



Political Economy Analysis of Kenya

Norwegian Agency for Development Cooperation

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List of acronyms and abbreviations

AKF	Aga Kahn Foundation
AU	African Union
CBO	Community Based Organisation
CDF	Constituency Development Fund
CIDA	Canadian International Development Agency
CMD	Centre for Multiparty Democracy
CSDGF	Civil Society Democratic Governance Facility
CSO	Civil Society Organisation
DFID	Department for International Development (UK)
DP	Democratic Party
FIDA	Federation of Women Lawyers
FORD	Forum for Restoration of Democracy
GEMA	Gikuyu, Embu and Meru Association
GGP	Gender and Governance Programme
GJLOS	Governance, Justice, Law and Order Sector (Reform Programme)
IDM	Institute for Multiparty Democracy
IDP	Internally Displaced Persons
IED	Institute for Education in Democracy
IIEC	Interim Independent Electoral Commission
IMLU	Independent Medico Legal Unit
IOM	International Organisation for Migration
IREC	Independent Review Commission on the 2007 Elections
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KNUT	Kenya National Union of Teachers
LA	Local Authority
LATF	Local Authority Transfer Fund
LDP	Liberal Democratic Party
NARC	National Alliance of Rainbow Coalition
NDI	National Democratic Institute
NDP	National Development Party
NGO	Non-governmental Organisation
NOK	Norwegian Kroner
Norad	Norwegian Agency for Development Cooperation
NPK	National Party of Kenya
ODM-K	Orange Democratic Movement – Kenya
OECD/DAC	Organisation for Economic Cooperation and Development /Development Assistance Committee
PFM	Public Financial Management
PNU	Party of National Unity
PSR	Public Sector Reform
Sida	Swedish International Development Agency
SLDF	Sabaot Land Defence Force
TI	Transparency International
TOR	Terms of Reference
TRJC	Truth, Justice and Reconciliation Commission
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

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Executive Summary

Norad commissioned Scanteam to prepare a Political Economy Analysis of Kenya to inform the development of its next strategy for governance in Kenya. The report has been prepared jointly by Geir Sundet of Scanteam and Eli Moen of Norad. Tiberius Barasa, of the Nairobi based Institute of Policy Analysis and Research, has assisted with the field work and analytical input. This report presents the output of the assignment.

There is an increasing realisation that governance reform is first and foremost a political challenge. Traditional technical interventions of capacity strengthening and institution building have not proved to be effective and development partners are now gradually turning to political economy analysis in their planning.

This report presents a political economy analysis of Kenya, which is informed by an analytical approach recently developed by OECD/DAC that proposes that the focus in countries in fragile situations should be on state legitimacy and state-society relations.

The violence that broke out after the 2007 elections made parts of the country ungovernable for several weeks. It took the intervention of international mediators, led by Kofi Annan, to negotiate an agreement between the two leading protagonists, who seemed more concerned with the battle for power than with the plight of the citizen. More than 1,000 people were killed during this period and at least 350,000 were internally displaced. The country remains in a fragile situation. The coalition government that was formed after the mediation has proved to be very ineffective and the citizens' confidence in their leaders has reached a low point.

The report provides a political economy analysis that is set in a historic context. It shows how the state-society relations have been under strain since independence due to a widening gap between the ruling elites and the population at large. Inequalities have often led to political resentment being expressed along tribal lines, particularly over perceived injustices over the distribution of land ownership.

State-society relations deteriorated further since the start of the Moi era, when state predation intensified and the accountability structures of the state were deliberately weakened to allow unchecked use of state resources by the executive.

Another problem that arose in the Moi era, is the use of violence for political means. This was particularly felt during the first multiparty elections in 1992, when violence was systematically used to influence the elections, particularly in the Rift Valley. It is noted that the death toll in 1992 was similar to what was experienced after the 2007 elections. Election-related violence was also significant in the 1997 elections, while there was a temporary respite in 2002.

The problems noted regarding corruption and the political use of violence are compounded by the issue of impunity. There have been a large number of official reports of enquiry, and also large amounts of independent evidence gathered, that document the involvement of political leaders in corruption and violence. Still, to date, no senior leaders have been brought to court to answer for what they have done. This has further undermined the legitimacy of the political leadership.

The report goes on to present the analytical approach developed by OECD/DAC to inform development assistance in countries in fragile situations. This approach argues that state-building needs to be the central objective and that this is best achieved through focusing on state legitimacy and state-society relations.

Three dimensions of state legitimacy are identified:

- How the state functions, which refers to the decision-making and democratic process (elections as well as the state's response to the population through transparency and accountability in

public administration, the functioning of checks and balances on centres of power, publications of audits of public funds, media coverage and open political debate, etc.);

- What the state does, which refers to the state's ability to provide essential services, such as education, health, market infrastructure and security, etc.; and
- The beliefs of people, which includes people's perceptions of community, including perceptions of identity in relation to ethnicity, religion and language, and the extent to which it is felt that these differences are accommodated under a common acceptance of the state.

The report then returns to a discussion of state-society relations in Kenya to see what light this analytical approach throws on the development challenges in Kenya. It is argued that support to the Government, in the present Kenyan context, is not likely to improve state legitimacy as there is a real risk of assistance aiding the further entrenchment of the current elites, rather than improving state-society relations. Assistance to civil society is also not without risk, as much of the present civil society is urban based and controlled by members of the same national elites.

There was a consistent message from respondents that change is most likely to be brought about as a result of demand from below. It is further argued that in order to tap into and support this demand in a systematic manner, it is necessary to engage in people's participation in public affairs at the local level. Engagement at the local level in Kenya, however, presents problems as there has been a continuous process of centralisation of power since independence and concentration of powers in the Presidency. Finding ways to support people's participation in public affairs at the local level, in the absence of a decentralisation reform, is a key challenge for development partners.

An overview is provided of the governance approach of Norway and other lead development partners. The development partners fully recognise the problem of the government have limited legitimacy in the population. Priority in the short term is accorded the implementation of the National Accord, which is the program developed by the international conflict mediators in collaboration with Government, to address the challenges of national reconciliation after the trauma of the post-election violence.

For the long-term programs, Norway and other development partners are concerned with the limited results in the governance sector programs, including the Governance, Justice, Law and Order Sector Reform Programme (GJLOS), the Public Financial Management Programme (PFM) and the Public Sector Reform Programme (PSR).

The donors are generally satisfied with their support to CSOs. The development partners do recognise, on the other hand, that the CSOs they support tend to be Nairobi based, and led by members of the national elite. There are reasons to question the extent to which CSOs are truly representative of the people that they often claim to represent.

Building on the above review and analysis, the report makes the following recommendations.

For the short term, it is recommended that the present support to the reconciliation process continues. This includes support to IDPs, reconciliation, and work to address gender based violence. Support should also continue for the Annan process. It is also recommended that Norway joins the multi-development partner support of the preparations for the next elections.

For the longer term, the following recommendations are made for support to Government and Non-State Actors:

Support to the **Government of Kenya** should be scaled down until there is evidence of a stronger commitment to reform. The support to GJLOS should not go beyond the current phase. In order to maintain some level of engagement with the Government, continuation of support to PFM should be considered pending the outcome of the Mid-Term Review. The Embassy is also recommended to position itself to support a decentralisation reform if and when it appears on the agenda.

Support to CSOs should as far as possible be channelled through the multi-donor supported Civil Society Democratic Governance Facility (CSDGF) and the Gender and Governance Programme (GGP). Consideration should also be given to continued support of the National Civic Education Programme II in view of the redirection towards more support to representative organisations. Direct support to CSOs outside these programs should be avoided to reduce transaction costs.

The exception to this rule is **support to the larger strategic organisations**, Transparency International Kenya and Kenya Human Rights Commission. Support to these is recommended, particularly in view of the strategic importance of their activities at the local level.

The support to **political parties** through NDI is recommended to be continued. The Embassy should encourage a particular focus on the democratic process at the local level.

Limited support to **media** is recommended in as far as it links with and reinforces other supported activities. Media is potentially an important means of supporting social dialogue at both the national and local level.

It is recommended that the Embassy explores possibilities of supporting **representative organisations**. These include in particular trade unions and farmers associations. These organisations play a potentially important role in building democratic institutions and lending legitimacy to national democratic processes at the national and local level and have a potential to counter the ethnic divide.

Finally, it is recommended that the Embassy supports efforts by partners in Kenya to engage in a **continuous process of political economy analysis** of particular issues when knowledge is lacking, in order to inform their own and other's planning and programming.

The gist of the recommendations, therefore, is to follow broadly the same strategy as present, but to put a more explicit focus on state-society relations, particularly at the local government level, and to place more emphasis on systematic learning, analysis and social dialogue.

Political Economy Analysis – Kenya

Norad commissioned Scanteam to prepare a Political Economy Analysis of Kenya to inform the development of its next strategy for governance in Kenya. The report has been prepared jointly by Geir Sundet of Scanteam and Eli Moen of Norad. Tiberius Barasa, of the Nairobi based Institute of Policy Analysis and Research, has assisted with the field work and analytical input. The report was prepared in the period April – June 2009 and included field work in Nairobi in April. This report presents the output of the assignment.

1. Introduction

Practitioners in development assistance have increasingly come to realise in recent years that development assistance, in particular assistance in the area of democratic governance, is largely a political challenge. As the technical interventions of capacity strengthening and more or less mechanistic building of democratic structures have failed to produce the desired effects, attention is now gradually turning to political economy analysis and thinking about how development partners can best assist in the political development of their partner countries.

The objective of this report is to utilise a political economy analysis with a focus on the legitimacy of the state to outline the context for Norwegian support to Kenya within the area of governance and to provide recommendation's for further support.

The second section of this report provides a political economy analysis of Kenya's recent history. It shows how the structures and public legitimacy of the Kenyan state have weakened, particularly in the post-Kenyatta years¹. The fragility of the Kenyan situation became particularly clear in the aftermath of the 2007 elections, which saw widespread violence. The subsequent coalition government and the reform and reconciliation agenda are given special attention.

The third section of the report provides a discussion of the challenges of development assistance in countries that are in fragile situations. It summarises the most recent thinking in OECD/DAC that proposes that the focus in states in fragile situations should be state legitimacy and state-society relations.

The fourth section relates this approach to the Kenyan situation and discusses the challenges of development assistance in a country that suffers from elite captures. It also includes a brief analysis of state-society relations at the local level.

The fifth section provides an overview of the programs and approaches of Norway and other leading development partners in Kenya, and attempts to distil lessons from their experiences. Their short and long term strategies are outlined and attempts are made to review them in the context of state legitimacy.

The sixth section provides recommendations for future Norwegian assistance, suggesting guiding principles for assistance in the area of governance and outlines recommendations for the short and long term.

The final section summarises and concludes.

2. A Political Economy Analysis of Kenya

The level of violence and counter violence that broke out in Kenya after the December 2007 elections took many if not most by surprise. Kenya had liked to see itself as a beacon of stability in a conflict-

¹ In Kenya it is the legitimacy of the ruling elite that is low. People believe in a future for the state of Kenya but want a new kind of leaders. See for example www.Afrobarometer.org

ridden region, and many observers agreed. The country boasts a strong middle class, vibrant media, vocal and well organised civil society organisations, a relatively large and organised business community (formal private sector), and a growing experience with competitive politics. Kenya therefore seemed an unlikely candidate for a failed state.

The events that followed the seriously flawed elections changed that perception. Shortly after the Electoral Commission of Kenya announced Mwai Kibaki as the victor of the Presidential polls, gangs went on the rampage and violence along ethnic lines resulted in more than 1,000 people dead and 350,000 or more internally displaced. Many of the gangs were seemingly well organised and subsequent investigations produced evidence that several of the gangs had been sponsored by senior politicians and that the police were sometimes turning a blind eye or even fuelling the violence, allegedly in collusion with politicians.

While the violence raged, the national leaders seemed more preoccupied with securing the best political outcome for themselves, than with using their influence to stop the violence. A resolution to the political crisis was achieved only through international mediation led by Kofi Annan. A coalition government was established of the president's party and the main opposition party under the leadership of Raila Odinga, who became prime minister, a new position that was part of the agreement.

Stability is no longer taken for granted in Kenya. One year after the coalition government took office the general perception is that little has been achieved by the coalition government on the urgently needed reforms that were part of the agreement. Internal conflicts both within the coalition and in the parties that make up the coalition are apparent. A lack of collective vision and commitment to reform is discernible. This has given room for anti-reform and non-reform forces at all levels to operate. The public is beginning to question whether the partners in the coalition government act in the public interest.²

In conversation, many Kenyan informed analysts say the possibility of state collapse is a real one. Some people draw parallels to Ivory Coast, another Sub-Saharan country that used to be cited as one of the rare success stories. There are obvious risks associated with providing development partner support in such circumstances, and perhaps the most risky field of all is governance. Any intervention in the governance arena is bound to have both intended and unintended impact on the continuous power struggles in Kenyan political life, and it is therefore prudent for development partners to seek, achieve and maintain an informed understanding of political realities in the country.

This section provides an overview over key characteristics of the Kenyan state that are relevant to Norway's work in the area of governance. First, a brief historical analysis is provided of the evolution of the Kenyan state. Second, further elaboration is provided on the challenges inherent in the concentration of powers in the Executive and the elite capture of the political and economic agenda in Kenya. Third, a brief assessment is given of the political situation after the 2007 elections and the National Accord that brought the coalition government into being.

The colonial foundation of the Kenyan state

At independence, Kenya inherited a colonial model with a strongly centralised state and a dominant executive. Kenya had been a European settler state, with plantation agriculture as the dominant occupation of the settlers. Their dominant position emerged through appropriation of land from local populations, including the Kikuyu, the Kalenjin, the Maasai and others. The African population remained smallholders while a large share of the rural population became labourers for the settlers in a semi-feudal system. The unequal distribution of land, landlessness and the legal restrictions on

² The Kenya National Dialogue and Reconciliation Monitoring Project, January 2009, Resolving the Political Crisis (Power Sharing).

indigenous Kenyans in some areas to own land and engage in commercial agriculture were among the major grievances in the independence struggle.³

Early political organisation was restricted by the colonial administration to ethnically defined regions, and they prevented the formation of nationwide movements. This gave an early impetus to the ethnicisation of Kenyan politics.

The Kenyan campaign for independence was marked by violence from early on. The Kikuyu *Mau Mau* movement for independence developed military tactics and launched a protracted war against the colonial administration. The *Mau Mau* revolt led to a State of Emergency being declared in 1952, which lasted until 1960. The casualties during the *Mau Mau* revolt are estimated to have been 100 Europeans and 10,000 Africans.

The colonial administration introduced land reform, partly to address the grievances of the independence movement, but it did not contain any significant component of redistribution. To the extent that there was transfer of land in the plantation economy in the early 1960s, this was mainly from Europeans to the new, mainly African, political elite. In the Rift Valley, the allocation of land to Kikuyu settlers during both the late colonial and early independence years, caused resentment by the resident Kalenjin, who looked upon the Kikuyus as 'outsiders' (Branch and Cheeseman 2008).

Thus, when power was handed over from the colonial administration to the Kenyans in 1963, some of the key characteristics of today's political situation were already in place: a centralised state with a powerful executive, political conflict around the issue of inequality, particularly with reference to land, and a tradition of violent confrontation between the state and popular movements in opposition.

Increasing concentration of powers in the Executive

Kenyatta established a patrimonial state from the beginning. By this is meant that he oversaw the informal establishment of patron-client networks, where clients were rewarded with land, state contracts and other preferential treatment. An African business elite, predominantly Kikuyus, emerged alongside businessmen of Indian origin. Some resentment appeared, particularly from the Luo, that the non-Kikuyu were not given a share of positions in the leadership commensurate with their share of the population. But Kenyatta did have a measure of success in portraying himself as the father of the nation and the leader of all ethnic groupings. Kenyatta also had the advantage of having access to considerable sources of patronage, most significantly through the re-allocation of large tracts of land vacated by European settlers.

In the first years of independence, there were two major political parties. The Kenya African National Union (KANU) was the party of Kenyatta and the dominant Kikuyu initially in alliance with the Luo under Oginga Odinga's leadership. The Kenyan African Democratic Union (KADU) was the party of the Kalenjin and other more marginal ethnic groups in the Rift Valley, but it also had support in the Coast Province and among the white population. KADU advocated the adoption of a system of regional federalism, which became known as *Majimboism*. This cause soon faded from the national agenda, however, and Kenyatta lured KADU leaders into crossing the floor, in return for lucrative appointments, in government or parastatals, or allocation of valuable land in the Rift Valley. KADU merged with KANU in 1964, only a year after independence, and Kenya became a *de-facto* one-party state (Mueller 2008).

Against the backdrop of the Cold War an ideological rift emerged in KANU between Kenyatta and Odinga. Whereas Kenyatta favoured a Western-oriented foreign policy and liberalist economic policies, Odinga maintained links with the Soviet bloc and espoused redistributionist policies. Eventually Odinga left KANU to form the Kenya People's Union (KPU). The erstwhile KANU MPs who had crossed the floor were compelled to face the electorate again in a series of bi-elections in

³ The information in this and the following paragraphs is drawn mainly from Marguette et. al. 2008

1966. Many of them lost. Although some prominent Kikuyu leaders had joined Odinga in the KPU on ideological rather than ethnic grounds, the KPU was portrayed as a Luo party. The split in KANU in the 1960s foreshadowed the same ethnic and ideological sentiments that transpired in 2007/2008.

After the death of Kenyatta in 1978, the Presidency went to Daniel arap Moi, then Vice President. A member of the smaller Kalenjin ethnic group from the Rift Valley, one might have expected him to revive the *Majimboism* and redistribution policies of the early KADU. This did not happen. While the Kenyan local authorities at independence were relatively well functioning, the central government started chipping away at their powers and resource base soon after independence. In the 1970s the responsibility for delivering the basic social services of health and education were moved from the Local Authorities to the line ministries and the Local Authorities lost its most important tax base. This development continued unabatedly under Moi, with the strengthening of the Provincial Administration, which is under the President's Office and in fact an extended arm of the Presidency, at the expense of the local authorities. Moi also created many new districts by sub-dividing existing ones. This was done to create new offices to bestow to his allies. The new districts were often not viable, which led to a further deterioration of the state of local government in Kenya (see, e.g., Ghai 2008, 222).

Moi's adaption of the slogan 'nyayo' – footsteps – signalled that he intended to follow the track laid out by Kenyatta. Moi faced tougher odds than Kenyatta, however, in keeping together the elite alliance forged by the first president. He did not have a sizeable ethnic base and he did not have the same kind of access to the spoils of independence as Kenyatta. Most significantly, there was no longer any vacant settler land to allocate to allies or would-be allies. It also didn't help that the beginning of the Moi era coincided with a global economic downturn following the 1979 oil crises (Branch and Cheeseman 2008) and the end of a coffee boom for Kenyan producers in the global coffee market.

In order to consolidate his political control in these adverse circumstances, Moi employed the twin tactics of buying support through predation on the state's resources and the weakening of his enemies through deliberate policies of further centralisation of power. Following the 1982 failed coup attempt it became abundantly clear that power could not be taken for granted. A constitutional amendment was hastily passed to introduce a *de-jure* one-party state and Moi's government outlawed ethnic welfare organisations, the most powerful of which had been the Gikuyu, Embu and Meru Association (GEMA), which was seen to be hostile to the Moi regime.

Moi's strategy of expanding the system introduced by Kenyatta of using the state's resources to maintain his network of patronage was partly made possible through what Branch and Cheeseman has termed the "informalisation" of the state (2008). This included the deliberate weakening of control institutions, such as the judiciary and the auditor general, and of systems of financial management. Increasingly, the Presidency took on extra powers, while the checks were weakened. This was a deliberate strategy to maintain control and to ensure that the President could manoeuvre as he wished, unencumbered by external controls. This led to a weakening of state institutions, which were increasingly seen as serving the country's elite rather than the people. The source of political patronage was found in allocating public land, often in protected forests and public areas like urban parks and reserved land, the sale of parastatals, and increasingly large schemes of grand corruption in public procurement and financial management. To what extent this exploitation of state institutions for private gains by President Moi led to the declining legitimacy of the state is difficult to assess, but it is probable that the legitimacy of the state was higher under Kenyatta, *inter alia* owing to the view of the general perception of Kenyatta as the founding father of the nation but also because political awareness was rising and people became more informed.

As a wave of democracy swept across the world with the fall of the Soviet Union and the end of the Cold War, the pressure for change was mounting steadily in Kenya by the end of the 1980s. Moi was strongly against the introduction of multi-partyism, arguing that it would fuel tribalism, cause conflict and undermine national development. As pressure mounted, also from development partners who

withheld support as they demanded the introduction of competitive party democracy, Moi was forced to give the population their first real taste of multiparty elections since the early days of the independent republic.

The introduction of multiparty democracy fuelled a further increase in an already high level of corruption. Sitting leaders accelerated accumulation, as they were now less certain of being able to stay in power. Also, it quickly became apparent that securing victory in multi-party elections are expensive, which in turn, provided further motivation for accumulation, often through highly organised schemes with the backing of political parties.

A second impact of the introduction of political competition was the increasing use of violence. This arguably started with some senior politicians keeping personal militias of bodyguards already in the early 1980s, which they used to mete out "private justice" (Mueller 2008). Such private militias increased with time and use, and politicians would also hire local gangs of youth to intimidate political opponents. In the run-up to the first multi-party elections in 1992, there was systematic use of violence. The violence was particularly severe in the Rift Valley, where KANU was worried about losing votes to large sections of relatively recent settlers from the Kikuyu, the Luhya and the Luo ethnic groups. This presented a particular risk under the new electoral rules, as Moi was likely to be dependent of getting at least 25% of the votes in the Rift Valley, in order to satisfy the requirement of getting at least 25% of the vote in 5 of the 8 provinces in order to be elected President.

To address this problem, senior politicians unleashed gangs of young, armed men of certain sections of the population, to drive people away from their homes, thus preventing them from casting their votes. In the run-up to the 1992 elections, more than 300,000 people, mostly Kikuyu, were displaced and more than 1,500 people were killed. The number of people killed, was therefore possibly even higher than after the 2007 elections. The names of several of the leaders and officials responsible for organising the violence were made known in several published reports, including those of Government commissions. Still, to date nobody has been held accountable for their sponsorship of the 1992. The relevance of this historic case of impunity to the more recent events is obvious.

Moi emerged victorious from the 1992 elections, and secured his election to the position of President, although he won only about 1/3 of the vote. The erstwhile unified opposition under the banner of the Forum for the Restoration of Democracy (Ford), had quickly fragmented into several opposition parties and consequently failed to become a real challenge to KANU, due to their failure to enter into a strategic alliance. Kibaki was the closest contender for the presidency, on the ticket of the Democratic Party.

History repeated itself in the 1997 elections. The election campaign was marred by organised violence aimed at ethnic groups seen to be opposed to KANU. Casualties were in the hundreds and more than 100,000 people were displaced. Again, the opposition failed to forge a strategic coalition, and again KANU and Moi won the election and secured the Presidency.

In this period, state predation led to the level of corruption reaching new heights. The most infamous case is the Goldenberg scandal, through which an estimated USD 600m had been paid out in export compensation for fictitious exports of gold and precious stones. A consultancy commissioned by the Government towards the end of KANU's rule, to look into the problem of corruption delivered the following conclusion to the Government of Kenya: "... our conclusion is that the level of corruption in Kenya is becoming so endemic that it is beginning to threaten the basic structures of the State" (Risk Advisory Group Ltd. 2002).

Towards the end of Moi's last term in office, the National Development Party (NDP), led by Raila Odinga, son of Oginga Odinga, went into an alliance with KANU, and Odinga was given the key Local Government Ministry. This was a classical Moi strategy of keeping his friends close and his enemies closer, and one which he had used also in the years before multipartyism. This time, however, it did not work, and Raila Odinga and NDP pulled out of the government before the 2002

elections, and joined a united opposition, the National Alliance of Kenya, under the National Rainbow Alliance (NARC). Odinga forged an alliance with Kibaki. According to a signed Memorandum of Understanding, it was understood that after a constitutional review, Odinga would be the first candidate for a new position as an executive Prime Minister. This was intended to add a check on the executive powers of the President.

A commitment was made that a new constitution would be in place within half a year of the elections. A constitutional review commission had been established under the KANU government already in 1998, but the process had been dragging on and it had become clear that KANU did not want a new constitution in place before the 2002 elections. The new constitution had been expected to provide for some kind of decentralisation, devolving powers and resources from the Presidency and the central government to local authorities.

The 2002 elections saw two Kikuyu contenders for presidency. Kibaki was the candidate for NARC (the coalition that included the party then headed by Odinga, the Liberal Democratic Party) and Uhuru Kenyatta was the candidate of KANU as Moi could not stand again because he had served the maximum terms allowed under the constitution. Uhuru Kenyatta was the son of the late Jomo Kenyatta. The elections resulted in a landslide victory for NARC and the end of the KANU era. The 2002 elections were also notable for the near absence of violence. There was none of the organised violence that had marred the 1992 and 1997 elections.

The multi-ethnic coalition led by Kibaki was campaigning on a promise of zero tolerance on corruption, and its victory, after elections that were deemed free, fair and peaceful, brought unprecedented hope and optimism to Kenya. In the days after the swearing-in of Kibaki, passengers of the capital's *matatu* minibuses physically rebuffed policemen who tried to continue the routine collection of bribes from the *matatu* drivers for real or imaginary offenses. This was a spontaneous demonstration of the power of accountability from below, when there is a sense of a common purpose and confidence that action will receive support, whether from the citizenry, the authorities or both.

The new administration's commitment to fight corruption was demonstrated by the appointment of the well known anti-corruption activist John Githongo, from Transparency International Kenya, to the new position of Permanent Secretary of Anti-Corruption in the President's Office. The euphoria was not long-lived, however. Not before long, a new grand corruption scandal broke. This was the Anglo-Leasing scandal, which was the largest of a string of corruption scandals relating to national security. Githongo's investigations found evidence of the complicity of a number of senior politicians. At one stage two ministers and three Permanent Secretaries resigned, and the latter were arraigned in court. No prosecutions followed, however, and the politicians were soon reappointed to ministerial positions.

In January 2005, Githongo resigned and went into exile, citing threats to his life as his reason. By this time it had become obvious that he did not have the support of Kibaki or the government. A report that Githongo first presented to Kibaki and then made public through the BBC website provided irrefutable evidence of the extent to which grand corruption in Kenya is tied up with political party financing (Githongo 2006). He cites discussions with senior Ministers where he is told point blank that the monies paid for fake contracts is needed for the financing of party elections and he is told to lay off in his investigations. The use of public funds for party campaigns has been a common practice in government circles. The ruling parties including KANU and the defunct NARC have enjoyed benefits of election campaigns funded by the public coffers as there has been little distinction between the ruling party and the government.

The hopes initially pinned on the constitutional review also quickly faded. In 2003, the draft constitution produced by the Constitutional Review Committee was agreed at Bomas in Nairobi. The so-called Bomas draft provided for a strong executive Prime Minister post and a quasi-federal system of government (commonly referred to as *Majimbo*). This draft caused a split between the Government

and Odinga. However, the government went ahead and significantly altered the Bomas draft, and put its own amended proposal (the so-called Wako draft) to a referendum in November 2005. The campaign over the Wako draft led to confrontation between the “bananas” of the yes side for the Government’s proposal and the “oranges” of the no side (named after the symbols on the ballot papers). The referendum turned into a plebiscite on the government. The oranges won a resounding victory, which was seen as an expression of the public’s disappointment with the Government’s failure to tackle corruption and to tackle the privileges enjoyed by the elites.

The political trauma of the aftermath of the 2007 election

The “oranges” built on the momentum of the 2005 referendum to form the Orange Democratic Movement to challenge Kibaki in the 2007 elections. But while the ODM later split into the ODM, led by Raila Odinga, and ODM-Kenya, led by Kalonzo Musyoka, Kibaki formed the new Party of National Unity, and managed to get the support of KANU among others. Going into the elections, opinion polls showed that it was too close to call. While PNU obviously had lost some popularity because of the Government’s failure to tackle corruption and inequalities, economic reforms had resulted in significant economic growth. In the period 2002-2007 Kenya enjoyed robust economic growth with a real GDP average of 5.4%. In 2007 the real GDP reached 7.1%. The service sector, led by the tourism and telecommunications industry, was one of the main drivers of growth, indicating increased employment. However, strong economic growth had done little to reduce the country’s widespread poverty because distribution was skewed in favour of the already affluent. In 1998-2002 the poorest 20% of the population received only 6% of the national income, while the richest 20% took 49%. In addition, the population suffered from a generally high consumer price inflation, averaging around 11% in 2003-07.⁴

While the run up to the elections were, like the 2002 elections, mostly free from organised violence, the violence after the elections was equal to the pre-election violence of 1992 in terms of casualties⁵. There were reports, however, of female candidates being exposed to serious violence and threats of violence intended to prevent them from standing for elections and many women also experienced sexual and gender based violence and threats thereof to prevent them from voting. The immediate cause of the post-election violence was the flawed election administration with the Election Commission of Kenya (ECK) at its centre, in particular the scandalous mismanagement of the final counting and tallying process by the ECK and the announcement of Kibaki as the winner of the presidential contest. This spurred inter-group hatred and anger that soon took an ethnic turn. Yet, this ethnicisation of political unrest was related to underlying conflicts of long-standing social injustice, regional inequality and, especially in parts of the Rift Valley, of access to and ownership of land.

The violence in early 2008 took different forms. It was spontaneous in some regions but planned in others. Illegally armed groups, most of which associated with particular ethnic groups operated in their respective home provinces, but also in urban areas. The most prominent illegally armed groups were the *Mungiki*, mostly associated with the Kikuyu, but also operating in pockets countrywide, and the Sabaot Land Defence Force (SLDF), associated with the Sabaot and operating in the Mt. Elgon area.⁶ Some politicians mobilised and financed youth to act against their rivals for political gain. But it is also said that groups were formed quickly to protect their respective communities and localities and that youth organised themselves along ethnic lines to fight rival communities. Tools used for tilling

⁴ Economist Intelligence Unit: www.eiu.com

⁵ The information on the election in the following paragraphs is drawn mainly from Andreassen, Bård A., T. Barasa, T. Kibua and A. Tostensen. 2008. “I acted under a lot of pressure” The disputed 2007 Kenyan general election in context, NORDEM Report, Norwegian Centre for Human Rights, University of Oslo.

⁶ The outlawed Mungiki group originated as an extreme Kikuyu nationalist movement with a program to revive Kikuyu customs and traditions. It gradually degenerated into a mafia-like criminal organisation involved in robbery and extortion of *matatu* drivers and shop owners. Mungiki’s operations in local communities have created fear and anger, and led to the formation of vigilante groups because the police have proved unable or unwilling to provide protection to the villagers. It allegedly has connections with key politicians.

land were also used as weapons. People were evicted from their homesteads and cruel murders of innocent people were committed. In urban centres, looting, burning and destruction of shops and properties reached massive proportions. Barricades and roadblocks were set up to intimidate and rob travellers and destroy their vehicles if they belonged to the “wrong” ethnic community. The looters knew that the likelihood of any judicial action being taken against them was minimal. In short, the post-election crisis created a situation of lawlessness and impunity for crimes carried out in the violence-affected areas.⁷

Violence was committed by militia, armed criminals, and organized crime gangs and by the police and the military. The former committed the gravest of offences and terrorised the citizens. However, overwhelming testimony is given of systematic, widespread, and carefully planned extrajudicial executions undertaken by the Kenyan police. A number of killings by police would undoubtedly have occurred in circumstances where the use of force was lawful by international standards. But in the current circumstances it is doubtful whether an accurate and impartial assessment of the violence can be made, and there is no independent accountability mechanism. It is argued that the Kenyan police are a law unto themselves, often killing with impunity. A justification often given is that the failures of the justice system leave the police with no alternative but to administer “justice” themselves. On the other hand the police are major beneficiaries of the inadequacies of the Kenyan legal system.

The Waki report on the inquiry into the post-election violence – the closest one can get to an impartial account - states that the commission received harrowing evidence during its investigations detailing how the police officers brutally raped the women in their houses in front of their children and husbands, others on the way as they fled and even those in refugee camps. The report also criticises the police for lack of will to police itself and take action against officers suspected to be involved in sexual crimes during this period. This is, however, not a completely new characteristic of Kenyan police as the media for years have reported on accusations leveled against police officers who have raped women while on duty. These cases have in most instances not been fully prosecuted and they rarely reach court. This is indicative of a fundamental lack of rights and protection of women in Kenya.

Apart from the police, shortcomings are reported in two other parts of the criminal justice system, i.e. the Office of the Attorney-General and the Judiciary. The judiciary is a stumbling block in achieving justice both in relation to accused criminals and to police accused of killing unlawfully. As indicated above, this is not a new phenomenon and one may wonder to what extent impunity for crimes is increasingly becoming accepted and counted upon by people in general.

The military, enjoying a generally favourable reputation in Kenya, also became tainted by the conflict. A military operation in Mt. Elgon District to disband and disarm SLDF was executed in a heavy-handed way and generated claims of torture of civilians.

The rapid escalation of the crisis provoked swift reactions from the international community. The African Union mandated Kofi Annan as the head of a mediation team of Eminent African Persons to find a peaceful resolution to the crisis. At the conclusion of the mediation phase in July 2008, a power-sharing agreement, subsequently adopted as the National Accord and Reconciliation Act had been brokered whereby Kibaki remained president while the post of prime minister with the authority to co-ordinate and supervise the execution of government function was created for Odinga. During the negotiations the parties also agreed to establish three important commissions: The Independent Review Commission on the 2007 elections (IREC) and the Commission of Inquiry into the Post-Election Violence (CIPEV), both of which had completed their work by early 2009 and the Truth, Justice and Reconciliation Commission (TJRC) which will inquire into, human rights violation,

⁷ The information on violence is based on Press Statement by Prof. Philip Alston, UN Special Rapporteur on extrajudicial, arbitrary or summary executions, Mission to Kenya, 16-25.02.2009 and The Kenya National Dialogue and Reconciliation Monitoring Project, January 2009, Immediate Action to Top violence and Restore Fundamental Rights and Liberties.

“historical injustices”, illegal or irregular acquisition of land and the misuse of political power from independence in 1963 to the present.

These initiatives provide ample opportunity to address in great detail the root causes of the violence of the 2002 election. However, the process to implement the recommendations has been slow. The coalition government has established an Interim Independent Electoral Commission (IIEC) to clean up the voters’ roll. It is deeply divided about implementing the recommendations of the Waki Commission into post-election violence.⁸ Nothing has happened on the urgently needed reform of the security forces. The TJRC is not yet established although some reconciliation initiatives have been taken. Negotiations over a new, long-awaited constitution are likely to present the coalition with one of its biggest challenges. The coalition also faces challenges of tackling inequitable land distribution and endemic corruption.

At the time of the fieldwork the governing coalition was under stress because of splits between the two main parties. At the heart of the issue were and still are disagreements over the power relationship between PNU and ODM, led by their leaders, and the pace, scope and depths of reforms. ODM has increasingly complained about being treated as junior partner, whereas the peace accord is based on the concept of an equal partnership. Part of the problem is that the post of prime minister was created to entice ODM into the coalition without a clear division of power with the Presidency. In recent months initiatives have been taken to resolve the differences without results. It appears that ODM wants detailed discussions about the full implementation of last year’s accord, while PNU, it seems, is willing to discuss only generalities.

The grand coalition is scheduled to last until 2012, but given the ongoing battle for influence there is no certainty that it will last that long. However, the power-sharing agreement makes no provision for another election. The coalition will collapse if either side formally pulls out; realistically, this applies only to ODM. But such a move would be a dangerous development, as it would lead to calls for an early election with the risk of a new round of violence. It can be argued that the coalition will hold together because neither party wants to relinquish power. One possible outcome is the emergence of a restructured coalition as factions switch sides, form new alliances or move into opposition, a process that is likely to intensify in the run-up to the next election.

The wrangling for power is hotly debated in the media, exposing the lack of interests in the well-being of the nation. Arguably one of the most damaging images of the 2007/08 post-election violence is the one of the national leaders fighting for power, seemingly oblivious to the carnage on the ground. The message conveyed was that the leaders were insulated from the life and death problems that the people faced on the ground, and that they were more concerned about jostling for position and privileges, than about the well-being of the people. The damage done to the legitimacy of the state in Kenya must have been very significant.

In social and economic terms, the effects of the post-election trauma are still to be determined. The human costs of the violence were dramatic and will have a long-term impact on social relations and trust among ethnic communities. To cite Kenya National Dialogue and Reconciliation Monitoring Project:

Consolidating national cohesion and unity is essential in guaranteeing stability and prosperity of the Kenyan nation. This hinges on the extent to which perceptions of marginalisation and exclusion are eliminated and a sense of belonging and togetherness cultivated among the citizenry. This entails addressing the root causes of such perceptions as inequality and inequity, regional development imbalances and engagement in decision-making (January 2009, Long-standing issues and solutions).

⁸ The Waki Commission (on Inquiry into Post-Election Violence) recommended the establishment of a special tribunal to undertake trials at the national level, and failing that arrangements were made, to involve the International Criminal Court (ICC). Nothing has yet happened.

Concluding remarks

This brief history of political development in Kenya since independence and the situation after the 2007 election have been presented to provide a context for the present challenges faced by development partners when looking for ways to contribute positively to building stronger structures and processes of democracy and good governance in Kenya. Although the historical development has been far from linear, we see a steady trend along a number of issues:

- There remains a serious gap between the ruling elites and the population at large, between the haves and the have-nots. The state has become increasingly predatory, and historical grievances around inequalities and perceived wrongs in land ownership are not being addressed.
- The raise of private militias and the diffusion of violence, to use Susanne Mueller's evocative phrase, has seriously challenged the state's monopoly of legitimate violence. The use of violence by political contenders during elections has, with the exception of a respite in 2002, become systematic. The state's failure to deal decisively with violent gangs and mafia like networks of extortion and protection has also dented its legitimacy among the citizenry as it is seen to fail in its primary role of providing security.
- Both the problems of social and economic inequality and lack of security are compounded by impunity. There are countless reports, many of which official, and public investigation commissioned by the Government of the day that names senior leaders as accomplices in large scale theft of public resources or violence against Kenyan citizens, but no senior leader has yet been tried and convicted in court. This has an obviously negative impact on the credibility of the rule of law and of the regulatory functions of the state.

Taken together these characteristics of Kenyan political life have contributed not only to undermining the legitimacy of the state, but has also negatively impacted on its capacity and ability to manage its resources in an efficient and responsible manner and to deliver quality services to the public. The increasingly centralised system of government and the emaciation of local government have also failed to provide for effective public participation in decision-making.

Although Kenya can boast the strongest and most self-sufficient economy and the best educated population in the region, the political analysis in the previous section provides an admittedly bleak rendition of the state of Kenya and its system of government and governance. The very strengths of the Kenyan society point to some of the gaps in much of the development theories around governance and international assistance. Not least, it points to the limitation of traditional capacity building programs. Taking the example of anti-corruption, conventional development partner analysis suggests that there are at least four factors that are present in states with good governance:

- A strong and vibrant civil society;
- Strong and independent media;
- A sizeable and influential middle class; and
- Competitive politics where no party dominates over the long term.

The puzzle with Kenya is that in the Eastern Africa region, she is by far the strongest in all these four dimensions, yet Kenya is consistently ranked as the most corrupt country in the region. Although corruption was considered by some to be just a particularly weak dimension of an otherwise strong state, recent events have highlighted that the high level of corruption in Kenya may be only one dimension of systematically poor governance.

The challenge in Kenya is to build on the impressive strengths that the country does possess, while overcoming the state's systematic weaknesses. In the next section we will take a closer look at the most

recent thinking on the issues related to development assistance in countries in fragile situations and the importance of state-society relations and legitimacy.

3. Challenges of Development Assistance in a Country in a Fragile Situation

The international development partner community has for some time voiced the opinion that a development partner strategy should be understood in an analytical approach of political economy. A political economy analysis would uncover the opportunities and obstacles for an external actor and possibly identify potential domestic agents of change. We agree. It is certainly essential to understand local power relations – within society, and between the state and various social groups.

However, for a development partner to take a strategic approach to governance in a state in fragile situations, the most recent thinking in OECD/DAC conveys that the focus should be on state legitimacy (Bellina et al. 2009). In this approach state-building is the central objective. But rather than being centered on the state *per se*, the focus is on the relations between state and society. Because a state's legitimacy is, by definition, a question of the extent to which the state is able to meet people's expectations. State legitimacy is then formed in a mutual relationship between state and society. In other words, state-building and state legitimacy concerns state-society relations through which the state and society are *linked* and by which state *authority* is justified.

In order to develop a strategy on governance in Kenya, development partners must understand how legitimacy relates to state-building in a fragile situation. In this perspective, fragility refers to lack of capacity, defined not only as organisational, institutional and financial capacity, but also as the capacity to produce or support the existence of common norms, rules and regulations that are recognised and shared by both the state and the general population. As will be explained below these factors identify legitimacy. In fact, state fragility can stem both from lack of financial, technical and human capacity and from lack of legitimacy, and both can hinder the making of the state as a robust institution.

Faced with a particular context, we must take an empirical approach to legitimacy and make out a strategy not according to internationally established standards of rights, fairness or justice, but to what people are likely to consider legitimate. State legitimacy draws on a changing mix of different sources or dimensions. Efforts to help bolster state legitimacy in fragile situations must be cognizant of *all the dimensions of state legitimacy simultaneously*. None of the sources of state legitimacy exists in isolation and no state relies solely on one of them. For example, a state whose fragility stems in part from its lack of capacity to deliver services will not necessarily be seen as legitimate if the quality of its services is improved. That will depend on the extent to which citizens consider the state as a whole as legitimate, including how it is seen to embody and represent a sense of community (beliefs) and how it operates and performs. Moreover, the sources of the legitimacy of a state are effective sources of legitimacy only to the extent that the population considers them to be so. Central here are the dynamics by which various groups seek either to enhance or weaken the legitimacy of the political order and the sense of community.

One can distinguish three general types and dimensions:

- i) How the state functions: The legitimacy of the state is tied to the rules and procedures through which it makes binding decisions (participatory processes, bureaucratic management, justice). In a sovereign state, the state is seen as expressing the will of the people, although state legitimacy through participation is closely linked with democratic elections. Moreover, legitimacy through participation extends beyond elections and includes transparency, checks and balances on centres of power, procedural norms, auditing of public funds, appropriate media coverage and public political debate. Such mechanisms of accountability constitute a source of legitimacy since they provide a channel for citizens to be engaged in how the state governs, beyond the periodic election of rulers. In a system of patronage, legitimacy rests on the rewards that accrue from exchange, and the fact that this exchange pervades large parts of society. If an institution is considered legitimate, it will be followed or obeyed, even when it goes against one's self-interest and even if there is an absence of credible sanctions.
- ii) What the state does: Legitimacy is defined in relation to the services (security, welfare, education, health, infrastructure, regulation and facilitation of economic activities, etc.) that the state delivers and the perceived effectiveness and quality of these services. The state is expected to provide security but whether the provision of security will bolster the state's legitimacy depends on people's experience with the state (whether it has been repressive, violent, etc.), and on the legitimacy and capacity of other groups (rebel groups, etc.) to provide security. Moreover, without security it may be difficult to provide other services such as health and education and the rule of law. The provision of social services and regulation of economic activities are central to statehood, but their significance for state legitimacy must be understood in the context of the prevailing ideas in a society about the proper role of the state.
- iii) The beliefs that make people accept the state as the rightful authority and make them share a sense of community and identity: The collective identity of a nation is a central source of state legitimacy. A strong sense of community attached to the state may act as a bridge between various other and conflicting sources of legitimacy such as tradition, religion, language or ethnicity. This collective identity is central to the making of a politically united people around a common acceptance of a state and to their mutual recognition as citizens despite their differences. Religious beliefs and religious institutions play a central role in defining what is considered morally right, appropriate, sinful, wrong, etc. in a society and in shaping peoples' political expectations and conceptions of authority. Traditions are defined both by rituals and symbols whose invocation reminds people of their identity, their sense of belonging and loyalty, their role and place in a particular community. However, traditions are not static; people continue to adjust their behaviour and practices to new situations, and the state is instrumental in identifying and defining some institutions and customs, but not others as «tradition».

While such a broad and empirically focused understanding of legitimacy is beginning to take hold among development partners there is still a clear tendency to present a hierarchy among different sources of legitimacy. There is no *a priori* reason, however, why any one source of legitimacy should be considered more important than others in a general sense. More to the point: a state whose legitimacy rests too much on one or a few sources of legitimacy is inherently unstable. Development partners have arguably been complicit in placing their bets on one or a few sources of legitimacy, such as service delivery, democratic elections and human rights norms. Moreover, they have typically defined democracy and human rights as pre-political and a-historical, and not as shaped by and linked to social, historical and political processes. If states are to be able to extricate themselves from fragile situations, their legitimacy must not only be deepened, but also broadened to form a resilient web of many different sources, some of which – such as nationalism or religion – may be at odds with liberal democratic sources of legitimacy.

Another challenge for the development partners is that their predominant mode of working and the focus of their interventions do not put them in a good position to observe and address issues of legitimacy. There are at least two reasons for this. Firstly, development partners tend to focus on the formal structures of governance, such as the legal system, the public financial management system and the operations of parliament. Secondly, and connected to the first point, development partners tend to work predominantly at the central government level, in the capital. This places them far away from where the citizens interact with the state, which is mainly at the local government or community level. These two points combined illustrate how development partners tend not to be well placed to gauge how the state-society interactions impact on the legitimacy of the state through each of the three dimensions indicated above.

The strategic approach of development partners in the following will be presented towards the background of state legitimacy as indicated above.

4. Challenges for development assistance in an overly centralised state suffering from elite capture

The above discussion on states in fragile situations and the importance of state legitimacy, brings to the fore the importance of considering state-society relations. This underlines the need for development partners to be cognizant of the politics and the social and personal interfaces in everyday life, which is some distance removed from the technical systems and capacity building that is closer to the development partners' comfort zone. The relevance of these issues is evident in the Kenyan context of elite capture and centralisation of unchecked power. There are obvious challenges for development partners to engage with governance issues in this context. Two problems that will be considered in this section are with whom to engage and which entry points to select.

Supporting democratisation and good governance in a system characterised by elite capture poses obvious problems for development partners, not least in choosing one's partners. The political leadership in Kenya is in a constant state of flux. Alliances change continuously, and parties merge and new ones are created at an almost bewildering pace. There are few senior political leaders, if any, in Kenyan politics who have not at some stage been both allies and opponents. It is also worth giving some thought of where civil society fits into this picture. The borders between civil society and politics is very fluid at times, and there is little doubt that many of the development partners' favourite CSOs are dominated by Nairobi-based elites and with weak, if any, explicit links with members or constituents at the local level. Although we will not underestimate the value of CSOs as champions of human rights and democracy, one should not automatically assume that supporting civil society is a more effective method of counteracting elite control than supporting state institutions. It is questionable whether support of governance and democratisation in its present form, whether through government or CSOs, contributes significantly to increasing the legitimacy of the state. An exception may be the CSOs that have recently started changing their strategies towards the interests of people at large.

For citizens, participation is a key principle of democracy and a likely source of state legitimacy. Although weak, political parties and parliaments are often more democratically representative than much of the civil society which is regularly involved in participatory processes within the aid architecture. For Kenyan citizens, however, achieving increased influence on the decisions taken on their behalf through parliaments and parties is not easy given the personalised character of the political parties and the politicians' preoccupation with using their positions for their own interests.

When searching for entry points for change, it makes sense to turn to the next generation. The Kenyan youth are arguably the key demographic group in the population. They are particularly effected by the high level of unemployment and the post-election violence demonstrate what can happen when their energy and resentment is channelled into militant action. The youth are therefore commonly

referred to as a problem and a danger in the political life of Kenya. There is another side of this coin, however, as many of the youth are comparatively well educated, technologically savvy and good at communicating. It is not unlikely – given substantial conscious-raising efforts - that youth may unite on the basis of class or poverty across ethnicity.⁹ Moreover, within the approach of behavioural change, youth is also perceived to be more inclined to adopt new norms and values, key both in terms of supporting a new culture of politics as well as gender roles and relations. They therefore represent an important pressure group for positive change in Kenya.

In our interviews during the field work in Nairobi, one of the most consistent messages from development partners as well as resource persons was that positive change is much more likely to come from “below”. A recurring comment by respondents was that “there is a need for a new breed of politicians”. However, “new” politicians need organisational support and it is unclear how that could happen. The “old” politicians are unlikely to give up their positions without a fight. Most people belonging to the elite have little interest in taking risks to change the status quo. The poor and disenfranchised, on the other hand, have very little to lose and history elsewhere has shown that in politics changes can happen suddenly.

State-Society Relations at the Local Level¹⁰

In order to tap into and support the demand for change from below, it is necessary to engage at the local level, and outside the Nairobi bubble. There is a disconnect between the state and society in Kenya, and this fracture is closely related to the centralised nature of the Kenyan state and of Kenyan politics, and of the weak provisions for participation and co-governance presented by Kenya’s enfeebled local government sector. The Constitution of Kenya Review Commission (CKRC) described the impact of this situation in the following manner:

The whole nation feels alienated from the government and [its] structures of authority. The people consider they have no control over their destiny and, outside the general elections, participation is almost non-existent.” (Kenya Constitution Review Commission, cited in JICA 2007).

The chair of the Constitution Review Commission, Yash Ghai, has continued to emphasise the importance of putting in place a stronger and more democratic system of local government in order to strengthen state-society relations in Kenya (see, e.g. Ghai 2008). In a presentation he gave just before the 2007 elections, he recounted the following observation from the consultations of the Commission:

There was a widespread perception, which statistics support, that the centralised state has, for the last past 50 years, singularly failed to promote economic and political development, and that only a few areas and a small elite, had benefited from the policies of government... Wherever the CKRC went, it noted widespread feeling among the people of alienation from central government because of the concentration of power in the national government, and to a remarkable extent, in the president. They felt marginalised and neglected, deprived of their resources; and victimised for their political or ethnic affiliations. (Ghai 2008, 214-215)

Local government in Kenya suffers from a number of common weaknesses. It is under-resourced and dominated by a strong executive, notably the president’s office but also the line ministries retain control over their areas of influence at the local level. Local authorities are also dominated by the strong influence, both formal and informal of national politicians over local decision making-

⁹ As was agreed by KHRC in an interview with the team.

¹⁰ This section draws heavily on a brief review of the Kenyan local government system that Tiberius Barasa prepared for this report. The full text of the review is provided in Annex 3.

processes, including the use of development funds and the management of natural resources, notably land allocation.¹¹

One of the most striking characteristics of the Kenyan local government system is its complexity. There are three partially overlapping structures of local government. The dominant structure, in terms of power and influence, is the **Provincial Administration**, which falls under the President's Office. The Province controls all the major organs associated with security, such as the police, intelligence and the army, and since the colonial era it has been used to control the political opposition; it retains a poor image for its human rights record. There are eight provinces in the country, and its leaders, headed by the Provincial Commissioner, are presidential appointees. There are no elected bodies at the provincial level or mechanisms for popular participation. Below the Province, the Central Government system works through two parallel and overlapping lines of command, the District, which is headed by a District Commissioner, and the line ministries, which have their own deconcentrated sector ministry field offices (JICA 2008, 11).

The second set of structures is the **Local Authorities (LAs)**. This is the local government proper, and consists of elected councils and the local executive. The councils are divided into county councils, which are predominantly in rural areas, town councils, municipalities and Nairobi City Council. There are a total of 175 LAs in the country. Most of the LAs and Districts share common boundaries, but not always. The law-making organ at the council level is the full council, which consists of elected and nominated councillors. The administration and the executive include a treasury and line departments for public services and utilities, such as health, education, water, roads, agriculture, etc. The delivery of these services, however, is the responsibilities of the line ministries, and not of the local authorities, as in the neighbouring countries of Uganda and Tanzania. Additionally, the local authorities need the approval of the Ministry of Local Government on any major decisions, such as budgets and by-laws. They also depend on the central government for most of their budget, as they do not have any tax levying powers, as such, beyond market levies and other charges for use of local authority services. The most important source of Central Government funding for the LAs is the Local Authority Transfer Fund (LATF), which is a non-earmarked fund.¹² Although the intention is for the LATF to be used to strengthen service delivery, the bulk of the funds is spent on administration and the LAs do not make a significant contribution to service delivery (JICA 2008, 14).

The third set of structures is the **Constituency** or the electoral area from which MPs are elected. The constituency has become important in recent years, with a number of funding mechanisms being allocated to the constituency as a unit. This started with the Constituency HIV/AIDS Fund and the Constituency School Bursary Fund in the early 2000s, but the most significant by far is the Constituency Development Fund (CDF), which is a non-earmarked fund that is made available by the central government for development projects at the constituency level. It was established in the Financial Year 2003/04 and consists of a fairly substantial 2.5% of the national budget. In many ways, the CDF has proved very popular with local populations, as this mechanism has been far more efficient in getting the resources out to the public. The LAs have very little credibility and are seen by the public as corrupt, self-serving and inefficient. The administration of the CDF is comparatively more participatory, and due to the high level of attention it has received, public oversight of the use of funds has been much better. The drawback of the CDF, however, is that it is very much seen as the MP's fund, which obviously politicises the use of the money. The signal sent is very much that this is money that is brought to the constituency by the MP, as opposed to its being owned by the community. The management of the CDF is provided by a Constituency Development Committee chaired by the MP. This duplicates and arguably undermines the role that is supposed to be played by the elected councils and the LA administration. Recently, Parliament passed a motion to triple the

¹¹ On the impact of the centralized nature of the local administration and the impact that this has on land allocations, see Kanyinga 2000.

¹² For more details on the LATF, see <http://www.kippra.org/local.asp>.

allocation to the CDFs, by adjusting the allocation to the equivalent of 7.5% of government revenue (JICA 2008, 14). It is all but certain that this will further politicise the use of development funds at the local level, and further weaken the already marginal role of the elected councils in the LAs.

The combined performance of the Province Administration/Districts, the Local Authorities and the Constituencies is weak. The overlapping and duplicating functions add confusion and complicate most efforts of public participation and oversight. The best functioning mechanism, the CDF, is also arguably the most damaging to the sustained strengthening of local democracy and state legitimacy in the long term. Moreover, much of the slack in service provision at the local level is picked up by CSOs, which are the major recipients of development partner funds for service delivery at the local level.

Few development partners work through the LAs, and many of them cite the complexity of the local government service delivery as a reason why they hesitate to try and engage with local government in a more systematic manner. The multiplicity of actors, the politicisation of the use of the steadily increasing share of government funding through the CDFs and the lack of an easily recognisable arena and focal point for local democracy and participation all work to erode the legitimacy of the state.

There is little doubt that there is an urgent need for comprehensive reform of the Kenyan local government system. As argued by Ghai:

Devolution will certainly open up opportunities for public participation in state affairs. There will be more debates about the purposes for which power should be exercised at the local level. People in rural and urban areas will be able to decide for themselves (or influence decisions) on numerous matters of local concern and to participate in greater number of debates and elections. Governments and officials at closer proximity to them will probably become more responsive and be compelled to be more accountable. Only in this way can we inculcate the practices and habits of democracy and participation (Ghai 2008, 218).

There is, however, a limit to the influence that development partners can have on making this happen. Decentralisation, or *Majimboism*, is an intensely political issue, and one which will be decided by Kenyans. In addition, it can be argued that local politicians engage in politics for the purpose of private gains in the same manner as national politicians do, which may also reduce the motivation of development partners to support the devolution of more power to local politicians. This does not mean that the development partners should not engage in the political discussion. Also, if the development partners are to tap into the demand for change from below, they will need to engage with what democratic structures that exist at the local level, which is the primary arena for interaction between citizens and the state. By addressing the interface between the population and the state at the local level, there may be opportunities to support constructive processes of increasing the legitimacy of the state and to support the 'organic' growth of democratic and administrative systems from the bottom-up.

Such an approach would not be limited to technical support in the form of traditional local government reform programs, but also include consideration of existing and potential linkages with local authorities in other programs of support to non-state actors, such as CSOs with links to the local community (CBOs or others), farmers associations, and professional associations and media. Support to expenditure tracking exercises at local levels, e.g. in relation to the devolved funds may be a concrete local level anti-corruption measure. This would lead to both increased local awareness of the amounts that should reach the local population and knowledge of whether the money spent is actually benefiting different groups of society, which may make the local population able to hold their politicians more accountable. Support of political parties also has obvious local government dimensions, especially if their build-up at the constituency level is included.

Engagement with the state-society interface at the local level would also benefit from a gender perspective that would take into account the particular obstacles and opportunities faced by the majority of Kenyan women, i.e. not only by the women in the Nairobi elite.

This type of approach would be an important counter-weight to support to central government institutions but also to national civil society, whose representatives are often members of the same elite as the political leadership. Although, as mentioned above, development partners getting involved in support to improve the relations between the state and the people at the local level, should consider intended and unintended effects at the central level, and recognise that approval and support by the central government to local initiatives is necessary.

The approach of addressing the interface between the people and the state at the local level is obviously a long term endeavour. However, it is also a very sensible approach for the short term. Some respondents in Nairobi mentioned the importance of reconciliation among people of different ethnic groups. Reconciliation efforts are, of course, important for peace and conflict prevention in the time running up to the election in 2012 and during and after the elections. Reconciliation is, however, also important because it facilitates joint decision-making at the local level across ethnic divisions at the community level. Groups who trust each other can more easily reach agreement on decisions for a common future. Conversely, joint decision-making may contribute to trust and reconciliation because when people are involved in exchanging views and are forced to listen to each other they may over time learn to know each other and trust each other. Thus, development partner support in the short term of reconciliation initiatives is important. Government initiatives such as the peace committees at the district level under the President's Office, the TJRC, as well as civil society initiatives should be considered. The Inter Party Peace Committees established by the Norwegian supported NDI program are also relevant in this context. It should be recognised that if the coalition government shows the population that they are serious about reform such as impunity and inequality the impact of reconciliation efforts by the civil society would be enhanced. But reconciliation efforts may nevertheless have some effect at the people's level. Reconciliation may lead to improved state legitimacy through increased trust and belief in a shared sense of community among people.

There is also a good case to be made for looking for new partners that have a particular potential for tapping into demand for change and contribute to increased state legitimacy through increased interaction with the authorities. These would typically be organisations representing the interests of a particular membership group or constituency. One obvious candidate is Kenya's largest membership organisation, the Kenya National Union of Teachers (KNUT), which has 235,000 members. KNUT has branches at the provincial and district levels. Although its priority is teachers' salaries and working conditions, KNUT has experience from lobbying at both the national and local levels and it is formally engaged in development committees with local authorities. With membership down to the individual schools, its potential reach is unrivalled in the Kenyan political context. As stated by Mr. Majali, the Secretary General of KNUT in an interview with the team: "KNUT has very good representation at the local level. Teachers are respected by the society and can influence national policy a great deal at the local level." Although it has experienced ethnic challenges it has a potential to bridge the ethnic divide.

Another type of representative bodies that has special promise is farmers' associations. Farmers used to be well represented through farmers' co-operatives but the co-operative movement in the past and especially under Moi became politicised and corrupt. A new movement that is detached from state patronage and politicisation has now emerged. Because of its history, it has a tendency to stay away from anything that tastes of politics (Nguni, 2007). There are efforts in place to revitalise the political influence of this important sector, as for example the support to livestock farmers associations provided by Heifer International, a US charity, which was interviewed by the team. This initiative aims at preparing livestock farmers for participation in decision-making at both local and the central government levels. There are also other active farmers' associations, such as the Tea and Coffee Farmers' Associations. There would seem to be considerable scope for exploring possibilities for

supporting such organisations, and also to assist them interacting with government at local and national levels alike.

5. The Approach of Norway and other Development Partners in the Field of Governance

This section presents an overview of the strategic thinking on governance in the development partner community as reflected in interviews in Nairobi and a presentation and comparison of the Norwegian governance portfolio in that respect. We also make a brief reference to development partner co-operation and their alignment with Kenya.

Strategic thinking on governance

The leading development partners in the area of governance in Kenya perceive the state (i.e. all branches of government) as having limited legitimacy in the population. They think that people have more faith in CSOs and the media. Actors that can be considered as change agents, because they have some political influence include local chiefs (representatives of the presidency through the provincial administration), retired civil servants, retired teachers and elders, traditional leaders, and religious leaders. For young people, musicians, TV-personalities, etc. may be important opinion leaders.

Short term strategy

The development partners including Norway we talked to during the fieldwork are satisfied with their achievement with respect to the National Accord. (A brief overview of Norway's governance portfolio is included in the attachments.) They stood united, and in cooperation with the African Union and with support from private business leaders, they motivated the two antagonistic political leaders to accept forming a coalition government. They recognise that in order to stop the ethnicity-based post-election violence, they had to accept a National Accord that was not perfect. It has turned out that it is in particular problematic that the National Accord did not define power sharing in government more precisely and that it includes no dispute resolution mechanism. They further recognise that inequality in the population, the difference between the haves and the have-nots, and unresolved ethnic animosity are likely to result in violent elections in 2012 and could even trigger serious crises before the election unless progress is made on the reform agenda.

In terms of improving the legitimacy of the state in the population in the short term, the most important measures to be taken by the Kenyan state is in the view of the development partners are:

Improving legitimacy:

- through what the state does in terms of restoring the security of the population,
- through how the state functions in terms of the reintroduction of the state monopoly on (a fair system of) law and order; and
- through how the state functions in terms of increased accountability to the whole population and participation by the population in terms of fair elections; and
- although seemingly less important for the development partners, through people's belief in a shared sense of community through state and society initiated reconciliation efforts.

The development partners are prepared to contribute towards further financing of the implementation of the National Accord if needed. It should be noted that support of the National Accord means in most cases support of logistics and financing of foreign experts.

Norway is, together with other development partners supporting the Panel of Eminent African Personalities under Kofi Annan and the Coordination Liaison Office in Nairobi. Norway supports several civil society initiatives in the field of post-conflict reconciliation, thus signalling a strong focus on reconciliation. This is a strategically wise approach since reconciliation programs can be expected to contribute to improved state legitimacy through people's beliefs in a shared sense of community across ethnic boundaries. The programs currently supported by Norway also include, although to a lesser extent, the security of the population through support of investigations into the post-election violence, and people's participation through support of the preparations for the next election.

Long-term strategy

Development partners are in general concerned about the limited results of the sector programs in the field of governance in the government and the judiciary. The sector programs include the Governance, Justice, Law and Order Sector Reform Programme (GJLOS), the Public Financial Management Programme (PFM) and the Public Sector Reform Programme (PSR).

The development partners are in general satisfied with their support of CSOs. The governance CSOs supported by development partners are largely pursuing human rights, women's rights, civic education and empowerment. Especially the CSOs promoting women's rights are popular with the development partners, i.e. those with women's rights as their expressed policy. Nobody seems to question whether improved human rights record in government automatically leads to improved legitimacy of the state among people. What matters in this respect is how and to what extent human rights norms are relevant for the groups whose trust and allegiance are needed to strengthen the state.

The development partners recognise that most CSOs are established in Nairobi by persons of middleclass background and that few CSOs, if any, represent the views of a membership. They encourage CSOs to represent particular constituencies in the population or parts of the country, for example, by entering into co-operation with community based organisations (CBOs).¹³ There are mainly two reasons for that. First, people at large, whether in rural areas or in the poorer urban areas are not organised for receiving development partner funding. Secondly, it is difficult to verify whether CSOs based in Nairobi are representing the interests of particular groups in the population, as defined by such groups. The same arguments are heard with respect to youth organisations; development partners want to support the youth, especially to get unemployed youth away from militias and criminal activities, but youths are poorly organised and may have views of their own future that differ from those of the elite-based CSOs. In general, development partners should be reminded that legitimacy increases when people feel that they influence decision-making in the state, whether through CSOs or other means.

Some development partners and resource persons are now of the opinion that civic education programs are no longer important because people are aware of their rights, they know what is wrong, but they don't know what to do about it. Therefore, empowerment programs more important, for example, through restructuring the interaction between state and society and supporting the capacity of organisations with a membership or a constituency to take part. There is some suspicion that campaigns by civil society may be counterproductive, focusing too much on the negative, thus widening the gap between state and society, and further that CSO leaders, especially women are using CSOs as stepping stone for a political career as opposed to representing the interests of a group of people. Some of the established CSOs have problems with ethnic animosity. Consequently, development partners should be aware of do-no-harm principles.

There are other categories of organisations in civil society that development partners appear to be avoiding. Among these are professional associations such as those of teachers, public accountants,

¹³ CBOs have been developed for people at the grassroots to be involved in the planning and implementation of development projects.

medical doctors, engineers, etc. even though development partners do support the association of women lawyers; they include trade unions although some support is given to business associations, and they include farmers associations, and faith-based organisations. There are several reasons for this but above all, development partners seem to be unsure of whether these organisations are relevant for co-operation and if so, how this could be done.

The media is receiving increasing attention by some development partners. Recent opinion polls have shown that the Kenyan population have high opinions of journalists compared to other public actors. The development partners recognise the importance of the media for political information and empowerment, and as a channel for activists and the population at large to make their views known.

Local authorities receive limited governance support by the development community. An attitude expressed by some development partners is that local authorities are too complex and poorly managed.

Some development partners support capacity building in parliament and political parties. Support of political parties is still a sensitive issue to some development partners. Technical support and training offered to all political parties is generally acceptable. In Kenya, support to political parties becomes complicated because of extensive political corruption and because political office is to a large extent being used for private purposes.

The development partners are supporting measures to increase state legitimacy, more or less successfully as indicated above, as follows:

- what the state does in terms of improved delivery of collective goods (social services, infrastructure, public facilities, economic regulation, etc.) by supporting increased accountability and transparency through public financial management and public sector reform in the central government, and through educating and empowering the population in holding the government to account if delivery fails – through CSOs, activist movements, and the media;
- how the state functions in terms of an improved legal system and respect for people's rights by supporting public and semi-public oversight and control agencies, parliamentary oversight, law-enforcement agencies, and the judiciary, and by educating and empowering the population to participate in or engaging with state governance matters – through CSOs, activist movements, and the media;
- how the state functions in terms of improved participation by the population in public decision-making by supporting Parliament and political parties and civil society/private sector participation in public decision-making, although this is for most development partners a minor part of the governance portfolio, and
- to a negligible degree, the beliefs in a shared sense of community by recognising forces which are important for a common national identity, such as religious beliefs and traditional rituals, practices and symbols.

The current long-term governance support from Norway may be summarised as follows:

- Norway supports two of the sector programs in the national government, the GJLOS and the PFM;
- Norway supports Nairobi-based CSOs, some of which running programs in conjunction with poorer sections of the population;
- Norway does not give direct support, but may be providing support indirectly through multi-development partner funds, organisations promoting the rights of youth and the activist CSOs;
- Norway does not support professional associations, trade unions or business or farmers associations, or faith-based organisations. The exception is FIDA, the association of women lawyers;

- Norway gives direct support to Nairobi-based organisations promoting the rights and political influence of women;
- Norway intends to revitalise support of the media which is currently suspended, especially programs targeting wide geographical areas and countering the ethnic divide;
- Norway has expressed scepticism to engaging with local authorities in the foreseeable future.

In terms of legitimacy, the main emphasis of Norway is on how the state functions in terms of law and order and respect for people's rights, by supporting government through the GJLOS reform program, public organisations such as the Kenya National Human Rights Commission, the International Organisation for Migration, CSOs such as Kenya Community Paralegal Association and the Federation of Women Lawyers (FIDA), the Independent Medico-Legal Unit (IMLU) countering torture, the anti-FGM Maasai Girls Scholarship Project, the multi-development partner Gender and Governance Programme, and the multi-development partner Civil Society Democratic Governance Facility.

Norway is emphasising the functioning of the state through people's participation in democratic decision-making through support to strengthening political parties by the National Democratic Institute and information for increased political influence through the National Civic Education Programme. The Gender and Governance Programme supported by Norway has emphasised the election of women to Parliament.

Norway is focusing on increased legitimacy through what the state does in terms of improved delivery of collective goods. Norway is supporting the PFM reform program emphasising accountability and transparency, and Transparency International's revised strategic plan 2008-2012 including the targeting of corruption at the local level.

Norway's suggested support of the media will emphasise beliefs in a shared sense of community. Support of organisations promoting the rights of women may be perceived as countering traditional law and customary traditions, thus countering the use of tradition to sustain and endorse the subordinate role of women.

Development partner co-operation, co-ordination and concentration

Development partners in Kenya have together with Kenyan authorities worked out a Joint Assistance Strategy (KJAS) for 2007-2012. It is called Improving Aid Effectiveness and lists the following governance issues among the greatest challenges facing Kenya:

- Significantly reducing corruption, improving public financial management, and reforming the public administration,
- Enhancing security and access to justice.

It can be noted that in terms of building state legitimacy, the focus is service delivery including the provision of security. People's participation and the informal values and institutions are not mentioned. KJAS has 17 development partners on the development partner side, including Norway and the other development partners mentioned above. Norway would like to continue its support of KJAS and should take note of the challenges listed above.

During the fieldwork several respondents outside of the development partner community were of the opinion that development partners could improve their knowledge of developments in Kenya, especially their knowledge of developments in the countryside and urban slums. Some recognised, however, that there were differences among the embassies and among individual diplomats. The development partners themselves seem to think that they do not do enough to systematically enhance their own understanding of the situation on the ground.

Concerning the use of political economy analysis the development partners think that the few comprehensive studies that have been undertaken are somewhat difficult to use in practice. Some recognise that an increasing number of such studies are being undertaken; some individually by single development partners and others by a few development partners together. They see a great potential for joint political economy analyses. Some emphasise that the studies should be focused and selective in order to be useful and that knowledgeable officers with capacity to undertake and follow up such analyses at the embassies are required. Ideas for topics include the interaction between the state and the citizens, local authorities, development partners' understanding of conflict in local contexts, tribal dynamics and local leaders, and issues that matters most to Kenyans.

Concerning the use of such analyses in the public debate the opinions vary. The basic idea is considered good but how to do it is a challenge. One development partner argued that the process of doing the studies itself creates debate and referred to the studies made in Rwanda and Somalia. This is because engaged people are gathered in groups for deep and comprehensive discussions.

6. Strategic Recommendations for Future Norwegian Assistance

Following the above analysis of the political economy in Kenya and taking into account the review of the Development Partners' strategy, we provide a general set of recommendations for Norway's continued support to governance activities in Kenya. First we propose some guiding principles for Norwegian governance programming. We then provide more specific recommendations for the short- and long-term scenarios.

Proposed principles for assistance

At a general level, we propose the following principles to guide programming.

- **Understanding the context.** There is a need to ensure that sufficient attention is paid to understanding the social and political context of supported interventions. This is in particular important where the supported activities involve interaction between citizen and state organs, at national or local levels. If, for example, political parties are supported to work for peace and reconciliation at the local level, it will be important to understand how the parties and their elected councillors impact on the democratic processes in the local authority.
- **Focusing capacities.** Norway supports a large number and a rather wide range of programs. This is a challenge in view of the limited capacity for Embassy staff to keep up to date on programs and partners, and on the development thinking in their areas. Bearing in mind the constraints the Embassy faces in terms of human resources and analytical capacity, it is recommended that the Embassy continues its efforts to limit the number of activities, and also that it attempts to link up existing areas of support in order to build mutually supportive areas of activities.
- **Building and working in networks.** The practice of pooling resources for program support with other development partners in baskets and arrangements for joint support is a good way to cut transaction costs and avoid duplication. Likewise, the convening of sector groups is a good way of ensuring open and ongoing exchange of information. The involvement of Kenyan organisations and coalitions in the ongoing dialogue is equally important. More could probably be done to pool resources and/or cooperate to conduct research, including further political economy analysis.
- **Supporting the demand for change from below.** As argued throughout this report, a key driver of change in Kenya is likely to be "demand from below" or political pressure brought to bear on the present leadership through organised demands for change from citizens. We recognise that the Embassy is already making such efforts in their support of CSOs. There might be a need to shift focus, where relevant, from activities relating to awareness raising

and public education, i.e. programs that inform people of their rights and what should be the response of the state, to activities that assist people in how to organise and articulate their demand for change and how their interaction with the state over decision-making can be institutionalised.

- **Strategic support for responding to demand for change.** Continued support to the Kenyan state should focus on its capacity to respond positively to the demands for change. This would include building stronger mechanisms for democratic participation, stronger systems and mechanisms for adjudicating conflicts between the state and citizens, and stronger oversight to ensure accountable use of public resources.

Development partners in Kenya should consider postponing long-term support of governance to the central government and the judiciary until a government with a sincere will to reform is in place, since the risks are high that good governance objectives may not be achieved and unintended, negative results may occur until that happens. Exceptions should be made for support of the reforms of the National Accord, which can be considered emergency support to avoid further bloodshed and pave the way for a peaceful election in 2012, despite risks of non-achievement. Development partners may also risk supporting initiatives outside the National Accord of programs for increased accountability to the population and increased security for the population in view of the urgency involved.

Long-term support of civil society should only be considered (1) when it is reasonably well established that such support will lead to increased political influence and rights for the population, (2) when such support is recognised as a priority by the target groups in question, and (3) when such support is countering the ethnic divisions in the population. With regard to the mass media, support should be considered if it may lead to increased political influence and rights of the citizens and if the support will contribute to bridging the ethnic divide. Long-term support of parliamentarians and political parties is risky given the tendency of politicians to prioritise their own welfare at the expense of that of the population. It could, however, be considered if the outcome is increased internal democracy in the political parties.

Given the serious lack of state legitimacy in the population, both short-term and long-term support should be directed at creating positive interaction between state and citizens. Since people's experiences with the state are largely formed by their personal interaction with the state, the focus of support should be directed at interaction at the local level, even though an open dialogue and common comprehension with the central level is always valuable.

Recommendations for the short term

In the short term, Norway should continue with its present support for the implementation of the reforms of the National Accord. Given that the reforms must be owned by the Kenyan population donors must recognise that it is reasonably limited what they can do beyond providing advice and financing Kenyan initiatives, if requested, and that they must take care to do no harm.

Support of the following programs will continue dependent on the development towards the 2012 election and considerations of the role that development partners can play:

- Support of the Emergency Psychological Support and Response Program for IDPs;
- Support to Amani Circus for healing and reconciliation & Umoja;
- The Annan process: Consolidating the gains from the Kenya National Dialogue and Reconciliation Process;
- Coordination of work to address gender based violence. Emergency response and early recovery 2008-2009.

The support to the reconciliation process is an important part of rebuilding the legitimacy of the state after the post-election violence. Together with the support to the reconciliation process, the short-term strategy should also encompass support for the preparations of the 2012 elections. It is recommended, therefore, that Norway joins the multi-development partner support of the preparations for the next election.

Recommendations for the longer term

For the longer term we suggest building on many of the elements of the present portfolio. Rather than a marked change in strategy and approach, we recommend a gradual shift along the following lines:

- A reduction in the support to the Government of Kenya, until there is evidence of a stronger government commitment to reform;
- An increased focus on state-society relations and participation in democratic processes;
- An gradual focusing on the local government dimension to complement work at the central government level; and
- A more systematic approach to learning and a continuous political economy analysis.

More detailed recommendations follow below.

Support to the Government

We recommend that direct support to the government's reform program is cut to a minimum.

- **The multi-development partner support of the Strategy for the Revitalisation of Public Financial Management (PFM) is planned to continue until 2010:** The program is an important part of the ongoing efforts to strengthen the accountable use of public resources. We recommend that Norway considers continuing its present support to the program, pending the outcome of the Mid Term review planned in September 2009.
- **The multi-development partner supported Governance, Justice, Law and Order Sector (GJLOS) Programme is ending in June 2009:** We do not recommend support to the Government for a continuation of GJLOS-related activities. Although the legal sector is a key to the strengthening of state-society relations, we do not think that there is sufficient commitment to genuine reform to justify prioritising continued support to GJLOS components¹⁴.

In the current political environment in Kenya, there is a real risk that support to Government will be doing little more than assisting the entrenched elite to protect its interests. At the same time, it may be difficult to maintain a constructive dialogue and reasonable working relations with a partner government if there is no direct support. Therefore, we recommend that one of the key programs of support is maintained (in addition to the electoral support, which is also a government led program). Reasons for preferring PFM include:

- The fact that PFM still has another year to go, while the GJLOS program is ending shortly means that for purely administrative reasons, it would make more sense to continue with PFM. Also, the choice not to engage in negotiations for continued support to individual components of GJLOS, as some development partners are presently considering, would send a clear political signal that Norway has limited confidence in the Government's commitment to reform.

¹⁴ Concerning the assumption of a lack of progress in GJLOS, we do not have any references to reviews or evaluations. An evaluation has been in the planning for some time. Lack of political will to undertaking reforms is a significant part of the perception that has manifested itself.

- There appears to be greater scope for progress in PFM than in the legal sector under the current circumstances. The experience with the PFM reform has been more positive to date. Comparative experiences also suggest that the PFM is an area in which one may be more likely to produce an impact on accountability and efficiency in the use of public resources.¹⁵

We also recommend that Norway consider supporting any Local Government Reform Program when and if such a program appears on the agenda.

Support to Non-State Actors

We recommend that Norway continues the main features of its support to civil society. The following areas of support are considered: basket funding arrangements, strategic CSOs, political parties and representative organisations.

- Basket arrangements for CSO support

We recommend that Norway goes ahead with plans to support the following two basket arrangements:

- **The multi-development partner supported Civil Society Democratic Governance Facility (CSDGF):** Support is recommended because of development partner co-operation and limited capacity at the Embassy. Focus on the local level is recommended. Consideration should also be given to supporting formative process research on the impact of support to civil society activities.
- **The multi-development partner supported Gender and Governance Programme (GGP):** Suggest continuing support given the principle of development partner co-ordination, that enhancing women's rights is both a priority in Norwegian policy as well as a key governance issue in Kenya, and provided that the program is re-directed after the evaluation.¹⁶

One justification for supporting the type of funds such as CSDGF and GGP is that it cuts transactions costs. In order to reap maximum benefits from this, it is recommended that, as far as possible, existing stand-alone support arrangements with relevant CSOs should in the future go through these funds. This means that the following CSOs currently receiving support from Norway should be asked to apply directly from the relevant funds for their next cycle of funding: the Kenya Community Paralegal Association (CSDGF); the Maasai Girls Scholarship Project (GGP), the Federation of Women Lawyers (GGP), and the AMANI Forum's Kenya Chapter.

Another development partner basket arrangement for civil society that could be considered for continuation is the **National Civic Education Programme II**. The Embassy could explore paying particular attention to the Programme's planned partnerships with representative organisations, such as COTU and KNUT.

Two ongoing projects would not be eligible for support from either of these funding mechanisms. They are the anti-trafficking program of the International Organisation for Migration (IOM) and the countering human rights abuses program of the Independent Medico Legal Unit (IMLU). It is recommended that support to IOM be discontinued, as it is not central to the reconciliation process.

¹⁵ See, for example, the World Bank's Independent Evaluation Groups evaluation of the Bank's public sector reform programs, which found evidence that the PFM programmes have had an impact on accountability, but no solid evidence that more general Public Sector Reform Programmes have had any impact (WB/IEG 2006). Experiences from neighbouring Uganda and Tanzania suggest that obtaining progress in legal reform is even more difficult.

¹⁶ For women, the introduction of multiparty competition has not necessarily opened up more space for political participation. The nomination processes within the parties were and are in practice discriminatory and the new Political Parties Act (2007) does not include effective affirmative action measures that would lead to more female candidates. Kenya consequently has a comparatively very low percentage of women in parliament and in the 2008 coalition cabinet only 6 out of 44 ministers were women.

Support to IMLU, on the other hand, is recommended, as it is directly related to the reconciliation by addressing human rights abuses during the post-election violence as well as current cases.

- Strategic CSO partners

Strategic CSO partners to which direct support would be justified include Transparency International Kenya and the Kenya Human Rights Commission:

- **Support to Transparency International Kenya's revised strategic plan 2008-2012** will continue and activities targeting corruption at the local level will be encouraged. Support should continue, given its importance at the local level.
- **Support to the Kenya Human Rights Commission's operational plan for citizen participation towards equality, justice and national reconstruction** will continue and should be encouraged to become active all over the country. We suggest support, provided the focus at the local level is real and considered sustainable.

The work of both institutions is sufficiently important to justify continued support directly from the Embassy. They both address state-society relations directly, and have the added attraction of explicitly focusing on the democratic process at the local level.

- Political Parties

Political parties play an important role in the democratic processes of a country. Like the state, political parties in Kenya have suffered a serious loss of legitimacy. The National Democratic Institute (NDI) has a good track record for technical support and training to political parties to play their roles in the democratic arena, both nationally and locally, addressing both inter-party relations and internal party democracy.

- **We recommend continued support to NDI with focus on the reconciliation process at the local level and the role of the political parties in the democratic processes at the local level.** The program should aim to document and learn from experiences of the partners at the local level¹⁷ and care should be taken to offer equal support to all existing parties and be open for support to new parties. This is also an opportunity to support the implementation of the new Political Parties Act which is regulating political competition in Kenya.

Efforts should be made to link the NDI program with other supported activities. An example of possible interlinkage is provided by one of the examples below on how the NDI supported Inter Party Provincial Committees can be the subject of a talk show under a media project. NDI should also seek to identify ways of linking supported activities at the local council level with other activities engaging with the democratic process at the sub-national level.

- Media

Support of the media, although currently suspended, is desirable, especially programs targeting wide geographical areas and countering ethnic divisions. The following programs should be considered:¹⁸

- Collaboration with the Media Institute on a program for enhanced media literacy among opinion leaders who can hold the media outlets themselves accountable to the public.
- **Support to specific media productions such as the Louis Otieno talk show on Citizen TV, for instance support to a proposed series of talk shows focusing on leadership. Or TV**

¹⁷ This is in line with the recommendations of the recent evaluation of NDI.

¹⁸ The recommended activities have been selected from a menu of options provided by Ivar Evensmo, Senior Advisor for Norad, in his recent "Report on the current media situation in Kenya: With some implications for possible Norwegian support," April 2009.

productions like the outstanding series by Hilary Ngweni, “The Building of a Nation”, to be broadcasted in seven sequences before the 2007 elections. This could be supported with a series on local level dialogue on issues that are relevant to the interaction between state and society. One idea which might be worthwhile pursuing is to explore the possibility of working together with Louis Otieno to do a series of programs with the Inter-Party Provincial Committees (IPPCs) sponsored by NDI in their Norwegian-supported program. Thus, this could be limited to a short-term commitment.

The media-programs have the attraction of a community or local government focus. This makes them relevant for issues relating to state-society relations. The media represents a potentially useful instrument for engaging the wider society in dialogue on key issues of reconciliation and also in building a more sustained and focused demand for positive change, and in building a consensus around what it would take to bring about such change.

- Representative organisations

In the democratic development of most Northern nations, representative organisations and/or popular movements have played an important role in socio-economic development and in building democratic structures and cultures. Organisations representing the interests of particular groups of the population might have a particularly important role to play in Kenya in the years to come, considering the need to strengthen state-society relations and bolster state legitimacy. Organisations that are not defined along, and do not follow, ethnic lines may be especially valuable as actors and participants in a constructive social dialogue. Having considered the available options, we recommend that the Embassy considers support to the Kenya National Union of Teachers (KNUT) and farmers’ associations:

- **Discuss with the Kenya National Union of Teachers to explore whether there is scope for support of their activities.** Support of activities at the local level, and participation in the democratic process at the local level would be particularly interesting. KNUT and its various sub-branches have an important political role to play in the social dialogue at the various levels of political life in Kenya. Teachers and teachers’ representatives also have a potentially valuable role to play in shaping values all the way down to the school level, and to help instill respect for democratic principles in the coming generation of Kenyans. The advantage of supporting this organisation would be further enhanced if care is taken to document activities and the challenges faced by KNUT in its work.
- **Explore possibilities for working with and supporting farmers associations.** This would start with further scoping work to map existing associations and opportunities for support. Support would probably be most feasible in conjunction with other development partners. The experience of Heifer International, referred to above, show how support to organising around the interests of a defined group of people (in their case livestock farmers) provides motivation to organise politically around an issue. The use of political influence, through an interest group, to improve one’s economic position is a good demonstration of the practice of issues based-politics and a departure from ethnicity-based cleavages. This is an ideal opportunity to support political and social dialogue at the local and national level in a constructive manner. The documentation and learning from the challenges experienced by farmers would also provide valuable lessons for Norway’s support to the governance sector in Kenya.

Whether the Embassy chooses to explore seriously the option of supporting representative organisations must be weighed against the capacity constraints of the Embassy. This area of support is included here due to its good fit with the need to support “the demand from below” and organisations with a potential to cut across ethnic lines but also because it is an area which does not seem to be trendy at the moment and has thus received less attention than it deserves. The potential

role of genuinely representative organisations that act to further the interests of their members, should not be underestimated. Also, when representative organisations have the capacity and political space to interact with authorities at national and local levels alike, it serves to contribute to institutionalising representative politics. The existence of organisations that serve as democratic outlets in this manner, also lends legitimacy to the democratic process.

- Research and political economy analysis

Political economy analysis, on the other hand, is an area of activity that is very much in fashion. Nevertheless, more could be gained from a more systematic and coordinated approach in research and analysis. There are currently a number of new initiatives in place. DFID, CIDA and Danida are currently doing a series of five political economy type studies. The World Bank, possibly together with Danida and DFID, is also planning a larger political economy study. The former has indicated that Norway would be welcome to join as a partner.

- **The Embassy should consider their involvement in continued political economy analysis as integral part of its monitoring and planning strategy.** The Embassy should also discuss with other development partners and Kenyan researchers and agree on a strategy for conducting, sharing and discussing political economy analyses on a regular basis. Priority should be accorded research into the democratic and administrative processes at the local level, as this is an area in particular need of further research, and one on which the development partners in particular need more knowledge.

The research must also include gender analysis.

Possible co-operation with Norwegian partners

The team has looked into the possibility of co-operation between Kenyan and Norwegian partners. We have, however, not been able to identify any clear Norwegian candidates in the suggested areas of possible future Norwegian support on governance. If Norway wants to explore the idea of supporting representative organisations and social dialogue Norwegian partners could be considered. These could be partners acting as advisers to the state and non-state actors on how to set up and how to work in a social dialogue as well as partners involved with counterparts such as teachers associations and farmers associations. If Norway considers engaging foreign advisers or partners in this context we would, however, recommend that advisers from other African countries, for example, South Africa, be considered as the Norwegian experience may not be directly transferable to the Kenyan context.

7. Conclusion

This report has provided a political economy analysis of the current political situation in Kenya with a view to informing the development of the next Norwegian strategy for supporting governance. The decision to conduct such an analysis has been motivated by the fragile situation in the country following the severe outbreak of violence after the disputed 2007 election. The apparent stalemate in the reform process owing to the reluctant and conflict-ridden coalition government has also cast considerable doubt on what continued support to the present government can be expected to achieve.

The report has adopted the analytical methodology developed within OECD/DAC Network on Peace-building, State-building and Security which suggests that when working with states in fragile situations, the strategic approach should be to a focus on state legitimacy. State legitimacy is determined by the nature of the state's relations with society and its citizens.

The relevance of this analytic approach is borne out by the analysis of Kenya's recent political history and by the responses received from the people interviewed. The legitimacy of the Kenyan state is at an all time low. Kenyan society is characterised by a widening gap between the haves and the have-nots and the concentration of vast personalised powers in the executive. The use of violence by leaders to

serve their own political ends brought the Kenyan state dangerously close to collapse in the aftermath of the 2007 elections. The impunity enjoyed by leaders over unchecked corruption and the sponsoring of violence has led many, if not most, Kenyan citizens to view their political leaders as corrupt, power-hungry and indifferent to the well-being of the people and the nation.

The paradox is that Kenyan society enjoys much strength compared to their neighbours. It has a comparatively strong civil society and strong and critical mass media. There is a sizeable and educated middle class and competitive party politics, albeit marred by ethnic divisions. The problem in Kenya is therefore not one of poor capacities. This means that the traditional approach to governance reform of capacity building and public awareness-raising is not likely to bear fruit in Kenya.

The respondents were near unanimous that change in Kenya is most likely to come as a result of demand from below. The challenge is how to strengthen this demand in a constructive manner and to identify the appropriate points of entry. Supporting demand from below needs to focus on the citizens and their interaction with the state. In particular this will require attention to the relations between citizens and the state, particularly at the local government level, where most state-society interaction takes place.

This presents a serious problem as the Kenyan local government system is weak, overly complex and tailor-made for top-down domination and politicisation by the present elite. The development partners, including Norway, are reluctant to focus on activities related to local government, because it is so complex and difficult to understand.

It is suggested that a key to strengthening democratic governance in Kenya is support of social dialogue. This would involve supporting citizens and non-state actors engaging in a constructive and informed debate on the division of power and the management of national resources.

Much of Norwegian support is already geared towards this end and changes are recommended accordingly. The report's recommendations are summarised as follows:

- In the short term, the present support to the implementation of reforms under the National Accord is seen as appropriate. The support to reconciliation and investigations of post election violence, including sexual and gender-based violence, should continue.
- In the longer term, the recommendation is for Norway to limit direct support to the Government of Kenya, as there is not sufficient evidence of genuine commitment to reform. Support to selected components of GJLOS is not recommended, but continued support to PFM could be considered in order to keep an open channel for dialogue with the central government depending on the outcome of the upcoming review. Support is recommended for the basket funding for the preparations for the 2012 elections due to the importance of elections in rebuilding the state's legitimacy.
- Support to civil society should to a greater extent be channelled through the existing common funding mechanisms in order to simplify management.
- The support to non-state actors should also be geared more explicitly towards supporting demand for change from below, and more attention needs to be paid to the appropriate linkages between non-state actors and the local government system, where most of state-society interaction takes place.
- More attention also needs to be paid to research and learning, much of which can be integrated into the existing activities through better documentation of supported activities and more systematic mechanisms for learning.
- Recommended new areas for support are social dialogue and representative organisations, with suggested recipients being Kenya National Union of Teachers and farmers associations.

The revitalised support of mass media should be considered in terms of its contribution to increased political engagement of the population. The development of a more comprehensive program of research and political economy analysis in cooperation with other development partners should also be supportive of this approach.

The gist of the recommendations, therefore, is to follow broadly the same strategy as at present, but for the time being adopt less emphasis on support through the central government and a more explicit focus on state-society relations, particularly at the local government level, and support non-state actors, including mass media, that are genuinely representing the people at large. More emphasis should be placed on systematic learning, analysis and social dialogue.

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Annex 2:List of interviews

16 April 2009

Norwegian Embassy:

- H.E. Ambassador Elisabeth Jacobsen
- Jan Arne Munkeby, Counsellor
- Vegard Holmelid, First Secretary (Political Affairs)
- Siv Cathrine Moe,
- Madel Gunnarshaug Rosland (intern)
- Tiberius Barasa (local consultant, engaged for the study)

Transparency International

- Jon Ogonda, Executive Director
- Lisa Karanja, Deputy Executive Director

Mars Group

- Mwalimu Mati

17 April 2009

MOPA:

- MainaKiai

Kenya National Commission of Human Rights (KNCHR)

- Hassan Omar Hassan, Commissioner, Vice Chairman

20 April 2009

John Githongo

Federation of Women Lawyers (FIDA)

- Patricia Nyaundi

Muthai Nguni

21 April 2009

Ministry of Finance

- Jackson N. Kinyanjui, Director
- Mr. Orwa

Sida

- Annika Nordin Jayawardena, Counsellor
- Camilla Redner

Embassy of Netherlands

- Jarije Balt, First Secretary

Kenya Human Rights Commission (KHRC)

- K. Muthoni Wanyeki, Executive Director
- George Morara, Programme Officer

22 April 2009

Workshop on Development partner Support of Elections

- Bjarte Tora, IDEA International

Ministry of Justice

- Gichira Kibara, Secretary

DFID Kenya

- Paul Simkin, Governance Adviser

23 April 2009

MYSA

- George Nderitu

African Union, Panel of Eminent African Personalities

- Berry Bennett, Political Analyst

UNDP

- Tomoko Hishimoto

Heifer International Kenya

- Alex Kirui, Country Director

24 April 2009

CIDA

- Robert Simiyu, Governance Adviser

Kenya National Union of Teachers

- Secretary General Lawrence Majali

Danish Embassy

- Bo Jensen, Ambassador

30 April 2009

Municipality of Voi

- Anthony Naunga, Town Clerk,
- Hamizi Makeo Kidoki, Mayor

Annex 3: Brief Overview of Norway's Governance Portfolio

The political guidelines of Norway for the development co-operation in Kenya are reflected in the annual activity plan for 2009 for the Embassy. The guidelines emphasise in the short term the peace and reconciliation processes that followed from the mediation of Kofi Annan and the African Union initiative, and the Peace Accord as well as humanitarian aid to the IDPs. In the short as well as the longer term, Norway will adjust its co-operation to the needs for reforms in the Kenyan state. Norway is in particular emphasising the reform policies and initiatives of Kenya in the area of good governance, fighting corruption, a new electoral system and a new constitution. Norway is recognising the importance of these processes for the region and for Africa as a whole. The strategic plan of Norway for 2008-2010 in addition refers to the importance of gender and women's rights and human rights.

Norway also wants to strengthen its support to Kenya and to the region of programs directed at better management of natural resources and adaptation to the climate change. This area was not part of this study. It is noted, however, that the issue of natural resource management does touch in key issues on Kenyan political life, such as control of resources and, not least, ownership of land and the Embassy is advised to be aware of potential linkages between the environment and governance programmes.

The Norwegian development portfolio in Kenya is focused on governance and democracy, human rights and women's rights. The overall development goal can be understood as improved governance and more equitable development for the population. It is assumed that the goal will remain so in the foreseeable future. In the short term, Norway is engaged in contributing to securing peace and supporting the implementation of the reforms according to the National Accord.

In the longer term, Norway supports a large number of projects in the governance area. These are by the Embassy classified as post conflict reconciliation, legal sector and rights, democracy, anti-corruption, and media. The projects as of 2008 are listed below.

Post conflict reconciliation:

- Support of the Emergency Psychological Support and Response Program for IDPs,
- Kenya National Commission on Human Rights Documentation/Investigations following Kenya's Post Election Violence,
- Support to Amani Circus for healing and reconciliation & Umoja,
- The Annan process: Consolidating the gains from the Kenya National Dialogue and Reconciliation Process,
- Coordination of gender based violence. Emergency response and early recovery 2008-09.
- Book on women's experiences in 2007-08 post election conflict,
- Direct support to AMANI Forum's Kenya Chapter working for peacebuilding and conciliation among MPs.

Legal sector and rights projects:

- The multidevelopment partner supported Governance, Justice, Law and Order Sector (GJLOS) benefiting about 35 state agencies and semi-autonomous institutions,
- The multidevelopment partner supported Civil Society Democratic Governance Facility, where CSOs have to compete for support and new support areas are announced for each call for proposals,
- Direct support to Kenya Community Paralegal Association, working at the grassroots level,
- Direct support to Kenya National Human Rights Commission's operational plan for citizens participation towards equality, justice and national reconstruction,
- Direct support of the International Organisation for Migration (IOM) which counters trafficking,
- Direct support of the Independent Medico-Legal Unit (IMLU) countering torture,
- The multidevelopment partner supported Gender and Governance Programme with focus until now on women's participation in politics, especially as members of parliament,

- Direct support to the Maasai Girls Scholarship Project (Anti FGM),
- Direct support to the Federation of Women Lawyers (FIDA).

Democracy:

- Direct support to strengthening political parties through the National Democratic Institute,
- The multidevelopment partner support of the preparations for the elections,
- The multidevelopment partner support to the National Civic Education Programme II,

Anti-Corruption:

- Direct support to Transparency International Kenya's revised strategic plan 2008-12 including targeting of corruption at the local level,
- The multidevelopment partner support of the Strategy for the Revitalization of Public Financial Management in the Ministry of Finance,

Media:

- Support of media is currently not captured in the program but is desirable from the Embassy's side, especially programs targeting wide geographical areas and countering the ethnic divide.

Annex 4: Summary Review of Issues Relating to Local Government in Kenya

Prepared by Tiberius Barasa, Institute of Policy Analysis and Research, Nairobi, Kenya

April 2009

1.0 Introduction

Three overlapping systems affect local government in Kenya. These are the provincial administration, the local authorities and the constituencies. We describe briefly each of these systems highlighting the structures, centers of power and functions, and their interaction with citizens, major challenges and development partner support, if any.

2. Provincial Administration

The Provincial Administration (PA) has existed prior to independence. The main functions of PAs were control, coordination and mobilization of the public for development. The Provincial Administrators have acted in an executive capacity as agents of the governor or the president. The provincial administration has been and continues to be a dominant institution that provides essential services to both rural and urban inhabitants in Kenya. Getzel (1970) observed that the PA was considerably expanded during the colonial period to help quell the African rebellion. Kuria (1973) and Hyden (1970) observed that there was expansion in the post-independence period to help contain the growing political opposition to the First (1963-1978) and Second Republic (1979-2002) governments. The PAs involvement in law and order functions both during the colonial and post-independence periods badly tainted its image (Tostensen, 1987). Due to this bad image, abuses of human rights by some staff and the absence of such administrations in devolved systems of government that led the Constitution of Kenya Review Commission (CKRC) Bomas Draft and Wako Draft recommended and endorsed the scrapping of the provincial administration. The fate of the PAs is still unknown as NARC Government of Kibaki and the current Grand Coalition Government continue to use and sustain the PAs.

2.1 PA's Structure

The PA, armed forces, the police force, special programmes, state corporations and internal security all fall under the Office of the President (OP). The structure of the PA is directly proportionate to the size and number of administrative areas that range from villages, sub-locations, locations, divisions, districts, provinces to the headquarters in the Office of the President and parallels that of other government ministries (Chitere, 2005). Currently there are 8 provinces in Kenya each headed by a Provincial Commissioner (PC); 209 districts each headed by a District Commissioner (DC); and several divisions each headed by a Divisional Officer (DO), locations each headed by a Chief, sub-locations each headed by a Sub-chief and villages each headed by a Village Headman.

The DCs, chiefs and village headmen and women command a lot of influence and seat in most of the public committees within their territories. For instance, they seat in local education committees, local development committees among others. This privilege enables them to influence decisions at the local level without many difficulties.

Apparently, the first decentralization efforts that were initiated during the Second Republic in the name of the District Focus for Rural Development (DFRD) and the renewed efforts, have established a strong institutional base at the district level and weak regional and lower levels. Each district has a District Commissioner (DC) as head of the district, coordinator of all technical ministries and development activities, a planning section headed by the District Development Officer (DDO), personnel and accounts sections within the PA, the district treasury and a tendering system. The same arrangement with minimum modifications exists at the provincial and lower levels. It is unfortunate that the PA is the core of this institutional base and yet with the exception of chiefs whose positions

are established by the Chief's Act, the rest of the PA is neither provided for by the constitution nor established by an Act of Parliament and its operations parallel or duplicate those of local authorities and the police.

Decentralization initiatives at the district level are beginning to show positive change in the districts and in local communities. These efforts include the poverty alleviation Fund established in 2000/1, the Roads Maintenance Fuel Levy Fund established in 2000/1. However, main challenges constraining realization of more benefits include weak accountability systems, inadequate funds and political interference especially, from the local members of parliament.

3. Constituencies

Constituencies in Kenya are units of communities' representation at the national assembly. There are 210 constituencies in Kenya and each represented in the national assembly by a local member of parliament. In Kenya constituencies are also units of development hence the some of the ongoing decentralization efforts have targeted constituencies as units of decentralization.

The Government now sends funds directly to the constituencies for development and service delivery purposes. Examples of these funds are the Constituency Development Fund (CDF) established in 2003/4; Constituency HIV/AIDS Fund established in 2001/2), Constituency Schools Bursary Fund established in 2003 (Mapesa and Kibua, 2006). Management committees were also established to manage the funds both at the national and local levels. The management committees at both levels are very well constituted as committee members are drawn from both the government and civil society including the local communities and the church.

The funds have made some positive impact in the sense that some communities have witnessed delivery of services, which used to be beyond their reach namely, children from poor families getting financial support to continue with their studies (Oyugi, Riechi and Anupi, 2008), communities getting clean water, community members infected and affected by HIV/AIDS getting support, among others.

The main challenges the funds are facing include inadequate accountability mechanisms; funds wastage; inadequate funds; limited participation of other stakeholders namely, business men and women, the church, Community Based Organizations (CBOs), Non Governmental Organisations and political interference especially by the local members of parliament, the chiefs and councilors.

The Member of Parliament commands enormous powers at the constituency level. His influence is felt in all sectors of the economy including the Social sector, Agricultural and industrial sector, among others.

4. Local Government in Kenya

The local government in Kenya is governed by the Local Government Act CAP 265 of the Laws of Kenya. The Act creates three categories of local authorities namely: the municipal councils; the county councils; and the town councils. Members to the councils are elected during the general election and a few are nominated after the election. There are currently 175 Local Authorities (LAs) in Kenya including Nairobi City Council. Recent reforms have seen the creation of the metropolitan ministry in charge of Nairobi. The three categories are briefly described below.

4.1 County Councils: County councils are local authorities that cover the rural countryside and they reside within the district administrative boundaries. Their main functions are to provide regulatory services, planning business and provision of services such as rural access roads, rural markets, and co-ordination of development through representation in the various district organs. The county councils also provide support to the needy especially through education bursary scheme. The most important service provided by the county councils is opening up and maintaining local access roads, which, form about three quarters of roads in the county.

4.2 Town Councils: Town councils are small local authorities with less physical structures and low populations. Town councils can be elevated to the status of municipalities if their physical structures are improved and the population size increased. Town councils have less urban coverage, inferior infrastructure; and less civil and administrative facilities.

4.3 Municipal Councils: Municipal councils are urban local authorities that are bigger than town council. Most municipal councils in Kenya have better infrastructure compared to town councils. Most municipalities have evolved as townships and started as urban centers during the colonial period serving as administrative and commercial centers.

4.5 Local Authorities Structure

Power of the Minister for Local Government: The Local Government Act provides immense powers to the Minister for local Government to the extent that he has to approve virtually all matters resolved by local authorities.

Local authorities in Kenya have a distinct structure provided for under the Local Government Act merging civil and administrative functions. The civil function is vested in the elected and nominated councilors. The law provides that those nominated as councilors do not exceed one third of the total. Municipal councils are headed by mayors while county and Town councils are headed by council Chairmen.

Administrative function is performed by qualified technocrats under the leadership of the town clerk in municipalities and town councils and county clerks in county councils. Their mandates are provided for under the Local Government Act.

Other key officials working in the local authorities include the treasurers, engineers, public health officers among others. The number of departments in local authorities varies according to the size of the local authority. All local authorities have at least the Clerk's Department, Treasury department, work department, and environmental department. In small local authorities social services departments are merged with the Clerk's department.

4.6 The Committees and Full Councils Meetings

The Local Authorities work through committees consisting members of the councils. Committees deliberate issues affecting the councils in search of solutions. The procedures for conducting debates in the councils are provided for in the Act to ensure consistency and uniformity among all councils. Resolutions made in the committees are tabled before a full council meeting which is the highest organ in the council under the Chairmanship of the Mayor or Council Chairman. The resolutions once adopted at the full council meeting become a policy at the Local Authority level. However, the policies have to be approved by the Minister for Local Government. The clerks play very vital roles in the councils including convening meetings and coordinating councils meetings and implementation of the policy.

By-Laws: The supervisory and regulatory role of the council is performed through the application of by-laws. The by-laws are rules and provisions enacted by local authorities to govern the activities of the residents. They are mainly prohibitions of acts or omissions that may injure order and smooth running of socio-economic activities, health, environment and conduct of business.

4.7 Citizen's interaction with LAs

In 1999/2000, the Government of Kenya established the Local Authority Transfer Fund (LATF) to enable local authorities improve local service delivery, improve financial management accountability systems and reduce local authority's outstanding debts. Consequently, the Government also established Local Authorities Service Delivery Action Plan (LASDAP). Evaluation of LATF has shown that LAs are struggling to meet LATF objectives and that the expected results have not been achieved yet (Republic of Kenya 2008 (1)). The LASDAP is the only official framework available for local

communities to interact with the LAs. The LASDAP is a three-year rolling programme of activities/projects that sets out a local authority's priorities for improving provision of local facilities and services (Oyugi and Kibua, 2006). This framework is meant to provide different kinds of information to the local communities to enable them participate effectively in the decision making process at the LAs level. However, recent studies and evaluations have shown that there is very little information availed to the communities hence constraining their participation in decision-making process (National Taxpayers Association, 2009). In addition, the councilors dominate the decision making process hence limiting the participation of the communities (Republic of Kenya, 2009 (1)). The public image of the LAs has therefore been negative. The councilors are perceived to be corrupt, ineffective, unqualified and opportunists who only enrich themselves at the expense of the communities they purport to serve.

The services provided by the LAs include creation and maintenance of roads, municipal markets, garbage collection among others. A quick tour around most of the LAs in the country will show that service delivered by the LAs is poor, uncoordinated, and inadequate. Most Kenyan towns have littered streets, open sewers, roads with potholes among others.

4.8 Major challenges facing LAs

The main challenges constraining the performance of LAs in Kenya include:

- a) Lack of technical capacity to implement reforms: These include financial skills and administrative skills
- b) Lack of adequate systems in place to implement reforms: This refers to administrative systems, accountability systems and information systems.
- c) Lack of political will to implement reforms: Both the councilors and local politicians are reluctant to implement reforms in LAs because they believe this will minimize opportunities for private benefits.
- d) Weak community participation in the reform process and project implementation: The councilors intentionally lock out community participation. A larger section of the community is also not sufficiently aware of the reforms being undertaken in the LAs.
- e) Lack of monitoring and evaluation framework in the Ministry of Local Government: The Ministry has not developed a monitoring and evaluation framework for LAs.
- f) Political interference: Local members of parliament greatly influence decisions about project priorities.

4.9 Stakeholders' influence

The influence of stakeholders namely, trade unions, farmers, business organizations, CSOs, CBOs, among others are insignificant, as the councilors tend to monopolise the decision-making role in the LAs (Republic of Kenya, 2009 (3)). Many stakeholders are also not interested in getting involved in LAs activities as they have a negative perception of the councilors. A few that are interested are restricted by the councilors. The councilors do not see the need for community participation. They fear that their corrupt behavior will be exposed to the public when communities participate in the entire LASDAP process.

National politicians: The Minister for Local Government can exert much influence to the LAs operations as provided for in the Local Government's Act.

Local Politicians: Local politicians do interfere with the activities of the local authorities and to large extent, they overrule decisions that are not in their favour.

Associations of vendors/small scale business traders: These groups have some influence, as they demand value for their money paid to the LAs through fees and licenses. Nevertheless, they have to mobilize

and get the support of other traders. In Kenyan major cities, it is a common phenomenon to see city 'askaris' (soldiers) in running battles with vendors or traders.

5. Development partner support

Perhaps there is no direct support of the LAs programs and activities by Norway. The European Union (EU) on the other hand is directly supporting LAs through the Rural Poverty Reduction and Local Government Support Programme (RPRLGSP). The programme focuses on improving local authority's information and financial management systems, transparency and accountability in the LAs, improving participation of the local communities in the LASDAP process and building the capacity of local communities to monitor and evaluate the LAs of projects (Republic of Kenya, 2008 (2)). Other development partners that support work related to LAs include DfID, CIDA, SIDA and GTZ. These four supported National Taxpayers Association to conduct Citizen's Local Authority Transfer Fund Report Card. The aim of the research was to sensitize citizens, elected officials and civil society organizations on the management of devolved funds and the provision of district services. The results were devastating citing wastage and mismanagement of funds.

Conclusion

The system most likely to be dropped when the constitutional reforms are finally accepted and the new constitutions endorsed is the provincial administration. It is still not clear whether both the district and the constituency will be accepted as units of devolution of power in Kenya. Retaining the two units will still complicate governance and development at the local level. The district as a unit of devolution has the following advantages: it is close to the people, has an established working system and has a direct relationship with central government. Most of the districts however, are inhabited by people from one ethnic group and have parallel departments representing most ministries. This implies that more personnel are also required at the district level.

The constituency on the other hand is organized in a very simple way and does not have many personnel working in different departments representing ministries at central level. The management committees established to manage the funds are also not composed of many members. One most unfortunate reality is that constituencies heavily controlled by the area member of parliament and that the community to large extent is afraid of the area member of parliament. The fear ends during the election period.

Majority of the LAs have not quite clearly understood the current form of decentralization being implemented in the country. They are faced with challenges such as inadequate capacity to implement reforms; transparency and accountability issues; and political interference by local members of parliament. It would be good to identify LAs that have demonstrated commitment to reforms and have a record of accomplishment of success story. These LAs could qualify for development partner support especially in the areas of community's participation in decision-making process, sharing of information relating to projects, financial management system and monitoring and evaluation.

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Annex 5: Summary Review on Trade Unions in Kenya

Prepared by Tiberius Barasa, IPAR, April 2009

Introduction

Trade unions in Kenya are collectively represented by umbrella organization called Central Organisation of Trade Union (COTU-Kenya) which, was founded in 1965 and registered, and operates within the provisions of Trade Unions Act CAP 233 of the Laws of Kenya. The COTU has approximately 36 registered trade unions and has a membership of about 1 million workers countrywide. The COTU's mandate is to create, develop and maintain a comprehensive social framework for championing the rights of workers and advocating for humane and productive working conditions of freedom, equity, security and dignity (<http://www.cotu-kenya.org/>).

Members of COTU are individual workers unions such as Engineering Workers Union; Domestic Workers Union, among others. There are other workers unions who are not members of COTU but who have a large representation and wide coverage in the country. These include the Kenya National Teachers Union (KNUT), the Kenya Union of Post Primary Education Teachers (KUPPET) and Civil Servants Union.

In this review, we discuss the following: internal organization; unions' relationship with the government, political leaders and other leaders, business associations and the parliament; unions' strategies of engagement with the government and political leaders; and unions' contribution to national development goals. We begin by pointing out that all registered trade unions in Kenya are important.

The most important trade unions

All registered trade unions are important. However, they can be looked at in terms of the sectors they are representing and/or the proportion of membership to total employees. The Kenya National Union Teachers (KNUT) is one of the largest trade unions in the country, mainly representing teachers in public primary schools. The Union of Kenya Civil Servants is arguably the 2nd largest in the country. It organizes civil servants in job groups A-L. The two unions are distributed countrywide, with presence in literally all the districts in Kenya. They also have branches in all the parts of the country.

How they are organized structurally

The organizational structure of trade unions in Kenya is almost the same since they operate on a model constitution. They have a delegate's conference as the supreme decision making authority. Below it is the council, which in many unions is composed of all the national officials of the union, the branch officials and representatives of various interest groups e.g. gender/women, youth, and other interest groups. Some unions have national executive board hierarchically below the governing council, then the secretariat and staff.

Internal Organisation and decision making

Decision making framework is mainly drawn from the structure presented in the union constitution. In some unions, it is incumbent upon the General Secretary/Secretary General to consult other elected union officials on certain issues before undertaking any decision. In others, the union chief executive has leeway to make a decision and then present it to the union organ for ratification.

The head of trade unions is the Secretary General. He presides over the delegates conference composed of national officials and representatives from affiliate unions. There is an Executive Board and the Secretariat composed of national officials, secretary general, deputy secretary general,

Chairman of the Board, Assistant Chairman, Treasury, Assistant Treasury and 3 Trustees. The main department which facilitate the functions of the union include Administration and Finance; Child Labour; Gender; Education, Research and Economics; and HIV/AIDS.

Political Influence and relation with the government and politicians

Trade unions have room to influence positive change in Kenya, but they have not utilized this opportunity apart from ordinary bread and butter issues. By virtue of their mandates, trade unions have much power to cause positive impact in the reform agenda of this country. Trade unions have representation in many public institutions and agencies including the National Economic Council, Electricity Regulatory Board, National Social Security Fund, National Labour Board, Wages and Advisory Board, Directorate of Industrial Training, Productivity center and Kenya Anti-Corruption Commission. Nevertheless, limited understanding of their mandates and narrow focus undermine trade unions' ability to influence positive change in Kenya. In addition, trade unions lack adequate capacity in form of competent staff; departments are personalized and ethnicised; and the workers voices are not well defined.

Kenyan trade unions have not yet developed any working relationship with political parties or politicians for that matter. This may be attributed to the fact that the political parties may not have, as yet, defined in concrete terms their agenda/ideals, which the unions can subscribe to. It may also be that if such an agenda/ideal is existing, then it is not deep on labour/workers' issues. Alternatively, it may be the case that the trade unions/their leaders have not yet realized the complementarity that exists between them and these other groups in furthering their ideals.

The trade unions are fairly active in public debates. The focus of their debates has, however, been on 'bread and butter' issues at the exclusion of more contemporary issues. Even the financial and economic crises have not changed these issues. Nevertheless, there is a gradual change.

Trade unions were consulted in the Poverty Reduction Strategy, the ERS and Vision 2030. But it also depends on how effective the consultation was, and if the government was actually genuine in undertaking the consultations. For instance, it is not clear whether it was a felt need from the government to consult or the government was doing it just to meet development partner conditionality.

Ethnic factor influences leadership positions in trade unions. For instance, major positions in trade unions are occupied by the three major ethnic communities in Kenya namely; Kikuyu, Luhya and Luo.

The trade Secretariat works independently of any other organizations in the civil society. It is very rare to see trade unions supporting NGOs agenda. It is claimed that the trade unions leadership does not like to work with NGOs even faced with issues of national interest.

Strategies used by trade unions

Threat of withdrawal of labour/industrial unrest is common. But they also lobby, to a limited extent, to achieve some of their goals.

The main strategy available to trade unions is industrial action. This strategy has been weakening with time due to limited confidence of workers in the trade unions leadership. While employing industrial action trade unions seek to

1. Strengthening the affiliated unions;
2. Promoting worker education;
3. Lobbying and advocating for appropriate employment and labour market policies, and legal regimes;

4. Articulating workers' views and representation at national, regional and international levels; and
5. Building solidarity, alliances, partnership and networks with government, private sector, regional and international trade union confederations and other labour support institutions.

Development partner assistance to trade unions

Development partners can assist trade unions to be more visible in society and play active role in governance reforms by:

1. Building advocacy capacity of their members
2. Assisting trade unions to form coalitions with the civil society organizations around a governance agenda.
3. Assisting trade unions to seek more representation in most government committees, boards and agencies.

Annex 6: Interview with Local Government officials

Hamizi Makeo Kidoki (Mayor) and Anthony Naunga (Town Clerk), Municipality of Voi

by Eva Jacobsen, Norad

30.04.2009

1. *Who are the senior officials? Are they elected or appointed? If appointed, by whom?*

The Municipal Council of Voi has 6 elected Councilors, 1 nominated Councilor, 1 Public Officer and 54 employees. Of the 54 employees, 6 are appointed by the Public Service Commission of Kenya (<http://www.publicservice.go.ke/>).

The Council is divided into 6 electoral wards.

2. *What is their basic decision making authority (degree of autonomy, do they act on instructions from higher up authorities or do they make decisions on planning, budgeting and implementation independently)*

The basic decision making authority is the full council meetings, after previous discussion in the different committees. Some decisions, e.g. regarding by-laws, budgeting and fiscal planning – has to be forwarded to the central government for final approval. The Municipal Council of Voi makes a resolution which is then presented for the relevant ministry (e.g. Ministry of Local Government).

On Eva's question "*In your opinion, do you consider Voi to have a high or low degree of autonomy*", the reply was: **We do not have a high degree of autonomy – most of what we do is regulated by the central government.**

3. *What provisions exist for citizens to interact with the authority, in terms of:*
 - *Accessing relevant information (financial information, minutes of meetings, land and business records)*

The inhabitants are free to come and ask questions, although not many do this. The municipality publishes the annual budget every year. In addition, according to the law, people can buy minutes of meetings (not many people do that – the mayor attributed this to a high level of illiteracy).

- *Providing input into decision making (participation in meetings, public hearings, written input)*

The full council meetings are open to the public, but there is little participation. The mayor's explanation: "Once they elect us, we represent them fully – therefore they don't have the need to participate in meetings. We hold meetings in all the wards when we want

to identify new projects. The public propose projects – we collect the information. The Council then decides in which projects to be implemented.”

Regarding written input: **“We receive a lot of this – both in form of project proposals and complaints. We give it to the relevant committee for preparation.”**

- Making formal complaints, requests for information, and requests for official investigation or action on suspected cases of mismanagement. Also, how likely is it that such requests for action/assistance by the public are acted upon?

Regarding complaints: **“Complaints are put on the agenda in a meeting.”** On Eva’s question on how people know about the possibility of filing a complaint, the mayor replied: **“They are free to file complaints, either in writing or in meetings. The public is aware of what the municipality is responsible of – this is the reason why they complain. If nothing happens with the complaint, people will organize demonstrations (2 so far this year).”**

Regarding suspicion of mismanagement: **“In cases of suspected mismanagement, people can complain to KAACC(Kenya Anti Corruption Commission). Sometimes we have audits performed by province or national level. If they suspect something, they can send special inspectors.”**

4. *A) How do the public view the different organs of local government? B) To what extent are they seen as being representative of the people? C) Which aspects of their performance are the public satisfied with and which aspects are they particularly unhappy with?*

Eva’s comment:

A: I did not see the reason for asking the mayor/town clerk about the first question, as they are not in a position to answer as “the public”.

B: As this question also relates to the “public opinion”, which I did not feel was right to ask the mayor about, I reformulated the question to: *In your opinion, do you think the public see you (the Council) as being representative of the people?* to which he replied: **“ Yes, we think we are representative. Traditionally, during the election, the system is designed so that the “winner (party) takes it all”. After the post-election violence, however – we now have representation from all the parties in Voi (3 parties).”**

5. *What influence do the following groups have at the local level?*
6. Eva’s comment: This question is formulated as it is possible to receive an objective answer regarding the different groups’ influence – but I don’t think the mayor is the right person to ask this. I reformulated the question to: *In your opinion, what influence do the following groups have at the local level?* The replies should be considered as the opinion of the mayor and town clerk, not as an accurate description of the facts. I quote the answers directly:

- a. *National politicians*

“Not much. We have guidelines developed at the national level regarding different issues. If we are uncertain of something, we ask at the national level. “

b. Local level politician

“ The mayor has much power. There are other politicians whom we won over in the election, but we listen to what they have to say.”

c. Trade unions (including teachers’ union)

“Not many teachers’ unions, since the schools here are mostly private.”

d. Farmers’ Associations

“They mostly focus their lobby work towards the national level. We do however give input to the farmer’s associations, e.g. about seeds.”

e. Business organizations

“The Kenyan National Chamber of Commerce and Industry has a branch in Voi, hence we have discussions with them and sometimes they complain about our work”

f. Traditional leaders/elders

“The politicians have contact with the elders, especially when they want to secure votes. We do not receive many complaints from the elders”.

g. User groups (e.g. school committees and health committees)

Eva’s comment: It was a bit unclear what was meant by this question.

h. CSOs

"They are there! We have about 2-3 of them in Voi, most of them are very critical of us. They represent the community, and e.g. complain about taxes in relation to the service we provide. Some groups call themselves human rights groups – they complain about everything.

i. FBOs

"We have many of these, and they have influence. The mayor is a Muslim – in Voi there are 80 % Christians and 20 % Muslims. We have most contact with them in relation to approval of buildings etc, otherwise not much".

j. Religious leaders

"They have their followers, but we don't have much contact with them."

k. Local and national media

We have a local radio, where they talk about everything. We have a good relationship with the media, although they generally are most concerned with negative issues".

l. Army

N/A.

m. Policy/security forces

Every district has a Central Police Station. We have much contact with them regarding security.

Are there any other significant groupings with influence?

Environment groups and women's groups.

6. What are the main challenges experienced by the authority, in terms of:

- Service delivery

"People have high expectations, but due to financial constraints we cannot meet them. We get our revenues from hotels (Voi municipality owns some hotels), ground rate from the markets (there are two big markets in Voi) and road toll (matatus pay 90 ksh each every day).

We don't collect tax – the Central Government does this and then redistributes funds to the local authorities."

- *Ensuring security*

" There is not a high crime rate in Voi, only sometimes. It is important to secure a high level of security, to attract investors"

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