

KENYA

Capital : Nairobi

Area: 580370 sqkm
Population: 34 millions inhbt
Density: 59,0 ctzns/km²
Average growth: 2,2%



FOCUS

The expected devolution

The Local Government Reform Programme (LGRP) initiated by the World Bank in late 1990 has made it possible for some service delivery functions to be decentralised to local government authorities and the revenue base of local government has expanded. The LATIF block grant has increased the viability of local government authorities. However a proper legislation to support these reforms is yet to be enacted.

But the implementation policy is to have real devolution of powers and functions to local authorities. The Local Government Act Cap 265 of the laws of Kenya, which was enacted in 1977 and it is still in force with various amendments over the years needs to be repealed to allow for real devolution of powers and functions to local government authorities.

The short or long term project in Kenya for local government is to enhance the viability of local authorities. Increasing their revenue sources, and enacting a proper legislation (including a review of the Constitution) which supports their existence as discrete spheres of governance local government would guarantee the decentralisation process in Kenya.

GENERAL INDICATORS

Human Development	HDI	0,488		
	Total GDP (millions \$US)	34 847		
	GDP/per capita (units of \$ US	1075		
	Annual Growth (2001)	3,1%		
	Life Expectancy	47,0		
	Literacy (%)	Men	90,0%	
		Women	78,5%	
Access Internet/1000 ctzn)	12,70			
Decentralization	Communalized Population	100%		
	Average Communal area			
	Urban Population	39,4		
	Numbers and tiers of local government (councils)	County	67	
		Municipal	43	
		Town	62	
City		3		

I- The decentralization policy

Evaluation:

The decentralization policy reform touched various and essential areas. But, the decentralization is not back up by the ambitious law. There is a big confusion between deconcentration and decentralization leading to a non consistent administrative arrangement.

Indicators:

- 1.1. Establishment of the LG system : ⇒
- 1.2. Consistency of the legal framework: ⇓
- 1.3. Consistency of administrative arrangements: ⇓

The establishment of the Local Governance system

The advent of multi-party politics in Kenya in 1992 ushered in a major shift towards devolution through local authorities. Local authorities are increasingly being recognized as effective partners in the governance and development process. The ministry of local government in collaboration with the ministries of Finance and other central level ministries has been undertaking various reforms focused on improving the intergovernmental fiscal structure, enhancing local financial management, strengthening citizen participatory planning has been

introduced through the local governance. Participatory planning has been introduced through the local authorities Service Delivery Action Plans (LASDAP) and it now involves over 43,000 citizens participating in over 1,000 community meetings nationwide to identify local priorities. The current Kenya Economic Recovery Strategy for Wealth and Employment Creation (2003- 2007) continues to stress the need to accelerate the local government reform process in order to further improve local service delivery,

governance and poverty alleviation. The strategy specifically places priority on:

- Restructuring of local authorities based on viability,
- Rationalizing central-local financial relations,
- Improving local authority budgeting, financial management and revenue mobilization,

- Strengthening Local Authority participatory planning and service delivery,
- Rationalizing Local Authority staffing and structure,
- Reviewing Local Government Act and legal framework.

Legal framework for decentralization

A strong legal framework does not yet exist to back up the decentralization policy in Kenya. This was expected to come through the 2004 draft Constitution that was rejected in the 2005 National Referendum. What exists since 1990 are piecemeal reforms, which have focused on improving the fiscal aspects of the Local Government Authorities. The 1977 local Government Act Cap 265 of the laws of Kenya provides for the local government

system in Kenya in terms of the mandate, management and operations of local authorities. Other laws that affect the management of local authorities and their revenue base include:

- Local Government Loan Authority Act (Cap 270)
- Land Planning Act (Cap 303)
- Trade licensing Act (Cap 497)
- Valuation for Rating Act (Cap 255)
- Agriculture Act (Cap 218).

The Administrative Organization

The local government system in Kenya comprises the Ministry of Local Government, and the 175 local authorities comprising 3 city councils, and 67 county councils. Local government is single-tiered in both urban and rural areas. Urban local authorities are the 3 city councils (Nairobi, Mombasa, and Kisumu), 43

municipal councils and 62 town councils. Rural local authorities include 67 county councils whose geographical boundaries coincide with those of administrative districts. Some of the local authorities are quite small and lack the resources to maintain adequate levels of service delivery.

Table 1 : Administrative and territorial organisation

Territorial Division		Local Govt..	Constituency	Delib. Organ	Executive Organ	Supervision/Control
Name.	Nber					
City council	3	Yes				
Municipal Council	43	Yes				
Town Council	62	Yes				
County-council	67	Yes				
Municipal division	34	No				
Parish/Ward	5225	No				
Village	44402	No				

Source: Ministry of Local government, 2007

II- The implementation strategy

Evaluation:

The local government doesn't have a big proficiency in the area of implementation strategy. The central government is yet to really transfer powers and function to the local authorities. Thus the spatial planning processes are not structured from local to central levels.

Indicators:

- 2.1. Implementation planning : ↓↓
- 2.2. Transfer of competencies and sector-based policies: ⇒
- 2.3. Structuring of decentralization and spatial planning: ⇒
- 2.4. Technical support and M&E of the process: ↓↓

The decentralization implementation planning

Kenya has since the mid-1990s initiated reform of LGs that foremost, has focused on improving the fiscal aspects of the LGs without, to date, substantial legal reforms. However, as part of the ongoing Constitutional review, much wider and very radical reforms are being introduced. The 2004 Draft Constitution of Kenya recognized local government as a separate sphere of Government,

but this draft was rejected by the National referendum albeit Local Government was not among the most contentious issues. In Kenya, the Local Government Act has remained relatively unchanged for a long period. It gives Local Governments very limited mandates as de-concentrated administration, and sector ministries provide most of the local services.

Institutions in charge of technical support and monitoring

The institutions in charge of technical support and monitoring of Local authorities in Kenya are:

- The Ministry of Local Government,
- The Association of Local Government Authorities of Kenya.

Kenya has introduced various market oriented reforms in public sector management since the 1960s. On the local government front there have been various attempts. The Omamo Commission of inquiry on local government in 1996 for example, pointed to the large number of small and non-viable local authorities. However

this problem was not dealt with at the time. In the late 1990s, the World Bank established and funded the Kenya funding. The focus of this programme has been on institutional development. The government is fully committed to devolution of powers and functions to local authorities as it considers them as effective partners in the governance and development processes. The Kenya Economic Recovery Strategy for Wealth and Employment Creation (2003-2007) places emphasis on the need to accelerate the local government reform process in order to further improve local service delivery, governance and poverty reduction.

Transfer of competencies and sector based policies

Local government in Kenya is not yet seen as a separate sphere of government. In this regard, the transfer of competences from central to local governments has not actually taken place in Kenya. The appointment of

senior staff is done by central government. Local Authorities have no powers to hire and fire senior staff. Central government through the Minister for local government has to approve local authority budgets.

Decentralization and spatial planning

Spatial planning powers and functions have little been decentralized in Kenya. The physical planning Act No 6 of 1996 vests most of spatial planning powers in the ministries responsible for Local Government, and Lands and Housing.

Some spatial planning powers are also centrally vested in the ministry responsible for Environment. In this regard local authorities are mainly charged with plan implementation, and enforcement of development control.

III-The Local Government structures and management

Evaluation:

The LGs organs are functioning with respect to their agendas. However, appointed officers from the Central Government limit local organs autonomy although their presence helps improving the quality of the technical staff. They are symbols of the State control over LG functioning.

Indicators:

- 3.1. Functioning of the political organs : ↑↑
- 3.2. Quality of the technical organs: ⇒
- 3.3. The level of the State control: ⇒

The political Organs

The council which is made up of councilors and the mayor (for cities and municipalities), or Chairman (for town and counties) is the main political organ of a local authority. The mayor or Chairman is selected by councilors from

among themselves. The council is the main policy making body supported by statutory committees which deliberate on policies before they are taken to a meeting of full council for approval.

Control of Local Government by the Central government

Local authorities in Kenya are semi autonomous legal entities with administrative and legal powers delegated by the central government under the local government Act. The Act empowers the minister of local government to approve local authority revenue sources, budgets, and to dissolve a council and appoint a commission if it is not justified. The public service commission – a central government body determines the

appointment of local authority senior staff. Central government oversight and control in Kenya is very strong at all levels down to provinces, districts and locations. The ministry is required to ensure that local authorities have the instructional and policy framework systems and capacity to effectively provide the required local services in a responsive, efficient accountable and transparent manner.

The technical Organs

The Town Clerk is the chief Executive for a local authority. He is an appointee of central government and he serves as Secretary to the council. He is assisted by heads of departments and each

department has various sections with middle and lower carder staff. All departments are linked to appropriate council committees.

IV-The Human Resources

Evaluation:

The process of HR transfer from the Central to local levels has started, but is still to be completed. The bulk of the local staff is constituted with junior and lower carder. In these conditions, it's difficult to pretend to have autonomous in the level of local government contracting power.

Indicators:

- 4.1. The qualifications of local agents : ↓
- 4.2. The transfer of the human resources: ⇒
- 4.3. The LG contracting power: ⇒

The existence and qualification level of local agents

Recruitment and appointment in Kenya for junior staff is done by the LG while for the senior staff is done by the PSC. Employments for both junior and senior staff are done by the LG whereas transfers are not applicable for the junior staff but are done by the PSC for the senior staff. Performance appraisal on the other hand, is done by the clerks and supervisors for the juniors while for the seniors are done by the province/PSC and MOLG. Salaries, benefits and incentives for both the juniors and the seniors are done by the ALGE and unions whereas the training for both the staffs is done by the LGs/MOLG. Discipline on the other hand for the juniors are done by the clerks while for the seniors are done by PSC/MOLG and terminations for the juniors are done by the LGs while

PSC/MOLG for the seniors. The staff at HLGs is in finance, Administration and works while in the LLGs they are not applicable. Vacancies are significant in all senior positions in most areas and functions. Issues of LG structures are bloated lower staff and stability is not good at all as there are very frequent transfers. Salaries are higher in LG than CG while the local incentives and variation are bigger in LGs and higher salaries, but the payments are not timely at all. Pensions have been problematic with LG because of contributions. The councilor staff conflicts are there and there are no pay reforms so far. Level of capacity building in Kenya is quite low. Main modalities of Capacity Building are LG own contributions and are discrete projects.

The transfer of personnel

In Kenya, Senior staff in local authorities can be transferred between local authorities, and to and from central government line ministries. The only

staff that can not be transferred are junior staff who are employed by the local authorities themselves.

The local government contracting power.

Given their semi autonomous status, Local Governments contracting power is limited. They have no powers to hire and fire senior staff. All capital projects have

to be approved by the minister responsible for local government and so are the contracts for the same.

V- The local democracy

Evaluation ⇒ ↑ ↓

Elections are organised regularly. The system promotes the participation of political parties. Citizen participation lacks tools and framework for implementation. Bottom-up accountability and citizen control are quasi-inexistent. The municipal movement has risen as a key player in the decentralisation implementation process.

Indicators:

5.1. Fairness of the electoral system: ↑

5.2. Level of citizen political participation: ↓

5.3. Transparency and accountability of local authorities and management: ↓

5.4. Sustainability of the municipal movement: ↑

The electoral system

The Electoral systems for local authority leaders in Kenya follow party lines. This means that every registered political party in a Ward (the electoral unit) is expected to field a candidate to be elected as the Councilor of the Ward. Currently there are 6 main political parties in Kenya including: NARC, ODM, NARC Kenya, KANU, FORD Kenya, and LDP. LG elections are held simultaneously with the presidential and

legislative ones. The system combines elected councilors and nominated ones from the Central Government. 2/3 of the councilors are elected through universal adult suffrage in a single member Ward for a 5-year term. The remaining 1/3 is appointed by the Minister of LG from nomination made by parties according to their weight in the various local Councils.

The representativeness of the local authorities

With the central government appointing 1/3 of the local councilors, the representativeness is a great challenge. There is no mechanism to guarantee or to promote gender consideration in local elections. Following the 2002 local elections, women represent far less than 3% of local councilors. In Kenya, the local government is not a separate sphere but rather a tier of government.

In this way, local authorities' representation in national and international issues is mainly through the local government line ministry. This picture is rapidly changing however with the local government reforms that are currently in place, albeit a substantial legislation to back up this process is yet to be enacted.

The local participation (relation between municipal organs and the civil society organization)

In Kenya there is yet no policy and legislative framework for the participation of the civil society and the private sector in the management of municipal affairs.

Civil society organizations are neither members of the Council nor the statutory committees of a local authority. This picture is rapidly changing with the current local government reforms, but their participation is yet to be formalized.

The transparency and accountability systems of local management

In Kenya, the ministry for local government supervises the activities of local government authorities. In this way Local government authorities are accountable to this central government line ministry for what they do. In case on non-performance or poor performance the minister for local government has powers to abolish the council and appoint a commission. He can also transfer the chief officers and bring in

new ones. However, a system of downward accountability for the elected officials to account for their performance to those who elected them does not exist.

Transparency does exist in that issues are discussed in a transparent manner in council and committee meetings. Members of public can participate are allowed to participate in full council meetings as observers.

The municipal movement and the decentralization cooperation

The Association of local government of Kenya (ALGAK) plays a lobbying and advocacy role for local authorities. It has staff strength of 10 people and annual

budget of 200,000 US percent of the budget while the remaining comes from the donors. Its impact on reforms is limited but increasing.

VI-The local finances

Evaluation:

The intergovernmental transfer is effective and improving. However, the system is not automatic. The locally generated revenue is important, however, the LG effort is yet to approach the potentialities. The LG contribution to the national economy is still very low.

Indicators:

- 6.1. Consistency of intergovernmental transfers : ↑
- 6.2. LG performances in locally generated resources: ⇒
- 6.3. The economic and financial weigh of LG: ↓

Intergovernmental transfers

The ministry of local government in collaboration with the ministries of Finance and other central level ministries has been undertaking various reforms focused on improving the intergovernmental fiscal structure, enhancing local financial management, strengthening citizen participatory planning.

To enable local authorities to provide the services and facilities as required by the Local Government Act, the Government established the Local Authority Transfer Fund (LATIF) through an Act of Parliament (LATF Act no: 8 of 1988). LATIF is block grant that provides

supplementary funds to local authority budgets. This mechanism transfer 5% of the national income tax to all local authorities in Kenya based on an objective formula basis. LATIF transfers account for 25% of total local government revenues and support local expenditures such as personnel, operations, maintenance, capital projects and debt resolution.

In addition to the LATIF block grant funds, the Government also provides a portion of the Road maintenance Levy Fund (RMLF) directly to some local authorities as earmarked grants for road maintenance.

The local generated revenues

Local generated revenue accounts for about 70% of local authority revenues. One main objective of the Kenya Local Government Reform Programme

established and funded by the World Bank from late 1990s is to strengthen local revenue resources.

The financial and economic weight of local governments

Local government authorities are yet to identify and collect all their local revenues. A number of local authorities have put in place various strategies including GIS systems to assist them in

this endeavor. Local authorities at the moment are not yet able to collect 50% of their local revenues, implying that if all revenue was collected most of them would be in surplus.

VII- Local development and poverty alleviation

Evaluation:

The local development planning is still to be improved. Service delivery by LG needs great improvement both in terms of access and quality. The support to the local economic actor is not efficient.

Indicators:

- 7.1. Local development planning capacity : ⇒
- 7.2. Level of service delivery to the population: ⇒
- 7.3. Support to the local economic actors: ↓↓

The local development planning

Under the current local government reforms, communities are being mobilized to participate in the governance and planning process, thus enabling more effective targeting of priorities, more effective implementation, monitoring and ownership. Participatory planning has been introduced through the Local Authorities Service Delivery Action Plans

(LASDAP). The LASDAP process introduced in 2001 currently involves over 43,000 citizens, participating in over 1,000 community meetings nationwide to identify local authority budget priorities. The Government is exploring further mechanisms of involving citizens in participatory budgeting through community contracting community monitoring.

Local government supply of basic services to the population

The bulk of Local government services in Kenya is provided by sector ministries. Local Governments are given very little mandates under the Local Government Act as deconcentrated

administration. The LATIF block grant is meant to among other things improve the capacity of local authorities in service delivery.

The support to the local economic actors

Not much support has been extended to local economic actors – small businesses through micro finance institutions and cooperatives. The informal sector where the majority of

businesses is found continues to be viewed by authorities as illegal and to be wiped out although it is the main employer in the local authority areas.

