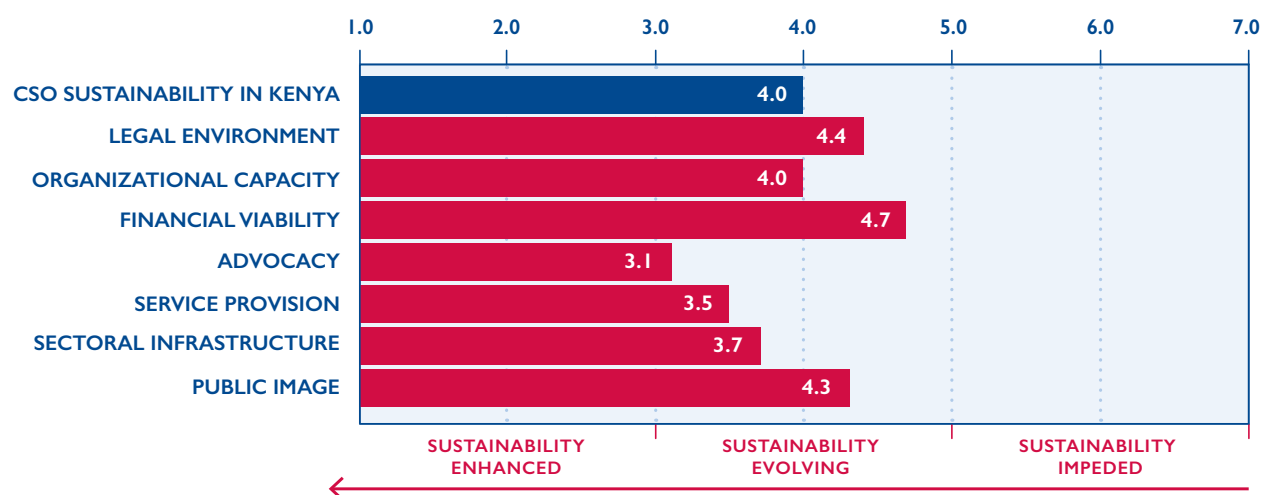


KENYA

Capital: Nairobi
Population: 47,615,739
GDP per capita (PPP): \$3,500
Human Development Index: Medium (0.590)
Freedom in the World: Partly Free (51/100)

CSO SUSTAINABILITY: 4.0



Tense general elections accompanied by significant civil unrest marked the year 2017 in Kenya. Following polling in August, the Independent Electoral and Boundaries Commission (IEBC) announced that the incumbent president, Uhuru Kenyatta, had won a second term. The opposition candidate, Raila Odinga, alleged fraud and other major violations in the electoral process and filed suit with the Supreme Court to contest the election results. Violent pro-opposition demonstrations erupted in Kisumu, Mombasa, and other opposition strongholds, and at least sixty-seven people were killed, according to Human Rights Watch. The court nullified the vote, and new elections were scheduled for October, in which Odinga declined to participate, pointing out that the IEBC had yet to reform the voting system. Kenyatta was again declared winner and was sworn in as president on November 28.

During the election period, CSOs engaged in voter education, election monitoring, and initiatives to maintain peace. Their activities focused on both national and county-level elections. New activist groups emerged that used social media effectively to mobilize the public. Overall, CSOs adopted a more confrontational approach than during past elections to holding the IEBC and the government to account. The government responded with overt hostility and increased its harassment and intimidation of CSOs during the year. Al-Shabaab attacks in Lamu and North Eastern Province in 2017 contributed to a general climate of tension and unrest, and the government closely scrutinized CSOs' financial transactions in an effort to curb financing for terrorism. Kenya's economy slowed down in 2017. The country's prolonged drought escalated food insecurity and strained hydropower resources, causing energy prices to shoot up. Business activity was subdued as credit became tighter and prolonged uncertainty surrounded the elections. Inflation reached 10 percent, its highest point in five years.

For CSOs the year was difficult, and overall CSO sustainability declined. The legal environment deteriorated significantly as the government responded vigorously to CSOs' involvement in the elections. CSOs' service provision and sectoral infrastructure were weaker because of inadequate funding, and their public image suffered as they became caught up in the political tensions dividing the country. However, apart from the elections, advocacy CSOs worked effectively with the government, especially on the county level, and their advocacy efforts improved.

The sector's organizational capacity was stable. Although the funding environment remained poor and forced many CSOs to deviate from their mandates in the search for funding, CSOs' financial viability was also unchanged.

According to a statement in the 2016 auditor general's report, there were more than 10,000 registered non-governmental organizations (NGOs), a distinct legal form, in all of Kenya's forty-seven counties in 2016. CSOs may also register as societies or companies limited by guarantee. More recent or extensive information about the overall number of CSOs is not available.

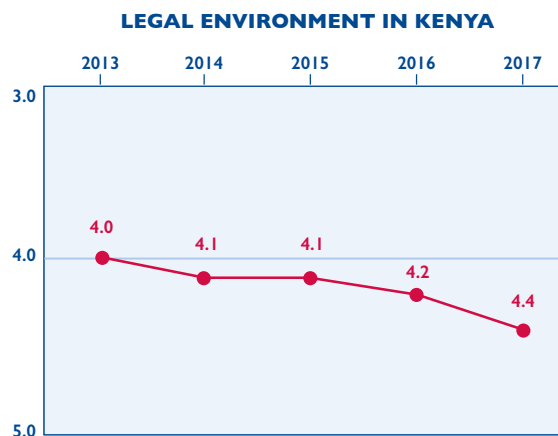
LEGAL ENVIRONMENT: 4.4

In 2017 the legal environment for CSOs worsened significantly. Negative profiling and state harassment of CSOs increased, especially during the elections. The government was particularly harsh in dealing with organizations engaged in electoral governance and civic voter education or that it viewed as pro-opposition if they expressed concerns about the way in which the elections were conducted.

In 2017 CSOs continued to register mainly under the NGO Coordination Act of 1990, Societies Act of 2012, or Companies Act of 2015. CSOs may also register as other forms of organizations. For example, in 2017 some groups found it preferable to register as community-based organizations (CBOs) with the Ministry of East African Community, Labor, and Social Protection, since such organizations do not need to provide the government with a list of members and are not required to prepare annual reports. Several groups based in Nairobi registered as county-level residential associations under the Nairobi City County Community and Neighborhood Association Engagement Act of 2016. In general, however, most organizations register as NGOs since they are unaware of other registration possibilities. CSOs not registered as NGOs are still subject to scrutiny and harassment by the NGO Coordination Board, the state body responsible for regulating organizations registered as NGOs. In 2017, with the elections approaching, the government more closely scrutinized CSOs seeking to register. The registration of organizations perceived as troublesome or as promoting Islamic radicalization sometimes took much longer than that of other organizations.

In 2017 little progress was made on implementing the Public Benefit Organizations (PBO) Act, which was signed into law in 2013. The act has never been implemented, because the government has not issued a date for its commencement, despite two court orders ordering it to do so. The law would create a more enabling legal environment for NGOs by encouraging them to maintain high standards of governance and management through effective self-regulation, the establishment of an independent regulator, a more transparent registration process, and required government support to NGOs in various ways.

A number of CSOs continued to experience harassment after the elections. For example, the Kenya Power and Lighting Company Limited, in which the government is the majority shareholder, disconnected electricity to the Katiba Institute, thereby ensuring that the organization was unable to meet the deadline for filing a petition challenging the presidential election results. According to a 2017 report on the elections by the Carnegie Endowment for International Peace, security forces raided the offices of the Kenya Human Rights Commission (KHRC), which fosters human rights and democratic values, and AfricoG, which monitors governance and public ethics. The government accused the organizations of defaulting on tax remittances. The NGO Board accused two other organizations contesting the elections, Kura Yangu Sauti Yangu and We the People, of having illegal bank accounts and attempted to ban their operations.



After the Supreme Court nullified the presidential election results, the Ministry of Foreign Affairs accused the International Development Law Organization (IDLO), an intergovernmental organization that promotes the rule of law through constitutional and judicial reform, of exercising undue influence over the judiciary. The ministry suspended its host country agreement with IDLO and lobbied fourteen countries to cut ties with the organization. However, IDLO continued to operate in Kenya during the year. In addition, the government continued to scrutinize CSOs' financial transactions, mainly in an effort to curb the financing of terrorist-related activities in the face of ongoing Al-Shabaab attacks in North Eastern Province and Lamu County. CSOs were not directly targeted as a result of the government's anti-terrorist security operations.

CSOs may apply for tax exemptions by filing applications with the cabinet secretary for National Treasury through the NGO Board. However, this process requires them to open their financial records to a high level of scrutiny, which entails a heavy administrative burden and therefore deters many organizations. CSOs working in humanitarian areas such as HIV/AIDS, malaria, tuberculosis, and maternal and children's health are often able to obtain tax exemptions on imports of medicine and equipment related to their work. Donor organizations are usually granted exemptions on duties for medications, and CSOs working in the agricultural sector sometimes also obtain tax exemptions.

CSOs are able to seek legal redress in court, but most organizations lack legal capacity and do not have sufficient funding to hire lawyers. Some lawyers offer pro bono services. For example, Trust Law, a program of the Thomas Reuters Foundation, provided CSOs with free legal support about registration and human resources in 2017. Lawyers are usually careful about taking up CSO cases because of the high reputational risk to which they may be exposed.

ORGANIZATIONAL CAPACITY: 4.0

CSOs' organizational capacity was unchanged in 2017. Constituency building improved as like-minded organizations established networks and coalitions, at times with the help of donors, to identify beneficiaries for their services and map out the government agencies responsible for relevant issues. For example, the Institute for Social Accountability (TISA) worked with residents' associations in Nairobi to mobilize citizens to undertake social accountability initiatives on environmental protection and management and budgeting. Community-Based Development Services partnered with the Constitution and Reform Education Consortium to raise the awareness of CBOs in Embu County of the PBO Act and the ways in which compliance with it could promote high standards of organizational governance, transparency, and accountability.

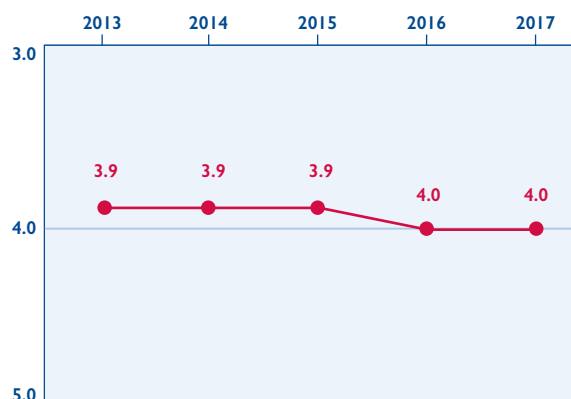
Established and better-organized CSOs have strategic plans defining organizational goals, missions, and objectives. However, realizing the plans can be challenging because of continuing changes in donors' priorities and funding levels. Most grants are for short-term, project-oriented work, which prevents many organizations from focusing on their institutional goals and development. In addition, in 2017 many CSOs felt pressured to undertake election-related activities, which were relatively well funded but pushed CSOs away from strategies involving other thematic areas. Some CSOs deviated from their original missions to compete for funding for non-election-related activities of interest to donors. For example, the Africa Policy Research Institute (APRI) expanded its focus to include county revenue enhancement, since little funding was available for trade issues, traditionally its main area of activity.

Although donors increasingly emphasize monitoring and evaluation as critical project components, many CSOs do not regard them as important undertakings. Results-based planning is particularly challenging for organizations engaged in policy work, since their projects are tied to policy makers' decisions and do not always manifest direct results. It is also often difficult to attribute policy-related results to the work of a single CSO, since many organizations focus on the same issues at the same time.

Internal governance structures exist in writing, but in many organizations board members do not have time to provide advice. Some board members face conflict-of-interest situations by owning consultancy firms that compete for funding with the CSOs on whose boards they sit. CSOs often have human resource and procurement manuals, but they may not adhere to them.

Staffing in CSOs is directly tied to funding. Some organizations find it difficult to maintain quality staff, because they must hire employees on a short-term basis, which leads to high turnover. Some CSOs keep staff on contract and pay them on a quarterly basis, which allows them to circumvent labor laws requiring that they hire persons working on contracts on a full-time basis after three months. Other organizations believe that so many people are desperate for jobs that they can simply replace their paid staff with lower-paid interns and volunteers. However, once they have joined organizations, many volunteers realize that their remuneration is not commensurate with the work they are expected to perform. The internal politics of leadership succession is also a frequent challenge, especially in organizations suffering from founder syndrome. Some individuals have obtained leadership positions based on friendships, even though they may not be well suited for the job.

ORGANIZATIONAL CAPACITY IN KENYA



CSOs' digital capacities improved in 2017, as evidenced in their increased reliance on social media and web-based information dissemination. Many policy organizations used the Internet, especially social media, to communicate about their work. Service-providing organizations also used social media platforms, particularly Facebook and Twitter, to disseminate information about their services and engage with target audiences. Some donors provide CSOs with laptops to implement projects, but the equipment usually remains donors' property and must be returned to them when the projects end.

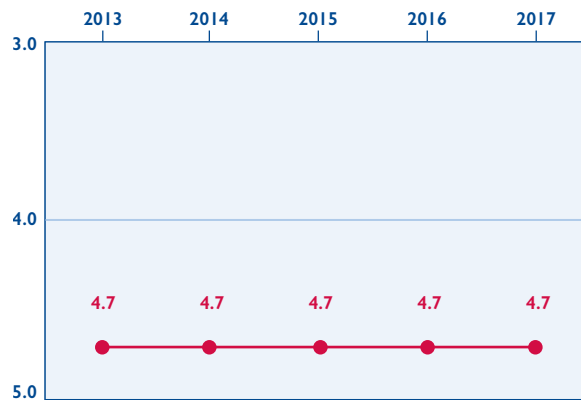
FINANCIAL VIABILITY: 4.7

CSOs' funding difficulties persisted in 2017. Financial support for most CSOs came from the same foreign donors as in 2016, including USAID, Danish International Development Agency (DANIDA), United Kingdom's Department for International Development (DFID), and the Embassy of Sweden. In recent years these donors have supported many projects related to devolution, and there continued to be substantial funding for county-level activities in 2017. In addition, since 2017 was an election year, considerable funding was available for election related-activities, such as voter education. Most CSOs were able to obtain only short-term funding, which usually lasts about one year. Longer-term funding was difficult to secure, although some donors, including Diakonia and DFID, continued to support their established partners' projects at the county level.

Philanthropic institutions and local giving provide a small but growing portion of financial support to CSOs. The Yetu Initiative, a joint project of the Aga Khan Foundation and USAID, has helped develop local philanthropy in Kenya, including by partnering with a local enterprise to offer an online platform for CSOs to raise funds. Yetu supported launch campaigns on the platform by twenty-three CSOs in 2017. By September these campaigns had resulted in more than 4,500 contributions and had leveraged more than \$720,000 in online giving and documented offline giving and in-kind contributions. Funding from corporations such as Safaricom was available for CSOs working in water and education. Organizations addressing urgent community needs were able to access drugs for cancer treatment from multinational companies. CSOs offering other types of health services obtained donations from pharmaceutical companies. A few organizations, including the Kenya Community Development Foundation, were able to raise funds from both individuals and corporate donors in 2017.

Parliamentary funds to combat drug abuse were available to CSOs through the National Authority for the Campaign Against Alcohol and Drug Abuse. The National Government Affirmative Fund, which focuses on public education, treatment, and rehabilitation, funded the Asumbi Treatment and Rehabilitation Center in Karen and Eden Village Treatment and Rehabilitation Center in Nairobi, which operated projects in community outreach, applied research, policy and advocacy, and life skills for youth and children.

FINANCIAL VIABILITY IN KENYA



registered under the NGO Act must submit annual financial statements to the NGO Board. In response to donor requests, many organizations, including IEA, TI, KHRC, Institute of Public Finance, ActionAid Kenya, and Oxfam International, are developing more rigorous financial management systems and adhering more conscientiously to procurement procedures and financial reporting requirements.

With overall donor funding scarce, organizations sought other ways to raise resources. Pambazuka News targeted membership fees, although they were difficult to collect as members increasingly questioned the benefits of membership. The Kenya Alliance of Residents Association charged both members and non-members to attend its forums and roundtables. Other CSOs explored new and innovative ways of raising additional resources. For example, the Institute of Economic Affairs (IEA) pursued a business model focused on consultancies, and EcoNews Africa adopted a strategy of relying on service contracts.

CSOs are legally required to hire audit firms to undertake independent financial audits. Organizations

ADVOCACY 3.1

Although the relationship between CSOs and the national government was tense in 2017, overall CSO advocacy improved in areas unrelated to the elections, such as health and education. As the process of county-level government decision making improved in 2017, the lines of communication between the government and CSOs were also, on average, more effective. Moreover, CSOs working on county-level policy issues became more professional in their approach and had a better understanding of the technical aspects of policy formulation and dialogue. For example, CSOs in Elgeyo Marakwet County, which was selected to take part in the Open Government Partnership (OGP) in 2016, engaged with the county government more easily after a county complaints and compliments committee composed of senior government officials and CSO representatives was established in 2017. TISA competently represented CSOs in the Nairobi County Budget and Economic Forum, which discusses the county budget and other economic issues. IEA, Center for Transformational Leadership, and Center for Enhancing Democracy and Good Governance developed a citizen report card on service delivery in youth polytechnic schools in Nakuru County. They shared their findings and policy recommendations with government officials, who took up a number of the recommendations. Transparency International (TI) Kenya continued to participate in the budgeting process at the county level. CSO-government relations tend to be largely informal.

Several CSO advocacy efforts focused on the elections in 2017. The former chairman of the Law Society of Kenya sued the government for publicizing its achievements under the hashtags #GoKDelivers and #JubileeDelivers, arguing that the government misused public resources to campaign for the Jubilee Party. This effort resulted in a permanent injunction on advertising by the government during the election period. The Katiba Institute litigated effectively to have sections of the Elections Act and County Governments Act, which set stringent requirements on the recall of members of parliament and county assemblies, declared unconstitutional. The Katiba Institute also filed a related case to learn the number and cost of the government's advertisements, but the case was unsuccessful. Kura Yangu Sauti Yangu organized street demonstrations to petition the director of public prosecution to investigate the improper conduct of IEBC officials, and TI organized an integrity walk against corruption.

The Wanjiku Revolution movement castigated the police for bias in dealing with election-related security issues and campaigned against police brutality, corruption, and electoral injustice on social media. Numerous bloggers took to social media to criticize the government and the Jubilee Party on election-related matters, which led to the arrest or harassment of several individuals.

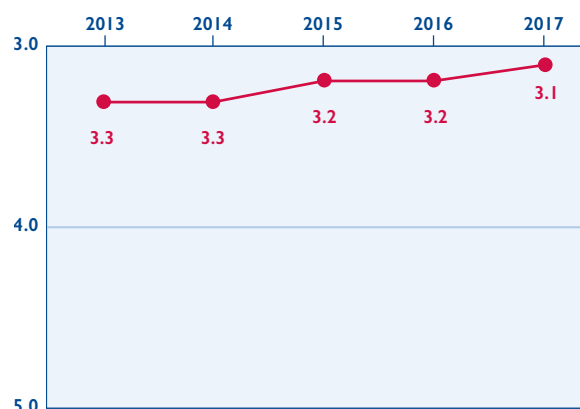
In other advocacy activity in 2017, the Grassroots Development Initiatives Foundation—Kenya (GRADIF—K) implemented projects to promote citizens' engagement in community development projects and the management of public expenditures in Central, Eastern, Rift Valley, and Coast regions. Oxfam International engaged in research and advocacy to strengthen county governments' own-source revenue enhancement. The initiative included a strong communications component involving state and non-state actors, but progress in building effective strategies for revenue enhancement was slow. TISA and the Center for Enhancing Democracy and Good Governance filed a suit contesting the legality of the Constituency Development Fund, a public fund meant to support grassroots and community development. They argued that the way in which the fund is administered digresses from the principles of public finance, division of revenue, and division of functions of national and county governments. The appeals court threw out the case on a technicality, but in January 2018 it was taken up by the Supreme Court. Coal ni Sumu campaigned against the government's decision to establish a coal plant in Lamu under the slogan #deCOALonize Kenya.

Many policy organizations, including TI, IEA, Kenya Community Development Foundation, and Youth Agenda, used social media to implement their advocacy work. For example, TI developed the "Action For Transparency" or A4T mobile app to enable users to report the mismanagement of funds in selected primary schools and health institutions in Nairobi. In 2017 TI recorded 609 downloads of the app and eighty-one cases reported through it. IEA's blog "How TTI-Supported Work in Kenya May Trigger Commitment to Open Government at Sub-National Level?" recorded more than 11,000 hits in the year after its posting in September 2017.

Although the donor community emphasizes the importance of lobbying, CSOs remain uncertain about what it means and are wary of using the word. Nevertheless, several CSOs engaged in effective lobbying in 2017. For example, the Institute for Law and Environmental Governance (ILEG) worked on health legislation in Baringo and Nairobi counties, and AfricoG partnered with TI to advocate successfully for the Public Audit Act to apply to the military.

Advocacy for the reform of laws affecting CSOs remained a challenge in 2017. The International Commission of Jurists (ICJ)—Kenya Section continued to advocate for implementation of the PBO Act, but the government did not gazette the commencement of the act, as ordered by the High Court in 2016 and 2017. During the elections CSOs met with presidential candidates, who signed pledges promising to pursue commencement of the act.

ADVOCACY IN KENYA



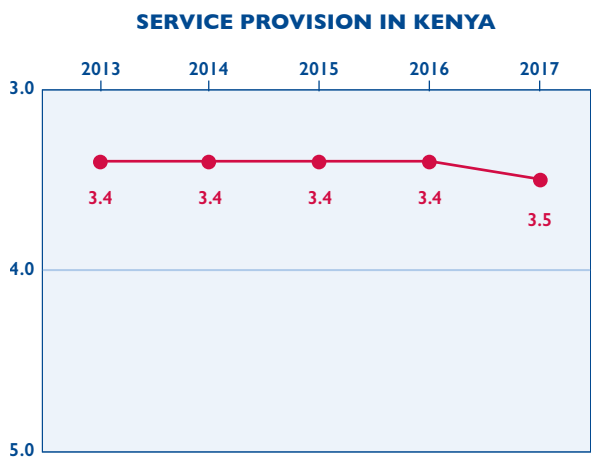
SERVICE PROVISION: 3.5

Service provision by CSOs declined in 2017, mainly because donors shifted their already limited funding to election-related activities. The CSO service-providing sector is generally diversified, with areas of focus ranging from health and development to trade, governance, and climate change. However, during the election period, CSOs such as the Center for Human Rights and Civic Education in Mwingi County and Redo Kenya in Bungoma County engaged in more civic and voter education projects than usual, while IDLO provided technical assistance to develop the capacity of the judiciary to improve access to justice in areas such as electoral dispute resolution and gender issues. Donors also emphasized projects involving public finance in 2017, such as budget monitoring analysis. In addition, international CSOs such as ACTED, Oxfam International, Concern Worldwide, and Care International provided support to drought-affected communities in northern Kenya, and ActionAid Kenya operated legal aid clinics offering an array of legal services to residents of informal settlements in Nairobi.

Much of the work undertaken by CSOs in 2017 responded to community needs. For example, county-based CSOs undertook social accountability initiatives in partnership with members of local communities.

As they developed community scorecards and social audits, CSOs helped local communities identify their needs, which community members then expressed in meetings with public service providers and policy makers to improve service delivery. One such effort took place in Junda Mombasa County, where Kwacha Afrika helped communities exact greater accountability in the provision of water services through the development of community scorecards. Redo Kenya implemented projects to mobilize communities in Bungoma County, so they could participate in county budgeting processes.

Some CSO programs and activities target specific audiences, but CSOs generally do not discriminate regarding the recipients of their services. In 2017 ILEG, for instance, distributed publications and offered free training on



climate-related activities to opinion leaders in Kwale County. These leaders were then expected to train others in their communities. Other CSOs also provided free training to the public on devolution, participation in budgeting, and social accountability, although the provision of these services was somewhat hampered by the election environment. The audience for reports on international trade developed by APRI was limited by funding constraints.

Most CSOs do not engage in cost recovery, because donors fund their projects. Government recognition of CSOs' work was mixed in 2017. County governments acknowledged the role of CSOs in mobilizing local communities to participate in planning and budgeting forums. Their appreciation of CSOs' efforts to improve

service delivery and resource management led to a growing number of partnerships and better access by CSOs to government documents. However, the degree of appreciation for CSOs' work varied from county to county. While Elgeyo Marakwet County was receptive to CSOs and even joined the OGP, Uasin Gishu County was less appreciative of CSOs' work unless the organizations were already known or locally based. At the national level, the government showed its appreciation for the information-generating role of IEA by incorporating the organization into the national trade negotiations committee.

SECTORAL INFRASTRUCTURE: 3.7

The infrastructure supporting CSOs declined in 2017, largely because donors' focus on the general elections pushed CSOs away from sharing information in their traditional areas of expertise. For example, IEA produced information related to the elections rather than budgeting, its usual main area of research.

In 2017 organizations shared information both through resource centers and one on one. Most new information focused on the elections. Resource centers such as the Uraia Center provided CSOs with materials from IEA, including copies of the constitution, laws on devolution, and reports on public participation in devolved governance. Because of funding shifts, the Consumer Unity Trust Society's Nairobi Resource Center disseminated less information on trade than in previous years and focused instead on smallholder farming activities and climate change.

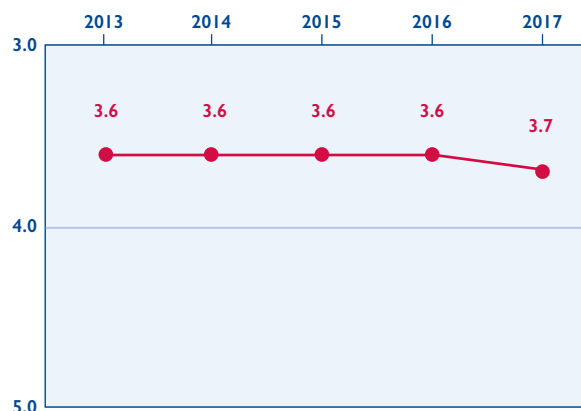
A number of intermediary support organizations supported CSOs in 2017. Uraia Trust used funding from DFID, USAID, Embassy of Netherlands, Embassy of Finland, and other donors to support other CSOs' projects on accountability, gender mainstreaming, and civic education. Diakonia and Forum Syd provided funding to local partners, such as KHRC, Inuka Kenya Trust, and Christian Impact Mission, for projects on governance, health, water, education, and sanitation. With funding from a consortium of funders, including USAID, DANIDA, and the Bill and Melinda Gates Foundation, the Africa Economic Research Consortium provided financial support to research organizations for a national dialogue on economic issues.

Several CSOs continued to provide training to Kenyan CSOs in 2017. The Yetu Initiative commenced a community philanthropy “bootcamp” program that strengthened innovative skills in engaging with local philanthropies through coaching, mentoring, and peer learning. Fifteen organizations took part in the program in 2017, including Youth Banner, Federation of Deaf Women, and Nairobits Trust. Training materials are usually available only in English.

Coalitions continued to be prominent, and a number of new coalitions took shape in 2017 to offer their members a common voice for greater impact. They included the CSO Reference Group, Kura Yangu Sauti Yangu, Parliamentary Initiative Network, Devolution Forum, Non-Communicable Disease Alliance, and Police Reform Working Group. CSOs also worked with other like-minded entities such as CBOs to realize savings on projects through joint activities. For example, the international CSO ACORD cooperated with the Peace and Rights Program of the Free Pentecostal Fellowship in Kenya to launch campaigns with CSOs in Bungoma County aimed at changing voter attitudes towards women’s leadership.

Intersectoral partnerships also continued to be formed in 2017. For example, CSOs collaborated with county governments on social accountability initiatives, such as the community scorecard developed by Rural Women Peace Link in Uasin Gishu County. The Kenya Data Network partnered with the National Transport Safety Authority on a campaign to promote safe driving. Organizations undertaking election-related work, such as the Matatu Owners Association, worked with the media to serve as a general source of public information. Internews offered training to journalists on health issues, and the Kenya Correspondents Association trained correspondents on in-depth, issue-based journalism and the handling of threats to journalists during the elections. CSO partnerships with the private sector included TISA’s cooperation with Safaricom on a text messaging service for its project Jihusishe, which mobilizes citizens to participate in governance processes. IEA worked with the Nairobi Securities Exchange on a study of diversity management and pluralism in Kenya’s private sector. CSOs and private sector representatives also engaged in discussions aimed at finding a common voice on taxation.

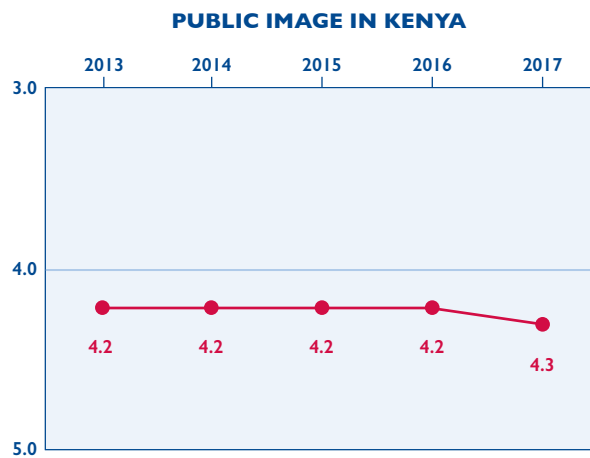
SECTORAL INFRASTRUCTURE IN KENYA



PUBLIC IMAGE: 4.3

The public image of CSOs declined in 2017 because of the partisan orientation of the media. During the election period, the media invited CSO representatives to talk about issues related to governance, accountability, and electoral justice. However, CSO participation became more problematic as the political temperature rose. Some panelists who worked for CSOs were seen as lacking objectivity. For example, NTV’s AM Live show hosted experts from civil society, but their opinions about electoral justice were as diverse as their number. At the same time, some media were themselves politicized or politically biased and tended to work only with CSOs that shared their political views. For example, KTN and NTV tended to host CSO representatives sharing the same political leaning. Media coverage of street protests led by CSOs was minimal, particularly on television, since the government threatened to close stations that covered protests and opposition rallies.

Public perceptions of CSOs usually depended on political orientation. The public saw CSOs that implemented governance and elections-related programs as either pro- or anti-government and reacted accordingly. For example, AfricoG, Katiba Institute, KHRC, and ICJ-Kenya Section were viewed as a anti-government, because they questioned the electoral process, while organizations that did not raise concerns, such as the Elections Observation Group, were generally viewed as pro-government.



Some CSOs that addressed issues of transparency and accountability in the elections, including the Katiba Institute, KHRC, and TI, were themselves perceived as transparent and accountable. Beneficiary communities had positive views of CSOs providing services in health, education, and water.

Government and business perceptions of CSOs in 2017 depended largely on whether their interests were seen as aligned. For example, the County of Nairobi viewed TISA as a partner following their cooperation on solid waste management, which is important to both the government and the business community. On the other hand, the executive branch viewed IDLO as anti-government because of its support for research

into the elections, although IDLO supported the judiciary with technical training and other capacity building. As in previous years, private-sector entities, such as the Kenya Private Sector Alliance and the Kenya Association of Manufacturers, viewed CSOs as partners, particularly if they advocated on issues of interest to business, such as taxation and the removal of trade barriers.

In a new development in 2017, CSOs effectively used community radio stations, such as Ghetto Radio and Radio Maisha, which broadcast in local languages, to educate voters and advocate for peace. They also used community radio stations that are not part of mainstream media to address other issues of public interest. For example, working with community radio stations, TISA disseminated information on its solid waste management initiatives to local audiences. With the support of the Yetu Initiative, several CSOs identified a strategic use for newspapers, television, and radio to engage with local audiences and worked with local media providers to implement community campaigns.

Since the elections were the main focus of CSOs in 2017, efforts to improve transparency and accountability and develop a code of ethics for the CSO sector were minimal during the year.