

WHO PROTECTS WHOM? REASSERTING SOVEREIGNTY IN THE FACE OF MISPLACED LOYALTY-A KENYAN CASE STUDY

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Abstract

*The recent case of the abduction of Bernard Kavuli, in which the victim said that the perpetrators introduced themselves as the people who were “protecting the government”, reveals a dangerous inversion of constitutional roles. In a democratic society governed by the rule of law, it is not the duty of citizens to protect the government but it is the government’s obligation to protect its citizens. The Constitution of Kenya, like many others, is founded on the principle that **all sovereign power belongs to the people**, and the government is merely a trustee of that power. When individuals justify unlawful acts in the name of defending the state, they not only act outside the law, but also defy the very foundations of constitutional democracy. This paper argues that such rhetoric represents a dangerous inversion of constitutional roles. Far from protecting the government, it is the duty of citizens to **question, challenge, and hold the government accountable**, to ensure that power is exercised within legal and moral limits. Reclaiming this understanding is critical to safeguarding democracy, justice, and the rule of law in Kenya and beyond.*

1. INTRODUCTION

In recent months, Kenya has witnessed a disturbing increase in the number of citizens being abducted and some their whereabouts still remain unknown. Among the most alarming cases was the abduction of Bernard Kavuli, a fourth-year journalism student. On December 22, 2024, Kavuli was seized by unknown men at a petrol station in Ngong town. He endured fifteen days of captivity, during which he was subjected to physical and psychological torture, including beatings and deprivation of food and water.²⁹⁴ What makes Kavuli's case particularly concerning is the justification provided by his captors. **They claimed they were “protecting the government”, asserting it was their duty to protect it.** This rationale not only challenges the

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²⁹⁴ Philip Muasya, ‘Bernard Kavuli: I was stripped, beaten severely and denied food’ (The Standard, 17 January 2025) <<https://www.standardmedia.co.ke/national/article/2001509754/>> accessed 10 April 2025.

principles of human rights and the rule of law but also reflects a profound misunderstanding of the constitutional order in a democratic society.

The problem with this is that when individuals believe that their duty is to protect the government rather than hold it accountable, then this means that the government officials can act without oversight. This opens doors for corruption, impunity and violation of rights because the people who should be holding the government accountable are now protecting the government. Protecting the government instead of the Constitution or the people's rights can lead to authoritarianism. Authoritarianism is a system of government that has been customarily linked with dictatorship, in contrast to democracy. It is a government based on obedience to authority, and opposes citizens demanding accountability from the authority in thought and action. Authoritarianism concentrates power in a leader or in a small elite not constitutionally accountable to the people.²⁹⁵ Kenya being a democratic state, sovereignty resides with the people, and the government is established to serve and protect its citizens.²⁹⁶ When individuals or entities claim to act unlawfully under the guise of protecting the government, they invert this foundational principle, posing a significant threat to democracy and constitutional governance. This article delves into the constitutional implications of such actions, emphasizing the imperative for citizens to hold the government accountable, rather than shield it from scrutiny. In doing so, it explores the rightful roles of both the state and the citizen, the dangers of reversing these roles, and the urgent need to restore public understanding of civic duty, constitutional supremacy, and the rule of law.

2. THE CONSTITUTIONAL ORDER: POWER BELONGS TO THE PEOPLE

2.1 The Social Contract theory

This theory was pioneered by political thinkers such as **Thomas Hobbes, John Locke, and Jean-Jacques Rousseau** who argue that governments are created **by the people to protect the people**. Social contract theory is a key theory used to explore questions about the relationship and obligations between citizens and their country's government.²⁹⁷ The Social Contract

²⁹⁵ Robert Bedeski, *Authoritarian System* (University of Victoria, Canada).

²⁹⁶ Ken Newton and Jan W van Deth, '2 – The Democratic State' in *Foundations of Comparative Politics* (3rd edn, Cambridge University Press 2016).

²⁹⁷ Musa El-thani Muhammad and Titus Utibe Monday, 'Social Contract Theories of Hobbes, Locke and Rousseau: An Extrapolation of Point of Harmony and Tensions, 125.

Theory posits that individuals voluntarily **surrender certain rights and freedoms in exchange for the protection** and benefits of living in a structured society, governed by a contract or agreement. This theory explores the legitimacy of state power and the obligations individuals have towards it, as well as the rights they retain under that contract.²⁹⁸ This was the initial agreement between the state and its citizens from the times of formation of the governments. The whole idea is that the people willingly submit to laws and institutions only to the extent that those structures protect their rights and uphold justice.

2.2 Constitutionalism and Democracy

From this theory came constitutionalism and democracy. Constitutionalism therefore naturally prescribes a system of government in which the government's powers are limited and democracy is government of the people by the people and for the people.²⁹⁹ Applying this to Kenya's constitutional framework, the government is not an entity to be "protected" from its citizens. Rather, it is a creation of the citizens, meant to act within defined limits for the public good. When individuals claim to commit unlawful acts like abduction and torture under the pretext of "protecting the government", they breach the very essence of the social contract. Instead of reinforcing the rule of law, they erode it. The moment individuals use force to silence criticism or shield institutions from scrutiny, they undermine the social contract and threaten democratic stability.

Kenya's 2010 Constitution embodies this principle. It enshrines democratic values, human dignity, and the rule of law. **Article 1** of the Constitution of Kenya states clearly that all sovereign power belongs to the people, and all state authority is delegated power.³⁰⁰ Further **Article 21(1)** states that

*"It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights."*³⁰¹

²⁹⁸ Trudo Lemmens and others, 'The Social Contract and Human Rights Bases for Promoting Access to Effective, Novel, High-Priced Medicines' (World Health Organization 2022) <<https://www.ncbi.nlm.nih.gov/books/NBK587891/>> accessed 10 April 2025.

²⁹⁹ Moses Adagbabiri, 'Constitutionalism and Democracy: A Critical Perspective' (2015) 5(12) *International Journal of Humanities and Social Science*, 108.

³⁰⁰ Constitution of Kenya, 2010, art 1.

³⁰¹ Constitution of Kenya, 2010, art 21(1).

Hence, the duty of the people to hold the government accountable. Therefore, the notion of individuals “protecting the government” is not just unlawful, it is profoundly undemocratic. Such a stance implies that the government exists as a self-preserving entity, entitled to shield itself from criticism or accountability.

3. THE DANGER OF INVERTED ROLES: WHEN CITIZENS “PROTECT THE GOVERNMENT”

When an unlawful action is done and a statement is made that the same was aimed at “protecting the government”, presents more than a legal or political problem. It exposes a **deep confusion** about the proper roles of citizens and government in a constitutional democracy. This reversal of roles poses a serious threat to the foundations of democracy, constitutionalism, and human rights. The greatest danger of this is that it can be weaponized to silence dissent and punish critics. When citizens assume the role of protecting state institutions by any means necessary, they risk legitimizing lawlessness and undermining the very rule of law they claim to defend. This mindset further enables a climate where criticism becomes treason, and dissent is branded as disloyalty. The government ceases to be accountable and instead becomes sacred, untouchable, and above scrutiny. The consequences of these are erosion of judicial independence, abuse of police powers, media censorship, and a fearful, silent citizenry.³⁰² The Kavuli case is a loud wake-up call to reinforce civic awareness and to reassert the rightful roles which are that the government is accountable to the people, and it is the people should safeguard the constitution and democracy.

4. THE ROLE OF THE CITIZENS: ACCOUNTABILITY OVER ALLEGIANCE

The responsibilities of citizens within democratic state are to promote democratic values, hold the government accountable, advocate for rights and freedoms, participate in election and engage in civic education.³⁰³ A cornerstone of democracy is accountability of elected officials and institutions and citizen ensure that there is accountability by monitoring government actions and polices and by questioning unethical and unconstitutional practices.³⁰⁴

³⁰² International Justice Mission, ‘Police Abuse of Power in Kenya – We Won’t Stop Until Police Are Protectors from Violence and Not Perpetrators of It’ < <https://www.ijm.org/news/> > accessed 13 April 2025.

³⁰³ Ank Michels, ‘Innovations in Democratic Governance – How Does Citizen Participation Contribute to a Better Democracy?’ (2011) 19(3-4) *International Review of Administrative Sciences*, 285.

³⁰⁴ Philippe C Schmitter, ‘Political Accountability in ‘Real-Existing’ Democracies: Meaning and Mechanisms’ (Istituto Universitario Europeo, January 2007).

Article 1 of the Constitution of Kenya states that all sovereign power belongs to the people.³⁰⁵ This shows that the people are the origin of all governmental power. Consequently, their **primary role is to oversee** how that power is exercised and to hold all public officers **accountable** for its use or abuse.³⁰⁶ This includes questioning public decisions, demanding transparency and seeking redress. These are not acts of rebellion but rather they are the very duties of democratic citizenship.

Kenya, like many democracies, are facing the urgent task of rebuilding civic awareness. Citizens must understand that their role is not to protect power but to question it, shape it, and limit it. National development, peace, and justice all flow from an empowered citizenry, not from unchecked government. Civic education should not be left to schools and textbooks alone. It must be a part of public discourse, media, law enforcement conduct, political rhetoric, and community leadership.³⁰⁷ Where citizens embrace accountability as a core democratic virtue, governments become better, fairer, and more responsible.

CONCLUSION.

Lord Acton famously warned that ***“power corrupts and absolute power corrupts absolutely”***. If this is the case, the question should be; does the same power which corrupts need protection or does it need oversight and limitations? Your guess is as good as mine, and if that is the case, then citizens should understand that they must be guardians of accountability, not agents of unchecked power.

³⁰⁵ Constitution of Kenya, 2010, art 1.

³⁰⁶ Jonathan Day, '14 Principles of Democracy' (12 April 2022) < <https://www.liberties.eu/en/stories/> > accessed 14 April 2025.

³⁰⁷ Jennings B, Gusmano MK, Kaebnick G, Neuhaus CP, and Solomon MZ, 'Recommendations for Better Civic Learning: Building and Rebuilding Democracy' (February 2021) 51(1) *The Hastings Center Report* S64.