Building Municipal Accountability

Local Government Decision-Making:

Citizen Participation and Local Accountability

Examples of Good (and Bad) Practice in Kenya

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1. Background

In common with many other countries, Kenya has been reforming its system of local government. The main aim of the reform has been to strengthen the capacity of local authorities (LAs) to deliver services to its residents. The very weak financial position of LAs has been considerably strengthened in the past two or three years as a result of the transfers made through the Local Authority Transfer Fund (LATF). But real and lasting improvements will only happen if LAs involve their residents in decisions about how resources are used, and are accountable to their citizens for those decisions. In the past, both of these aspects have been very weak in LAs in Kenya, raising questions about whether LAs are making good use of their resources, both LATF transfers and their own local revenues. But things are changing, and this briefing note seeks to highlight some examples of good practice, as well as noting cases of bad practice.

This note is based on a comparative study of current practices of decision-making (informal as well as formal) about the use of resources in local authorities in Kenya and Uganda. The study looked at who participates in those decisions and how, and how far local governments are accountable to citizens for their decisions. The study examined seven LAs:

- ❖ Mombasa Municipal Council
- ❖ Maragua County Council
- ❖ Mavoko Municipal Council
- ❖ Narok County Council
- ❖ Nyahururu Municipal Council
- ❖ Nyeri Municipal Council
- ❖ Ol Kalou Town Council

This note seeks to identify examples of 'good practice'. We recognise that the term 'good practice' is problematic in any context, since there are always aspects which are less than perfect. We do not claim universal applicability or transferability of the examples. Rather, we outline some examples of where and how local governments and citizens in Kenya appear to have implemented relatively successful practices to extend citizen participation and enhance accountability in decision-making about resource use.

2. Decision-making in Local Government

The idealised model of representative democracy in local government suggests that, through regular, free and competitive elections, citizens make known their needs and priorities. The councillors they elect then formulate strategies, make key decisions and prioritise expenditure choices through formal policy and budgetary processes, with officials (who are politically neutral) advising them and implementing the decisions.

The reality is generally rather different. Whilst local elections in Kenya are held regularly, and are generally free and fair, issues are highly aggregated, with candidates rarely presenting clear manifestos or choices. Together with the fact that elections are held only once in five years, this means that local needs, priorities and choices are not identified through the electoral process in sufficient detail for the purposes of planning and budgeting.

Meanwhile, councillors are often poorly equipped to formulate strategies or make key choices, but instead tend to intervene on an ad hoc basis, often at the implementation stage. As a result, there is distrust between officials and councillors, with officials driving the agenda, and both sides accusing the other of vested interests and malpractice. In practice, much decision-making is informal, while formally approved budgets are often not adhered to because of the lack of financial resources.

How do councillors know what are the needs and priorities of local citizens?

Given the limitation of the electoral process, a fundamental question is how do those elected know what are the needs and priorities of their constituents. The answer can be caricatured through the responses we received from the Councillors and citizens / community groups we interviewed:

Councillors say:

- ❖ "We know our people" (but which ones do they know?)
- ❖ "We meet them all the time" (but often indirectly, through agents, with no formal system of consultation)
- ❖ "We hold meetings" (although these are rare in practice, and Councillors usually depend on DC/ Chiefs to hold *barazas*)
- ❖ "They come to our houses" (but people come to ask for individual favours, not communal needs, which is what the LA is there to provide)

Citizens / community groups say:

- ❖ "We never see our Councillor, except perhaps at election time"
- ❖ "We don't even know who our councillor is!"
- ❖ "Vote-buying is common: people feel obliged to vote for those who have paid them"
- ❖ "We have no way of telling who is a good candidate"
- ❖ "We do not have any influence, especially when told there is no money or equipment".

However, the situation is not all gloom: there are signs of changing attitudes, as illustrated in some of the case studies in this briefing paper.

3. Financial Resources

Kenyan local authorities (LAs) face serious financial problems for a number of reasons:

- ❖ local own revenue sources are limited: although the Single Business Permit has increased local revenues, LASC has been abolished and the full potential of the property tax is not utilised
- ❖ until the introduction of LATF, central government provided no grants - and it even fails to pay its obligations in the form of the Contribution in lieu of Rates (CILOR)
- ❖ LAs fail to collect the revenue due: in many cases less than half of the potential revenue is collected, and LATF may be having a negative effect on the incentive to collect
- ❖ taxpayers are often unwilling to pay because the LAs provide hardly any services
- ❖ enforcement action against tax defaulters is difficult and expensive
- ❖ meanwhile, LAs spend most of their money on personnel (partly due to over-staffing) and councillor allowances, with little left for operations, maintenance or capital investment
- ❖ extensive corruption drains available resources
- ❖ many LAs (including some of the richest!) have huge debts.

As a result, many LAs have substantial deficits – in reality, even if not shown in the approved budget. Expenditure management is often simply crisis management – staving off creditors. In most LAs, few services are actually delivered, and despite the rhetoric of the PRSP, little attempt is made to direct the available resources to addressing poverty.

Many of these problems are caused by the structural imbalance between expenditure needs and resource availability at the local level, but other problems are attributable to the failings of LAs themselves.

For example, in almost all LAs, there is a huge gap between the formally approved budget and what actually happens. This is mainly because revenues are forecast unrealistically, in order to show a balanced budget whilst accommodating the many demands from councillors. The forecasted revenues cannot then be collected, so the LA soon runs short of money. In order for the LA to survive, the Treasurer effectively operates a "shadow budget", deciding what will really be done with the money actually available. Since most of the available resources are already committed, to salaries and councillor allowances, little else from the original budget is implemented. What little decision-making discretion is left to the Town/County Clerk, Treasurer and senior councillors, operating on an ad hoc basis. Treasurers defend themselves by saying: "There is no money". The real issue, though, is "What was done with the money there was?"

Potential impact of LATF

The Local Authority Transfer Fund (LATF), introduced in 1999/2000, transfers 5% of income tax to LAs, through a transparent formula. It is provided as a block grant to finance local service delivery, particularly for the poor.

For a few LAs (mainly the biggest cities), LATF does not represent much in the way of increased resources for services, because of the loss of LASC, and/or their huge debt overhang. For most LAs, though, LATF represents a significant increase in resources, over which real expenditure choices can be made. Some LAs are making good use of these additional resources, but others – perhaps many - appear not to be.

The questions are:

- ❖ how are decisions about the use of additional resources being made and by whom?
- ❖ to what extent do ordinary citizens, and particularly the poor, participate in reaching those decisions?
- ❖ to what extent do the resulting expenditure choices reflect the needs, priorities and interests of citizens, including the poor?
- ❖ how accountable is the LA for the pattern of expenditures which actually results?

4. Citizen Participation

As in every society, elected, representative democracy needs to be complemented by mechanisms of citizen participation, to enable those elected to gauge better what are the needs and priorities of citizens, as well as to create a sense of ownership on the part of citizens of the services provided by government.

However, in Kenya, there has never been a strong tradition of citizen participation in local government. The Local Government Act makes no reference to citizen participation, and the style of local government is very traditional, with elected councillors deciding everything behind closed doors. In addition, many LAs are very large and therefore remote from citizens. Sadly, some councillors perceive citizen participation as a threat to their autonomy and position.

But there is a mood of change in Kenya, for a number of reasons:

- ❖ the growth of civil society and community organisations (in Kenya, as elsewhere)
- ❖ the role of LA Community Development staff, and NGOs, in helping communities to organise and establish community-based organisations (CBOs)
- ❖ donors like GTZ and DFID, which have emphasised participation over many years
- ❖ the LADP, process promoted by the Ministry of Local Government with the support of GTZ, has involved a degree of citizen participation, and in some places this has started to change attitudes towards stakeholders

❖   more recently, the requirement to produce a Local Authority Service Delivery Action Plan (LASDAP) has obliged LAs to identify community organisations in their locality, to consult them about priorities for the use of resources, and to provide information to citizens. In the first round, all except one LA managed to produce a LASDAP. Nationally, some 1,050 public meetings were held, involving 30,000 people. It seems that this process has resulted in a shift in priorities from what officers and Councillors want (vehicles, equipment, offices) towards things which citizens want (wells, clinics, drainage).

The following boxes provide some positive examples of change. Of course, we have to be cautious about calling them "good practice", since there are many elements which are far from good. But these example, nevertheless, present positive features from which others can learn.

Box 1: Changing Attitudes in Ol Kalou Town Council

Ol Kalou Town Council covers a small town and surrounding rural area in central Kenya. It has benefited over the years from considerable technical assistance from the Small Town Development Programme (STDP). One element of that was the production of a Local Authority Development Plan (LADP). The first LADP was produced largely by external consultants with little citizen participation. But the second, produced in 1999, involved extensive participation by local organisations. This was a turning point in the relationship between the Council and community organisations, from one in which local residents regarded the Council "as a foreign body", to one of partnership. The Council started to regard community organisations as "stakeholders" rather than "enemies", and to involve them in setting priorities for the Council. Nor were those involved just the elite: they included women market traders, *jua kali* artisans, and residents from the low-income resettlement area.

The provision of additional resources through LATF clearly helped, since it meant that, for the first time, there were real resources available for capital spending and improvement of service delivery. At the initiative of the Acting Treasurer, part of the LATF money was allocated to each ward, and Councillors, together with Community Development staff, held ward level meetings to discuss how these resources should be used. The projects which were prioritised included repair of bridges, provision of water tanks and pipes, health centres and school equipment. The Council also responded to local residents' initiatives in improving local access roads through voluntary labour by providing the Council's tractor to deliver stones. In several cases, the Council was able to respond to needs of local communities through making land available: to extend the resettlement area to permit lower density of housing, to provide sites for *jua kali* artisans, and to relocate the market.

Box 2: Involving CBOs in Mombasa

In Mombasa, too, attitudes have been changing. Kenya's second largest city, with a population approaching a million, has huge financial problems, serious urban poverty and a history of corruption and political conflict. There have been a number of catalysts for change, including the DFID-funded PAMNUP project, which is seeking to develop a participatory approach to poverty reduction. The Council's Community Development staff have been active in assisting low-income communities to establish CBOs both for mutual self-help and to lobby the Council and other organisations for improved services. There is now a regular forum for dialogue between the Council and community organisations in the city. Small but significant improvements have been achieved. The Kenya Street Traders Society has also been active in helping street-traders to organise, lobby for their rights and resolve conflicts. This has resulted in a considerable improvement in relations between the traders and the Council, from one of conflict to one of collaboration (although there appears to have been a set-back recently as a result of politically-instigated demolition of street traders' premises).

The recent LASDAP preparation was able to build on this basis. 19 ward-level meetings were held in January 2002, with around 400 people attending in total, representing different sections of the community. Each ward meeting was invited to prioritise four projects to a total value of KSh 2 million: these included, amongst others, road improvements, nursery schools, garbage containers and drainage.

Box 3: Consultation with the Business Community in Nyeri Municipal Council

The critical event in Nyeri was the construction of the new (Soko Mjinga) market in 1995, largely funded from the World Bank KUTIP project. This project required the active participation of the Market Association as stakeholders, who had to contribute part of the cost. Although the process was slow, it did give those concerned a feeling of involvement in the work of the Council. Following this, other lobby groups were formed to work with the Council on future developments. The Council has murramed some roads, improved drainage, and put up some street lights and footbridges, in response to lobbying from such groups. However, the Council lacks the resources to meet most of the demands. Formal consultation over budget priorities has been mainly with the business community, e.g. the Chamber of Commerce.

Box 4: The Role of the Task Force in Obliging Nyahururu MC to Negotiate

Nyuahururu Municipal Council, like most LAs in Kenya, was reluctant to consider wider participation in decision-making. Even though there had been limited stakeholder involvement in the preparation of the LADP in 1999, further participation was not encouraged. This was partly because the Council lacked the resources to implement the projects included in the LADP, and partly because those wishing to participate were perceived as being "politically motivated". It was only when a group of mainly business interests, calling itself the Task Force, demonstrated against the Council for its poor services and high level of SBP, and subsequently took the Council to court to prevent it collecting SBP, that things started to change. The (new) Mayor persuaded the Task Force to have the injunction lifted by agreeing to work with them and other community groups on the management of the Council. Since then, there has been a much more positive atmosphere, particularly in relation to the preparation of the Council's LASDAP.

Box 5: Enthusiastic LASDAP Preparation in Maragua County Council

One of the most notable examples of good practice in the preparation of a LASDAP was Maragua County Council. Although, as elsewhere, there had been no tradition of citizen participation in Maragua, the newly appoint County Clerk, together with the Chairman and Councillors, took up the opportunity of preparing a LASDAP with enthusiasm. Not only was Maragua the first LA to submit its LASDAP – several months before the deadline – but they also carried out a participatory process which was substantially greater than the minimum requirement specified in the Ministry Circular. 206 community organisations were identified, posters advertising the process were placed in 132 locations, 56 local meetings were held for awareness raising and initial identification of projects, and 12 ward-level meetings were held to prioritise projects, attended by around 250 people. Each ward was allocated KSh 0.5 million. Prioritised projects included bridge construction, rehabilitation of wells, health centres and medical equipment, feeder roads and construction of Chief's camp. The main criticism is that, although these projects spread benefits widely, many were allocated amounts too small to be useful.

The key to the process seems to have been the enthusiasm of the key people involved, and the good working relations between the Clerk and the Chairperson. Councillors were also enthusiastic once they saw that the process enabled them to get closer to their electors.

Participation in many LAs has been much less extensive and effective:

- ❖ most LAs lack staff skilled in participatory techniques and processes, and Community Development departments generally have very limited resources
- ❖ participation is still often dominated by elite groups, and not all CBOs are representative, especially of the poor (e.g. some of the residents groups in elite areas of Nairobi)
- ❖ many communities / CBOs remain unaware of LATF and LASDAP, and have limited capacity to demand engagement with and accountability from their LA
- ❖ under LASDAP, LAs still control who is invited to participate, and some have used that to exclude individuals and groups whom they do not favour
- ❖ use of LATF money for ward level projects can become a form patronage by councillors, and in some LAs there is no proper accountability for money allocated in this way
- ❖ while some attempts have been made to identify and engage disadvantaged groups (e.g. *jua kali*), many remain excluded for various reasons
- ❖ the process of engagement can lead to co-option, with the result that community leaders become alienated from those they claim to represent, and cease to be accountable
- ❖ although women predominate in many CBOs, there are very few women councillors
- ❖ business interests are often the most powerful voice, and have increasingly resorted to the courts in their disputes with LAs (e.g. over SBP)
- ❖ some LAs are squandering their land resources as political payoffs or corruption
- ❖ the emphasis on projects has often been without an adequate, integrated planning framework
- ❖ participation is costly, both for the LAs and for citizens, and particularly the poor; because of mistrust and apathy, many people are often unwilling to participate.

Box 6: Recent Experience of Citizen Participation in Uganda

Uganda has adopted a radical model of local governance, with five levels, providing multiple opportunities for participation and election, including by poor, and with reservation of seats for women, youth and disabled. With substantial resources flowing through the system, particularly as a result of the HIPC debt-reduction programme, there is scope for participation in real choices over resource use. The Local Government Development Programme (LGDP), in particular, gives local communities real choices about projects from within a menu of options (schools, clinics, water supplies, roads, production, etc.). However, many of the same problems apply as in Kenya: failure to collect local revenue, corruption and misuse of resources, lack of trust between officials and councillors, councillors focused on private benefits, and participatory processes which are not as participatory as they appear on paper.

5. Accountability

It is one thing to invite citizens to participate and to identify their priorities, but it is another matter to account to them for the decisions made and the way resources have actually been used. The parlous state of most LAs' finances may have been an excuse for failing to deliver services in the past, but the additional resources from LATF make that less convincing. If LAs fail to deliver tangible results, people will quickly become disillusioned with participating.

Performance of LAs varies widely. Some clearly are managing to improve service delivery and undertake new projects identified as priorities by citizens like road repairs, bridges, water supplies, drainage, market improvements, street lighting. Others are struggling with past debts, reducing their efforts to collect local revenues because of the easier money from LATF, employing ever more staff, increasing councillor allowances, and opting for projects with little or no benefit to citizens (new vehicles, especially for the Mayor, extensions to council offices, dubious income-generating projects).

Accountability has three aspects, all of which are relatively weak in Kenya:

- ❖ Horizontal: accountability between officers and elected councillors
- ❖ Vertical downwards: the council's and elected councillors' accountability to citizens
- ❖ Vertical upwards: the council's accountability to central government.

Horizontal accountability

- ❖ there is a general lack of transparency over decisions and actual use of resources
- ❖ there is a profound distrust between officials and councillors in most LAs, each accusing the other of malpractice
- ❖ councillors complain of not being provided with information, of council decisions not being implemented, and of officers not being accountable, e.g. for budget implementation
- ❖ councillors also accuse officers of secrecy, obstruction and corruption, and complain that corrupt officers are simply moved by the Ministry to different LAs
- ❖ officers often regard councillors as ill-educated and so unable to understand policy choices or read a budget (although officers rarely seem to make serious efforts to engage councillors in strategic decision-making)
- ❖ officers accuse councillors of being interested only in their direct benefits (allowances, corrupt awarding of tenders, appointment of staff), and of not following due procedures
- ❖ officers in some LAs see the LASDAP process as a way of holding councillors to account.

Vertical downwards

- ❖ there has been no tradition of reporting back to citizens on the work of the council
- ❖ a lack of transparency and a tradition of secrecy, with budgets not being publicly available, and accounts not being produced, never mind audited (until now); "the council operates like a casino" was a comment of one citizen
- ❖ although full council meetings are open to public, key decisions are usually made in closed meetings
- ❖ almost all LAs have failed until recently to produce accounts, let alone have them audited
- ❖ although some LAs put some information on their notice boards, this is often not in a form which can be readily understood, and few people are aware of it
- ❖ the media can play an important role in building local accountability, although much media reporting in Kenya lacks proper investigation; local radio potentially offers opportunities for local accountability through on-air discussions between Mayors or officials and citizens, but this has yet to really take off (as it has in Uganda)
- ❖ courts are potentially another mechanism of accountability, although they tend to be used by the better off (e.g. business organisations protesting about tax rates), and courts do not provide a satisfactory means of resolving complex issues.

Vertical upward

- ❖ given the weakness of downward accountability, upward accountability is crucial; but in practice that has also been weak, mainly because of the ineffectiveness of the Ministry of Local Government: serious delays in budget approval; approval of unrealistic budgets; and inspections which seem to be regarded as rent-seeking opportunities
- ❖ the Ministry also seems unwilling or unable to take decisive action when LAs transgress regulations or where officers or councillors act corruptly.

There are, however, some examples of attempts to increase accountability, as illustrated in the following boxes.

Box 7: Local Improvements in Accountability

Mombasa Municipal Council is attempting to make its revenue forecasts more realistic, so that its budgets more accurately reflect the resources available, thereby avoiding having to make arbitrary cuts through intransparent processes during the year. This should help to increase local accountability. However, the Council's huge debt overhang can easily upset the fine balance, since creditors can obtain court orders for immediate payment out of the current year's income. Politically-motivated decisions to hire additional staff can also derail the budget, as happened in 2000.

In 1999, the then Mayor of Mombasa called a public meeting to discuss the work of the Council. This was well attended and well received, but the initiative died when the Mayor resigned.

Mavoko Municipal Council, with assistance from the Kenya Local Government Reform Programme, has installed a computerised financial information system which links its revenue receipts to the preparation of accounts and reports. As a result, the Council was among the first LAs to submit its budget in the new format and to produce (using external accountants) its abstract of accounts for auditing.

Local Elections

Local elections are a key element of downward accountability. On the positive side, local council elections are held at regular intervals, generally take place peacefully, with competing candidates, and quite high turnouts in some places, for example 88% in Nyeri MC and 81% in Ol Kalou TC, in the last local government elections.

But turnout is much lower in some other places (Mombasa MC: 42%; Mavoko: 50%), while long-term domination by one party prevents effective competition in some places (in Narok CC, 30 out of 41 wards were unopposed in the last election). Relatively few councillors seem to get re-elected, suggesting a degree of public dissatisfaction. Those who do get re-elected time after time tend to be those who are well connected and well resourced. Central government nomination of some councillors undermines local accountability. "Vote buying" seems to be standard practice, with between KSh 20 to 50 (and even KSh 100) being widely quoted. There are also allegations of vote-rigging in some places.

Voter turnout figures vary quite substantially between wards (e.g. in Mombasa, between 15% and 57%, in Nyeri between 56% and 98%). Of course, high voter turnout does not necessarily mean voter satisfaction – it could mean dissatisfaction combined with a perceived ability to change things or it could indicate failures

in the voter registration system. However, there does appear to be something of a correlation between voter turnout figures in the sample of LAs studied and the levels of satisfaction or dissatisfaction expressed by citizens and community organisations.

Vote-buying has a pernicious effect. Quite apart from the effect on electoral outcomes, it means that candidates require substantial funds for their campaigns. Thus, their primary concern, once elected, is to secure financial benefits from the council, whether through higher allowances or corrupt manipulation of tenders, contracts or jobs for their supporters, in order to recoup their outlay. Since many are not re-elected, they may see their term as a councillor as their only opportunity to recoup these costs.

There are signs that voters are becoming more aware, and realising that, with secret ballots, they do not need to vote for those who paid them. The more this happens, the less effective vote buying will be. The Electoral Commission is working hard to undermine the practice of vote-buying, and using publicity material to encourage voters to use more appropriate criteria when deciding whom to vote for. Unfortunately, the credibility of the Electoral Commission may be somewhat undermined by its use of local chiefs, widely associated with the ruling party, as the instruments to convey its message.

Box 10: Recent Experience of Local Accountability in Uganda

Uganda suffers from many of the same weaknesses in the area of local accountability, including abuses of the electoral system. However, it has gone rather further in developing sustainable mechanisms of upward and downward accountability. In relation to the former, there is an elaborate set of performance indicators applied by the central Project Management Unit to decide whether a local council is entitled to additional funding (or any funding at all). These indicators relate to technical capacity, accounting, project monitoring, communication of information, co-financing, etc., and are not without their problems in practice. In terms of downward accountability, local councils and institutions such as schools and clinics are required to publicise information about the level of resources being made available to that unit, thereby enabling local citizens to ask questions about what happened to the money. In addition, Project Management Committees elected at the local level monitor the implementation of projects, thereby holding council officials accountable for project implementation and the use of money.

6. Conclusions: Individuals Can Make a Differernce

Practices of citizen participation and local government accountability vary widely between local authorities in Kenya. Although in most cases they remain quite weak, there are signs of change.

Much seems to depend on local leadership - both councillors and officers (including some Treasurers, Works Officers and Community Development staff) – and in some cases local chiefs. Individuals make a difference: in those places which seem to be performing best, it is usually possible to identify one key person, or a small group, who are committed to reform and good practice, and who are able to work effectively with others.

But in many places there remain serious problems of bad relationships, conflict, lack of trust, corruption, opportunism, rent-seeking, and poor use – or misuse – of resources.

There is a significant window of opportunity, with the LATF, to develop a more open, participatory and accountable system that delivers real service improvements for citizens. But if accountability for resource use is not improved, and results are not delivered, citizens – as voters, taxpayers and participants – are likely to become increasing cynical and alienated.