

**End-of-Project Report -R8374 (Nov 2004-March 2006)**

**Democratizing Local Governance in Africa**

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**Background**

Recent literature on decentralization has recognized that if *democratic* (not simply decentralized) local governance is the ultimate objective, then just as much emphasis must be placed on balanced representation and genuine downward accountability to local residents as is placed on aspects such as the degree of autonomy from central government and capacity for service delivery (Nsibambi 1998; Blair 2000; Omiya 2001; Crook & Sverrisson 2001; Olowu & Wunsch 2004; Golooba-Mutebi 2004). This study took this proposition further by suggesting that in a context of transition from decades of top-down administration, clearly defined and guaranteed mechanisms for citizen participation, including structures for representation of marginalized groups, are an important part of overcoming the history of acceptance of privilege, resignation to patronage, and a tolerance for opacity in public affairs.

The empirical research for this study was conducted in Kenya between January and November 2005, on the back of significant legal-political events in the country: in March 2004 a national delegates conference issued a draft constitution for Kenya, which was revised by a parliamentary committee and re-drafted by the Attorney-General in August 2005, put to a national referendum and defeated in November 2005. The draft contained far-reaching proposals on re-organizing local government to devolve some authority to the district level, with key provisions aimed at enhancing citizen participation in local government affairs.

## **Aims & Objectives**

This study sought to understand how structural reforms intended to enhance citizen participation and downward accountability in local governance can be sustained and made effective in a context of transition from decades of centralized top-down administration.

## **Methodology**

The study combined desk-based and field research. The desk-based component primarily involved textual analysis of two versions of a proposed constitution for Kenya. The study linked analysis of the frameworks for citizen participation proposed in the drafts:

- lessons learnt from relevant experience in Ghana, Tanzania and Uganda;
- citizens' current experience of interaction with local governance institutions;
- citizens' expectations of the proposed arrangements, as well as expectations of recent policies that have sought to enhance citizen participation in specific aspects of local governance.

The fieldwork was conducted in four districts in Kenya and it involved a survey with 516 respondents, 100 key informant interviews, eight focus group discussions and eight community-level feedback and analysis workshops.

## **Summary of key findings**

### **1. Structural reform must be accompanied by efforts toward incremental change in the culture of local governance**

Rejection of the draft constitution in the November 2005 referendum marked the shelving of the first attempt at comprehensive structural reform of local government, including the creation of a legal framework for citizen participation in management of local government affairs. In the absence of such a framework, efforts to enhance citizen participation have taken the form of piecemeal administrative reforms since the late 1990s. Expectations that structural reforms could deliver meaningful citizen

participation and downward accountability have been dampened by the experience so far of these piecemeal administrative reforms. Examples of such piecemeal reforms include a 2001 policy directive that conditions the release of 40% of a local authority's allocation under the Local Authority Transfer Fund (LATF) on the involvement of local residents in drawing up a Local Authority Service Delivery Action Plan (LASDAP). Experience so far suggests that without a change in the culture of local governance the participatory processes created through these structural reforms have been pigeon-holed: there is no indication that they have the potential to gradually transform mainstream local government toward a culture of transparency and answerability to local residents. The culture of opacity has not changed, as examples from our survey and interview established: Of the 516 survey respondents:

- only six percent had ever been invited by their local council to any public meeting;
- only a tiny 1.6% were of the view that their local council regularly makes public its audited accounts;
- although 86.4% reported not being satisfied with the services provided by their local council, only 10.7% had ever filed a complaint or made a suggestion either to the council or to their councillor. The overwhelming view in the feedback forums was that this is because no channels exist for such complaint or suggestion, and no basis for citizens to expect that the council would take complaints seriously or act upon them.

This general picture of relations between councils and residents was confirmed in interviews with council executive officers. The only positive example we encountered of citizens having been able to seek and obtain information and explanation from the council (in this case, on a unilateral decision by the council to subsequently re-allocate LATF monies intended for priority projects identified by residents in the LASDAP) was that of a sustained campaign mounted by the Kisauni Land Lobby group in Mombasa municipality.

This suggests a need for serious investment in two indispensable measures that must accompany structural reform: first, linking up local movements for accountability with the necessary support services that enhance their effectiveness. Second, creating an internal system of incentives and sanctions to enhance the responsiveness of local

officials to residents. The current sanction of forfeiture of 40% of a council's LATF allocation does not penalise the officials, nor does it create positive incentives. Councils forfeit the allocation with no consequence at all.

## **2. Changing the culture of local governance includes changing citizens' expectations of themselves**

Since the late 1990s Kenya has seen a trend of decentralization of ear-marked development funds and decision-making authority to the district, local authority or constituency level. Examples of these funds are LATF (1998), the Constituency Development Fund (2003), the District Roads Fund (1999), the Constituency AIDS Control Fund (2003), and the Constituency Bursary Fund (2003). The procedures laid down to operationalize these funds point to a trend towards demand-driven service delivery (groups are expected to make proposals to access these funds) and a greater responsibility on the part of citizens to participate actively. All of these funds have guidelines requiring committees to be set up at the local level, with stipulations intended to ensure that these committees are broadly inclusive and representative. However, in spite of this trend, what continues to define citizen engagement on the whole is an attitude of resignation rather than active participation, as the responses cited above on submission of complaints or suggestions on councils' poor performance in service delivery indicate. This study was concerned with *how* we can begin to question this attitude of resignation, as part of the process of changing the culture of local governance, and we looked for answers in counter-examples of 'democratic practice' in citizens' own associations or informal groups. How transparent were their processes for choosing leaders? Could any member of the group aspire to leadership (or was leadership reserved to a clique)? Was there openness about the group's finances? Could any member of the group access information on finances? Examples of findings that emerged:

- 50% of the groups chose leaders through secret ballot, 30% by public acclamation and 20% by selection (no public process or group-wide consultation);
- 46.9% rated their chances of becoming group leaders as 'very high', 29.4% as 'likely', 13.6% as 'not likely' and only 5.3% did not think they stood any chance (4.4% 'no comment').

- regarding openness on group finances: 79.4% said group leaders made information on group's finances available to all group members (17.1% no; 3.1% don't know); and on whether members have to approve the organization's expenditure 76.3% answered 'yes', 19.7% answered 'no' (3.5% don't know).

These findings provide a basis for asking people why they do not expect the same or higher levels of openness of their elected leaders in the political/public arena, and why they are more tolerant of the domination of cliques and lack of financial transparency in public affairs.

### **3. An elected structure is not inherently more accountable than one based on appointment**

It is generally taken for granted that democratic practice at all levels is better served by election, as opposed to appointment. The design of this study had made that implicit assumption. Indeed, replacing the system of provincial administration (a series of appointed officers whose chain of command extends all the way down to the village level) with elected local representatives at the district level was a central plank of the local governance reforms in the draft constitution. This proposal was included in the draft notwithstanding palpable anxiety over the lack of an alternative to the myriad local-level functions played by chiefs, assistant chiefs and village elders in addressing citizens' day-to-day concerns. This study found that the performance of chiefs was rated much better than the performance of elected councillors. This was uniform across rural and urban sites. In addition, in response to an open-ended question regarding which officials people approached for various specified problems, the office of the chief/assistant chief or village elder were mentioned at least ten times more frequently than the councillor for three out of the five problems listed.<sup>1</sup>

This does not point to a conclusion that there is an inherent preference for appointed officials over elected officials. Rather, as emerged from the feedback workshops,

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<sup>1</sup> It is quite telling that the two problems with respect to which the councillor received more mention than the chief or village elder involved financial assistance, giving some credence to the view that the councillor role is perceived largely in patronage terms.

there are attributes that make people more confident in the chief than in the councillor, namely:

- Accessibility: there is a defined office/building and defined office hours, and therefore people know where to find the chief. The councillor does not have a designated local public space.
- Defined structure: possibility of appeal to a higher authority (District Officer) gives a measure of accountability. From whom can people seek accountability over the performance of a councillor, apart from a chance to vote him out of office in the next election?
- Defined mandate: there is relatively more clarity on the types of matters a chief is expected to deal with as these are addressed in a statute and in administrative circulars. A councillor's day-to-day work is less tangible, and performance varies depending on the office-holder and what political connections he/she is able to mobilize.

A structure of elected representation is good in principle, but it is not enough unless, at a minimum, it exhibits these attributes and an ability to respond to concrete problems.

#### **4. Special Representation raises more conceptual and practical dilemmas than the literature suggests**

A few writings on democratic local governance acknowledge the importance of special arrangements for the representation of marginalised groups if pro-poor outcomes are to be achieved (Manor 2002; Crook & Sverrisson 2001). However, since these writings are set in contexts where such arrangements are already in place there is little discussion about the contentious political process of arriving at such arrangements. The issues raised by Kenya's recent experience include:

- the process of arriving at a consensus on whom to include in the category;
- the process of agreeing on what form the special arrangements will take;
- the social legitimacy of any special arrangements;
- the (perceived and real) effect of any such special arrangements on the democratic process.

Through this study we learnt that social marginality is not necessarily equated with political marginality. There may be consensus about the marginality of a particular category of people in terms of their lack of access to services, or the fact that they are under-served by certain social institutions, e.g. customary justice forums. But we learnt that this is far from establishing a consensus about the need to treat this category as a political category, let alone consensus on their eligibility for special representation in the political process. For example, in interviews with local governance officials (current and past) the groups that were perceived as 'marginalized' were very concrete and not easily translated into political constituencies: widows, persons living with HIV/AIDS, orphaned children/neglected children/street children, hawkers, geographically marginal people (living on the outskirts of town yet considered administratively part of municipality) etc.

While special mention of groups such as youth and women has become standard practice, the Kenyan referendum experience demonstrated that there is little social consensus, particularly on women as a political category. The fact that women were the only category for whom special representation was provided for in the proposed District Assemblies provoked a significant backlash, which we observed first-hand in the feedback forums. This raises conceptual issues: how can we justify special representation arrangements as an important part of the political process in the face of public sentiment that is overwhelmingly against special representation, if at the same time we place significant weight on citizen participation in shaping political institutions? In the absence of broad social legitimacy or acceptance, where is the impetus for sustained political will or bureaucratic commitment to maintain the special measures and make them effective? In the absence of special measures, how is political voice to be assured for groups against whom there is comprehensive bias? If local understandings of marginality are so concrete and contextual is there a case to be made against lists of marginalized groups (e.g. in constitutional frameworks or in laws on local representation), and in favour of broad statements of principle that allow for local flexibility? How is this local flexibility to be checked so that it does not end up being simply an articulation of bias?

The study also drew two key conclusions relating narrowly to the process of constitutional review as it related to local governance reform:

1. Although the local governance arrangements contained in Kenya's draft constitution were spoken of as 'devolution', a review of the attributes of devolution from existing literature based mainly on experience in sub-Saharan Africa suggests that the arrangements fail the conceptual test. At a minimum, in order for a system to be properly described as devolution (used interchangeably with 'democratic local governance') it must meet five criteria: (Olowu & Wunsch 2004:1):

- transfer of significant elements of authority and responsibility for services;
- transfer of fiscal resources and significant financial autonomy;
- transfer of control over human resources;
- in addition to accountability channels between the center and the periphery, major revisions in accountability so that those charged with managing local public affairs are accountable to local residents;
- balanced representation of the residents of the locality in question, including special provision for marginalized groups (Olowu 2001; Manor 2002).

While the proposed reforms did attempt to address each of these dimensions there were significant shortcomings. An analytical paper written for this project gives detailed reasons for this conclusion. The paper is being revised for submission to *Regional Development Dialogue*.

2. Despite two years of nation-wide civic education and public hearings as part of the constitutional review process our findings suggest that there was little more than superficial knowledge of even basic content of the draft constitution. For instance, our survey included a basic straight-forward question: 'Are you aware that a new local government structure is proposed under the draft constitution?' Only 28% of respondents answered 'yes' notwithstanding that 'devolution' was supposedly one of the most contentious issues and received considerable (but evidently not educative) media coverage. Even more surprising was significant lack of knowledge on the content of the proposed structure of local governance among key informants. Out of 36 current and former local government and provincial administration officials, 12 did not know about the proposed changes to local government structure. Those that did know admitted that their information was drawn from media sources rather than a reading of the draft or any officially-provided information.



## **Dissemination and Policy Influencing**

This project was designed as participatory action research, and therefore engagement with key actors at community level and at macro level took place during the research as well as during the dissemination stage. Key forms of engagement included:

### 1) Community-level workshops for feedback and analysis of interim data

Following analysis of the interim data we held community-level workshops in eight research sites (two in each district, one rural and one urban). The interim data was summarized in diagrammatic form on flip charts and presented to an audience made up of some of the survey respondents, some of the FGD participants, selected representatives of community-based groups and local officials. Reports of these forums are available on request.

### 2) Forums to discuss the draft constitution's proposals on devolution ahead of the national referendum.

The community-level workshops referred to above took place in October 2005, just before the national referendum, and therefore they also served as a forum for discussion of the devolution proposals and people's expectations of them. We drew from a draft paper prepared by Dr. Nyamu-Musembi which juxtaposed the draft constitution's devolution proposals with the current system, representing both systems in simple diagrammatic form. We incorporated comparative examples from Ghana, Tanzania and Uganda. A simplified four-page summary ('Six things that will make or break devolved government') was distributed to participants in English and in Kiswahili at each forum and they were encouraged to pass it on to others. The feedback we received on this discussion was overwhelmingly positive, particularly as civic education on the referendum was very slow in getting off the ground and often did not get into the details.

In February 2006 both Mr. Mwambi Mwasaru and Ms. Wanza Kioko were appointed to a presidential Committee of Eminent Persons to undertake an evaluation of the constitution review process and recommend a roadmap for future work on the constitution. This is an indirect confirmation that the project's action component has had impact and that its contribution was noticed and valued.

### 3) Mass media

#### - Radio programme

The lead researcher was interviewed on October 12<sup>th</sup> 2005 about the highlights of the research findings on Baraka FM, a regional radio station that broadcasts from Mombasa. The interview was in the Kiswahili language and it also included discussion of the draft constitution's provisions on devolution. This way the project was able to reach a wider audience beyond those that we interacted with during the research and in the workshops. Feedback from the producer indicates that the response following the show was very positive. Copies of the four-page handout were left with the radio station to distribute to people making enquiries.

#### - The Link

Two articles summing up the research findings were published as a supplement in *The Link*, a monthly newspaper that focuses on local governance issues (published by the Institute for Civic Affairs and Development- ICAD). Fifty copies were distributed to various people relevant to the project in the research sites and in Nairobi.

### 4) Workshop with national-level civil society and Kenya Local Government Reform Programme representatives

This workshop was held in Nairobi on November 17<sup>th</sup> to disseminate the research findings, incorporating the feedback from the community-level workshops. The discussion was very lively and led to a further meeting between the lead researcher and staff of the Kenya Local Government Reform Programme.

### **Publication plans and other follow-up**

1. Nyamu-Musembi, C., Mwambi Mwasaru & Wanza Kioko, 'Institutionalising Citizen Participation for Democratic Local Governance: Learning from Missed Opportunities in Kenya', (forthcoming) IDS Working Paper.
2. Nyamu-Musembi, C., 'Is this Devolution? Kenya's Failed Reforms in Historical and Comparative Perspective' (not yet submitted; intended for publication in *Regional Development Dialogue*)

In addition to publications there are potential spin-offs from the research project:

- possibility of collaboration with LogoLink's East Africa partners. LogoLink is a Ford Foundation-supported learning initiative for civil society actors

involved in issues of local government accountability. Currently it is hosted by IDS.

- Possibility of further funding for research focusing on one of the recently decentralized ear-marked funds, the Constituency Development Fund.

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