

Kenya

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Introduction

In 2010, Kenya adopted a new constitution that provided for a devolution process. This took effect in 2013 (the main legislation giving effect to this being the Counties Government Act) and it created two equal levels of government: the national government and 47 county-level governments. While the constitution guarantees the existence of the county level of democratic government, with most of the characteristics that are associated with decentralised models, it must be noted that there is no constitutional protection for sub-county local government. The constitution does state that every county government must decentralise its functions to the extent that this is efficient and practicable, but it imposes no unequivocal obligation to do so. In any event, Article 184 provides for appointed urban area and city board units of decentralisation under the counties. Hence decentralisation at sub-county level, even if it occurred, would not be of a democratic character. This situation is a significant barrier to meaningful local democracy at truly local level. On the other hand, at county level (on which this chapter will focus), the features of decentralised governance are strongly reflected in the constitution and legislation and hence this provides the potential for democracy to flourish at that level. Despite the progressive features of the constitution, however, there has been considerable dissatisfaction among certain quarters with the new arrangements (see Cheeseman, Lynch and Willis 2016).

About ICLD

The Swedish International Centre for Local Democracy (ICLD) is part of the Swedish development cooperation. The mandate of the organization is to contribute to poverty alleviation by strengthening local governments. This report is part of a publication series that investigates local democracy in the 19 countries where the ICLD municipal partnership programme operates.

This report covers events up to 31 May 2019. Events occurring after this period are not considered.

General country analysis

Articles 1(4) and 6(2) of the Constitution state respectively that the sovereign power of the people is exercised at the national level and at the county level, and that the two levels of political authority are distinct and interdependent and must conduct their mutual relations on the basis of consultation and cooperation. This means that, in theory at least, county governments are not subordinate to the national government. Article 189 requires government at either level to perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity and the constitutional status and institutions of government at the other level. Powers and functions of the two levels are allocated in terms of the constitution.

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As indicated above, a curious feature of the framework relating to sub-national governments in Kenya is that, pursuant to the new constitutional arrangement, cities and towns are no longer governed by councils. Instead, according to sections 12 and 13 of the Urban Areas and Cities Act, the management of a city and a municipality shall be vested in the county government and administered on its behalf by a board appointed by the county.

Fiscal decentralisation

Spending responsibilities, or powers and functions, of county governments are specified in the constitution. These include agriculture, county health services, cultural activities, county transport, trade development and regulation, county planning and development, and pre-primary education. Article 175 of the constitution states that county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively. However, county governments have limited revenue-raising power, in that a county may only impose property rates, entertainment taxes and other taxes authorised by an act of parliament. They may, however, impose charges for the services they provide.

The largest source of counties' revenue is a share of national revenue (Commonwealth Local Government Forum 2018). Article 202 of the Constitution provides that revenue raised nationally shall be shared equitably among the national and county governments (with not less than 15 percent going to the counties), and that county governments may be given additional conditional or unconditional allocations from the national government's share of the revenue. The Commission of Revenue Allocation advises the legislature on the allocation. The national senate decides the horizontal division of the total

counties' equitable share among the individual counties every five years.

Section 212 of the Constitution provides that a county may borrow only if the national government guarantees the loan, which implies that national government approval is required. In terms of Article 224 of the Constitution, counties prepare and adopt their own budgets. These are not subject to national government approval, although their formulation and format must follow nationally established norms.

Political decentralisation

The constitution states that county governments shall be based on democratic principles and the separation of powers and that the government of each county consists of a county assembly and a county executive. The legislative authority of a county is vested in, and exercised by, its county assembly, which may make any laws necessary for the performance of the functions and exercise of the powers of the county government.

Article 81 provides that the electoral system must provide for free and fair elections. Voters elect members of the county assembly every five years at ward level (the ward is the electoral unit for local authorities) and independent candidates may stand for election. The county executive consists of a governor, elected directly every five years by the voters, a deputy governor, and no more than 10 county executive members, appointed by the governor. The relationship between county and national level is governed by the constitution.

While county governments have considerable constitutionally guaranteed autonomy, the national government may intervene if a county government is unable to perform its functions, or if it does not operate a financial management system that complies with the requirements

prescribed by national legislation. In addition, in terms of Article 192 of the Constitution, the President of Kenya may suspend a county government in certain extraordinary circumstances.

Kenya has a comprehensive range of accountability mechanisms in local government. These include public participation processes, internal council processes, intergovernmental accountability structures and institutional mechanisms such as the Auditor-General.

Conclusion: possibilities and barriers for municipal partnerships

The decentralisation or devolution process has, as far as it goes, been enthusiastically promoted in Kenya and has a sound legislative and constitutional basis, and hence may provide potential for productive partnership engagements. It must be remembered, however, that decentralisation, in the true sense of the word, does not extend to sub-county level, and hence experiences may differ, which, together with a different environment, may limit the usefulness of partnerships.

References

- Cheeseman, N., Lynch, G. and Willis, J., 2016. 'Decentralisation in Kenya: the governance of governors' *The Journal of Modern African Studies* 54 (1)
- Commonwealth Local Government Forum, 2018. 'Country profile 2017-18: The local government system in Kenya. London: Commonwealth Local Government Forum

Legislation

- The Constitution of Kenya 2010
- The Urban Areas and Cities Act 2011
- The County Governments Act 2012