



WHAT NEXT FOR KENYA'S LOCAL AUTHORITIES?

One of the major issues in governance in Kenya is demonstrated in the fact that citizens continue to demand the devolution of power and resources to local units. However, close scrutiny of the management and performance of existing local authorities shows that most local authorities in Kenya are not only poorly managed, but are also close to financial insolvency. The Institute of Economic Affairs held a public forum on the 27th July 2005 to discuss the public perception of local authorities, the reasons for their poor performance and the reform measures that are underway. The forum was addressed by *Mr. Augustine Odipo* (Chief Executive, Association of Local Government Authorities in Kenya), *Dr. Tom Wolf* (Researcher for Transparency International-Kenya), *Ms. Mabel Omari* and *Mr. Sam Mwaura* (Kenya Private Sector Alliance). The Point presents a synthesis of the discussion.

Introduction

While the central government in Kenya manages plans and develops policies in regard to the whole nation's affairs, local authorities tend to have jurisdiction limited to the city, municipal, county or town councils. Naturally therefore, their level of action is quite limited as compared to the central government. In spite of the limits of their action, most local authorities act as the avenues for implementing decisions formed by central government at the local level. However, a review of press reports and accurate surveys undertaken within Kenya have revealed that there is disillusionment with the performance, management and competence of local authorities in providing the services that they are mandated to provide.

It is clear that local authorities are not only failing to provide a satisfactory level of services but are also poorly managed and have departments that are among the most corrupt within the public sector in Kenya. A further indication of the growing dissatisfaction with the services provided by the existing local authorities is seen in the rise of residents associations which are prepared to resort either to court action or to campaigns aimed at withholding of the rates due to councils as a mechanism for compelling local authorities in Kenya to provide services on a regular basis. Against this background, it is important to make an assessment on the reasons for this all round poor performance of local authorities before appropriate proposals for reforms and improvements are made.

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This Bulletin has been published with funding from the Centre for International Private Enterprise (CIPE)

➤ *Evolution of local authorities*

The form of local government that existed before independence was replaced by a new structure with new powers and duties. This arrangement was drawn up by the Governor as the Local Government Regulations 1963 and incorporated in the Constitution of the Republic of Kenya of 1963. The regulations provided for municipal and county councils as the two types of local authorities. The role of local authorities now expanded beyond managing residents and maintenance of utilities, to providing primary education and public health services within properly defined places. These councils fell within the ambit of regional assemblies which in turn fell under the control of the Ministry of Local Government.

In 1964 the regional assemblies were abolished and local authorities fell directly under the Ministry of Local Government. It is noteworthy that the activities of the assemblies were transferred to local authorities without giving adequate thought and preparation to the implications. In 1978, the local government regulations were upgraded and published as the Local Government Act (Cap 265 of the Laws of Kenya). Since then, local authorities have not only been subject to the provisions of the statute but their numbers have risen substantially with the effect that there are presently 175 local authorities units within the country.

FUNCTIONS AND POWERS OF LOCAL AUTHORITIES

There are 4 types of local authorities and these are city, county, municipal, and town. These authorities are managed and run by councils and hence referred to as a city council or county council respectively. Each respective council is comprised of councillors elected during the national elections in addition to the councillors who are directly nominated by political parties on the basis of the proportion of their votes.

The creation of every new district makes it necessary for the creation of a new council and this condition is obviously responsible for the proliferation of the local authorities units. During the last decade, the executive branch of government created a high number of districts and thereby additional units of local authorities. Presently, there are 175 councils in Kenya comprised largely of county councils. In accordance with the Local Government Act, there

is only one city council and this is the City Council of Nairobi. However in common parlance, there is an assumption that Kisumu and Mombasa have the formal status of city councils.

The main role of local authorities is to plan and protect the well-being of its residents through the delivery of services defined in the statute. These roles can be broken down into the following components;

- ✍ Collection of revenues and the mobilization of resources
- ✍ Management and allocation of those resources
- ✍ Delivery of services such as waste management and water supply

➤ *Powers of Local Authorities*

The powers of local authorities can be classified as either permissive or mandatory and this is dependent on the discretion granted by the Minister for Local Government. Permissive powers are powers to carry out certain tasks or activities subject to the approval of the Minister for Local Government. On the other hand, the mandatory powers are duties that are expressly defined by the statute. For instance, part 10 of the Local Government Act defined mandatory powers to include the prohibition of the sale and movement of livestock with the object of preventing theft, control of the felling of timber and the prohibition of the wasteful destruction of trees.

It is evident that the structure and limits of these powers are important for an evaluation of the performance of local authorities throughout Kenya. This perspective is important because the Minister for Local government has considerable discretion in the management of local authorities due to the appointment of councillors on the one side, in addition to the appointment of key officers such as the county clerks and the town clerks. Thus the degree of independence and the autonomy of local authorities is an outstanding policy issue. This lack of autonomy sometimes causes conflict between the town clerks appointed by the Minister for Local Government and the councillors and mayors. In recent times, this conflict between the Ministry of Local Government and local authorities manifested itself when the Minister for Local Government clearly stated that he could exercise the option of dissolving the Nairobi City Council and replace it with a commission.

➤ *Structure of councils*

Irrespective of their designation, all councils have councillors that are elected through elections, nominated by political parties or appointed by the Minister for Local Government. From amongst these councillors, a mayor and a deputy are elected in accordance with the rules prescribed by the Electoral Commission of Kenya (ECK). Upon formal election, the mayor holds office for two years after which mayoral elections are held. It is clear from this prescription that within a single five year electoral cycle, a council would have at least three separate mayoral elections. Due to the comparatively short reign of most mayors and council chairmen, the incentives that drive their action tends to be based on securing re-election. This state of affairs is not the most suitable for the residents who would prefer that the actions of the mayors and council chairmen were based on longer term goals.

An elected councillors' term of office is equivalent to the electoral cycle of five years while that of a nominated and appointed councillors could be less as this is dependent on the discretion of the nominating party or the Minister for Local Government as the appointee. The combined effects of the frequent elections for mayors and council chairmen and the discretion granted to the nominees and appointees of councillors do affect the stability of the local authorities quite adversely.

SOURCES OF LOCAL AUTHORITY FINANCE

Financial management is an enduring problem for local authorities of all sizes. Not only is this problem related to the failure to account for all the revenue received from the central government on the one hand and the rates payers on the other, but they are often unable to efficiently collect all revenues that are due to them. Depending on the size of the local authority and the number of people to whom it renders services, a large proportion of the money generated by local authorities comes from the provision of water services, licensing fees and issuance of permits for developments of land. Other opportunities for generating revenue such as the collection of rates on agricultural produce or from the fees from natural reserves and game parks are available to select local authorities because these are dependent on the resource endowments of the regions in which they are situated.

Separate from the funds that local authorities may

raise from the provision of services or facilitation of economic activities, local authorities also receive substantial grants from the central government. These grants include the Local Authorities Transfer Fund (LATF), the Road Maintenance Levy Fund (RMLF) and the Contribution in Lieu of Rates (CILOR). The statutory provisions that facilitated the creation of the Local Authorities Transfer Fund was enacted in Parliament in 1998 to supplement the limited revenues that local governments were collecting. The fund is calculated at 5% of all national personal income tax and this implies that local authorities receive a sum that varies with the aggregate of income tax that is collected throughout the country.

In total, local government receipts include central government grants and revenues from the services that they provide. The grants from the central government also contribute significantly to the overall receipts of the local authorities. As an illustration, in the financial year 2000/01, the grants from the central government constituted 27% of the overall revenues and was maintained at 26% in the subsequent financial year. The Local Authorities Transfer Fund constitutes 98% of all the grant funds that local authorities receive from the local government. The implication here is that they are heavily dependent on the collection of income taxes by the central government.

Because most local authorities still rely on manual systems for collection and accounting for their revenues, it has been found that the proper accounting for revenues that are collected does not take place. While local authorities should be subjected to regular audits on the funds received from the central government before further disbursements are made, most of them are reluctant to undertake a full audit of their activities as is required by the Minister for Local Government.

➤ *Performance of Local Authorities*

It is evident from the roles outlined above, that local authorities are uniquely and strategically placed to act as a link between local and central government, between resources and needs, and between the governed and the governors. In spite of this unique placement, local authorities are evidently failing to competently meet public expectations. According to the Transparency International-Kenya Urban Corruption Survey on local authorities based in urban areas, water supply, health services and garbage collection are the services to which citizens

attach the highest priority. Unfortunately these are the same service areas in which the performance of local Authorities was rated the worst.

CHALLENGES TO PERFORMANCE

➤ *Weak institutional frameworks*

Although the role of local authorities has since been expanded, their scope of autonomy has not grown commensurately. This is reflected by provisions within the Local Government Act (Cap 265), which ensure that local authorities have limited autonomy and are subject to controls from the Minister for Local Government. While it has been suggested that the local authorities in Kenya do require more autonomy from the Minister for Local Government in order to improve their operations, the public reaction to the quality of the services and the pervasive corruption militate against wholesale amendment of the law to grant such autonomy. This is because in the absence of sound management and high calibre leadership, this increased autonomy will not necessarily result in improved performance.

➤ *Poor resource management*

It has been shown that local authorities are generally mandated to collect, mobilize, allocate and spend specific resources. To that extent, they automatically become stewards of such public resources. Given that there will always be competing needs for the resources that are available, local authorities must establish systems with high integrity to not only prevent their misuse but ensure that they are optimally utilized. This remains one of the most significant hurdles that local authorities face because the financial management systems have remained grossly inefficient for a long period of time. Another major challenge for local authorities in Kenya is their failure to generate and allocate resources on the basis of real priorities. This weakness in the efficient allocation of resources ties in with poor management of the revenues and manifests itself in the inability to maintain good quality of services such as water and regular collection of refuse.

It is more commonly heard that among the reasons for poor performance by local authorities is the fact that they have insufficient resources for the enormous tasks that they often have to undertake. Judged on the basis of their performance and the state of most local authorities, it emerges that the bigger problem is related to the management of resources. A breakdown of municipal council

current and capital expenditures from 2000/01-2004/05 shows that a cost such as labour takes up almost half (48%) of total expenditure. While the local authorities such as the Nairobi City Council admits that it collects insufficient revenues, it is instructive to note that there is a permanent dispute about the real number of workers employed by the council. Without doubt, this is a reflection of very poor human resource management by the institution.

➤ *Overlaps in local management*

An analysis of the reporting and oversight mechanisms to which local authorities are subjected reveals that there are multiple lines of reporting and accountability. For instance, there appears to be a parallel in management of local government where the provincial administration reports directly to the Office of the President, while local authorities on the other hand report to the Minister for Local Government. Within this set up, local authorities are in some instances expected to comply with provincial administration requirements in the formulation of their budgets. This arrangement necessarily makes it difficult for personnel, services users and taxpayers, to demand accountability from a single institution. In practice, this management overlap causes confusion and enables local authorities and the other institutions to escape accountability.

➤ *Political interference*

Performance of the local authorities in Kenya is not only affected by the lack of autonomy from the Minister for Local Government. The prescribed manner of enlisting councillors and personnel is prone to abuse. Since the Local Government Act (Cap 265) allows for the appointment of councillors by the president, oftentimes such councillors are reluctant to submit to the authority of the managers in the local authorities. In situations where the councillors are elected, experiences of political party influence also arise. This difficulty is often reflected in councils in which the political divisions are so sharp that councillors are permanently preoccupied with gaining immediate political advantage over their opponents. In some cases, personnel are hired without the consideration of their ability to perform the tasks at hand.

➤ *Poor capacity and decision making*

Councillors do not always formulate strategies or make decisions that improve the ability of the local authority to deliver services to the residents of the

areas for which they are responsible. This has been attributed to the lack of capacity, interest, incentive and motivation to do so. Additionally, decisions are sometimes made informally or casually hence it is very difficult for citizens to have a clear understanding of the standing procedures of service delivery.

➤ *High turnover of professionals*

Whereas local authorities throughout Kenya tend to have a large staff complement, they also experience a very high turnover of professionals and technical staff. This is due to lack of incentives, motivation and conflict between the Public Service Commission and local authorities. The high turnover of the most qualified professionals in local authorities is both a cause and a symptom of the degree of corruption and inefficiencies that they are faced with. Besides the failure to provide services to rates payers and residents of urban areas, the other characteristic of most local authorities is their recurrent failure to pay their workers promptly. Some council workers have had to resort to industrial action to ensure that they receive back wages. In this situation, the worker morale does not only suffer but the rates payers are unduly inconvenienced because service delivery is disrupted, delayed or under supplied.

MEASURES TO ADDRESS POOR PERFORMANCE

The concept behind the Local Authorities Service Delivery Action Plan (LASDAP) is to match all expenditure by local authorities to the needs of a local authority area. This is to avoid spending scarce resources on areas that are not of high priority. The process of planning under LASDAP is supposed to involve residents of the area on the presumption that residents as consumers and payers for the services can identify problem areas and suggest ways of improvement. However, for these expectations to be met, the Minister must decisively act on the constraints related to human resources and financial management as priority areas. In essence, the success of the Local Authority Service Delivery Action Plan (LASDAP) and the other funds is predicated on management reforms within the local authorities.

Across Kenya, neighbourhood or residential associations have emerged as an organised avenue

to voice concerns and agitate for change by local authorities. There are approximately 200 registered residential associations in Nairobi and they are engaged in improvement of security, roads, and the clearing of solid waste. A leading example is Karen-Langata Residents Association (commonly referred to as Karengata located in Nairobi province) which is heralded as the pioneer association that engages through dialogue, demands and litigation with the Nairobi City Council on matters that affect its members. Residents of these localities have chosen to take a stand against poor service delivery by their respective local authorities and in some cases solve their own problems.

While the rise of most of the residents associations is laudable, it is essential for local authorities to note that they are primarily the result of failure by the latter and the frustration of residents. Therefore, the rise of these associations is a manifestation of the reluctance of most residents in the largest towns to continue to support local authorities without a substantial improvement in the quality of services.

It is also noteworthy that their degree of organization suggest that the residents associations retain a vast array of options that are not available to individual rates payers. Residents associations in Nairobi have formed an umbrella association called We Can Do It. Kenya also has a countrywide umbrella association called the Kenya Alliance of Residential Associations (KARA). These associations lobby for improved services, facilitate formation of new associations and provide technical assistance to potential associations.

The Minister for Local Government and local authorities generally must recognize that these residents associations are increasingly adopting the option of challenging administrative decisions through litigation. The strategic response from local authorities is to improve services dramatically or have these decisions taken after court orders have been granted.

**Table 1: Revenue Sources for Local Authorities for FY 2000/01 and FY 2001/02
(in Kshs)**

Revenue Source	Actual FY 2000-2001	Actual FY 2001-2002	% Change
Central government receipts (Kshs. billion)			
LATF	2. 236	2. 771	23.9
RMLF	0. 561	0.037	-93.3
Subtotal (Kshs. Billion)	2.798	2. 808	0.4
Local government receipts (Kshs. billion)			
CILOR	0. 110	0.104	-5.5
Property rates	1. 418	1.501	5.8
Single business permit	1.145	1.204	5.1
Vehicle parking	0.339	0.391	15.4
Market fees	0.498	0.566	13.5
Plot rents	0.107	0.114	6.8
Water and sewerage fees	1.610	1.857	16.3
LASC	0.441	0.026	-94.0
Total cess receipts	0.267	0.303	13.3
Game park fees	0.426	0.433	1.5
Poll rate	0.0045	0.0038	-15.3
House rents	0. 419	0.436	4.1
Others	0.938	0.966	3.0
Subtotal local government receipts	7,729	7,910	2.3
Total central and local government receipts (Kshs. Billions)	10.527	10.718	1.8

Source: Local Authorities Transfer Fund Annual Report FY 2001/02 reprinted in 'Management of Resources by Local Authorities: The Case of Local Authority Transfer Fund in Kenya', Morris Odhiambo, Winnie V. Mitullah & Kichamu S. Akivaga, CLAI PRESS, Nairobi, 2005

Table 2: Central Government LATF Transfers to Local Authorities in Financial Years 2000 to 2004

	2000/01	2001/02	2002/03	2003/04	2004/05*
Nairobi City Council	485.32	607.06	607.06	642.39	691.80
Municipal Councils	511.13	816.81	816.81	906.46	969.83
Town Councils	1,060.21	1,256.23	1,256.23	1,774.13	1,900.28
Total (Kshs. Million)	2,306.90	3,000.00	3,000.00	3,750.00	4,000.00

* Provisional Figures

Source: Republic of Kenya Economic Survey 2005 p.112

➤ *Institution building*

Independent and voluntary membership organizations such as the Association of Local Government Authorities in Kenya (ALGAK) serve the interests of local authorities. Registered as a society in 1996, its aim is to contribute to local development and good governance through creating coalitions and partnerships in advocacy and policy research. Towards this end, it is advocating for a constitutionally guaranteed protection and autonomy for local authorities. ALGAK is simultaneously building the capacity of local authorities to provide efficient and effective services and to strengthen their responsiveness to the concerns of the citizens from whom they collect rates and levies.

➤ *Restructuring Nairobi City Council (NCC)*

The Minister for Local Government has created a Board to assist Nairobi City Council (NCC) in carrying out a wide range of reforms. This is in exercise of the statutory authority provided by section 104 of the Local Government Act (Cap265). The primary focus of these reforms include separating policy from the regulatory and service delivery functions. These reforms are being carried out under the Kenya Local Government Reform Programme (KLGRP) and envisages partnership with the private sector.

The proposed board will oversee decentralization of the Nairobi City Council into five semi autonomous boroughs. Each borough will have a designated chairman, a clerk, departments and departmental heads. The mandate of each borough will be to collect revenue and deliver all services. However, a share of these revenues will be directed to City Hall to meet central overhead and to support boroughs that may not have sufficient collections. Under the reform programme, City Hall will not collect any revenues though it will be responsible for coordinating, monitoring and evaluating performance of the boroughs. In the new council, the mayor and deputy mayor will be directly elected by the citizens and will therefore bear executive responsibilities. An independent regulator will regulate the reformed council.

Semi autonomous agencies will be created to deliver services as the council will also have commercialized units such as the Nairobi Water Company. Partnerships will be sought to assist the Nairobi City Council (NCC) see through the

proposed reforms. A consultant from the private sector has been appointed to coordinate this sector working group on behalf of the private sector.

➤ *Innovative resource management*

Local authorities in the country need to develop innovative ways to collect and mobilise resources. Existing systems for revenue collection are demonstrably weak and lead to both leakage and systematic failure to maximize on collections. Apart from the management of public finances, systems for proper human resource management are required. Among the important decisions that the local authorities and the Minister for Local Government may have to make is the effort to streamline employment and audit the range of skills and capabilities that employees possess. This audit may have to be followed by the adjustment of the staff numbers to ensure that all local authorities can regularly cover their staff costs. Given the high wage bills that local authorities maintain, it is imperative for all of them to conduct staff audits and to rationalize the functions and numbers of employees. Where local authorities fail to make sustained efforts to use resources wisely and refrain from incurring debt, the Minister for Local Government should reduce the amount of funds allocated to them through the LATF until they achieve compliance.

➤ *Improved record keeping*

Local authorities in Kenya have the reputation for very poor records keeping for financial and management purposes. This problem therefore affects the institution's ability to make financial and management decisions on the basis of accurate and useful information. This failure to keep proper records can be resolved in a large measure by the insistence of the Minister for Local Government that all disbursement from the central government will be predicated on the maintenance of proper financial and management records. One way to ensure that record keeping is improved is through automation as this will be more effective, time saving and user friendly. Furthermore, it will make access to information easier not only for the local and central government planners, but for residents. Lastly, good record keeping is a way of documenting history, making it easier for external agents to review performance.

➤ *Enforcement of regulations*

It is evident that even without going to the Public Officers Ethics Act 2003 for enforcement there is a legal basis on which to hold public officials accountable under the existing law on local government. For instance, section 173 of the Local Government Act states that an officer with a pecuniary interest in a bargain, contract or arrangement by a local authority should give notice of the same to the local authority. If any person fails to comply with either of these subsections s/he is to be found guilty of an offence and be liable to a fine and or imprisonment. This law should be enforced impartially to set precedent on the accountability expected of local authority officials.

➤ *Increased oversight*

For governance to work optimally, both local authorities and the residents of their units need to participate and exchange information on problem areas and ways to resolve them. As it is, the Local Government Act (CAP.265) already accords residents opportunities to participate in developing their local authority. Section 82 states that the “minutes of proceedings of local authorities shall at all reasonable times be open to the inspection of **any rate** payer or voter of the area of the local authority...”

In addition, section 84 of the same statute states that “every meeting of a council shall within the limits of availability of accommodation be open to the public...” These opportunities for oversight should be taken up by more residents as they are created by statute and cannot be exercised at the discretion of mayors or councillors. Additionally, community engagement acts as a means of social accountability. This in turn audits public service delivery and may be the arena for developing a citizens charter on the quality of services that the local authorities provide.

CONCLUSION

As the population in Kenya grows, the demand for services from local authorities will grow commensurately. This also means that infrastructure and the range of services that local authorities provide will require expansion at a pace far higher than the nominal growth rate of the population. Local authorities in Kenya will be required to respond and meet the challenges of this rapid growth. Unless they are able to clarify their relationship to the central government, reforms the mechanisms for delivery of services and close out loop holes that lead to revenue leakage, most local authorities will face an increasingly aggressive public making demands for proper service delivery or complete closure. This assertion is supported by the fact that many residents associations in Kenya are unwilling to tolerate increased taxation in the absence of services of comparable costs. Indubitably therefore, a local government structure with clear and non-conflicting responsibilities and some level of autonomy is required. Additionally, strategic thinking and planning for the local authority units is vital. This will be facilitated greatly by better record keeping and adequate oversight from the public and the Minister for Local government.

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PUBLISHED BY THE INSTITUTE OF ECONOMIC AFFAIRS, 5TH FLOOR, ACK GARDEN HOUSE
P O BOX 53989 00200 NAIROBI. TEL: 2721262, 2717402, 2716231 Fax: 2716231
E-MAIL: admin@ieakenya.or.ke

**DIRECTORS: DR. JAMES KARUGA, PROF. ANYANG' NYONG'O, MR. JOE GICHUKI, MR. EVANS OSANO,
MS. BETTY MAINA, MS. MUSABI MUTESHI, MS. LILIAN ONDUKO**

EDITORIAL: THITU MWANIKI: WRITTEN BY: KWAME OWINO & THITU MWANIKI
DESIGN & LAYOUT: NELLY KIBATHI