

Local government in Kenya

Like most post-colonial states in Africa, Kenya inherited its local government structure from the colonial government. The City of Nairobi was created by royal charter in 1950 and a local government ordinance was passed in 1960 to regulate local government. Local government in the colonial era was primarily meant to serve the growing white settler community in Nairobi and other areas.

Administratively, Kenya is divided into eight administrative provinces, including the Nairobi area, all headed by provincial commissioners appointed by the president. Provincial administration is further deconcentrated into districts, headed by district commissioners, also presidential appointees. Districts are, in turn, divided into smaller units called divisions, locations and sub-locations. The provincial system has no legislative basis, while local government is statute-based. The current Constitution is silent on both.

Legal framework for local government in Kenya

The Local Government Act is Kenya's primary legislation on local government. Passed in 1977, the Act has undergone a number of amendments but retains, as its main feature, tight executive control of local government through the Ministry of Local Government. Currently before Parliament is the Local Government Bill 2009, which is intended to repeal the 1977 Act. However, the debate on the proposed law has been shelved as attention turns to the current constitutional review process. Apart from the Local Government

Act, there are other pieces of legislation that are of relevance to local government, which mainly focus on matters of revenue.

Local government structure

Kenya has a total of 175 local authorities classified as county councils (67), municipal councils (43), town councils (62) and city councils (3). There is no particular hierarchy among the local authorities as they are in a mono-tier structure. County councils basically provide services in rural areas. At one stage they had almost the same geographical demarcations as the administrative districts, before the latter were enlarged in the run-up to the general elections in what is perceived as a means of voter enticement.

The municipal councils and town councils serve urban areas. Municipal councils are in larger urban centres, whereas the town councils are generally to be found in smaller townships. While the Nairobi City Council was created by royal charter, Kisumu in Nyanza Province and Mombasa in Coast Province were granted city status by former president Daniel arap Moi in 2001 and 2002 respectively.

A 2009 report by the Commonwealth Local Government Forum notes that a number of town councils have been given the status of municipal councils. The report further notes that some counties have been divided, creating smaller counties or urban areas within them constituted as town councils. City and municipal councils are headed by mayors and town clerks that are elected by councillors and appointed by the Public Service Commission (PSC), respectively. Town and county councils, on the other hand, are headed by chairpersons and county clerks, also elected by councillors and appointed by the PSC, respectively.

Local government service delivery and functions

Few local government functions are expressly provided for by statute. However, local authorities, with the permission of the Ministry of Local Government, perform many service delivery functions. These services include the management and maintenance of local marketplaces and slaughterhouses, solid waste management, recreational facilities, local road maintenance, street lighting and health services. The functions differ depending on capacity and prior arrangements with the Ministry of Local Government or other responsible ministries. A total of seven local authorities provide education facilities for pre-primary, primary and secondary education, while others provide pre-primary education facilities only. Some authorities also provide basic health services, largely through clinics, with the exception of Nairobi, which runs a hospital. A few of the local authorities provide housing in conjunction with the ministry in charge of housing.

key points

- Local government is not constitutionally entrenched in Kenya.
- There are 175 local government authorities, which are made up of county councils, municipal councils and town councils with no particular hierarchy.
- The Local Government Act gives the Minister for Local Government extensive powers over local authorities.
- Local government services vary from one local authority to another depending on size and capacity.
- The current constitutional reforms in Kenya, if completed, will see a restructuring of local authorities into devolved units referred to as county governments, which will exercise both decentralised government functions and local government functions.

Following the water sector reforms introduced in 2002, water and sewerage services are provided by privately formed companies, which are, in most cases, incorporated as subsidiaries of the respective local authorities.

Local government financing

Local authorities draw funding from three main sources, namely government transfers, own revenue and donor funding. Government transfers are done through the Local Authorities Transfer Fund, which replaced the Local Authorities Service Charge in 1999. The transfer has a 60% service delivery and 40% performance component and requires budget plans before the funds are released. Twenty percent of the national Road Maintenance Levy Fund is distributed to 26 local authorities to maintain roads that do not benefit from the national ministry in charge of roads. Own revenue is mainly through fees and charges, local property tax and small business permits. However, the Ministry of Local Government must approve all charges, and all disbursements are done through the ministry.

Local democracy and community participation

Local government elections are held at the same time as presidential and parliamentary elections. As a result, local councils

are usually dissolved soon after the National Assembly. Two thirds of the councillors from each authority are elected, while a third are appointed by the Minister for Local Government, after nomination by parties or coalitions on the basis of their representation in each council. The district commissioner or his/her representative attends council meetings as a councillor. Currently, there are no legislative measures to ensure that gender issues or special interests and groups are considered in elective or nominated council seats.

The Local Government Act has no provision on community participation. The Act makes the publication of budgetary estimates of local authorities optional. The public can access the estimates upon payment of a fee. The Act allows members of the public to attend full council meetings as observers, but committee meetings are closed to the public. Community participation is supposed to be effected through councillors, who are the elected representatives, but consultation between the councillors and local communities is rare or non-existent.

Under the Kenya Local Government Reform Programme (KLGRP), funded by the World Bank, local authorities are required, through participatory means, to develop local authority service delivery action plans indicating how they intend to spend funds as a pre-condition to receiving the funds.

It must be noted that the multiparty era that started in 1992 has seen an increase in the number of civil society organisations at the local level. There is consequently an increased demand for space and participation in local government, but there has been no legal response, and there has been a varied institutional response from local authorities to the increased political space.

Local government reforms

There have been attempts to reform local government in Kenya, including a commission formed in 1996 that saw the merging of smaller local authorities as a means of increasing viability. The KLGRP has, since the early 1990s, been engaged in reforms aimed at making local government more effective and transparent. The KLGRP hopes to achieve this through a strengthened local revenue base, appropriate intergovernmental



City Hall in Nairobi

fiscal relations, and democracy and participation in budget making and development.

With a referendum set to be held on 4 August 2010, Kenya may have a new constitution before the end of the year. The proposed constitution intends to overhaul the provincial administration and local government structure by creating a constitutionally entrenched two-tier devolution structure made up of national and county governments. County governments will perform both decentralised government and local government functions. There will be 47 counties across the country, each composed of wards. In each county a county legislative assembly will act as a check on the executive council, which will be headed by a governor and deputy governor elected directly by the public. Gender and special interests will be taken care of in the new county government structure.

Relevant transitional clauses in the draft provide that the current local government legislation will continue to apply until a new local government law is passed. The transitional clause provides for a five-year grace period to restructure the current provincial administration structure into the new constitutional order.



Conrad Bosire
Doctoral intern