.

2.5.1 Procurement/tendering procedures in the LGAs

The procurement of works, goods, services and consultancies is governed by the new Public Procurement Act of 2004 and the related regulations. The Act requires under section 28 for each Local Government Authority to have a tender board for procurement of goods, services and works. The composition of Local Government Authority tender board and the method of appointment of the members, and the procedures to be followed by such a tender board, shall be prescribed in Regulations made pursuant to the provisions of section 65 of the Local Government (Finances) Act, 1982. Under the old Public Procurement Act 2001, the PORALG prepared Procurement Regulations 2003 for use by LGAs. In view of the enactment of the Procurement Act 2004, the old regulations need to be reviewed to be harmonised with the requirements of the new Act. The method of appointing members of the tender board and procedures to be followed are therefore yet to be determined.

The functions of a tender board, as laid out in section 30 (of Procurement Act 2004) shall include the following:

A Tender Board shall be responsible for -

- (a) Adjudication of recommendations from the Procurement Management Unit and award of contracts;
- (b) Review all applications for variations, addenda or amendments to ongoing contracts;
- (c) Approving tendering and contract documents;
- (d) Approving procurement and disposal by tender procedures;
- (e) Ensuring that best practices in relation to procurement and disposal by tender are strictly adhered to by procuring entities;
- (f) Ensure compliance with this Act; and
- (g) Liasing directly with the Authority on matters within its jurisdiction.

The current Procurement Act (2004) and Regulations (2005) both focus on improving transparency in the procurement of goods and services. The need for the whole cycle of procurement i.e. receiving tenders, evaluating tenders, selection of tenderers and approving tenders etc, to be really transparent.

3.0 LGRP – Assessment Manual for LGAs assessment criteria

Following changes in the financing arrangements for LGAs, as discussed above, a system for ensuring prudent utilization of funds has been developed. This system is the assessment exercise to be conducted annually by PMO-RALG.

3.1 Role of the LGA Annual Assessments in enhancing transparency

The minimum conditions which LGAs are required to meet in order to access the Capital Development Grants are meant to assess the functioning of the Council as required by law and other statutory requirements. The conditions are derived from laws, regulations and guidelines including the Local Government Acts of 1982, the Local Authority Financial Memorandum of 1997 and the Procurement Regulations of 2003. The minimum access conditions are designed to ensure safeguards for the utilization of grant funds as well as promote compliance with the basic statutory and regulatory requirements for Local Government operations.

The Local Government Reform Programme has included financial transparency in its assessment manual as one of the criteria against which Local Governments will be assessed annually under

the performance measures. LGAs will also be assessed on a number of issues on how they have performed after they have accessed grants. One criterion on which the LGAs will be assessed is transparency. According to the assessment manual, this will be assessed by looking at whether information is displayed on notice board, etc. These annual assessments represent the most effective way of encouraging transparency at the local level. A careful scrutiny of the aspects to be assessed shows that these aspects are well linked with planning and budgeting guidelines requirement on matters of transparency. The specific aspects assessed are:

1. The posting of Indicative Planning Figures (IPFs) for Lower Level Governments (LLGs) for the current financial year at the respective Higher Level Governments (HLG) headquarters and other public places.
2. The posting of approved projects of HLG for the current financial year at the HLG offices, LLG offices and other public places.
3. Communication to LLGs of information on projects to be implemented in their respective areas in the current financial year using Capital Development Grant (CDG) and Capacity Building Grant (CBG) from the Local Government Capital Development Grant (LGCDG) system.
4. Posting of summary annual budgets plans and audited accounts on public notice board at the LGA offices.
5. Timely submission of quarterly financial and fiscal progress report for the previous financial year.

3.2 Other laws affecting transparency³

There exist some laws in Tanzania, which have a negative effect on transparency generally. These laws constitute legal barriers to transparency as they are considered in the Country Financial Accountability Assessment (CFAA) to make it impossible or difficult to access information on public sector financial management: These laws are:

1. National Security Act No.3 of 1970 expressly prohibits disclosure of broad and vaguely defined categories of Government held information. This is to say the Act is not specific in terms of which information should be withheld and by being unspecific; it can be used to withhold a large amount of information that would otherwise be accessible to citizens. It is perceived that some public information could be shrouded in secrecy through the application of this law.
2. The Newspaper Act of 1976, limits acceptable criticisms to the persons who hold public offices and are supposed to be open to close scrutiny. The Government also controls dissemination of information in various forms of media through the defense of the public interest norm.
3. Civil Service Regulations, Circulars and Standing Orders. These restrict officials to reveal information because of criteria being applied for the classification of information in the public sector. This may lead to unnecessary or even intentional practice of ‘foot

³ These are discussed in the Country Financial Accountability Assessment (CFAA) document prepared by the Ministry of Finance (MOF).

dragging’ by officials who are in doubt about their right or duty to provide information, which is supposed to be for public consumption.

4. The Broadcasting Services Act No. 6 of 1993, inter alia provides for the establishment of Tanzania Broadcasting Commission, which has the mandate to attach conditions to licenses. Example, public broadcasters are restricted to cover geographical Local of about 25% of the country. This denies citizens an equal right to access information (the 25% is Subject to confirmation).

Conclusion

In practice, the involvement of NGOs and other Civil Society Organisations in Social accountability Monitoring of financial and other resources use and expenditures in Tanzania has been limited, though beginning to evolve. Sundet (2004) has observed that a growing number of organisations are adopting approaches that build on surveys and data-collection and dissemination. Action Aid is one such organisation, which in collaboration with the Institute of Democracy for South Africa (IDASA) convened a training workshop on budget analysis for a large number of Tanzania NGOs. A number of organisations have recently carried monitoring in the form of expenditure tracking studies (PETS) including: a coalition of CSOs through the Tanzania Education Network (TEN/MET), HakiKazi Catalyst, Tanzania coalition on Debt and Development (TCDD), Kiteto Civil Society Organisation on Poverty Reduction (KCSPR), ANGOZA in Zanzibar (supported by UNDP). Other initiatives in the offing are those by Action Aid in Zanzibar and the Community Score Cards to be used to facilitate community evaluation of projects under the Tanzania Social Action Fund (TASAF).

Civil Society initiatives such as the ones outlined above fulfil a number of functions. They enable at a local level individuals and user groups at community level to provide feedback and exercise their voice vis-à-vis Central and Local Government and service providers. At national level, these initiatives also provide Civil Society Organisations with information to guide their advocacy initiatives. Both Central and Local Governments can also benefit from such initiatives: they strengthen the capacity of oversight and consolidating community support of such programmes.