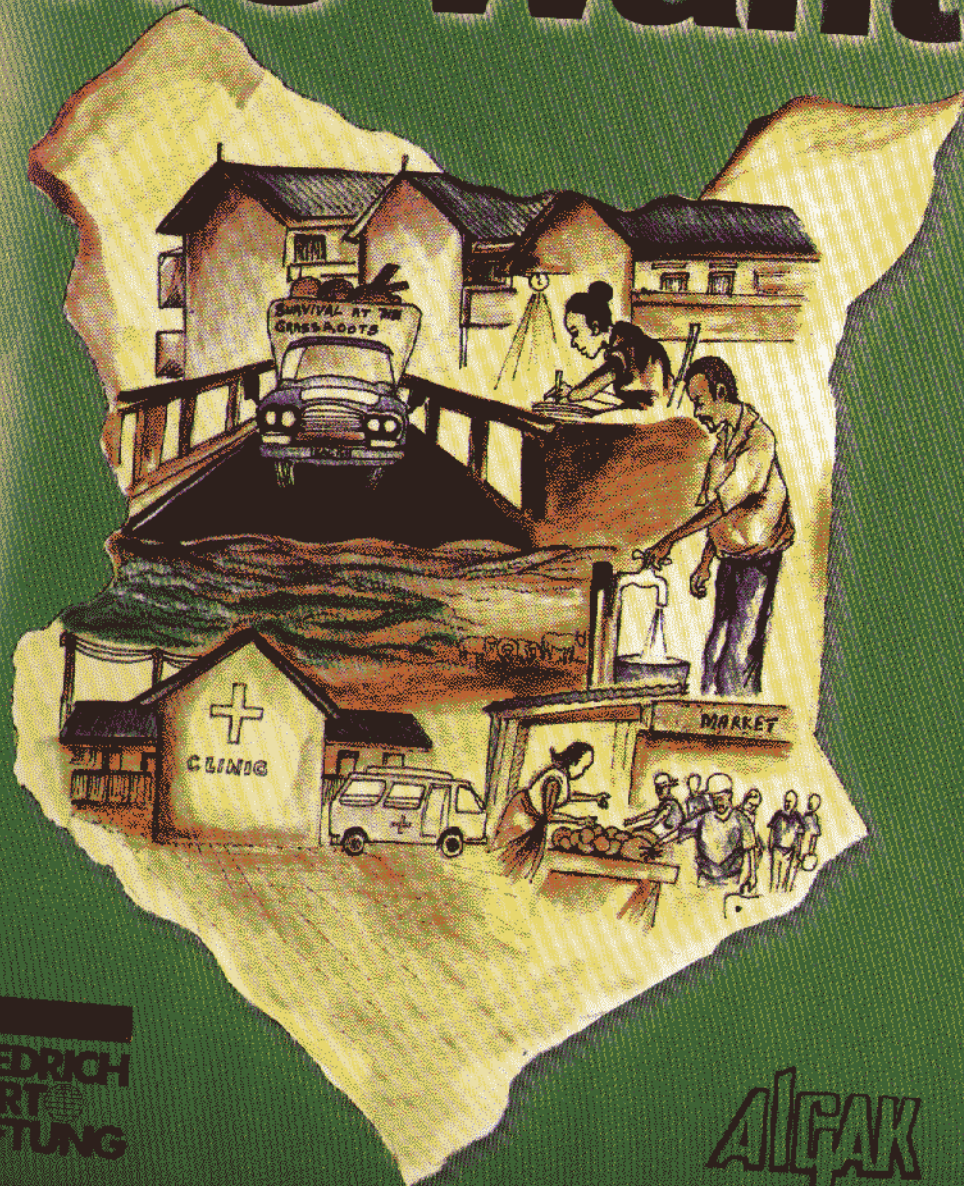


The Local Government We Want



FRIEDRICH
EBERT
STIFTUNG

ALFAK

**Association of Local Government
Authorities of Kenya
(ALGAK)**

**The Local Government
we want in Kenya**

A Chapter on the Local Government Position as ratified by
the Annual General Assembly held in Eldoret

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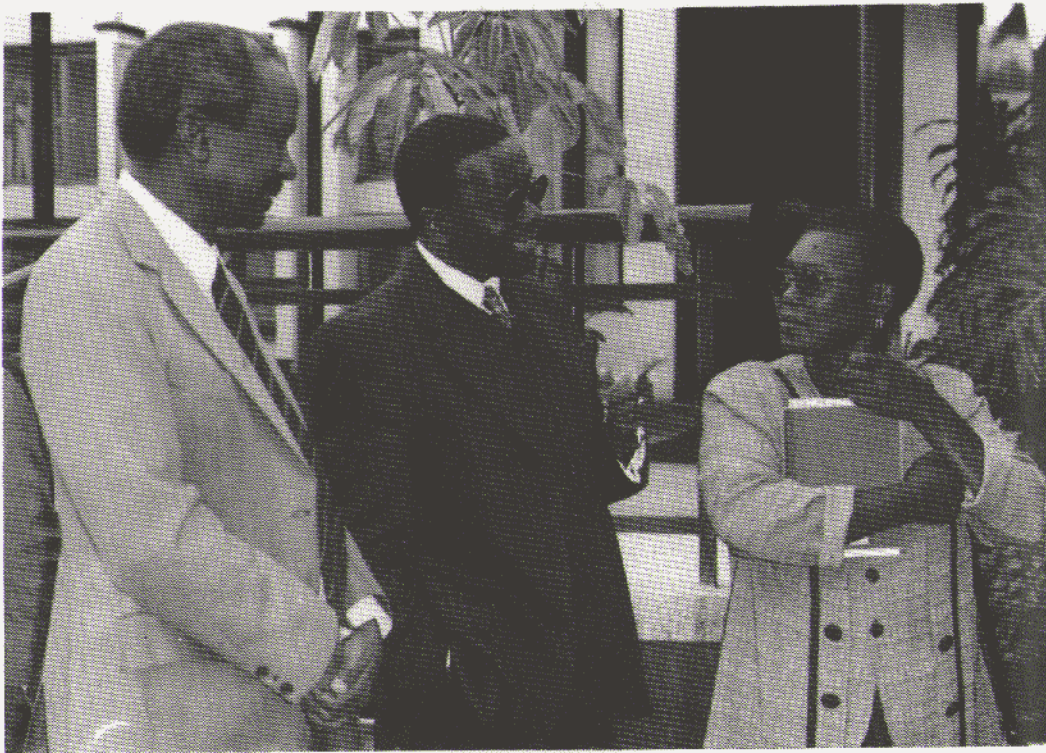
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Consultations: From left to right: ALGAK Secretary General, Mr. A. Odipo, Dr. Willy Mutunga (ALGAK Consultant) and Wanjiku Mbugua (FES) during the workshop to discuss the ALGAK position in Nairobi.

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The ALGAK POSITION on the local government sector constitutional reforms is the result of the efforts of many individuals and organizations. Inception work started in May 1998 when the participation of local governments in constitutional reform was only a hazy idea and the way forward was not very clear. However, the pace of activities was precipitated by the development of concept papers which pointed out the way ahead and assigned roles and actors to whom we are greatly indebted.

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P.N. Aoga
Programme Officer
ALGAK Secretariat

Chapter on Local Government

Summary background

After the constitution of Kenya reform process stalled in March, 1999, the Association of Local Government Authorities of Kenya (ALGAK) took advantage of the jammed process to consolidate its position. Had it not been for stalled process, ALGAK would have participated haphazardly and therefore ineffectively in the negotiations.

During the period between March and November ALGAK developed a position and took a stand to ensure a Viable accountable, responsive and sustainable Local Government in Kenya. The stand ALGAK took is in form of a Local Government Chapter to be incorporated in the envisaged new constitution.

The Chapter has been thoroughly discussed and debated by all local governments in Kenya. Between October and December, 1999, ALGAK conducted meetings in all provinces where all councils met and discussed the chapter. The culmination of the meetings was the ratification of the developed chapter during the ALGAK Constitutional Conference and consequent Annual General Meeting held in Eldoret in December, 1999.

This chapter is what ALGAK would like to see form part of the new constitution.

Rationale

The Local Government Chapter as promulgated by ALGAK is based upon the following premises:

- 1) That the current constitution of Kenya does not provide for the existence of a system of Local Government in Kenya, therefore, it is imperative that the new Constitution to be negotiated enshrine a Local Government System in the structure and organization of governance.
- 2) Since the Local Government in Kenya exist courtesy of the Local Government Act Cap 265 of the Laws of Kenya, a subsidiary legislation, myriad functional problems ensue as a result of inadequate and inappropriate law.
- 3) It therefore, follows that, to address the shortcomings that are perpetually associated with Local Governments, the system of Local Government must be embodied in the constitution and that a new appropriately functional legislation (Act) crafted in the spirit of the Constitutional provision be enacted.

The Chapter

The promulgated Local Government chapter under a new constitution has been as a result of a consultative process involving all Local Governments in Kenya. The spirit and drive behind the chapter is the establishment of Autonomous Local Governments in Kenya. The salient features of the

They are:

- 1) Constitutional Principles upon which the Local Government is negotiated and established.
- 2) The Assembly of Local Governments - as a major and crucial organ towards autonomy.
- 3) Autonomous Units of Local Governments, with executive and legislative powers, and
- 4) The Local Government Councils as Cabinets at the local level - independent of the Central government Cabinet.

Principles

Of the principles as contained in the chapter, the following are outstanding and forms the backbone of the Local Government as so established.

- 1) The realisation of autonomous Local government in Kenya.
- 2) The provision of Local democratic and accountable governments for the communities
- 3) The promotion of economic, social, cultural and political development of communities
- 4) The creation of structures that enable democratic participation of the communities and their organizations in the decision-making on all matters of Local Governance.
- 5) The protection, defence and efficient utilisation of land and other local resources of the communities and
- 6) Affirmative Action

The Chapter

1. Local Government System

There shall be a local government system in Kenya. The following principles shall apply to the local government system in Kenya:

- a) the provision of democratic and accountable government for the communities;
- b) the provision of basic needs, human rights and services to the communities in a sustainable manner;
- c) the promotion of economic, social, cultural and political development of communities;
- d) the promotion of a safe and healthy environment to the communities;
- e) the promotion of participation and involvement by the communities and their organisations in all matters of local governance;
- f) the consolidation of a sound financial base for local governments;
- g) the realisation of autonomous local governments in Kenya;
- h) the creation of structures that enable democratic participation of the communities and their organisations in the decision-making all matters of local governance;
- i.) the establishment of a democratic nexus between central and local governments, a nexus that shall be based on equality rather than agency and control;

- j.) the protection, defence and efficient utilisation of land and other local resources of the communities;
- k) the participation of the local governments in all the affairs of the nation undertaken by the central government that affect or impact on local governments;
- l) affirmative action; and
- m) the acceptance of local referenda as a democratic practice of making decisions by communities in matters that affect their basic needs, service provision, welfare and livelihoods.

2. The Local Government Assembly

- a) The Local Government Assembly shall comprise representatives from all the units of local government in the country;
- b) The Local Government Assembly shall determine periodically the viability of local government units and make such changes as are necessary to best serve the principles under which the local government system is established;
- c) The powers, mode of election of representatives, the remuneration of the Local Government Assembly, its duties and responsibilities shall be provided for by the Local Government Assembly and shall become part of the Local Government Act;
- d) The Local Government Assembly shall provide formulae of sharing the country's resources between local governments and the central government and how resources will equitably be shared between the various local governments;

- e) The Local Government Assembly shall provide for the powers of the local governments to levy and appropriate taxes from inhabitants within the jurisdiction of each local government;
- f) The Local Government Assembly shall provide for the financial accountability of each local government; the Assembly shall also provide for the funding activities of itself;
- g) The Local Government Assembly shall provide for the modes of recruitment of local government employees;
- h) The Local Government Assembly shall provide for the setting up of Local Electoral Commissions;
- i) The Local Government Assembly shall elect eight (8) of its members (half of these members shall be women) to be nominated members of the National Assembly. One of the nominated members of the National Assembly shall be the minister for local government;
- j) The Local Government Assembly shall sit in Nairobi.
- k) The Local Government Assembly shall establish, in consultation with the central government, the content of the democratic nexus between the central government and local governments; and
- l) The Local Government Assembly shall undertake democratisation process such as civic education, good governance, information systems and community participation in the affairs of local government.
- m) The Speaker of the Local Government Assembly shall be elected by secret ballot by the members of the Local Government Assembly.

3. The Unit of Local Government

- a) The units of local government shall be the district, the city, municipal and town councils.
- b) The current district boundaries shall operate as such units of local government.
- c) The said Local Government Assembly shall have the power to establish, after consultations with the local governments, the local communities and the central government, such units as will best serve the principles under which local governments are established;
- d) Units of local governments so established by the Local Government Assembly shall have the power, subject to the consent of the local communities within their jurisdiction, to merge or to split to best serve the the principles under which local governments are established.

4. Local Government Councils

- a) A local government shall be based on a council;
- b) The council shall be the highest political authority within the area of jurisdiction of each local government with legislative and executive powers;
- c) The Local Government's Act shall provide for the following: composition, qualifications, functions, term and electoral procedures of local government councils; the constituencies of local councils; the powers and duties of the employees of the local government; the powers of Chairperson of the local government and those of his/her cabinet; the elections, duties, powers of the officials of local government councils; the removal from office of any local government officer,

the local government itself or its leadership or member of its cabinet and any official of the local government council including the members of the council; the security apparatus of the local government. However, the Act shall take into account the following principles:

i) the District Chairperson/Mayor of the local government shall be elected by the inhabitants of the unit of local government by universal adult suffrage through a secret ballot; his/her running-mate in such election shall automatically become the Vice-District Chairperson/Deputy Mayor; the members of the councils shall be similarly elected to represent their local constituencies;

ii) the Speaker of the local council shall be elected by the respective councils

iii) the cabinet of the District Chairperson/Mayor shall be elected by secret ballot by the elected and nominated councillors

iv) the elections of the local government councils shall be peaceful, free and fair;

v) women, who shall be nominated, shall constitute 50% of the members of the council;

vi) the youth, who shall be nominated, shall constitute 50% of the members of the council;

vii) people with disabilities, who shall be nominated, shall constitute 33% of the members of the council;

viii) at least 10% of the members of council shall be nominated from the people's organisations within the jurisdiction of each council;

ix) local government council elections shall coincide with presidential and parliamentary elections;

x) the District Chairperson/Mayor shall be a person qualified to be elected a member of parliament and shall be at least thirty (30) years old;

xi) council members shall be citizens of Kenya;

5. Definitions

Cabinet...means the cabinet of local government;

Central government...means the government of Kenya;

Civil servant...means women and men employed by the government of Kenya;

City council... means a city council as defined under the Local Government Act

Communities... mean the inhabitants (men, women, girls and boys) at the urban or rural grassroots;

Councils...mean bodies having legislative and executive powers of local governments;

District...means a district as currently set up or as may be set up under the recommendations of the Local Government Assembly;

Employees of councils...are men and women employed by councils under the terms set up by the Local Government Assembly;

Local electoral commission... means a commission set up to carry out free and fair elections of local councils;

Local government...means a government comprising the District Chairperson/Mayor, the cabinet and comprising elected members of council;

Local government act... means an act of parliament reflecting the principles of a local government system and setting up local governments and providing for their operations;

Local Government Assembly... means an Assembly set up under section ... of this constitution;

Member of parliament... means a member of the National Assembly of Kenya;

Municipal council...means a municipal council as defined under the Local Government Act

Officials of council... are elective offices that councils may designate to best act as checks and balances of the local government;

Taxes... mean monies to be levied by either central or local governments;

Town council... means a town council as defined under the Local Governments Act;

Youth... a Kenyan aged between 18 and 40