



African Peer Review Mechanism

Citizen Views on Governance Reforms in Kenya

A Pre-Review Mission Report



Project ref: APRM.W/01/2011

Commissioned and led by the NEPAD KENYA SECRETARIAT

March 2011

Project ref: APRM.W/01/2011



REPUBLIC OF KENYA



African Peer
Review Mechanism

African Peer Review Mechanism

Citizen Views on Governance Reforms in Kenya A Pre-Review Mission Report

Commissioned and led by the NEPAD KENYA SECRETARIAT

March 2011

Table of Contents

Acronyms and Abbreviations ii

Background..... 1

1.0 Objectives and Scope of the Assignment..... 2

 Devolution and Governance 3

1.1 Design and Methodology of the Assignment 3

1.2 Documentary Review 5

1.3 Field Visits 5

2.0 Findings of the Pre-review mission 7

2.1 Democracy and Governance 7

 2.1.1 Ethnic Tensions and managing diversity 7

 2.1.2 Marginalization and alienation 9

3.0 New Constitution and Popular Participation 11

 The Land Problem 12

3.1 Devolution and Participation 14

3.2 Devolved Funds and Participation 17

4.0 Access to Government Services 18

4.1 The Challenge of Youth Unemployment 19

4.2 Gender and Affirmative Action 21

4.3 The Physically Challenged 22

5.0 Corporate Governance 23

6.0 Views on the Coalition Government 24

7.0 Citizen Platforms 26

Acronyms and Abbreviations

APRM	-	African Peer Review Mechanism
AU	-	African Union
CDF	-	Constituency Development Fund
DDO	-	District Development Officer
FGM	-	Female Genital Mutilation
IDP	-	Internally Displaced Persons
IDs	-	Identity Cards
KACC	-	Kenya Anti-Corruption Commission
KWFT	-	Kenya Women Finance Trust
LATF	-	Local Authorities Transfer Fund
NEPAD	-	New Partnership for Africa's Development
NGC	-	National Governing Council
PEV	-	Post Election Violence
TJRC	-	Truth Justice and Reconciliation Commission

Background

Kenya voluntarily acceded to the African Peer Review Mechanism (APRM) in March 2003. It was among the first countries to join the initiative aimed at ensuring that participating countries align their policies and practices with agreed governance values and standards geared towards achieving agreed socio-economic objectives set out in the New Partnership for Africa's Development (NEPAD).

The country was among the first members of the APRM to submit to the Peer Review when H.E. President Kibaki presented the Kenya Country Review Report at African Union's APR Heads of State Forum in The Gambia in 2006. The report entailed a self-assessment and a report of the country review by the team led by Dr. Graca Machel.

This exercise was carried out across the four thematic predetermined pillars of the APRM process; namely:

- Democracy and Political Governance,
- Economic Governance and Management,
- Corporate Governance, and
- Socio-economic Development.

At a summit of the AU in Addis-Ababa in January 2009, it was agreed that Kenya would pioneer a second country APRM Review of Kenya. An advance Mission led by H.E. Prof. Amos Sawyer, the former President of Liberia visited the country in November 2010 and the substantive Mission is set for mid-July 2011.

1.0 Objectives and Scope of the Assignment

In the wake of the violence that rocked the country after the disputed elections of December 2007, and with the hind sight of the identification of governance flashpoints in the first APRM mission report of 2006, and in light of the role played by Dr. Machel in the National Reconciliation effort in early 2008, it was decided that the second Country Review would give primary focus to the Political Governance pillar with key attention to institutions and practices envisaged in the first APRM country review report of Kenya, and promised under the National Accord and Reconciliation Agreement that established the Grand Coalition Government.

Consequently, The NEPAD Secretariat in Nairobi retained our services to coordinate the development of a field report on citizen views on governance reforms in Kenya setting the stage for the second APRM Country Review Mission of Kenya. The level of citizen engagement in light of the new constitution has been treated as a major area for assessing evolving popular participation in governance. To focus this sufficiently, it was agreed that attention to the three other pillars of governance under the NEPAD mandate would remain modest. Thus the survey included views on economic governance and management, corporate governance, and socio-economic development but not with as much accent as the one given to the first pillar. Part of the rationale was that fairly recent documentary and national level assessment had been carried out in late 2010 to project the necessary trends that can inform the review mission on these more national trends.

Specifically, The Terms of Reference for the assignment entailed the following:-

- Collect, collate and study documentation relevant to the programme
- Develop and utilize agreeable methodology and instruments to carry out the pre-review mission in the selected counties
- Help identify and develop strategies for the establishment of citizens' governance platforms
- Help generate a consolidated report from the visits setting the stage for the 2nd APRM Country Review and future engagement with citizens' governance platforms

Devolution and Governance

One of the most significant changes contained in the New Constitution of Kenya is the provision for devolution and the attendant establishment of potentially powerful counties. The phenomenon is partly a result of and potentially a source for greater grassroots involvement in governance and popular empowerment. Because of its novelty and potential, we have found it necessary that the Kenyan Review pays enhanced attention to the initial steps towards evolving changes. The synopsis to guide field interviews went beyond the standard format of the APRM process to seek wider views on devolution and emerging county engagement.

1.1 Design and Methodology of the Assignment

Apart from the technical approaches to executing the assignment, we have had to get to terms with the setting under which method and goals could be interpreted. The assignment has been carried out within an on-going exercise at the NEPAD Kenya secretariat to induct the members of the National Governing Council in the countrywide activities of the organization. So the core team doing the field visits are members of National Governing Council (NGC) and select representatives of Civil Society. While the consultant could develop some interview guidelines, the broad drift of field interviews was determined largely by the team leaders of the four teams touring the country, and other team members.

Secondly, the focus of the pre-review mission was broadly developed through meetings between the consultant and members of the Programs sub-committee of the NGC and later the members of the NGC. The programs sub-committee had set out the broad guidelines of the assignment and its methodology at a meeting on 1st December 2010. But deliberations at the Secretariat not only re-focused the scope of the assignment, but also removed the responsibility of sampling the counties from the consultant and this was done by NGC members. Up to the very last moment before the field surveys, target counties were still being changed often for reasons other than creating a representative sample of the diversity of the country. This partly meant some counties were not adequately prepared before the

teams arrived. But it also means the representativeness of the views may not carry across the board for the whole country. It can, however, be affirmed that the counties visited remain diverse enough to capture key patterns of citizen views to generate a national profile.

Upon reflection, it was agreed that the position of rapporteurs be enhanced to recruit substantive field assistants to record the work of each of the four field teams that visited different counties, but in addition steer the field interviews to cover a set of basic themes. This is necessary for coherence and collapsing the diverse field reports into a consistent overall statement. The rapporteurs were taken through a training exercise in the use of open-ended questionnaires for a qualitative survey. This entailed understanding the context and the purposes of the field trip. Reading background literature and familiarizing with the expected results. And being made part of the team to collate the field notes and contribute in making it a national report.

The principal facilitator then developed a synopsis of the core issues on the review mission as a form of interview guide to ensure that all the teams covered the key governance questions that would then allow for cross-county comparisons and thematic consistency in the entire exercise. This was also hoped to focus the members of the teams visiting the counties to the main issues that should inform a pre-review field survey.

Although the assignment was supposed to entail the establishment of citizen platforms for long-term engagement and monitoring, the identification of citizens for participation was broadly done by District Development Officers (DDOs) who are the grassroots officials of the partner Ministry for NEPAD, The Ministry responsible for Planning, National Development and Vision 2030. These teams sought to find balance by identifying individuals and groups of the rural citizenry who could give the diverse and credible views of the non-state actors in the counties on the matters of interest to the APRM process. Given the modest lead up time, the establishment of citizen governance platforms could only be a work in progress at this preliminary stage.

The work of the NEPAD Kenya Secretariat, members of the APRM National Governing Council, and some of the civil Society participants in the field teams in reaching out to some of their contacts from Civil Society greatly balanced the teams which would otherwise have been dominated by Government officers that the District Development Officers had prepared for the visits. Similarly, an eye was kept on inducting the more focused respondents as part of the team to be met during the main review mission in March.

1.2 Documentary Review

An extensive literature review constituted the first phase of the assignment. This included the basic publications like the APRM Kenya Country Report, Progress Reports on Kenya's APRM performance since 2006, reports from the Sustaining the Dialogue Programme, and the various evaluations of the performance on implementing the National Programme of Action. But attention was also given to the best practices; how some countries have deepened the domestication of the APRM instrument as a tool for national planning and monitoring of governance. We also looked at the various reports of Government programs and activities. Progress in the implementation of the so-called Agenda IV undertakings has also been examined.

1.3 Field Visits

From the outset, the mission was conceived as a pre-mission. This meant that even field visits had to remain brief, concise and exploratory. The interview briefings and guides pointed to a pilot rapid exercise that could only establish contours of governance issues and set the stage for more detailed engagement later. For this reason, no quantitative instruments were developed for the trips. Given an ambitious schedule of visiting 23 counties in seven days, the amount of time in any location was reduced to a single day.

Team members were divided into four groups that visited the country as follows:-

-
- Team A visited Garissa, Tana River, Mombasa, Taita-Taveta, and Makueni counties
 - Team B visited Laikipia, Samburu, Isiolo, Meru, Nyeri and Nyandarua counties
 - Team C visited Narok, Migori, Kisii, Siaya and Nakuru counties, and
 - Team D visited, Busia, Kakamega, Bungoma, West Pokot, Keiyo Marakwet and Uasin Gishu counties.

The principal facilitator had an itinerary entailing visiting with each of the field teams in the regions they were covering. This report reflects the impressions made by the writer from the six county meetings attended and by putting together reports prepared from field notes by the secretaries to the four teams that went on field trips from the 31st of January to the 8th of February 2011.

2.0 Findings of the Pre-review mission

2.1 Democracy and Governance

The interviews of Government officers and representative samples of ordinary citizens covered a range of topics. Their views have been organized under the sub-themes like ethnic tensions and the management of diversity, the land question, constitutional democracy and devolution, the Bill of Rights, level of popular participation in governance, efficiency of public service delivery, corruption, gender equity, mainstreaming youth agenda, and mainstreaming the physically challenged.

2.1.1 Ethnic Tensions and managing diversity

One of the weaknesses that have bedevilled Kenya's governance has been the poor record on managing inter-ethnic relations. The field visits pointed to this problem as very deeply embedded in some areas of the country. Two components stand out;

1. A perception of competition for resources moulded in ethnic or regional idiom, and
2. A deep held sense of being discriminated against by groups in some parts of the country.

A new pressure point seems to derive from the failure to overcome the pain of the post election violence.

Ethnic conflict has traditionally festered in some areas of the rangeland between pastoral communities, and between pastoralists and farming communities. Accusations and counteraccusations about responsibility for livestock theft and violent modes of response were very rife in West Pokot and Samburu counties. The Marakwet complain of the continued deadly raids from the Pokot. Similarly, the violence between ethnic groups in Isiolo, which is heightened during periods of drought, remains a sore point and very acute focus of public dialogue.

In Tana River County, the local Pokomo complain of the continued incursions by Somali pastoralists into their farms as a perennial source of conflict. This is compounding the long running competition between the agricultural Pokomo and the pastoral Oroma. In Taita Taveta, the recent arrival of large numbers of camel nomads from North Eastern Province is heightening competition over pasture.

Beyond the traditional competition for resources and conflicting niches between pastoralists and agro-pastoralists, there is the sense of tensions due to unequal access to state resources. The Pokot feel neglected when neighbouring counties like Trans Nzoia have better roads than them. The Marakwet similarly stated that their Keiyo neighbours have always received more attention from the Government. Many speakers at the forum in Western, i.e. Busia, Bungoma and Kakamega are incensed that while the main infrastructural achievements of Government over the past seven years has been the construction and repair of paved roads, their region has virtually been shut out of this. They view this as discrimination in favour of other tribal areas.

Perceived discrimination in Government services was also seen as contributing to ethnic tension. In Mombasa, respondents suggest ethnic discrimination in award of Government tenders, registration and award of title deeds, and recruitment into Government jobs all in favour of upcountry people and to the disadvantage of locals. They see this as one of the main courses of a growing sense of rejection and desire for greater autonomy than that provided under the devolved system.

In Samburu, a similar sense of ethnic bias in allocation of Government contracts was repeated by respondents. The Samburu complain of Kikuyu contractors from Nyahururu taking up all Government contracts in Samburu county. Similarly, respondents in Nandi and Uasin Gishu counties felt a resurgence of anti-Kikuyu feelings on the basis that most public officers posted to their counties are from the Kikuyu community. This has created a sense of being perfected more than being offered public service.

Ethnic difference in multi-ethnic counties was seen as a tool political demagogue have exploited in competition for power. Counties like Nakuru, Isiolo, and Narok

were a case in point. Many see political leaders as playing up ethnic fears and stereo types to gain popularity in election seasons often translating into ethnic hostility among the people. As a speaker in Isiolo stated, it is political utterances that “make neighbours become scared because of their tribe or religion.”

Not all is depressing though. In some areas, dialogue between elders and leaders from traditionally conflict prone neighbours are leading to more peaceful relations. The improved relations between the Keiyo and Marakwet, and that between the Kuria and Luo of Migori are examples highlighted in the field visits.

2.1.2 Marginalization and alienation

The sense of some communities and groups being marginalised has gained substantial currency in Kenyan dialogue. The pastoral communities have a widespread sense that they have been turned into the marginalised in the country. The category is ascribed to the Borana, Samburu, Maasai, Somali, Gabra, Turkana and Ogiek in particular. The consciousness is widespread that apart from being domiciled in ecologically marginal territory, they have been victims of denied public investment and services leading to being disadvantaged in open market competition with their more agrarian and urban competitors.

The sense of alienation has grown very deep in some areas bordering on paranoia. This is reflected in enumerating what they see as evidence of the state being against them and suggesting a sense of irreconcilable difference. Some of the Somali respondents in Garisa and some of the views expressed at the forum in Mombasa are cases in point. In both places, some respondents think that the local plight is not just about poor resource allocation and investment by the Government, but a sense that this is deliberate and part of a long term historical injustice.

To some respondents in Garissa, the negative acts of public officers are seen as part of state neglect or even rejection of Somalis in particular and Muslims in general. There were reported cases of Government officers humiliating Somalis under the

guise of verifying that they are not disguised refugees. Accounts of police brutality including rape of refugee women were mentioned. Respondents said that their reasons for supporting secession at independence have never changed as they remain marginalized and discriminated in Kenya. A respondent claimed that the act of recognizing South Sudan as independent from the North is evidence of Kenya supporting a Christian nation weakening a Muslim country against the feelings of Kenyan Muslims.

Apart from the complaints about discrimination, some in Mombasa argued about deliberate impoverishment of locals by the Government. The collapse of a cashew nut factory in Kilifi is presented as evidence of a desire to export jobs to Thika where a private factory for cashew nuts exists. The absence of a Government fish processing facility is interpreted as neglect of coastal people. The super highway under construction from Nairobi to Thika is contrasted with the limited transport facilities in Mombasa as evidence of Nairobi disinterest in the needs of Coast region. Sentiments of support for secessionist groups were validated by this enumeration of perceived rejection of Mombasa people by the Government. Indeed the widely held hostility to the privatization of certain services at the port of Mombasa is grounded in the suspicion that people from upcountry will take over those services and replace Coastals in employment with upcountry people.

Whereas the fact of ethnic diversity is embraced as part of the national mosaic, a widely held view of inter-ethnic injustice is not being met by any clear actions of Government. Apart from a few statements threatening those espousing hate speeches, people do not see any appreciable effort by Government to address the genesis and engine of the ethnically – defined rivalry and the growing sense of being aggrieved among some of the smaller ethnic groups.

Beyond communities, a sense of marginalization was also expressed as a problem of the youth. Rampant poverty and unemployment was sited as a cause for broad discontent among youth and a major threat to stability in coming years.

3.0 New Constitution and Popular Participation

After nearly two decades of effort and set backs, Kenya achieved a comprehensive New Constitution in 2010. The very inclusive method of creating a new constitution in Kenya meant that the whole population is broadly aware that fundamental changes have been initiated by this new era. However, the specific opportunities for greater involvement in governance and the way the new order can deal with long standing problems remain broadly unknown to the people. A recurrent problem across the country is mass ignorance about the content of the constitution.

The campaign for and against the new constitution was narrowed down by competing politicians to alleged provisions on Kadhi Courts, the alleged provisions for gay marriage, and claims that the new law would legalize abortion on demand. This meant that the public were mostly treated to competing statements giving alternative interpretations of the provisions on these issues at the expense of substantive debate about such key content as devolution, the Bill of Rights and Land Policy. Since the coming into force of the constitution, no systematic attention has been paid to filling the public information gap on these key areas. Hence while the fundamentals for greater participation and engagement are laid out, the level of actual understanding and thus popular engagement remains extremely circumvented. It is in this light that one could appreciate the statements on devolution.

There are areas of the Rift Valley where the majority of leaders were against the constitution and led people to vote against the document during the referendum. Most of these leaders have not seen the benefit of turning around to encourage dialogue about the new order. Apart from extensive ignorance of the new order, people in these places have very little public discussion about new challenges and opportunities. In places like Tana River, most people are illiterate and politicians only tell them partial truths that are convenient for the political gains the politicians want. Since there are insignificant numbers of professionals from the area who can come home and raise awareness about new roles and possibilities like is done elsewhere,

the people remain pessimistic about greater engagement in governance even with a new constitution,

The Land Problem

The constitution of Kenya promulgated on 27th August, 2010 contains a comprehensive and far-reaching chapter on land. Covering the whole range of issues from land classification, public land, community land, leases for non-citizens, regulation of land use, establishment of a national land commission, and provisions on how legislation on land may be provided, chapter five of this constitution goes further than any other initiative since the Carter Commission of 1932 in setting forth a comprehensive policy framework for land ownership and use in Kenya. In addition to the constitution, a comprehensive land policy which had been in the making for years has been passed through parliament and is now under implementation.

One of the issues that have belied ethnic and other social tension over the decades has been the problem of an unjust land law and land access. Land poverty and evident unequal access trigger substantial animosity and public disapproval. After decades of official insensitivity and neglect, a major step was taken in the new constitution. The constitution and land policy reforms have made critical progress. Putting public and trust land beyond the reach of greedy leaders, reducing foreign leases from 999 to 99 years, extending inheritance rights to daughters, and establishing a permanent Land Commission to enforce probity are among the signs of improved statutory framework.

The views from the field trips, however, showed limited appreciation of these changes. In areas of pastoral Kenya such as Samburu and Isiolo, the problems of communal titles and the fate of trust lands were stated as matters of continued concern. Respondents sensed that the changes mention in the constitution and National Policy were likely to disguise the continuation of old practices. At the Coast, the slow pace of registering titles for locals and the continued alienation of the limited land by rich investors remains a thorny issue.

Land Injustice: The view from Mombasa

The People of Mombasa have long standing complaints about land policy and practice in Kenya. Victims of historical injustice paying rent to absentee landlords who live in The Middle East, they face double jeopardy that upcountry land owners many of whom gained beach front properties mysteriously can easily get title deeds while locals rarely succeed in registering their lands. Others complain of losing land to crooks who win court cases with fake title papers. To them the cases of land injustice are the most evident among a series of practices that have reduced them to abject poverty and demonstrated the discrimination that Government has subjected them to.

Ethnic distrust and discomfort with settling Internally Displaced (IDP) People in areas away from their ethnic neighbourhoods receives continuing animosity in many parts of the country. The case of Narok is particularly loudly protested. Large protest rallies have been held there recently in efforts to stop the Government from settling IDPs from another community in a neighbourhood which is predominantly Maasai. Rumours of plans to similarly settle IDPs in Lamu were strongly condemned by local politicians before Government declared that there had been no such plans. Unequal ownership and access to land remains a source of resentment and tension even in areas where such friction has traditionally been subdued like the case of Jodak land lords in Migori.

In areas like Kakamega, poverty has been exploited by rich non-locals who have ended up buying much land and converting erstwhile land owners into rural workers. The tension it has generated is said to be one of the reasons why ethnic violence flared up in parts of the county in the period after the last elections.

Respondents called for more civic education on the new constitutional provisions and land policy, and practical steps to show that the promise of dealing with land injustice is not limited to print but demonstrated by action. Government is also urged to model a viable policy of resolving the perennial conflict over land use between

pastoralists and agricultural communities where they compete for land resources in places like Isiolo, Tana River, Taita Taveta, and Laikipia.

Some view the constitution as a tool for pre-empting future land injustice, but they seek clear redress over past land grabbing and unequal access. The fear is dominant political leaders are major beneficiaries of past land crimes. They cannot be expected to preside over redress. Hence the continued failure to implement past land commission reports on land theft.

3.1 Devolution and Participation

Chapter 11 of the Constitution of Kenya establishes a devolved form of Government under which 15% of public revenue will be transferred to a new locus of power called the county Government which will have substantial autonomy in planning and managing public affairs. With a governor and his county executive answerable to the elected county assembly, this model goes some way in addressing the popular desire of effective Government being brought closer to the people.

One of the most popular provisions in the constitution is the creation of devolved Government. Across the country the people understand that there are going to be more resources decentralized from Nairobi to be managed locally, and that a new layer of Government is being established at a level where they can have greater impact. However, that is as far as broad understanding of the devolution goes. In nearly all counties speakers suggested the need for greater civic education to understand the challenges and opportunities accompanying the new system.

In many counties, the main focus of discourse on devolution is the emerging competition for elective offices in the counties. Politicians mention devolution at funerals almost in passing. Mostly the leaders suggest how positions will be distributed to cover different parts of the county. The grassroots people then embrace this narrow debate without much awareness of other concerns entailed in the creation of a new tier of Government.

Many speakers are fearing that incompetent management of devolved funds evident in the Local Authority Transfer Funds (LATF) and the Constituency Development Fund (CDF) can easily be carried on to the huge amount of money rumoured to be transferred to each county under devolution. The limited popular participation in decision making for existing devolved funds does not bode well for popular involvement in decisions concerning devolved Government. Positions of influence in managing devolved funds are occupied by cronies and relatives of leaders like MPs and Councillors.

Minorities in counties are weary of potential discrimination against them by the dominant groups once power and resources are devolved. This was clear in Bungoma, Isiolo, Uasin Gishu, Nakuru and Migori. These represent counties with sizeable ethnic minorities. In some places, minority communities fear that outsiders who are members of the dominant ethnic community in the county are likely to invade the county for new jobs at the expense of local minority communities.

Minority fears and devolution, the case of the Sabaot of Mt. Elgon

The Sabaot are a Kalenjin people occupying the slopes of Mt Elgon on the Kenya Uganda border. They are surrounded by the Bantu Bukusu cutting them off from their Nandi and Marakwet cousins to the east and south east. For many years, their main political agitation was the desire to get their own district hived off the predominantly Bukusu Bungoma. This they achieved in the early 1990s. When the new constitution set out counties, Mt Elgon district was made part of Bungoma County. When interviewed, the Sabaot, feel that the new order is a loss for them as they will be under Bukusu domination and their choices will not impact on what is done in the county.

Professionals from some counties have held successful forums discussing the challenges of devolution and what opportunities can be harnessed for local growth. Development blueprints are in progress and substantial excitement is in the air. The gulf in planning for devolution and the mobilization of the people as part of the

process of the new order will greatly impact patterns of success in the devolved system. An area of inquiry may be how to extend enriching debate on how to face the challenges and opportunities of devolved Government to all parts of the country.

In some counties, youth and women are seeing the new system of devolved Government as an opportunity for them to take over local leadership and management challenges from the crop of old men who have increasingly lost touch with felt needs of the people. This came out particularly well from the youth in Garisa and women in Tana River counties respectively.

In some counties like Kericho, Kisii, Nakuru and Meru, there is a sense of potential success in the air. The more exposed opinion leaders emphasize identifying the right calibre of leaders as the main bottleneck to realizing great achievements from devolved Government. The challenge is making people talk of going beyond the traditional demagogues to identify competent managers to use the opportunities that devolution brings.

Concerns are expressed that in the transition to devolved Government, local authorities like county and municipal council officers and district administrators are disposing of land and other public assets before elected county leaders come into place. That a freeze needs to be urgently imposed on all public land transfers until after the next elections.

Considering the critical role devolved units are expected to play in the future of Kenya, it is critical that a platform of sustained engagement on county governance be developed across the country. This may be the venue for presenting best practices from other counties and raising the benchmark for citizen participation in governance under the new order.

3.2 Devolved Funds and Participation

There is varied levels of local people involvement in the management and monitoring of devolved funds. This is mainly CDF. There was no county visited where people said they were consulted on LATIF decisions or management. In areas like Eldoret East people were satisfied that transparent and inclusive planning and management of CDF resources has not only brought visible change for the better, but encouraged people to believe they can also impact what happens and how it is done in their area.

Most areas, however, show a public cynicism towards politicians for hiring their relatives, friends and cronies to run CDF with little transparency. Some cases were mentioned in Marakwet of a 3.5% penalty levied on every CDF disbursement by politicians. The public have no faith in politicians managing devolved funds. They see an even bigger threat if the funds under county Government will be put again at the disposal of politicians. Hence the desire that dialogue on how to streamline devolution should not be driven by politicians but by non-state actors and professionals.

Suggestions are made that more open recruitment to the management of CDF committees and study tours to areas where the fund has been well managed for greater participation and successful implementation of projects will boost the role devolved funds play in rural development.

4.0 Access to Government Services

The Government has been undertaking a number of measures aimed at improving service delivery to the public. Two major initiatives in this regard have been the performance contracting program and the rapid results initiative. Under these plans, each ministry and state agency sets out yearly agenda of achievable improvements and measurable goals. They also define short term deliverables for a period of 100 days. While commendable improvements in service delivery have been observed in some key state agencies, political bickering has seen some ministries openly defy the order or ministers ignore the prime minister who is supposed to coordinate the program. For this and other reasons, the overall public score card remains low.

The most widespread complaints about poor public service among youths is acquisition of Identity Cards (IDs). Across the country youths are frustrated by the absence of clear policy and consistent practice in registration for IDs. In Garisa, Tana River and Mombasa, respondents complain with bitterness that they are particularly being blatantly discriminated against in accessing IDs and passports. They are aware that corrupt officers have sold identity documents to foreigners with Muslim names, but cannot accept the horrendous difficulties they must go through because of this. Registration centres are few and far apart and officers are very inefficient. In Tana River, it is claimed that ID issuance ceased nearly ten years ago.

Petty corruption in the provision of public service was reported across the country. In virtually all counties, reports of petty bribery for Government services are rife. Fingers continue to be pointed at police officers as among the most corrupt. The department of registrar of persons, and providers of health services were also frequently mentioned as corrupt and inept in their work.

Inefficiency and corruption in Government offices is partly blamed on officers staying in the same station for too many years. Across the country people suggest regular transfers as an important first step in improving public service delivery from Government. There were suggestions also for greater scrutiny of qualifications for public office holders.

The prevalence of members of one community in one station tends to breed a sense that they cover each other in the public view. Citizen's fear reporting one to their superior since they may care to protect each other more than serves the locals. Breaking the tribal mould in staff deployment is suggested as a step to reducing this anomaly.

The main hope expressed in improving access to Government service is the coming into force of devolved Government. Many expect more responsive and locally accountable officials under devolution than the current system. They further expect devolution to rid counties of tribally unbalanced clusters of civil servants.

4.1 The Challenge of Youth Unemployment

The biggest challenges to Kenya's stability must be seen as the rampant unemployment and existential hurdles bedeviling the youth. In all counties visited, there is unsustainably high numbers of unemployed young men and women who are often in despair and turning to anti-social tendencies like drug abuse, prostitution and thieving. The Government has come up with a few initiatives targeting youth. Key among them is the Youth Enterprise Fund, the Kazi Kwa Vijna initiative, and the Economic Stimulus Programme has been rolled out. A significant number of youths have benefitted from the programmes. But the field surveys suggested that the programme has not had any fundamental difference in the lives of most youth spoken to. Many respondents saw the different measures so far as uncoordinated, intermittent, and unsustainable.

Many counties reported very little access to the modest credit scheme for youth empowerment. Where the scheme was acknowledged, the idea of giving credit of Ksh.50, 000 to a group of more than ten people and expecting them to conduct viable business were derided as totally inadequate. Youths complain of unemployment and idleness as conditions making them vulnerable to recruitment into destructive tribal gangs used by political agitators to cause chaos. Whereas the Government has suspended issuance of ID cards, the same Government asks for IDs as a condition for applying for youth funds.

As the country seeks to disband private militias and other outlaw organized groups, the steps taken to create gainful employment and sustainable incomes for youth remain one of the more challenging areas of required attention. While sound macro-economic policy has seen the country's economy steadily recover from the ruins of PEV era to touch 6% GDP growth at the close of 2010, this has not translated into sufficient employment creation to renew optimism among the youth. Much of the jobs riding on a steady construction industry are taken up by the urban youth particularly in the Nairobi area while more rural counties report a growing sense of hopelessness.

The youth are seeking more than resources for themselves. They seek empowerment to contribute to what happens at decision making level. The youth in Kisii did suggest that they be training as civic education providers to led public awareness of the new constitution and be on the frontline for its implementation.

Youth challenged to suggest viable solutions to their unemployment problem suggest a number of approaches. Creating an environment to encourage investment flows in their areas will create more sustainable jobs than small credit to start businesses which are often competing locally. That credit schemes tend to discriminate against the most vulnerable and needy who are supposed to be the main beneficiaries. Thus designing intervention should involve the target youth so they can grow a sense of ownership over the programme.

Some suggest that funds meant for youth empowerment should be channelled through savings co-operative societies which exist with user friendly networks in many areas. These can more easily provide follow up work and advice for the youth than the present disbursement vehicles.

4.2 Gender and Affirmative Action

Women in rural Kenya feel disadvantaged compared to men in access to knowledge about different opportunities. Steps made in affirmative action by programmes like Women financing schemes are either dormant or captured by urban women in the counties. The typical rural woman is not a beneficiary. Though the soft credit facilities are announced, the actual disbursement remains shrouded in mystery for most rural women. On the other hand, credit organizations for women like Faulu Kenya and K.W.F.T were giving loans on terms that often ended up leading to greater poverty through auctioning securities used. In Mombasa and Bungoma, women respondents spoke of loans which move recipients from beds to the floor as their mattresses are auctioned for non-payment.

Most women do not know their rights under the new Bill of Rights. When told about their right of inheritance women were typically surprised but also fear that the strong cultural barriers to such rights as land inheritance will make it virtually impossible to realize such rights. In places like Mombasa, women raised concern about cultural practices that exclude them from leadership roles as a challenge to realizing their rights and opportunities under the new constitutional order.

The traditional method of disseminating news about developments is public barazas. These are dominated by men. Any changes that transfer some power from men to women are detested by men. Hence such men cannot be relied upon to transmit the news about this to the womenfolk. A comprehensive and nationwide civic education programme with gender-sensitive approach and particularly targeting rural women may help translate the promise contained in the constitution into actually improving access to power, resources and management for rural women.

Stories of sexual and domestic violence towards women are still recounted. Cases of continuing female genital mutilation particularly among the pastoral communities continue with limited impact of declared anti-FGM policies. Many stories of police men sexually abusing women refugees in Dadaab camp Garissa were recounted during the visit to Garissa.

Views from Meru on strengthening women in governance

In the Meru community, women have emerged as hard working and contributed to economic growth and family enrichment. But the customs which give precedence to the opinions of male elders under their traditional councils called *nchuri ncheke*, the acute premium of land in such a densely populated region, and the hold of such traditions like FGM which cannot even be discussed publicly in mixed audiences mean that innovative interventions targeting women alone will be necessary to enlighten them about their rights and embolden them to demand such rights. Mixed audiences lead to pretence and not critiquing fundamental flows that keep women off governance debates.

4.3 The Physically Challenged

The new constitution does provide for more positive steps in the lives of the people with disabilities. But no effort has been made to integrate them more closely in the dialogue of implementation. Access to ordinary services continues to be inhibited. Schools for the blind remain few and far apart. The entire Coast Province has only one school for the blind situated in Lamu.

In Mombasa complaints about the absence of special ramp facilities for disabled people at ferry crossings were raised. Mainstreaming people with disabilities in decision making and planning priorities is broadly ignored. The little opportunities given are not commensurate with the proportion of the disabled in the total population.

Many physically challenged people at the hearings have a sense that Government support for them is mere tokenism. No substantial effort is made to model programs and opportunities that can raise their livelihoods for the long term.

5. Corporate Governance

Corporate organizations have varying attention to responsible behaviour when operating in Nairobi and upcountry. First many corporations such as banks are accused of employing people from tribes of their senior executives. In some counties, it is pointed out that tribal recruitment is more acutely visible in banks than even in Government offices.

While many corporates pride themselves through acts of corporate social responsibility in Nairobi, they show no such solidarity with the needy people in the rural areas. In most places, only Equity Bank was mentioned for its efforts to go beyond making money by supporting poor schools, paying fees of bright children from poor families, and such acts. Most large enterprises are accused of environmentally unsound practices such as polluting water sources and uncontrolled noxious emissions and acting like bullies. Mining companies were accused of harsh working conditions and intimidation of their poorly paid workers in Taita Taveta county.

People in Tana River complain about Kengen blocking water flow when downstream consumers are in need, and opening dams to flood homes and farms without announcement to the detriment of livelihoods.

6.0 Views on the Coalition Government

On the 28th of February 2008, the National Accord was signed in Nairobi. This formally ended the animosity that had led to the death of nearly 1400 Kenyans in the post election violence, and ushered in the power sharing arrangement. Many citizens were happy with the establishment of the coalition Government after the violence that rocked the country in early 2008. The comprehensive list of reform promises framed as Agenda Four represented a refreshing attempt at national healing and setting the foundation for a peaceful future.

The people consider completing the making of a new constitution for Kenya, something many people had been waiting for, was the most important achievement of the coalition Government. A lot of expectations abound on what role the new constitutional order may play in easing public tension and re-tooling the sense of Kenyan nationhood.

But many respondents also see performance of this Government as being very poor on critical scores. That too much attention has been paid to latent competition and posturing by leaders from both sides of the Government. The fact that Government and consequently parliament are split on issues of appointments to constitutional offices has alarmed many. Some pointed out that the tension coming off these wrangles is reducing public certainty and diminishing Kenya's attractiveness to foreign investors.

One of the factors over which Government scores badly is the continued presence of temporary camps for the Internally Displaced Persons (IDPs) who lost their homes, relatives and livelihoods during the post-election violence of 2008. The fact that it appears like we are back to business as usual politically, with the usual brinkmanship, while citizens continue languishing as domestic refugees is seen as evidence of official callousness. The ambiguity of what constitutes a viable policy for the return or resettlement of these citizens remains a pointer of official indecisiveness.

Already datelines like the appointment of a new Chief Justice have been missed. The establishment of an Independent Electoral Boundaries Review Commission is way off schedule with potentially disruptive implications to the preparations for the next elections. Fears are expressed that the polarization between political factions in Government is playing into the hands of those reviving ethnic animosity. This forebodes badly for the competition in the run up to the next elections. The squabbling between coalition partners is seen to draw attention away from popular education on the new constitutional order and empowering the people to enjoy the potential fruits of the new order.

The appointment of Prof. PLO Lumumba as the head of the Kenya Anti-Corruption Commission (KACC), and his very public style of management has elicited very positive reactions in many areas visited. While many saw corruption as almost endemic in the country, there were clear hopes that Lumumba's team is making some headway. Indeed many people suggested that KACC should open county offices where people can report directly the corruption they encounter in public offices across the republic.

On the other hand, the acrimony surrounding the establishment of the Truth Justice and Reconciliation Commission (TJRC) has negatively impacted the public's faith in the Government. The failure to steer a credible way of pre-appointment scrutiny of candidates, the subsequent outcry about the chair, and the conflicting messages from Government have made a potentially important toll of national healing a laughing stock of all. In areas of Rift Valley, this failure appears to have delayed a systematic addressing of the causes of the extreme violence witnessed there in 2008 and to embark upon healing in time for the next electoral cycle.

7.0 Citizen Platforms

One of the objectives of the pre-review mission was to establish potential citizen platforms for future engagement on governance issues. Major challenges were faced in this aspect of the assignment. The NEPAD secretariat was broadly dependent on the parent ministry to organize a sizeable group among the people to be met in the counties. This work was carried out within a very limited time particularly in counties which were included a few days before the exercise. Often the results were mixed. The method of informally inviting non-state actors to the forums also had mixed results from the different counties.

The result is that in quite a few of the counties, contact was made with very credible citizen opinion leaders around whom future collaborative work can be undertaken, in other counties the groups met did not appear to represent credible foundations for building a future sustainable engagement. Visiting a small sample of the chosen counties gave the facilitator too limited a view to properly discern the potential of follow up work that could be built upon. This notwithstanding, some key contacts around whom dialogue can be nurtured on constructing an infrastructure of citizen participation in breathing life into the new constitutional order and growing popular engagement in governance were made.

As part of strengthening popular engagement in governance, the new unit of devolved Government, the county may be a viable locus for setting up forums for non-state actors to engage in the implementation of inclusive governance, but also to grow the capacity for citizen audit of Government performance.

Considering the enthusiasm shown by many participants in the discussions, regularizing consultations on the governance reform and performance under the APRM mechanism can lay the foundation for the citizen platform that is otherwise so lacking in rural Kenya where civil society presence is very subdued.



**African Peer
Review Mechanism**

NEPAD KENYA SECRETARIAT

Liaison House, 4th Floor | State House Avenue

P.O. Box 46270-00100 Nairobi, Kenya

Tel: +254 20 2733735/38/42 | Fax: +254 20 2733725

Email: info@nepadkenya.org | Website: www.nepadkenya.org