

GOVERNANCE OF CITIES IN DEVOLVED GOVERNMENT IN KENYA: EXPERIENCES FROM KISUMU

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Abstract

Devolution in Kenya has had ramification on local governments especially urban areas. Kisumu City is unique as the only city with a rural county hinterland. It has created a challenge for the County Executive in terms of managing County expectations and City interests in terms of governance. This paper looks at Kisumu in terms of the governance structures, spatial planning and finance as key aspects of having an effective city management and governance. It points out the gaps that exist within the legal framework that operationalizes the devolved structures for the city. It allows for an appreciation of the management and governance structures of the city as it strives to put in place systems that would make devolution for the city to work.

Keywords: Devolution, Governance, Cities, Kenya

1. INTRODUCTION

Kenya's decentralization is among the most rapid and ambitious devolution processes going on in the world, with new governance challenges and opportunities as the country builds a new set of county governments from scratch.

Feinstein (2015) and Ojambo (2012) notes that decentralisation entails the devolving of responsibility to sub-national tiers of government and is often described in terms of political, administrative and scal dimensions where:

Political = power to elect representatives who are able to make various laws and regulations;

Administrative = responsibility for the provision of certain services and activities; and

Fiscal = distribution of revenue between different tiers of government and the regions' powers to raise revenue through taxes, charges and surcharges.

Every experience of decentralisation is unique and will result in different advantages and disadvantages to the people of the decentralised region.

Cities are critical drivers of national economies. With an effective network of cities, nationals are able to diffuse development to the rural hinterland and create sustained positive change. This process, however, is determined to a great extent by the governance of the cities. Such city governance is often part of a devolved system that gives city governments latitude to implement policy.

Kenya has had some form of Local Government since 1902 (Mboga H, 2009) though these have evolved over time. The management of Urban Areas and Cities in Kenya has been through the 175 Local Authorities established by the Local Government Act Cap 265 of the Laws of Kenya. The Local Authorities were categorized as city council, municipal councils, county councils and town councils. The Local Authorities worked through committees of elected and nominated councilors who formulated policies and planned activities that helped communities engage in socioeconomic and political responsibilities in their locality. Community participation was made possible through the Local Authority Service Delivery Action Plan (LASDAP) meetings. With the advent of the Constitution of Kenya (CoK) 2010 these governance structures were repealed.

The Constitution of Kenya, 1963, amongst others, provided for Unitary parliamentary system of government, with two levels – the National and quasi – federal devolved eight Regional Governments. The Regional Executive, comprised an Executive Chairperson, Regional Executive Committee-all drawn from the Regional Assembly. The powers and authority to govern were heavily tilted in favour of the Executive, though, there were less clearly defined structures of division of labour and limited checks and balance vested in the National and Regional Legislatures. There were a number of changes over the years in the Constitution which resulted in executive powers being centralized and regional authority reduced to Local Government administration through a Minister in charge of these local governments.

The Constitution of Kenya, 1963 was replaced by the Constitution of Kenya 2010; the latter was adopted by 67% at a national referendum on August 05, 2010 and then promulgated on August 27, 2010. (Transition Authority 2013)

The Constitution 2010 gives explicit sovereignty of the people of Kenya, as the custodian of the authority and power to govern, including its apportionment to designated state organs, institutions and offices, who exercise the same on behalf of the people;

It gives a clearer division of mandate, role, function to govern between the main stakeholders/ arms of the state and government, i.e. the Parliament, the Executive, the Judiciary, the ten Constitutional Commissions and two Independent Offices; the devolution, distribution, openness and accountability in governance and service provision; upholding gender parity; inclusion of the erstwhile marginalized communities; the creation of two levels

of government – at National and County: the National Government, comprising of an Executive and a bicameral National Parliament and the County Government, comprising of an Executive and a unicameral County Assembly.

The Urban Areas and Cities Act, 2011 gives effect to Article 184 of the Constitution of Kenya (CoK) 2010. The Act provides for the classification, governance and management of urban areas and cities; the criteria for establishing urban areas and; the principle of governance and participation of residents in the governance of urban areas and cities. This assessment of the Act is an attempt to check its conformity with chapter 11 on devolution in the Constitution as well as its applicability and its effectiveness. Part III of the Act on governance and management of urban areas and cities came into operation on the repeal of the Local Government Act. (Oduor and Kimani 2012).

2. METHODOLOGY

The study used various approaches to collect data. The most important was Key Informant Interviews which were held with officers in institutions that are key drivers in Kisumu county. These included Kisumu City and Kisumu County Government staff in planning, and administration. This created preliminary findings and the information so generated was presented for Focus Group Discussions to validate and build on the information. These were with practitioners in the County, local Universities and civil society groups. Round table discussions by the researchers and identified stakeholders provided further input into the data. Secondary sources were used to provide authenticated information especially statistical data about Kisumu. The information so collected were consolidated into thematic areas that emerged as being key factors in city governance. The paper then addresses the institutional framework within which this governance is progressing and then presents interventions that are designed to enhance effectiveness of the governance system.

3.FINDINGS AND DISCUSSION

3.1. Status of Kisumu as a City

Kisumu City in Kisumu County is the third largest urban centre in Kenya, located on the shores of Lake Victoria (see Fig 1). The City was established in 1901 as part of the development of the railway from Mombasa to Uganda, and also the port connecting to both Uganda and Tanzania. Kisumu is the leading commercial/trading, fishing, industrial, communication and administrative centre in the Lake Victoria basin. It is a transportation hub for the western region, linking Kenya to the East African Countries via rail, road, water and air. Further, the city also has an inland depot for oil and containerized cargo serving the wider great lakes region, as well as being host to Lake Victoria Regional Bodies including the EAC Lake Victoria Commission.

The Urban Areas and Cities Act classifies urban areas as city counties, cities, municipalities and towns. These urban areas are differentiated largely in terms of population and minimally in terms of capacity. Of the 47 Counties Nairobi, Kisumu and Mombasa counties have cities. Nairobi and Mombasa cities are determined by the City Boundaries. Kisumu County on the other hand has Kisumu City and a substantive rural hinterland and other small urban areas. The Urban Areas and Cities Act sets the threshold for a city at 500,000, and for a municipality at 250,000. Nairobi and Mombasa, qualify as cities on the basis of their population. Kisumu is deemed to be a city under the Act.

The Urban Areas and Cities Act provides the basis on which Kisumu is classified as a city. Kisumu meets the following criteria;

- has a population of at least five hundred thousand residents according to the final gazetted results of the last population census
- has an integrated urban area or city development plan
- has demonstrable capacity to generate sufficient revenue to sustain its operation; (UA&CAct No13 of 2011)



FIGURE 1 - MAP OF KENYA SHOWING KISUMU COUNTY IN THE WESTERN PART
Source: County Planning Office

Kisumu's population is growing and is estimated at over 500,000. Kisumu was designated as a city before the promulgation of the new Constitution in 2010. The constitution thus recognizes Kisumu as one of the three Cities in Kenya

3.2. City Management and Governance Structure

The Urban Areas and Cities Act prescribes that "city-counties" (defined as "a city which is also a county") should be governed as county governments. Nairobi is deemed to be the capital city, and is to be governed and managed in the same manner as a county government. Since the 2009 census defines Mombasa county as having a population that is 100 percent urban, it is assumed that that neither Nairobi nor Mombasa will have city boards. In effect only Kisumu City should have a City Board (World Bank. 2012)

The City should be governed by a board comprising of not more than 11 members; comprising, 6 members appointed by the CEC and 5 members nominated by the Institution of Surveyors of Kenya (ISK), Kenya Institute of Planners (KIP), Architectural Association of Kenya (AAK), Law Society of Kenya (LSK), an association of urban areas and cities, Institute of Certified Public Accountants of Kenya (ICPAK) and the business community (Oduor and Kimani 2012).

Kisumu County governance structure is made up of the County Governor, County Executive Committee, County Assembly and Decentralised Units, which legally include the City Management Board.

The County Governor shall constitute the county executive committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county and submit the county plans and policies to the county assembly for approval;

The Executive Committee has mandate for city planning and includes monitoring the process of planning, formulation and adoption of the integrated development plan by the city, assist the city with the planning, formulation, adoption and review of its integrated development plan, facilitate the coordination and alignment of integrated development plans of the cities with the plans, strategies and programmes of national and county governments; and take appropriate steps to resolve any disputes or differences in connection with the planning, formulation, adoption or review of an integrated development plan.

The County Government of Kisumu has not established the Board and has exercised control of the City Management directly from the Governor's office through the City Manager, an arrangement not provided for in the Constitution or the UA&CAct No13 of 2011.

Principles of governance and management of the city are defined in The UA&CAct No13 of 2011. It envisions that the governance and management of the city shall be based on the following principles:

- a) recognition and respect for the constitutional status of county governments;
- b) recognition of the principal and agency relationship between the boards of urban areas and cities and their respective county governments including—
- c) the carrying out by a board of such functions as may be delegated by the county government;
- d) financial accountability to the county government; and
- e) the governance by each board for and on behalf of the county government;
- f) promotion of accountability to the county government and residents of the urban area or city;
- g) institutionalised active participation by its residents in the management of the urban area and city affairs;
- h) efficient and effective service delivery; and
- i) clear assignment of functions.

Without an established City Management Board, the County Executive would be constrained in undertaking a monitoring role while it is also directly governing the city. The City management has therefore tended to continue working within the framework of the old order of the City Council, albeit without elected Councilors or Mayor.

The County Executive Committee member in charge of Planning has tended to engage in supervision of the City without clear authority leading to conflict especially when the office of the Governor also gives instructions to the City Manager.

The management of a city is vested in the county government and administered on its behalf by:

- a) a City Management Board constituted as stated earlier
- b) a City Manager appointed competitively; and
- c) such other staff or officers as a the county public service may determine.

The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of:

- a) suing and being sued;
- b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- c) borrowing money or making investments;
- d) entering into contracts; and
- e) doing or performing all other acts or things for the proper performance of its functions in accordance with this Act or any other written law which may lawfully be done or performed by a body corporate.

The Board shall exercise executive authority as delegated by the County Executive; (Sec 21 UA&CAct 2011). This implies that although the County Executive has the ultimate authority, for purposes of an efficient management it needs to delegate to the Board and allow it to perform its functions as a body corporate.

Urban governance arrangements still need to be finalised. In the new dispensation, cities are to be managed by unelected boards, directly appointed by the county executive. They will also have limited powers and discretion. Moreover, all but three of Kenya's current local authorities will meet the conditions required to become cities or municipal boards. Instead many major urban centers will be governed by town committees with weak and unclearly specified management arrangements (World Bank. 2012).

The Act recognizes a principal-agent relationship between the County Government and the Board of the City, and specifies that the Board is financially accountable to the County Government. However a look at the County Organization structure demonstrates that the City Management Board is not included in this structure (Fig 2).

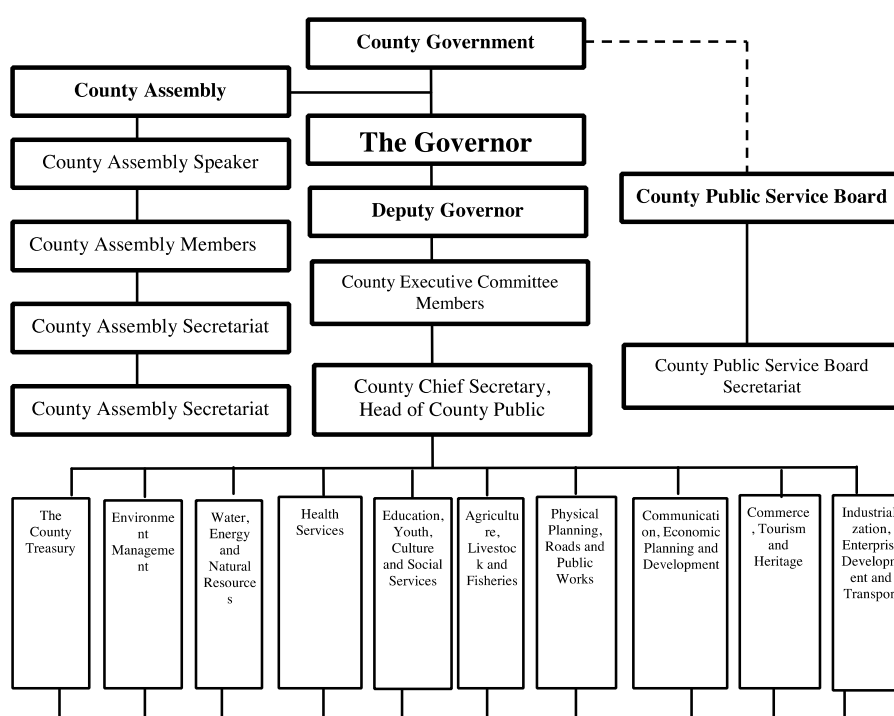


FIGURE 2 - KISUMU COUNTY ORGANIZATION STRUCTURE
Source. County Government of Kisumu 2013

The City Management Board is mandated to undertake the following:

- oversee the affairs of the city
- develop and adopt policies, plans, strategies and programmes, and set targets for delivery of services;
- control land use, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centres, residential

- areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the city or municipality as may be delegated by the county government;
- d) as may be delegated by the county government, promote and undertake infrastructural development and services within the city or municipality;
 - e) develop and manage schemes, including site development in collaboration with the relevant national and county agencies;
 - f) maintain a comprehensive database and information system of the administration and provide public access thereto upon payment of a nominal fee to be determined by the board;
 - g) administer and regulate its internal affairs;
 - h) implement applicable national and county legislation;
 - i) enter into such contracts, partnerships or joint ventures as it may consider necessary for the discharge of its functions under this Act or other written law;
 - j) monitor and, where appropriate, regulate city and municipal services where those services are provided by service providers other than the board of the city or municipality;
 - k) prepare and submit its annual budget estimates to the relevant County Treasury for consideration and submission to the County Assembly for approval as part of the annual County Appropriation Bill;
 - l) as may be delegated by the county government, collect rates, taxes levies, duties, fees and surcharges on fees;
 - m) settle and implement tariff, rates and tax and debt collection policies as delegated by the county government;
 - n) monitor the impact and effectiveness of any services, policies, programmes or plans;
 - o) establish, implement and monitor performance management systems;
 - p) promote a safe and healthy environment;
 - q) facilitate and regulate public transport; and
 - r) perform such other functions as may be delegated to it by the county government or as may be provided for by any written law.

This comprehensive list of functions gives the Board a wide spectrum of roles and responsibilities which would require interaction with various departments of the County. Giving the Board the mandate allows for effective coordination at the city level. However without a Board various departments of the County Executive have been undertaking activities in the City with conflicts in operations. The net effect has been ineffective use of resources and results that do not deliver to the citizens. The biggest challenge has been the scope of the departments in City Hall vis a vis the County Departments. The latter assume a superior role without clear lines of authority. The new system makes urban managers clearly subordinate to County Executives, including being dependant on

County Governments for financing. On the human resource side, the City has weak capacity in middle management and lacks technically qualified staff. There is no training policy for the City staff or systematic measuring of performance.

World Bank. (2012) observes that “unless corrective action is taken, Kenya’s cities may well be the big losers of the devolution process. This would be dramatic as Kenya’s cities, just like other cities worldwide, are growth engines for the entire country, and the main source of own fiscal revenues for local administration. Kenya’s devolution is unique in that it involves simultaneous decentralization of key services and resources from the central to the county level, but also recentralization of urban management, formerly provided by the local authorities, to the new county administrations. With inadequate resource and management for Kenya’s cities, the transition to devolved government is leading to failing urban service delivery, which would hurt residents and businesses, and so compromise the country’s growth prospects” The requirement for public participation is wrought with inadequacies which makes it difficult to achieve effective participation by the Citizens in planning, budgeting and implementation (Nizam and Muriu 2015, 2015 a; Omolo and Nizam 2015).

Experiences from Rwanda note that The growth of urban centres poses a specific challenge to the delivery of social services to urban populations. These challenges are difficult to face using the political and administrative structures for rural local governments. The needs of urban populations are specific and require structures that are specifically tailored to them (Republic of Rwanda 2001).

The political leadership needs to ensure that the administration who will provide the services has the appropriate skills and resources to deliver their mandate. In transitional contexts it is the building of capacity of both those who provide the services and those who regulate and oversee their delivery that is often neglected. Such capacity building can range from the provision of basic literacy, numeracy and project management skills to sophisticated project-based accounting, and monitoring and evaluation techniques (Feinstein 2015).

3.3. Spatial Planning and Governance of Cities

The law requires that the City develops a spatial plan that would govern the use of space and resources within the City. The City Manager is expected to submit to the Executive Committee, a copy of the Integrated Strategic Urban Development (ISUD) Plan as adopted by the Board for adoption or amendment. The copy of the integrated development plan submitted to the County Executive Committee shall be accompanied by:

- a) a summary of the process of its formulation
- b) a statement that the process has been complied with, together with any explanations that may be necessary to clarify the statement.

Although the City has no Board, the ISUD Plan was developed and submitted to the County Executive.

The County Executive Committee on receipt of a copy of the plan considered the ISUD plan and made recommendations; and eventually submitted the plan to the County Assembly for its approval. On approval by the County Assembly however there has been no clear roadmap on the implementation of the ISUD Plan. The City thus has a plan it has not been able to implement. With inadequate staffing, only one Planner at the City and none at the County, it would be a monumental challenge to expect the one officer to coordinate the Plan implementation for a city of half a million people covering an area of over 250 sq. km.

The City Management Board is expected to review its ISUD plan annually to assess its performance in accordance with performance management tools and may amend the plan where it considers it necessary. This has not been technically possible due to the lack of a Board and staff to undertake this process. This sorry state of affairs is resulting in a waste of resources invested in preparation of the Plan which cannot be implemented for the growth and development of the City.

The main difference between the Kenyan model of urban governance and that of most other countries, is the absence of democratic representation on the boards and committees of urban areas. Comparison with Tanzania (Massoi & Norman 2009; Kisumbe et al 2014) and Uganda (Ojambo 2012; Mugabi 2004) revealed that there was insignificant community involvement in planning process at grassroots community. In most case planning was undertaken by few experts who did not include residents' priorities, hence leaving many problems unsolved. Attempts have been made to address this through the participation of the County Assembly in monitoring development proposals of the City.

The Act rightly assigns the role of oversight of the City (read Executive) to the County Assembly. This is mainly exercised through the approval of plans and policy instruments. Given that the urban area plans include performance indicators and targets, the Executive should be able to use their reporting against these targets to provide an informative report to the County Assembly. (Oduor and Kimani 2012) This oversight role has not been undertaken by the Assembly due to non-existence of the City Management Board. There have been no clear measures put in place to support the City in meeting the Plan targets hence the unavailability of progress monitoring report to the Assembly.

3.4. City Financing

Urban service delivery depends on the priority which the County gives their expenditures in their budgets. The UA&C Act envisages that the County government will provide transfers to the city boards, but provides no guidance as to how these amounts should be calculated. The net effect has been piecemeal allocation of resources for city activities as part of sector financing (County Government of Kisumu 2013). The City Departments therefore continue to struggle in meeting their mandate of service provision with indeterminate financing.

The World Bank. (2012, 2015, 2015a) indicates that the national government could help to ensure that urban services are adequately provided through earmarked urban service grants. Grants might be paid either to the county governments or to the bodies that manage them (urban boards). However, most county revenues are fungible, and can be allocated to any purpose. An earmarked grant might have the effect of allowing counties to reduce their own funding to urban services. County governments might abandon their own responsibility for taking care of urban services, and blame the national government for inadequate service delivery in urban areas. To ensure that counties maintain their own level of funding for urban services, transfers could include an additionality clause, which binds the counties to maintain a certain level of funding to urban services. A county that does not allocate an adequate amount, would not receive the earmarked grant.

On the whole, county governments have embraced provisions on public participation. However, proper and adequate mechanisms provided for in the Constitution and County Government Act to facilitate these principles are yet to be put in place to ensure structured engagements with the public (see World Bank 2015). There is the process of advertising in the daily paper and other media on the locations where the public may assemble to listen to and interrogate the budget. However this budget rarely has special consideration for the city. The requirements of the city are treated like any other part of the county. The net effect is inadequate resource allocation to the city even if it is the largest generator of County revenue. The projections for the Public Service Board for Kisumu County FY2018/19 is 73million which is the same figure allocated to the whole City. On the other hand the ICT department in the County projected allocation in FY2018/19 is 269million (County Government of Kisumu 2016)

The CIDP provides that all implementing departments will be expected to prepare budgets and thereafter develop work plans based on the approved budgets. The CIDP will form the basis for budgeting for the County and so it will be tabled in the County Assembly for deliberation and approval. Implementing agencies will be expected to produce annual reports for their activities towards the implementation of the CIDP (County Government of Kisumu 2013). It is with this vague framework that the City Management has been striving to provide services. The City has been managed like a sub-department within the county structure working its budget through the County Executive Committee Member in charge Physical Planning, Roads and Public Works. This in effect means that departments within the City are financed through other Departments in the County Executive and priorities tend to be the rural areas of the County.

Governance in Kisumu is facing a number of challenges as the city attempts to recover from years of neglect (due to its status as an opposition stronghold), address corruption and political interference, and respond to reforms within the Kenyan local authority framework. The City Management also has to address its poor revenue collection, high rates of poverty and the exclusion of slum communities in urban decision making. Additionally, it

has to manage the newly emerging partnerships and the increasing donor interest in an efficient and meaningful way.

Studies in Uganda (Steiner 2006; Ndegwa et al 2003) reveal comparative challenges. Since local taxes and levies are extremely low, local governments receive intergovernmental transfers from the centre in the form of unconditional, conditional, and equalisation grants. These transfers account for the bulk of local revenue (nearly 90 percent in recent years). Even though transfers have increased incrementally, this has happened without proper consideration of the costs of local functions, and local governments have always complained about the inadequacy of their finances.

The Kisumu City Management is ill-equipped to respond to these challenges in a holistic manner as it lacks the financial and human resource capacities. The City has poor performance in revenue collection and its financial problems are compounded by highly centralized decision making. The City collects 80% of the County Revenue and this is used to finance the total County expenditure. The County Government supervises the City, influencing its spending priorities and policies, and disregarding efforts towards decentralization. Community participation during the processing of the Public Finance Bill is a ritual in which contestation sees the rural citizens refusing to accept any new or enhanced levies and hence the City remains the main financial resource provider.

4. CONCLUSIONS

Devolution envisages decentralization at administrative, political and fiscal dimensions. The constitutional structure and attendant legislation provides a framework for inclusivity in city governance in Kenya. Kisumu however has not fully implemented the tenets of these provisions. The political level of devolution has been achieved with an operational County Assembly and elected Executive Governor. These are the organs who have begun putting in place administrative structures to operationalize devolution, albeit at a very slow pace, with no City Management Board in place. Fiscal policy still has not been fully implemented to ensure independence of the City administration.

These could be a result of the Executive exploring ways to ensure that the city management does not develop as an alternative power center. This is informed by the disproportionately large resources controlled by the City within the County. Unlike Nairobi and Mombasa which are City Counties, Kisumu County has the City and other urban areas within the County. The City is the County Headquarters and the Executive would want to have full control of the City. It will be imperative for the Executive to provide for the requirements of the Constitution, County Government Act and the Urban Areas and Cities Act by having legislation at the County Level that would allow for operationalizing governance structures at the city without creating power conflicts. This would involve interpretation of the levels of authority as provided by law. There will be need to address perceived resistance to change that has been noted amongst operatives who were powerhouses in the repealed Local Governments.

Enhancing participation of citizens at lower Ward levels (e.g. Ward Committees) would mitigate the loss of electing direct representation to the City Management Board.

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