

Decentralization: Accountability in local governments

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African presidents have historically controlled politics on the continent through highly centralized states, a state of affairs that is enshrined in around 80% of African constitutions (Kuperman 2015). But in the past several decades, various reforms have sought to decentralize African states and transfer both power and resources from central governments to subnational ones. Some policymakers, development agencies, civil society organisations and academics advocate for such reforms in the hope that they will realise a number of benefits, including reducing local and national conflict, alleviating poverty, creating greater efficiency in service delivery, making public participation easier and more generally deepening democracy (Crawford and Hartmann 2008; Dickovick and Riedl 2010).

But scholars of decentralized political institutions in Africa and the broader developing world tend to divide about whether the institutions they study work as intended or, indeed, work against these goals. In the ideal case, decentralized governments are more responsive to their citizens, more aware of their needs, better at delivering services and more capable of collecting taxes. However there are a number of barriers to decentralization that can impede these gains or even exacerbate the problems that decentralization sought to resolve.¹

This chapter focuses on the question of when, and why, decentralization fulfils its promise to enhance local accountability. In some cases, decentralization may increase accountability, but in others it can lead to minimal change or simply a shift in the location of corrupt practices from the national government to a local one (Crawford and Hartmann 2008). The existing literature highlights a number of factors that shape the quality of accountability in devolved systems, such as the strength of citizens and civil society (Sisk 2001), corrupt local elites and politicians who attempt to “capture” newly decentralized institutions (Wunsch 2001; 2014). This process of capturing is said to impede accountability because it directs the efforts of decentralized institutions away from the interests of local people and towards the interests of the national or local elites

¹ See Crawford and Hartmann (2008) for a comprehensive review of the potential benefits and obstacles of decentralization in Africa.

who capture them. Thus, informal practices of patronage undermine the process of strengthening formal institutions.

In contrast to more pessimistic accounts, I demonstrate the potential for decentralization to strengthen ties of local accountability by drawing on the experience of Kenya. Following the introduction of a new constitution in 2010, and the subsequent election of 47 new county governments in 2013, Kenya represents an important test case for the possibility of using devolution to enhance accountability in the African context. So far, much of the discussion of the Kenyan case has focused on the spread of corruption and mismanagement that has characterised county-level government. However, I follow Helmke and Levitsky (2006) in demonstrating that informal and formal institutions are not always in competition. Rather, I show that the self serving actions of county leaders has promoted a system of horizontal accountability between different figures at the county level which, in turn, has allowed for a degree of local accountability to county electorates. This kind of opportunistic defence of the rules of the game echoes the parliamentary marriages of convenience documented by Joel Barkan (2009), who argued that they have the potential to evolve into effective ‘coalitions for change’, supporting processes of legislative strengthening (for a full discussion, see Collord, this volume).

To illustrate this argument, I draw on the experiences of two Kenyan counties: Embu and Kericho. The governors of both of these counties faced (ultimately unsuccessful) impeachment motions within their county assemblies, and therefore they make interesting case studies as points of inter-institutional conflict. Many commentators argue that these impeachments represented attempted power grabs by various local and national elites (Shilaho 2015). While these accounts contain a great deal of truth, they also miss the way in which the efforts of assembly members increased accountability, whatever their motives. The governors of both Embu and Kericho were reluctant to work with other county officials, and part of the reason for their impeachments was to bring them in line with the formal institutional framework at the county level. Using a variety of newspaper sources as well as over thirty interviews² conducted in Kenya in the summer of 2014 and January 2015, I show that these attempted impeachments were triggered by a mix of motives that involved both

² Due to the politically sensitive nature of my interviews, I have kept all of my interviewees anonymous.

self-interest and inter-institutional accountability. Such motives are not mutually exclusive. Indeed, they appear to have been mutually reinforcing.

Kenya is one of a number of countries that have introduced decentralized government, but the Kenyan experience will not necessarily be repeated elsewhere. For one thing, significantly more power has been devolved in Kenya than is usually the case in Africa. After the election of local governments in 2013, national authorities looked to prevent the county governments from assuming various responsibilities (Ghai 2015: 137; Shilaho 2015: 148), but the early evidence suggests that Kenya's counties have taken the power afforded to them by the constitution and consolidated it against national interests (Cheeseman, Lynch and Willis 2016). However, although the fate of decentralization in other countries has been less impressive, the Kenyan case demonstrates that such reforms do not always work to the advantage of national elites, and provides an interesting opportunity to analyse how local dynamics play out in a strongly institutionalised decentralized context, where institutions seem to interact with the practices and behaviours of local elites in an unexpected way.

My cases go against the commonly held idea – explored in detail in the following section – that corruption and patronage always work against accountability and thus undermine local government. I find that when local governments have genuine and tangible powers, the pursuit of patronage resources may go hand-in-hand with accountability. In other words, informal practices and networks can work towards creating a more accountable local government through formal institutional tools, and thus have the potential to lead to the strengthening and consolidation of institutions rather than their subversion.

Decentralization in Africa: Impeding accountability

In the 1980s, international financial institutions like the International Monetary Fund, the World Bank and other donor agencies saw decentralization as a means to shrink the powers of African states (Ndegwa 2002). In their eyes, African governments were oversized and predatory, and to make the state more efficient one had to take its power away through decentralization and privatisation. There are two major ways in which these reforms have played out: devolution and deconcentration.³ Devolution (also

³ Others will contest that there is a third type of decentralization in the form of fiscal decentralization (Crawford and Hartmann 2008) or delegation (Wunsch 2001), many see it as a middle ground between

known as political or democratic decentralization) is perhaps the strongest form of decentralization, and it involves a transfer of powers and resources from the central government to an independent and elected local authority. Deconcentration (or administrative decentralization) is much less substantial, and it usually consists of a transfer of powers from the central government to local branches and unelected representatives of the central government – which in many cases enhances, rather than weakens, the control of central government. On the whole, African leaders proved able to manipulate the proposed reforms in order to protect their own power (van de Walle 2001), ensuring deconcentration rather than devolution.

Partly as a result, the late 1980s and 1990s saw a change in the goals of decentralization, with a greater emphasis on the benefits of such reforms for “good governance” as well as administration. In this phase, decentralization became less about promoting efficiency and more about creating local democracy and giving communities ownership of and power over political processes and development around them (Kauzya 2007: 90). However, this second iteration of the decentralization agenda also met with limited success. In a fairly comprehensive survey of African States conducted in 2002, Stephen Ndegwa found that of 30 states with available data, all had a semblance of local government institutions, but only two had decentralized to a high degree, eleven had moderately decentralized, thirteen had a low degree of decentralization and a final four (as well as probably many of the countries with insufficient data) had nominal or no decentralization at all. While nearly all countries had some semblance of political decentralization, only half had moderate or high levels of decentralization on Ndegwa’s index.

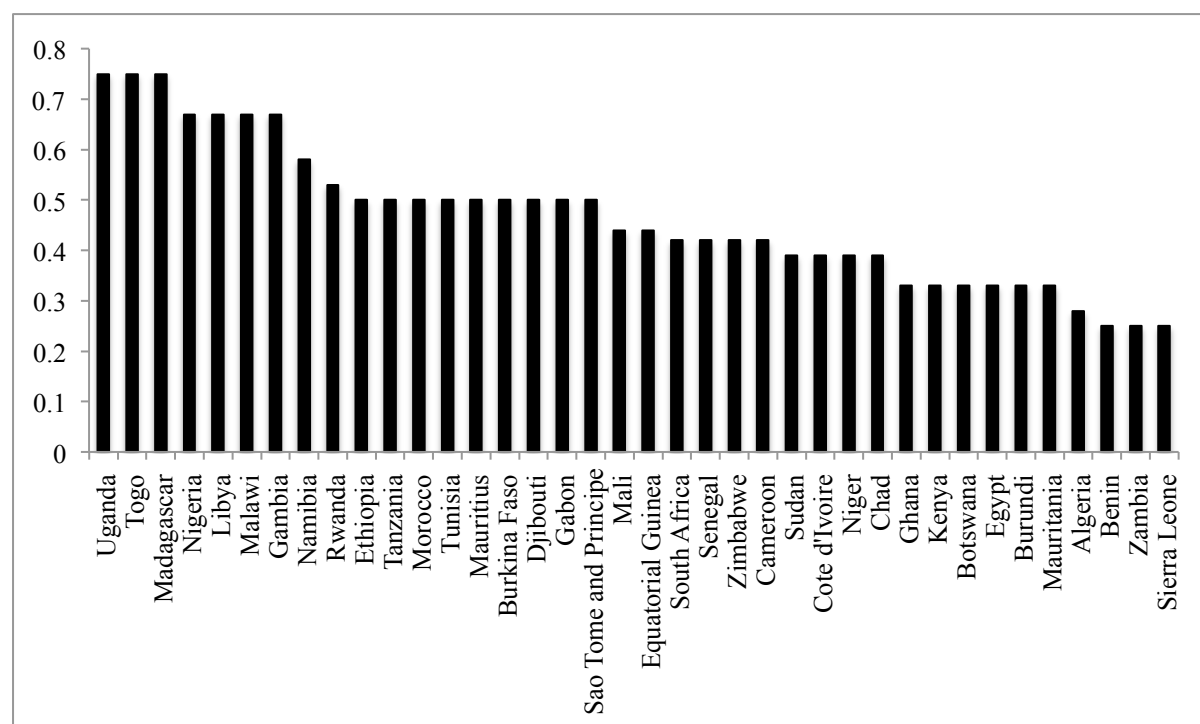
A more recent survey by Anwar Shah and Maksym Ivanyna (2014) deployed indicators from 2005 to measure decentralization worldwide. It found that African states were poorly decentralized compared to their counterparts in Europe, Asia and Latin America based on political, fiscal and administrative indicators. Only ten African states are located in the top hundred on this indicator, and the highest ranked was Ethiopia at 37.⁴ Ivanyna and Shah also created a binary variable to reflect the level of political decentralization, rating countries on a 0-1 scale based on whether local governments have a directly elected legislature and executive as well as the degree to

decentralization and deconcentration. Still others will point to privatisation of state functions as another form of decentralization.

⁴ The others were: South Africa, Uganda, Nigeria, Tanzania, Sudan, Ghana, Senegal, Morocco and Kenya.

which public participation is enshrined in the procedure of local politics. Using this as a proxy for political decentralization is interesting, because it ranks African countries in a much more favourable light relative to the rest of the world, with 18 states appearing in the top 100, and Uganda ranking twenty third overall. The index for African states with a ranking of 0.25 or higher is outlined in figure 1.⁵

Figure 1. Political Decentralization in Africa (2010)



In recent years, decentralization reforms have been introduced or mooted in countries as otherwise diverse as Kenya, Liberia and Zambia. This chapter addresses this more recent trend of devolution and political decentralization. Over the last two decades, the number of countries committing – rhetorically at least – to some form of decentralization has significantly increased, with many states either adopting sub-national elected bodies or deepening the power of existing sub-national governments (Dickovick and Riedl 2010). For example, the Ugandan Local Governments Act of 1997 changed the local government structure from one that had directly elected village committees appoint the superior tier of local government and that tier would appoint the next superior tier, and so on and so on, to one where people directly elected each

⁵ This leaves out the 14 African states that have little to no political decentralization.

tier of local government (Steiner 2008). But the creation so many new sub-national elected governments across the continent does not necessarily imply that the quality of accountability has improved. Rather, we need to carefully investigate these cases to work out whether local government answers to the citizens in the locality, the central government, or other local government bodies.

Before we start to develop answers to these questions, it is important to say a word about terminology. Only three African countries (Nigeria, Ethiopia and South Africa) have instituted fully-fledged federalism, whereby decentralized units are constitutionally recognised as having sovereign powers at the local level and a veto on national decisions that affect them. Federalism is typically viewed as a particularly strong set of arrangements in the sense that it creates constitutionally independent subnational units. While this is true, subnational governments in more centralized states may still have a significant impact on the distribution of power. In Kenya, for example, the system of decentralization established in 2010 is very similar to a federal model, with provisions for the direct election of county level leaders enshrined in the constitution (Cheeseman, Lynch, Willis 2016).

Subnational governments have been organised in very different ways: around boards, assemblies, executives or councils at the district, state, county or municipal level. Some, like the Nigerian states, reflect the national governance structure, with a governor taking the place of a president and a state assembly taking the place of a national one. The Ugandan system is multi-layered, with five tiers of local councils that see districts and cities take on the largest role, while villages are the smallest and least powerful unit. These smaller councils receive fewer funds than the larger federal Nigerian states. Alongside its sub-national provincial governments, South Africa also has tried to merge local traditional governance structures with more formal sub-national government in rural areas (Ntsebeza 2005). But all these varied configurations face a similar question: does decentralization increase the accountability of government, does it do little to change accountability or does it, in fact, further empower established political leaders?

Theories of decentralization and accountability

By bringing democracy closer to communities, decentralization is meant to increase public control of government and public policy, creating a more accountable and

responsive political system (Sisk 2001: 24). Accountability largely operates in three ways in the ideal-type decentralized government. Local governments are *vertically* accountable to the people below them (downward accountability) and the national government institutions above them (upward accountability), while they are also *horizontally* accountable to the other local institutions that surround them (Agrawal and Ribot 1999: 478-479; Wunsch 2014: 10). In an ideal three-pronged system of accountability, 'central officials must support and monitor decentralization in a controlled way', 'local officials must learn to work with elected representatives and other actors' and 'perhaps, most critically, local people must learn to hold local officials responsible' (Smoke 2003: 14).

However, accountability does not necessarily follow from the creation of sub-national units, and local governments typically end up being fairly unaccountable to their people and answer only to the central government and local elites. A USAID based study managed by J. Tyler Dickovick and Rachel Beatty Riedl (2010) conducted in-depth case studies of ten African states with a relatively high level of political decentralization. The resulting analysis revealed that even in cases that already have a high level of political decentralization, there are severe obstacles to the accountable and responsive sub-national government. In particular, the literature to date has identified three main barriers. First, national governments can look to control local institutions in the name of vertical accountability, but their real motive may have less to do with accountability and more to do with regaining control over local politics and resources (Wunsch 2014; Dickovick and Riedl 2010: 7; Cheeseman, Lynch and Willis 2016). Second, local elites can capture decentralized institutions and subject them to their own local corruption and patronage networks, thereby circumventing downward accountability to the residents of a decentralized unit (Wunsch 2001; 2014). Finally, the weakness of local legislative bodies as compared to the local civil service or executive means that horizontal accountability can be ineffective (Steiner 2008).

The first of these barriers results from the actions of national governments. Their legacy of a strong central authority goes back to the colonial era, but the trend crystallised during the post-independence authoritarian era in the 1960s and 1970s and was somewhat counter intuitively entrenched during the era of structural adjustment, despite the pressure to reduce the size of the government (van de Walle 2001). In part, this is because national leaders in Africa have often been able to co-opt and dominate

sub-national leaders via patron-client ties and other forms of personal persuasion. Thus, in the terms set out in the introduction to this volume, the formal institution of decentralization is often seen as being undermined by the presence of a strong set of competing informal institutions.

The continent has certainly seen its fair share of recentralization. Powerful central authorities often seek to undo attempts at decentralization by attacking the new local institutions, assuming their responsibility or co-opting them to serve the interests of the centre (Boone 2003; Wunsch 2001). A good example of this practice can be found in Kenya's attempt at decentralization in the 1980s through the District Focus for Rural Development (DfRD) program. On its surface, the DfRD aimed to decentralize development capabilities to local authorities through deconcentration. But Daniel Arap Moi, Kenya's then president, also used it to undermine the power structures left by his predecessor, Jomo Kenyatta (Barkan and Chege 1989; Lynch 2011). By going straight to the districts, Moi was able to circumvent the powerful provincial administration and establish his own network of loyal administrators who could service his own constituencies ahead of Kenyatta's. Yoweri Museveni's decentralization reforms in Uganda were similarly useful in undermining his predecessors and opponents (Lewis 2014) and spreading support for his National Resistance Movement (Kauzya 2007).

The local accountability and responsiveness of decentralized institutions is not only threatened by national elites; sub-national political institutions are also prone to elite capture by local elites and pre-existing informal networks of patronage. Thus, rather than delivering more accountable local government, sub-national institutions often simply manifest a 'decentralization of corruption' from the national level to the local one (Watt, Flanary and Theobald 1999: 48). Indeed, they turn out to be even more corrupt than their national counterparts. According to Susan Steiner, elite capture is feasible because 'those with vested interests are capable of turning the institutions and opportunities created by decentralization to their own advantage' (2008: 58). In other cases, new sub-national institutions may become vulnerable to the same kinds of neo-patrimonial networks that run through other political institutions, with the consequence that decentralization simply adds another layer of interests to the already corrupt and complex system of local politics (Bierschenk and Olivier de Sardan 2003: 166-167; Olivier de Sardan 1999). The common theme running through this literature is that when elite capture occurs, 'there is no reason to expect that [decentralized]

institutions will work for the benefit of anyone but [elites]', thereby making local government unaccountable (Wunsch 2014, 8).

Finally, the weakness of various local institutions may undermine the capacity for horizontal accountability, irrespective of the actions of national elites. Local legislatures, which should act as a check against a local executive and the drafters of local legislation, are often staffed with people who are too poorly trained and educated to understand their roles, and therefore act outside their formal responsibilities (Steiner 2008: 52). This makes horizontal accountability ineffective, especially in the context of better staffed local executives. Paul Smoke, in his analysis of decentralization in Africa and Asia, points out that decentralization should aim to create a new degree of independence from national elites for local institutions, and warns that if this lack of accountability 'is not replaced by a degree of accountability to local people, local officials may become primarily accountable to themselves and influential local elites' (2003: 11). Moreover, given the general depiction of untrained local officials acting in an unclear local institutional framework (Chinsinga 2008) often to pursue their own self-interested policies (Steiner 2008), it is not surprising that competition between local governmental institutions (the legislature, the executive and the public service) is usually viewed as a scramble for patronage funds, rather than an attempt to secure better policy.

The danger of national manipulation and sub-national dysfunctionality implies that the task of holding local governments to account will often fall largely on local voters themselves. Indeed, some scholars (Sisk 2001) do not even address horizontal accountability, and instead focus their analysis on the question of whether a supportive national elite exists, and whether local government establishes accountable relationships with its electorate. For example, Agrawal and Ribot explicitly state that achieving horizontal accountability in decentralized institutions is less important, and that 'downward accountability ... is the *primary* dimension of decentralization since it can broaden the participation of local populations and enhances the responsiveness of empowered actors' (Agrawal and Ribot 1999: 479, emphasis added). However, the case decentralization in Kenya suggests that it would be unwise to throw the baby out with the bathwater.

The Kenyan case in comparative perspective

One seemingly obvious but important finding from Susan Steiner's study in Uganda is that decentralization does not increase accountability unless it is accompanied by 'the establishment and enforcement of accountability mechanisms, such as competitive elections, auditing and evaluation, public hearing, third-party monitoring ... and procedures for recall' (Steiner 2008: 38). Steiner found that Uganda's councils had to rely on conditional transfers from the national government and thus could not establish autonomy from the central state. Further, as one descended down the five tiers of local councils in Uganda, capacity decreased and a perception emerged that corrupt or patronage-based practices increased. Without accessible mechanisms for accountability at the local level, there was little hope for decentralization to have a positive effect on government accountability.

One such mechanism in many local governments is the ability to recall or indict corrupt elected or appointed officials. The impeachments of Nigeria's state governors and their assemblies provide a case for such recall. However, these processes fall under the umbrella of the above criticisms of devolution's ability to increase accountability. Joseph Fashagba (2015) and Yayaya Baba (2015) find that when impeachments happen in Nigeria's states, they often originate when the national government attempts to remove governors who were in a party in opposition to the president's party at the national level. Otherwise, 'state legislatures largely function as mere appendages of the governors' and therefore are too weak to make any sincere attempts at holding the executive to account (Baba 2015: 139).

However, such concerns of central domination of decentralized institutions are less important in the Kenyan case, where the new county assemblies have been granted similar impeachment powers. This is because the pressure on sub-national leaders to satisfy the demands of vocal local electorates has placed them under sufficient pressure that it is dangerous to simply 'sell out' to national elites (Cheeseman, Lynch, Willis 2016). As a result, the way that devolution has played out has been strongly shaped by local, rather than national, issues. In the analysis that follows, I demonstrate the varied outcomes this has given rise to by comparing the fate of two different sub-national authorities. In doing so, I argue that local competition over authority and state resources can serve as a motivating force for horizontal accountability, and that as a result informal institutions such as neo-patrimonialism may actually play a role in promoting accountability in new political institutions.

Devolution in Kenya

Kenya devolved power to 47 new counties after the March 2013 elections, as directed by the 2010 Constitution. The county governments are much more powerful than the previous districts were under Moi, and they receive 15 per cent of national government revenue, which is then allocated to individual counties by a formula that takes into account factors like size, population and economic marginalisation, and the counties are able to raise revenue through limited taxes, including property taxes. Further, county governments have almost unimpeded control over how they spend that money in a number of devolved sectors. In contrast, the districts were mere branches of the national government administration. The formal responsibilities of the county governments encompass infrastructure projects like public works (such as water infrastructure and roads), early childhood education, some agricultural sectors and, perhaps most importantly, healthcare.

Additionally, the counties combine this power over resources with a democratic mandate. In the pre-devolution era, decentralized administrators controlled development resources while elected local councillors had few resources at their disposal. The new county system is very much a politically, fiscally, administratively and democratically decentralized one. Now, elected county officials control the allocation of vast development resources. This is in stark contrasts to many other sub-national governments in Africa, who have struggled to prise resources away from the national government (Dickovick and Riedl 2010).

The constitution outlines a number of formal roles for county officials. The governor, who is elected by all voters within the county, heads the executive, while the assembly acts as both a legislative body and a check against the governor's executive power. The assembly is populated by members of county assembly (MCAs), two-thirds of whom are elected in wards by a first-past-the-post-system, while parties appoint the final third proportional to their share of elected MCAs to make sure that the assembly represents minority and marginalised groups. This gives the local electorate considerable control over the composition of the assembly, in contrast to many other systems in which a larger proportion of local politicians are appointed. For example, in Ghana's local governments, the president directly appoints 30% of local authority members, and these appointees are often more loyal to the president and ruling party

than they are concerned with local interests (Ayee and Dickovick 2010). Having the local parties control nominations in Kenya circumvents this national control to some degree, especially as the distribution of appointment members reflects parties' local popularity. Finally, each county elects a senator to serve in the senate in Nairobi, a newly created second chamber that was initially envisioned as a guardian and monitor of the devolution process.

Significantly, each county assembly has the ability to hold the executive to account horizontally through the power to approve or decline the governor's appointments (for example to the county executive committee) as well as the county budget. These formal powers of executive scrutiny are underpinned by the assemblies' ability to impeach the governor by a two-thirds majority vote (Republic of Kenya 2012: S.33). In combination with the unique arena provided to Kenya's county governments in terms of resource independence and constitutional mandates, the assemblies' powers have enabled the MCAs to hold governors to account, setting the scene for a series of prolonged power struggles within Kenya's counties.

The County Governments Act (CGA) confusingly does not outline specific charges that constitute a minimum benchmark for impeachment proceedings. However, if one takes the rules set out in the Constitution on the impeachment of the president as a model, one might assume that the target of the impeachment must have acted illegally, unconstitutionally or improperly in such a way as to constitute 'gross misconduct' (Republic of Kenya 2010: S.145.1.c). The CGA does state that an impeachment motion should then be referred to the senate, where a committee will decide whether the claims are legitimate (Republic of Kenya 2012: S.33). If the committee does uphold the impeachment, then a majority vote within the senate will see a governor impeached, and the governor will lose office to be replaced by his or her deputy governor. If not, then the governor continues his or her term.

Impeachments in Kenya are thus more local affairs than in a country like Ghana, where the president can use the 30% of assembly members that she appoints to control the impeachment of the local 'Chief Executive' (Ayee and Dickovick 2010). In the initial two years of the devolved era, much of the local political competition in Kenya has manifested itself in a struggle between the executive and legislative bodies over who controls development resources (Ghai 2015: 133). Most notably, Kenya experienced several impeachment bids in 2014, starting in Embu and Kericho counties. More

recently, the Makueni county assembly has voted to impeach its governor and many other county assemblies such as Nakuru⁶ have come close to impeaching their governors. In analysing these impeachment processes, I seek to trace the role played by formal and informal institutions, and to untangle whether they simply reflect local struggles over resources or attempts to hold the executive to account.

Embu and Kericho counties

Embu and Kericho are two of Kenya's smaller counties. Both are largely agricultural and not poor, though neither is hugely well-off. Embu, located in the Mt. Kenya East region, is home to just over 500,000 people. Over half of these people hail from the Embu community, around a third are of Mbeere ethnicity and the rest are Kamba and Kikuyu. Recognizing the county's status as one of Kenya's more multi-ethnic counties, Embu elites forged a power-sharing agreement laid out before the county government elections in 2013. This agreement stipulated that the governor would come from the Embu ethnicity, while the deputy governor and senator would be Mbeere.⁷ Following this agreement, appointments in both the assembly and governor's executive were made to roughly reflect the ethnic breakdown of the county. The county assembly contains 33 MCAs, 20 of whom have been elected and 13 appointed. The various county positions are shared predominately between two parties, The National Alliance (TNA) and the Alliance Party of Kenya (APK).

Kericho, which can be found in the South Rift Valley is much more ethnically homogenous. Nearly 90 per cent of the county's 750,000 strong population are Kalenjin, and most of those are from the Kipsigis sub-group. The governor, senator, MPs, executive and all but one of the 47 MCAs⁸ are Kipsigis. Further, all save one MCA are from the United Republican Party (URP). The county has been the site of several instances of electoral violence, where the Kipsigis have instigated attacks against the minority Kikuyu, Luo, Luhya and Kisii populations, who have at times retaliated with violence of their own (Akiwumi 1999; Throup and Hornsby 1998). Notably, the 2013 elections were marked by the absence of overt violence, but there is effectively no representation of these minorities in the county government (Dyzenhaus 2015).⁹

⁶ Civil Society Activist. 25 January 2015. Interview. Nakuru, Kenya.

⁷ Elder. 12 September 2014. Interview, Embu, Kenya.

⁸ 30 were elected and 17 appointed.

⁹ Youth Activists. 22 January 2015. Kericho, Kenya.

Embu and Kericho are unlike each other in most aspects. Indeed, the only clear similarity is that the three parties with a presence in these counties are the same and are allies of the current ruling Jubilee Alliance at the national level. Despite this, their experiences under devolution reveal some interesting parallels. What these two counties have in common is the fact that they were the first two cases of gubernatorial impeachment in Kenya. Further, the governors of these counties both emerged from their impeachment difficulties with their position intact, but their powers diluted. This similar experience, in counties that are otherwise very different, demonstrates the potential for devolution to generate horizontal accountability even in diverse contexts.

Impeachments: Background and motives

Embu's county politics started out as – and have continued to be – rocky and unpredictable. The governor elect, Martin Wambora, had his election challenged by the runner-up after a close-fought contest and was kept out of office by this appeal for three months in early 2013.¹⁰ Wambora was eventually sworn in as the governor of Embu County and he began his work as the county executive, but he arrived as an executive whose legitimacy had already been questioned in a county that had begun to attempt to work without the executive branch for months.¹¹ Partly as a result, Wambora viewed with suspicion key actors in the county government, like the senator and the county assembly speaker.¹² For example, Wambora refused to sit on a county stakeholder committee organised by the senator, Lenny Kivuti, simply because the committee had been active in his absence.¹³

At the end of January, 2014, the county assembly had impeached Wambora, with 22 of the 33 MCAs voting for the impeachment motion, and the senate upheld the impeachment several weeks later. They alleged that Wambora had not only spent more than five times what he had allocated on redeveloping the stadium in Embu Town and that he had spent 35 million Kenyan Shillings (KSh) on maize seeds for farmers that did not germinate, but also that he had acted improperly in the tendering of both contracts.¹⁴ Wambora challenged his impeachment in the Embu High Court, which, in

¹⁰ Civil Society Activists. 4 September 2014. Interview. Embu, Kenya.

¹¹ Businessman. 8 September 2014. Interview. Embu, Kenya.

¹² Political Advisor. 25 September 2014. Interview. Nairobi, Kenya.

¹³ Political Advisor. 25 September 2014. Interview. Nairobi, Kenya.

¹⁴ MCA. 7 September 2014. Interview. Embu, Kenya.

April, ruled in his favour.¹⁵ But later that month, 23 MCAs voted to impeach Wambora again, and again the senate voted in favour of the impeachment.¹⁶ Wambora's appeals continued into 2015, with various court rulings declaring him free to govern, while senate and assembly rulings as well as other court decisions determined he was correctly impeached.¹⁷ It was only in December of 2015, nearly two years after the first impeachment motion, that an appeal court absolved Wambora of the impeachment charges.¹⁸

Kericho's impeachment process was much more short-lived.¹⁹ Paul Chepkwony, Kericho's URP and Kipsigis governor, had won his position with over 70 per cent of the vote. He maintained a large degree of popularity with his Kipsigis supporters for promising to address the issue of the colonial acquisition and foreign ownership of the area's large tea estates.²⁰ But while Chepkwony may have enjoyed a stronger local support base, he also ran into trouble with his county assembly quite early on. Chepkwony first erred when he appointed a number of civil servants, including CECs, without following the official hiring process, and subsequently prevented MCAs from using county money to travel abroad.²¹ This led to the tabling of a unanimously supported impeachment motion in the county assembly in May 2013. However, local Kipsigis elders stepped in and brokered a truce between the executive and legislature.²² Despite the elder's intervention, Chepkwony's relations with his assembly continued to be tense, with the assembly stubbornly standing in the way of many of Chepkwony's projects. Frustrated by the intransigence of the MCAs, Chepkwony tried to subcontract ambulance services to the Kenya Red Cross and sign a deal with a firm to begin a solar power project without the assembly's consent.²³

Kamau, Julian. 15 February 2014. 'Embu Governor Wambora becomes the first governor to be impeached', *Standard Digital*, <<http://www.standardmedia.co.ke/article/2000104675/embu-governor-wambora-becomes-the-first-governor-to-be-impeached>>

¹⁵ Journalist. 22 August. Interview. Nairobi, Kenya.

¹⁶ Journalist. 22 August. Interview. Nairobi, Kenya.

¹⁷ Political Advisor. 30 January 2015. Interview. Nairobi, Kenya.

¹⁸ Makana, Fred. 11 December 2015, 'Appeal court nullifies Martin Wambora's impeachment', *Standard Digital* <<http://www.standardmedia.co.ke/article/2000185119/appeal-court-nullifies-martin-wambora-s-impeachment>>

¹⁹ This fact may actually be attributable to the senate's worry that the assemblies were using their impeachment powers too readily, so the senate sought to put a stop to the impeachment of Kericho's governor as a message to Kenya's county assemblies to stop impeaching their governors.

²⁰ Civil Society Activists. 11 August 2014. Interview. Kericho, Kenya.

²¹ Political Organiser. 30 July 2014. Interview. Kericho, Kenya.

²² Journalist. 26 July 2014. Interview. Kericho, Kenya.

²³ Journalist. 26 July 2014. Interview. Kericho, Kenya.

When tensions rose even further, Chepkwony took the issue to the Kericho High Court to clarify the role of the executive and assembly. This prompted 32 MCAs to vote to impeach him again in May 2014, this time on the basis of his alleged violation of several acts surrounding public-private partnerships and the distribution of government contracts. In contrast to the first impeachment effort, this time his rivals – which included national level figures such the Deputy President William Ruto and the county’s senator, who did their best to encourage anti-Chepkwony sentiment – mobilized to send the issue straight to the senate.²⁴

In contrast to Wambora’s drawn-out battle with the senate, a senate committee ruled Chepkwony’s errors to be insufficient grounds for impeachment within a month, and thus Chepkwony continued in his role as governor.²⁵ Some have even alleged that the accusations against him were accurate, but that the senate chose to let Chepkwony return to office as it feared that a second impeachment might lead to a nation-wide impeachment crisis, with multiple other assemblies following suit.²⁶ Chepkwony was also helped by his local popularity, as thousands of residents signed a petition against the impeachment, elders mediated in favour of Chepkwony and people showed their dissatisfaction by cheering Chepkwony and booing the deputy president during events where they both appeared as speakers.²⁷ The ability of Chepkwony to withstand a national move against him by the deputy president thus reflected the different demographic composition of his county, and his landslide electoral victory, but nonetheless stands as a testimony to the independence of Kenya’s county governments.

Elite capture and the impeachment process

How can we explain the rise of impeachment at the county level in Kenya? According to some scholars, they represent the devolution of corruption as assembly members – and the communities they represent – demand “their turn to eat” (D’Arcy and Cornell 2016). On this interpretation, decentralization created the conditions for local competition for resources and the extortion of the executive by the assembly. Such legislators are

²⁴ Kemei, Timothy. 15 May 2014. ‘Governor kicked out’ *Daily Nation*, <<http://www.nation.co.ke/counties/MCAs-Kericho-Governor-Paul-Chepkwony/-/1107872/2315992/-/u8w27lz/-/index.html>>

²⁵ Kiplang’at, Jeremiah. 3 June 2014. ‘Kericho governor survives impeachment’, *Daily Nation*, <<http://www.nation.co.ke/news/politics/Kericho-governor-survives-impeachment/-/1064/2336266/-/r75uyv/-/index.html>>

²⁶ Journalist. 26 July 2014. Interview. Kericho, Kenya.

²⁷ Kipsigis Activist. 20 January 2015. Interview. Kericho, Kenya.

primarily motivated not by a desire to strengthen sub-national institutions, but by a shortage of resources to secure their re-election (Cheeseman, Lynch and Willis 2016).²⁸ These accounts are right, but only up to a point.

It is true that many MCAs in both Embu and Kericho desired to control county development resources. As one civil society activist in Embu explained:

‘When the governor does just a little thing without involving the MCAs, that arises to be an issue. And instead of them solving it amicably ... the MCAs see an opportunity to impeach a governor so that they can get that position and be the head of the county governments.’²⁹

Indeed, Embu’s MCAs proved able to assert a huge amount of authority over the development resources in the county.³⁰ In the 2013/2014 budget, the MCAs tried to push for funding for ward projects for each of the 20 elected MCAs that would start out at 16.2 million KSh/ward and rise to 20 million in 2014/2015.³¹ This desire was affirmed in a bill passed in the county assembly in January 2015 – while the impeachment proceedings were still on-going – that asked for 10% of the county’s money to go towards a Ward Development Fund for Embu’s MCAs.³² In his bid to evade the impeachment proceedings, Wambora had to tame his mutinying MCAs by awarding them with contracts, tenders and Ward Development Funds, eventually carving out a loyal faction in the assembly to stop further impeachments and even winning over the MCA who tabled the initial impeachment motion.³³ This shows that the MCAs in Embu were able to use leverage they gained through the impeachment process to capture

²⁸ Kwayera, Juma. 4 July 2015. ‘Why impeachment stalks some governors as politically-savvy survive’, *Standard Digital*, <http://www.standardmedia.co.ke/article/2000167942/why-impeachment-stalks-some-governors-as-politically-savvy-survive?articleID=2000167942&story_title=why-impeachment-stalks-some-governors-as-politically-savvy-survive&pageNo=1>.

²⁹ Community Activist. 3 September 2014. Interview. Embu, Kenya.

³⁰ One audacious attempt saw MCAs try and ask for monthly salaries for their ‘lonely’ spouses. See: Wanyoro, Charles. 28 August 2014. ‘Give our lonely wives allowances, say MCAs’, *Daily Nation*, <<http://mobile.nation.co.ke/counties/County-first-ladies-forum-launched/-/1950480/2433248/-/format/xhtml/-/qcw0saz/-/index.html>>

³¹ MCA. 7 September 2014. Interview. Embu, Kenya.

³² Wanyoro, Charles. 28 June 2015. ‘Embu assembly passes ward fund Bill’, *Daily Nation* <<http://www.nation.co.ke/counties/Embu-County-Assembly-Ward-Development-Fund/-/1107872/2768156/-/format/xhtml/-/xhn2uk/-/index.html>>

³³ Peace Activist. 14 January 2015. Interview. Embu, Kenya.

devolved resources in a fashion that was outside their formal constitutional role as local legislators.

In Kericho, the MCAs have made similar gains, and ‘the powers of the governor and the executive have been significantly diluted’.³⁴ The elected MCAs have also influenced the appointments of the county executive’s ward administrators (who control development at the ward level) so as to gain a greater degree of control over development expenditure in their wards.³⁵ Further, since the impeachment process, Kericho’s MCAs have a tighter grip on tenders and contracts and often award them to friends, family and supporters.³⁶ However, it is worth noting that there was never a serious bid to give Kericho’s MCAs direct control over resources in the form of ‘projects’ or ‘funds’ for their wards,³⁷ as there was in Embu. In large part this reflects the Chepkwony’s stronger position within the county, which ensured that he never became as desperate as Wambora.

Thus, there was clearly a desire on the part of local legislators in both counties to *capture* decentralized development resources in order to sustain their informal patronage networks in ways that moved well beyond the formal role of MCAs set out in the constitution. In Embu, MCAs have a stronger and more direct grip on development funds through Ward Development Funds, while the MCAs in Kericho must make do with controlling some tenders or contracts and indirectly controlling county funds through their relationships with ward administrators. However, the impeachment proceedings in these counties cannot simply be reduced to a scramble for resources,

Accountability as a motive for impeachment

Just like Kericho, Embu also had a degree of national-level elite involvement in the impeachment process. Both the senator, Kivuti, and the MP who had initially coaxed Wambora to join TNA were said to have stoked the flames of impeachment.³⁸ However, it would be reductionist to put these actors’ motivations down to their desire to control county resources. Similarly, it would be unfair to argue that MCAs impeached the governor just to get a Ward Development Fund and salaries for their spouses. Rather, in

³⁴ Civil Society Activist. 19 January 2015. Interview. Kericho, Kenya.

³⁵ Journalist. 19 August 2014. Interview. Kericho, Kenya.

³⁶ Civil Society Activist. 19 January 2015. Interview. Kericho, Kenya.

³⁷ Youth Activists. 11 August 2014. Interview. Kericho, Kenya.

³⁸ Representative of the Governor. 13 January 2015. Interview. Embu, Kenya.

examining the underlying reasons for Embu's impeachment, one can see how it was, to some extent, a bid to establish executive accountability in the county.

Wambora's delayed arrival in county politics made him difficult to work with. Instead of trusting with other branches of government, Wambora concentrated power in his county secretary³⁹, Margaret Kariuki. Kariuki controlled executive spending and was unwilling to make political compromises and concede resources to the MCAs, adding to a perception that Wambora's administration favoured the section of Embu from which both Wambora and Kariuki hailed.⁴⁰ The county secretary had sourced maize seeds that failed to germinate,⁴¹ and the MCAs used this as an opportunity to demand that Wambora replace her with someone more neutral. But Wambora refused to concede any control to his perceived rivals, like the senator and the assembly.⁴² He even ignored the demands of local MP Cecily Mbarire, Wambora's powerful sponsor within his party, to change his county secretary, which lost him the support of his own political party.⁴³

Wambora's impeachment was a sign of his isolation from county politics. And instead of negotiating with the assembly, Wambora made the affair even more adversarial by taking the issue to the courts. Had he made minor concessions such as reshuffling his county executive committee and resolved to work with his rivals, his impeachment debacle may not have dragged on for nearly as long.⁴⁴ All told, the process continued for 23 months, and it was only in January of 2015 that Wambora finally bowed to pressure and appointed a county secretary who could better manage the assembly through strategic political concessions.⁴⁵ Thus, MCAs determination to impeach the governor reflected both their need for patronage resources, but also a growing sense of frustration that the governor was not willing to compromise or make concessions to improve the functioning of the county government and force the executive to engage with a broader range of voices.

³⁹ The county secretary is the chief administrator of the county.

⁴⁰ Urban Activist. 1 September 2014. Interview. Embu, Kenya.

Civil Society Activists. 4 September 2014. Interview. Embu, Kenya.

⁴¹ *Capital FM*. 28 January 2014. 'Embu Governor, Deputy first to face impeachment', <<http://www.capitalfm.co.ke/news/2014/01/embu-governor-deputy-first-to-face-impeachment/>>

⁴² Government Planner. 4 September 2014. Interview. Embu, Kenya.

⁴³ Political Advisor. 25 September 2014. Interview. Nairobi, Kenya.

⁴⁴ Urban Activist. 1 September 2014. Interview. Embu, Kenya.

⁴⁵ Peace Activist. 14 January 2015. Interview. Embu, Kenya.

Chepkwony behaved in a similarly exclusionary way. He faced a county assembly that featured many opposition leaders, but instead of working with Kericho's MCAs, Chepkwony tried to work around them. This led him to break several laws as he tried to make appointments and initiate his projects without the approval of his legislature. Further, Chepkwony also resorted to the courts to interpret the relationship between the executive and his assembly, an adversarial move that led his rivals to conclude that he compromise was impossible and negotiation futile. Chepkwony thus left an opening for dissatisfaction within county politics that national elites and rivals were more than happy to exploit. When the impeachment bid emerged, Chepkwony accused the deputy president and Kericho's senator of targeting him for political reasons and the MCAs of attacking him to enrich themselves.⁴⁶ But while there was an element of truth in his complaint, county legislators were also responding to Chepkwony's failure to adopt a more inclusive form of governance.

Embu and Kericho are extreme cases, but they are representative of a more general trend. Since their election in 2013, Kenya's governors have acted with a great deal of aloofness, showiness and authority, which has benefited them in the face of national-level challenges (Shilaho 2015; Cheeseman, Lynch and Willis 2016). However, such behaviour makes them appear unaccountable to other local institutions, and is thus likely to cause inter-institutional conflict at the county level. Successful governors, like Isaac Ruto in Bomet and Alfred Mutua in Machakos, have managed those above them while also coming to mutually acceptable arrangements with other local branches of government (Cheeseman, Lynch and Willis 2016).⁴⁷ In contrast many governors – like Chepkwony and Wambora – are political newcomers and have little political experience (D'Arcy and Cornell 2014), and this helps to explain the difficulties that they have faced since taking office.

If these political greenhorns are to enjoy successful periods in office – however defined – they will need to learn how to manage and accommodate other actors, and to recognise the potential strength of the institutions of horizontal accountability established under the country's new constitution. In this sense, while the impeachment

⁴⁶ Wanga, Justus. 17 May 2014. 'MCAs demanded Sh30m to save my job', *Daily Nation*, <<http://mobile.nation.co.ke/news/MCAs-demanded-Sh30m-to-save-my-job-says-Chepkwony/-/1950946/2318566/-/format/xhtml/-/9r5hrlz/-/index.html>>

⁴⁷ Cheeseman, Lynch and Willis formulate governors' action as a two-level game whereby the governors must balance the demands of those above and those around them. See also Kwayera (2015).

proceedings in these counties manifested themselves as struggles over resources, they reflect deeper battles over the control of sub-national political institutions and how power should be exercised. One of the goals of assembly members in both counties was to clip the wings of executives who appeared to think they were above the law, and above the county-level political system. Their activities thus reflect a mixture of motives, in which a combination of informal imperatives and a concern to defend formal institutions generated a powerful impulse to check the abuse of power by the executive – even among assembly members that were abusing their own positions. As one civil society activist put it, the MCAs have used impeachments to push for a more supervisory and consultative role: ‘When the governor was elected, some thought that now ... they could do things without consulting others and the MCAs now feel that they are the ones who supervise the functions of the governors.’⁴⁸

Conclusion

Most researchers do not hold out much hope for the potential for effective horizontal accountability within devolved systems of government in Africa. The literature to date suggests while decentralized institutions are meant to provide greater accountability, national elites are usually able to undermine new local institutions in order to regain power, while local elites capture local institutions to sustain their local patronage networks. However, the cases of Embu and Kericho demonstrate that in some cases formal and informal norms may converge to hold the executive to account, reinforcing mechanisms of horizontal accountability. Combined with the relative strength of Kenya’s county governments within the wider political system, which is underpinned by counties’ control of significant resources, direct election, and the incentives for governors to resist central co-optation, this has led to the emergence of a system of devolution that is more vibrant and – so far at least – appears to be more robust than its counterparts in Ghana and Uganda.

This conclusion is not meant to downplay the very real problem of corruption at the local and national level in Kenya (D’Arcy and Cornell 2016). Neither do I wish to imply that county assemblies should be viewed as democratic or reform-minded bodies. Rather, I have sought to show how the efforts of some county legislators to advance their own personal interests have coincided with other the desire of other legislators to

⁴⁸ Community Activist. 3 September 2014. Interview. Embu, Kenya.

check the abuse of executive power. Such marriages of convenience are driven by a range of motives, many of them problematic, but nonetheless generated strong incentives for MCAs to hold the executive to account. In this way, developments at the sub-national level thus mirror, to an extent, the national trends identified by Joel Barkan in his work on the Kenyan National Assembly (2009), where a cross-party coalition of reformers and opportunists came together to push greater autonomy for the legislature. This did not end corruption or necessarily improve the performance of the National Assembly in terms of public policy, but it did make it harder for the executive to dominate the legislature in the way that it had done in the past (Collord, this volume). Thus, when informal institutions motivate actors to invest in formal rules, even fleetingly, it can advance the slow and uneven process of institutionalization.

But how generalisable is this finding? As discussed above, decentralized institutions in Africa are relatively weak. Many African decentralized political institutions were born with limited powers (Ghana), others have few independent financial resources (Uganda) and more have fallen prey to recentralizing forces and therefore have lost some of their independence (Nigeria). In cases where the formal institutional framework for sub-national government is weaker, the kind of inter-institutional bargaining documented here may prove to be inconsequential in the face of scarce resources and national interference. But even in these cases, the introduction of new political institutions may have profound effects. Consider the way in which federalism has decentralized the location of conflict in Nigeria from the national to the sub-national level (Suberu, 2010), or the way in which the opposition used their control of states such as Lagos to construct their national electoral victory in 2015. These, too, were important consequences of the introduction of sub-national government, and suggest that the promotion of decentralisation in countries like Liberia and Zambia will refashion politics in new and important ways – even if they do not perform as intended.

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