

(1)

THE POLITICS OF LOCAL GOVERNMENT;  
THE POLITICO- LEGAL ASPECTS OF  
THE LOCAL GOVERNMENT SYSTEM:  
THE CASE OF THE NAKURU MUNICIPALITY.

A DISSERTATION SUBMITTED IN  
PARTIAL FULFILLMENT OF THE  
LL.B. DEGREE, UNIVERSITY OF NAIROBI

BY

UNIVERSITY OF NAIROBI  
LIBRARY

J.K. KANDIE

NAIROBI

JUNE

1982

# C O N T E N T S

(i) TITLE PAGE

(ii) DEDICATION

(iii) ACKNOWLEDGEMENTS

<u>INTRODUCTION</u>	<u>PAGE</u>
3.1 HISTORICAL BACKGROUND .....	22
3.2 ACTIVITIES OF THE COUNCIL .....	23
(A) The Theory Of Local Government ..	1 ✓
(B) The Scope Of Local Government Law ..	3
(C) The Setting: Aims & Purpose .....	4
3.4 THE 1960 MAYORAL ELECTIONS .....	4 31
(D) (1) Terminology: What is Politics ..	5 34
3.5 A COMPARATIVE STUDY: THE CASE	

## CHAPTER ONE

3.6 RESULTS OF THE CASE STUDIES .....

## THE DEVELOPMENT OF THE LOCAL GOVERNMENT SYSTEM

### IN KENYA 1900 TO THE PRESENT

4.1 (A) THE COLONIAL ERA:	
4.2 THE NATIVE AREAS .....	7 40
I.I (B) THE NON-NATIVE AREAS .....	9 47

## CHAPTER TWO

### THE HISTORY OF THE LOCAL GOVERNMENT SYSTEM

#### IN NAKURU

2.1 (A) FROM TOWNSHIP TO MUNICIPALITY	
1900 to 1963 .....	14
2.1 (B) ACTIVITIES OF THE MUNICIPAL	
BOARD .....	16
2.1 (C) THE POLITICS OF COLONIALISM .	19

CHAPTER THREE DEDICATION

HISTORICAL DEVELOPMENT SYSTEM IN NAKURU:  
INTERVENTION 1963 TO THE PRESENT

3.1	HISTORICAL BACKGROUND .....	22
3.2	ACTIVITIES OF THE COUNCIL .....	23
+ 3.3	THE POLITICS OF INTERVENTION .....	26
	(BACKGROUND)	
3.4	THE 1980 MAYORAL ELECTIONS .....	31
3.4	(1) THE PRESENT STRUCTURE .....	34
3.5	A COMPARATIVE STUDY: THE CASE OF MOMBASA .....	35
3.6	RESULTS OF THE CASE STUDIES .....	37

CHAPTER FOUR

4.1	BACKGROUND: ABSTRACT	
4.2	A NEW THEORY OF LOCAL GOVERNMENT .....	40
4.3	CONCLUSION .....	47

ACKNOWLEDGEMENT

DEDICATION

TO MY PARENTS, FOR THEIR LOVE, this dissertation  
the help of my supervisor Mr. George Roberts cannot go  
**UNDERSTANDING AND DEDICATION THROUGH THE YEARS**  
unmentioned. My special thanks also go to Miss Betty Owsayo,  
Deputy Registrar **TO MR. ENOCH KARDIE WHOSE HELP** each of her time  
looking for materials and data, also the staff at the Council  
**AND INSPIRATION WILL ALWAYS BE**  
registry and all those who responded to my relentless  
questioning. My thanks also go to Miss Rose Cheaire,  
**REMEMBERED FONDLY**  
Grace Orange, Joyce Olale and Rose Ochieng for their  
efforts in ensuring that the manuscript was converted into  
the readable whole it is. All the mistakes be they of  
law or fact needless to say are all mine.

## INTRODUCTION

### (A) THE THEORY OF LOCAL GOVERNMENT

Local Government as a system of public administration can be studied from two basic view points, one approach concerns itself with the study of Local Government as a social science. (III)

This approach emphasizes the role of politics vis-a-vis social relations at the micro-political level. The second approach concerns itself with the legal aspects of the Local Government system, implicit in such analysis is a study of the legal framework and the operation of such rules at the micro-political level within the administrative machinery of the state.

In the mammoth task of compiling this dissertation

the help of my supervisor Mr. George Rukwaro cannot go

unmentioned. My special thanks also go to Miss Betty Omwenyo, Deputy Town Clerk Nakuru who spent so much of her time

looking for materials and data, also the staff at the Council registry and all those who responded to my relentless

questioning. My thanks also go to Miss Rose Chesire, Grace Orango, Joyce Olale and Rose Ochieng for their efforts in ensuring that the manuscript was converted into

the readable whole it is. All the mistakes be they of law or fact needless to say are all mine.

Traditionally, the Local Government arose out of the increasingly complex range of activities involved in providing essential services such as public health, water services, education and roads-such services that could not be effectively provided by the Central Government. This arose as a result of the Industrial revolution which led to Urbanization in England.

While this paper will not concern itself with a detailed study of the evolution of the Local Government system in England it is pertinent here to observe that the Local Government system had its inception in the England of the later half of the Nineteenth Century when the first modern system of Local Government arose (1)

Local Government therefore has as its first theoretical basis, the concept of utility which embodies the proposition that the system exists to run services for the benefit of the

## INTRODUCTION

### (A) THE THEORY OF LOCAL GOVERNMENT

Local Government as a system of public administration can be studied from two basic view points, one approach concerns ~~itself~~ with the study of Local Government as a social science. This approach emphasizes the role of politics vis-a-vis social relations at the micro-political level. The second approach concerns itself with the legal aspects of the Local Government system, implicit in such analysis is a study of the legal framework and the operation of such rules at the micro-political level within the administrative machinery of the state.

In this paper the two view points above will be adopted as paradigms. There will be however a higher level of analysis of the legal rules based on the various phenomena that pervade the Local Government system. This paper will also examine albeit, schematically, the social science aspects of Local Government.

Local Government as a legal <sup>entity</sup> entry is conceptualized as a body corporate established by law whose range and nature of activity and scope of competence will be provided for in a statute. The system envisages a micro-political unit within the state which within its limits, has autonomy over the range of activities. Essentially, the system as of necessity is a convenient as well as useful organ in the process of public administration.

Traditionally, the Local Government arose out of the increasingly complex range of activities involved in providing essential services such as public health, water services, education and roads—such services that <sup>could</sup> could not be effectively provided by the Central Government. This arose as a result of the Industrial revolution which led to Urbanization in England.

While this paper will not concern <sup>itself</sup> itself with a detailed study of the evolution of the Local Government system in England, it is pertinent here to observe that the Local Government system had its inception in the England of the later half of the Nineteenth Century when the first modern system of Local Government arose (1)

Local Government therefore has as its first theoretical basis, the concept of utility which embodies the preposition that the system exists to run services for the benefit of the Community.

By dint of necessity, it was necessary therefore to invest such a body with legal authority. As can be apprehended such authorities have potential powers which if exercised on a purely informal basis would create problems in the effective planning of the services. The idea of constructing these micro-political units as body corporates therefore became necessary it is obvious that if such authorities were not constituted on a sound legal basis there would be gross misuse of power and there would also be the added danger that they might not carry out the outies unless enjoined by law.

(2)

A leading authority has defined a corporation as:

" A collection of many individuals united into one body, under a special denomination, having perpetual succession, under an artificial form, and vested by the policy of law, with the capacity of acting in several respects, as an individual particularly in taking and granting property, by contracting obligations, of suing and being sued".

The system therefore depends on the existence of a body of persons invested under the Corporate name with ngut and obligations: This however may not actually resolve the problem of the legal nature of the Corporation vis-a-vis the idea of a political unit. Weber<sup>(3)</sup> has argued that:

"It is not possible to define a political Corporate group, including the state in terms of the end to which its corporate action is devoted"

Implicit in this argument is the realization that a political body such as a local authority cannot merely without more be described as a Corporation. The political aspects of the system clearly militate against a purely legalistic conceptualization of the Local Government system. The observation above raises an important aspect which fits in strugly with the thematic framework of this paper.

Local Government as a social science envisages a system which exists to resolve certain conflicts at the micro-political level. Burke<sup>(4)</sup> has argued forcefully that the Local Government system should ensure the security of the members of that particular area, Secondly that it should exist to resolve inter-personal and inter-group differences, and thirdly, to

"Equip the members of the locality with sufficient knowledge to appreciate the altered conditions requiring new Institutionalized forms of behaviour and belief". Thus stated the Local Government system exist solely as an institution to promote harmony in society. This theory recognized that there are conflicts that would inevitably arise and the necessity of having such Institutions becomes crucial. There is much meant in the argument as stated. Since it appreciates the necessity of an arbiter of conflicts inherent in society.

(5)

John Stuart Mill argues that Local Government is a system established as an arena for the development of political skills and Maturity. This theory was quite prevalent in the formative years of the Local Government system. It is therefore at best an antiquated theory which appeals least to the contemporary Local Government theories. Although it is possible to argue that it has indeed been a launching pad for politicians into the wider field of National politics, This it is submitted is not a primary purpose of the system. Local Government has always been hicked with integrative aspects of National administration.

(B) THE SCOPE OF LOCAL GOVERNMENT LAW:

Having looked at the theoretical basis of Local Government in the preceding section, it is necessary to define the legal limits of the Local Government and the framework under which it operates. In Kenya, the Local Government Act Cap 265 Lay down the powers and duties of Local Government Authorities. These include inter alia, the power to enter into Contracts<sup>(7)</sup> to acquire land,<sup>(8)</sup> to make and guarantee Loans<sup>(9)</sup> to make grants to hospitals, scientific research and chantaible organizations,<sup>(10)</sup> to impose fees and charges<sup>(11)</sup> and a residual power to make bye Laws:

"As are necessary or desirable for the maintenance of the health, I safety and well being of the area and any part thereof... and for the prevention and suppression of nuisance therein"<sup>(12)</sup>

It is clear from a cursory glance of the Act that Local authorities have immense powers conferred on their by statute. In the ideal situation, Local authorities which have control of it frances have immense potential powers so much so that they would require legal constraints in order that they do not exceed their powers. The Local Government Act seeks to provide these Constraints. At first glance, it would appear that the legal Constraints would be anathema to the theoretical framework, The reality of the practise has however shown that infact legal constraints are not the only means financial constraints have also

....4.....

/roo



been crucial in militating against the autonomy of the Local authorities.

The Central Government has exercised rigorous Controls over the activities of the Local authorities. The Minister for Local Government has vast residual powers. This aspect has been ably illustrated by Ochieng' Okore.<sup>(13)</sup> On the basis of the finding he has correctly concluded that Local authorities have only potential powers which are exercised only subject to the approval of the Minister. This clearly operates against the theoretical autonomy of the Local authorities. A detailed study of this contracts is beyond the scope of this paper. Some of these controls will emerge in this paper in the area of the case study.

(C) THE SETTING; AIMS AND PURPOSE OF THE CASE STUDY

The case study method is an important concept in the study of public administration. Infact the whole scope of social science this paper will attempt to record some of the trends that have run through this branch of the Law. We have argued above that the theoretical basis of Local Government is not borne out in the actual practice. This paper is therefore an excursion in empiricism, it will seek to shown factually and concretely that there is a need for a re-examination of the theoretical basis. Local Government by its very nature is heavily inundated by politics. This case study is a stredy of the dynamics of Local Government and intends to establish that politics has a pervasive influence in this sphere.

Nakuru has been and remains as an important town in the politics of independent Kenya: Conspiracies have been hatched there, radicals have fermented conlicts there, and in a nutshell the town epitomizes the struggles that have prevaded Kenya history since independence. Even before independence. Nakuru as a bastion of settler economy occupied the centre stage of the politics of colonialism. A study of the Local Government system in Nakuru will therefore illustrate the pervasive influence of politics in the legal institutions of society while it is possible to argue that Nakuru being a hotbed of political intrigue would hardly be useful criterion in measing the pulse of Kenyan Laws and politics and the result therefore would not tell us much of the achial system, it is submitted that though this criticism is valid, the choice of Nakuru is appropuate because it will present the conflict starkey. In any case, Nakuru is a far representative

of the municipalities in Kenya. A comparative case study in chapter three with the Mombasa, Municipal Council will illustrate this amply. The choice of Nakuru is therefore deliberate.

(D) TERMINOLOGY: WHAT IS POLITICS?

Since this paper has chosen to study the politics of Local Government it is necessary to define the term politics and its influence on a system of Law. The terminology adopted will be used in the case study:

As Samoff states, (14) there has been a widespread search for precision as to the meaning of politics, that there has been little agreement among students of politics as to its precise meaning. This statement has the ring of truth in it "politics" has been used in several senses and means different things to social scientists he observes however that there has been an "Orchestrated but cacophonous terminological debate". As this paper is not an essay on methodology, the present does not wish to add another voice to the din.

Politics has been defined as an "art of Government and that it covers the entire field of life and behaviour: the forces at work which form the anatomy and philosophy of states (15). Samoff (16) argues that for the purposes of research, it is helpful to consider politics as a process "concerned with the distribution of resources, with the selection of one set of values or objectives over another" This conception emphasizes the machinery of politics in the important process of rational decision making and the allocation of scarce resources.

It has also been argued in a colloquial sense, that politics connotes some sinister design (17).

"It implies a milieu hospitable to scheming and manipulation and invites action and speech less intellectually honest and high-minded than are common in purely personal relations"

To the ordinary man in Kenya, this is the most commonly perceived notion of politics particularly if considered against the backdrop of the exhortation by the leadership cadres for people to "forget politics and join hands in the development of the Nation".

This paper will adopt samoff's approach as a basic definition of politics. The commorsensical meaning stated above will also be used. In order to bring out the dynamed of Local Government in Nakuru clearly, the definations above may not be exhaustive. Suffice it to say that for the purposes of the paper it will be sufficient. A study of politics will therefore, not be a digression from the theme of the paper. It will be of great use in establishing the trends of Local Government Law.

Having established the premises on which the paper will operate, this paper will now tackle the historical background of the Local Government system in Kenya Generally in chapter two the development of the Local Government system in Nakuru in the colonial era will be examined. The third chapter which is the apex of this paper will concern itself with Local Governmer in Nakuru after independence. The results of the case study will also be enumerated. Chapter four will concern thelf with a dissection of the results of the case study. A comparison will then be drawn within the general framewok of the Law. On the basis of this result the paper will attempt to lay down a theory of Local Government which will not only be in accord with the actual practice of Local Government but will form a skeleton for the re-apporasal of the Local Government theories.

THE DEVELOPMENT OF THE LOCAL GOVERNMENT  
SYSTEM IN KENYA: 1900 TO THE PRESENT.

In outlining the development of Local Government Law and the system in Kenya, the approach which will be used will correspond to the historical epochs that Kenya has undergone in its political and constitutional development. Although it has been established as a matter of course that a historical study of the institutions imported from England usually proceeds from the study of those institutions as they existed in England, this paper will not adopt this hallowed approach for the chief reason and as will be amply illustrated, that the study will not necessarily illuminate the particular aspects of that institution changed socio-economic and political conditions necessitates a new approach to these conditions. In the event that in fact the institutions reflect faithfully those that exist in England then no harm will be done by studying them in the Kenyan context only. Reference to the system in England will therefore be resorted to only for the purposes of comparative analysis.

The history will thus be divided into two distinct periods, the colonial era and the independence era. The first era will cover the years 1900 - to 1963 under this era the guiding policy was that of separate development. Local Government will thus be divided into two, in the Native areas and in the "Non Native areas" the second era will cover the integration of the Local Government system necessitated by the change of status brought about by the achievement of political independence of Kenya in 1963. The historical background will not merely be a chronological account of events that occurred rather, it will involve an examination of the underlying conflicts and compromises that pervaded all spheres of constitutional development. It will be an attempt to put the legal justifications of the system in its historical perspectives.

1.1

THE COLONIAL ERA

1.1(A)

THE NATIVE AREAS

As the guiding principle in the Colonial era was the policy of separate development (apartheid). Local Government developed along racial lines. The Native areas comprised those areas that were inhabited by Africans "(Natives)". Before concrete policies were laid out it was thought that Africans with their archaic institutions should best be left alone. Due to the pressure of settlement by Europeans and Asiatics, it became virtually impossible to maintain the African institutions in isolation. Once this was realized, there were some attempts to introduce some forms of administration. The need was further felt in the 1925 after the emergence of an African elite who were beginning to agitate a convenient 'turnstile' to channel this agitation was seen to exist in the institution of Local Government which would nurture diffuse traditional tribal nationalism and prevent the emergence of Nationalism in Kenya. This rendered obsolete the reliance on headmen and chiefs as basic units of Control of the Natives.

Local Government can be traced to the enactment of the Native Authority (amendment) ordinance (1). This amended the 1912 Native authority ordinance which gave traditional Councils of elders minor executive powers. There had been attempts earlier in 1917 to establish local advisory Councils in Nyeri - A fact which Omusule Monone (2) uses to dispute 1924 as the starting point of local Government as a legal unit. It is submitted however, that for the purpose of conceptualizing Local Government as a legal entity 1924 will be taken as the starting point from the Central Government. The LNCS did not fulfil the initial purpose of acting as a "turnstile" of political agitation since the LNCS were subservient to the Central Government through the agency of the District Commissioner. The elite became disillusioned with the LNCS.

In 1948, with the coming of a seemingly more "liberal" labour Government in Britain a new Local Government Bill was drafted. It was the first attempt to provide a sound legal basis for the Local Government

system. The Ordinance became Law in 1950 (8) under the Ordinance, the LNC's were renamed African District Councils (ADCS) with wider powers. Under the Ordinance, it was thought that Local Government must assume a more effective role. The trend is captured by a despatch: (10)

"Local Government has an equally important part to play in the sphere of political development ... An efficient and democratic system of Local Government is in fact essential to the healthy political development of the African territories. It is the foundation on which their political future must be built"

In this respect, Local Government as a training ground for Africans to develop some political skills. In an interesting application of John Stuart Mill's theory already discussed Phillip Mitchell recounts an episode when Kenyatta came back from Britain he advised him to make a start in Local Government after Kenyatta had expressed his desire to join politics (11).

In 1953 the ADCS were transferred to the Office of the Commissioner for Local Government from the Office of the Chief Native Commissioner as a salutary gesture. This had the effect of putting under the same administration Local Government in the Native areas and in the European Areas. This was the last major reform before independence in 1963. Throughout this period Local Government in the Native areas as a legal entity was more apparent than real. By the fact that it existed merely as a "safety valve" and as a political arena" to thwart nationalistic tendencies effectively militated against this. It is possible to conclude therefore that Local Government in the colonial era was characterized by the contradictions inherent in using change to effect change in that because of the agitations of the Africans (changed conditions) the Local Government was reformed to in a ad hoc manner (the change) to contain these conditions rather than an exhaustive and complete reform based on the actual concept of Local Government.

1.1(B) THE NON NATIVE AREAS

The Non-Native areas (Europeans and Asiatics) comprised those areas that had been settled in by the Europeans. Local Government can be traced to the enactment of the Local Government (District Councils) ordinance of 1928 (12) and the Local Government (Municipalities) ordinance 1928 (13) Hitherto,

the only forms of Local Government were the settler advisory committees and the Road Boards which had been established in the first half of the 1920s.

In 1926 Sir Edward Grigg, the Governor appointed a commission led by Feetham (The Feetham commission) which was to "make recommendations as to the establishment and extension of Local Government" in the settled areas and the Municipalities. In 1903 only Nairobi and Mombasa had achieved the status of townships. Apart from these two towns there appears to have been no laid down regime for the Local Government system. The Feetham Commission reported five months later and the report was labelled rather grandiosely. "The Local Government Bible for Kenya" (14). The Commission's recommendations were adopted in the two legislations already mentioned above.

Under the Municipalities ordinance, six Municipalities were created; Nairobi, Mombasa, Nakuru, Kisumu, Eldoret and Kitale. These towns had municipal boards comprised of elected members usually chaired by the District Commissioner. Apart from the maintenance of the police force and the provision of education which were in the preserve of the Central Government, these Board had wide powers in the other fields covered by the traditional Local Government system in England. Under the District Councils ordinance, District Councils were established in Naivasha, Nakuru, Nyeri, Vasen Gishu, Trans Nzoia, Londiani-Kisumu and Nairobi these were established periodically such that by 1947 District Concils had been established in vitually all the areas that had been settled in by the Europeans.

In 1952, the Local Government (County Councils) ordinance 15 was enacted. This legislation was intended to bring in line with the system in England the County Councils section 3 of the ordinance provided that a Distric council could submit a scheme of "County administration" which was to involve the division of the district into Townships, Urban and Rural Districts 16 in this ordinance we see the beginnings of the contemporary system of Local Government.

Although it appears that there were greate attempts to put Local Government on a sound legal basis. In the Non-Native areas and that consequatly Local authorities would be able to function admirably. The experience of the Local authorities was in fact a sad out. The Councils refused to rate themselves and refused to adopt major responsibilities many Parker 17

/roo

report that in the average Local Authority 97.14% of the total revenue came from Government grants whereas the comparable figure in the African Councils only 7% of Revenue was derived from Government Grants. The present writer sees no reason to doubt this not immodest estimation. In the words of the Commissioner. For Local Government while referring to European District Councils:

"with regret, they could only be regarded as little more than agents for the expenditure of Government funds on the construction and maintenance of District Roads "18

ironically the Local Government system on the European areas was intended to be a showpiece to the Africans and to provide a lead for them to emulate one statement in 1949 puts it thus: 19

"In Local Government we have a first-class opportunity to secure acceptance of our leadership which should be aimed at showing the Africans that our control of affairs is to his best (Sici)

In the light of the experience of the Local authorities generally in the European areas, one can conclude that although a sound legal superstructure was established, in the Non-Native areas, it failed to provide an efficient and workable system of Local Governance. The importance of this region in this regard therefore is rendered practically useless. However, the importance of this region lies in the fact that the background of the future Law on this branch was laid down. These trends will be illustrated in the next two chapters when a study of Local Government and its historical development in Nakuru will be undertaken. The themes that have run through this chapter albeit schematically, will then be expressed concretely within the context of the case study.

TRANSITION: INDEPENDENCE TO THE  
PRESENT DAY 1963 - 1982.

Before we examine the changes that took place after independence in 1963 it is necessary to summarize the structure of Local Government existing by that time:

- (i) Municipalities comprised six of the larger towns - had the greatest autonomy.
- (ii) County Councils in the former settled areas broken down to Urban and rural District Councils.

/roo

.....13.....



- (iii) African District Councils: Thirty-Three in number covered the rest of Kenya outside the Municipalities, the County Councils and townships.
- (iv) Six grade "A" townships and a large number of grade "B" townships with varying degrees of autonomy - usually run by the District Commissioner.

This, there were four streams of Local Government. The first result of the independent status of the County was the fact that all Laws had to be integrated to ~~align~~ with the basic philosophy of equality enshrined in the constitution. It was at once obvious that the policy of separate development had to be scrapped.

To this end, the Local Government Regulations were enacted in 1963. This piece of legislation imported in toto the concepts of Local Government from England. This legislation superseded all the ordinances that had existed before independence. Under the Regulations which were finally enacted as the Local Government Act 1977 chapter 265 of the Laws of Kenya, the two tier system of Local Government was introduced, comprising as the first tier the Municipalities and County Councils. The second tier comprises Urban, area and Local Councils. The Councils were to be composed of elected Councillors (on a common roll) who were then to elect in the case of Municipalities the mayor and in the case of the other Local authorities chairmen.

From that time upto the present time the basic structure has remained the same. The experience of the Local authorities has continued to be a sad one; charged with a multitude of duties and responsibilities, inundated with financial problem and crippled by experienced leadership on all fronts Local Government authorities are perpetually on the brink of total collapse. The various measures that the Central Government has adopted to buttress this ~~edifice~~ edifice have seemingly foundered on the rocks. The Graduated personal tax was introduced to ~~boost~~ the revenue did not help matters much as the councils were unable to collect them. The result has been that Local Government Authorities have had to be dissolved and run directly by a commission appointed by the Minister for Local Government under the Local Government act 20.

/roo

.....14...

In 1969 the Government enacted the Transfer of functions Act. This Act was a result of the 1966 Hardacre Commission which had been appointed to study ways and means of strengthening the Local Government system the Act 21 removed some functions from Local authorities which rendered them virtually powerless. Although the result was that the burden on Local authority was eased somewhat, the Local authorities cannot be said to be running smoothly. This fact will be indicated elsewhere in this paper in the study to be undertaken.

During this period therefore the system is established on a sound legal basis. The Central Government has increasingly exerted control of the Local authorities through various measures which will be highlighted in chapter four of this paper. Having established the development of the system in Kenya Generally we will now concern ourselves with the case study. In this respect the theoretical constructs that have been discussed earlier in the paper will then be put to test; the case study raises a Central question which this paper will attempt to answer. The question is whether the actual practical of Local Government justifies the theoretical as well as the legal constructs - in effect whether it is necessary to clothe Local authorities with qualities and powers which in fact are illusory. A side issue to be raised also is whether we should try and adopt a system of Local Government which is in line with the theoretical framework established or whether there should be a re-appraisal of these theories in order that a more realistic formulation may emerge. This is the question of the moment.

THE HISTORY OF THE LOCAL  
GOVERNMENT SYSTEM IN NAKURU

2.1 Like the history of other towns in Kenya, Nakuru's history is closely linked with the construction and development of the Uganda Railway. More or less, the History of the local government system follows the development launched by the building of the railway. In tracing the history of the local government system in Nakuru this paper intends to adopt the scheme mentioned in the previous chapter, the history will therefore necessarily conform to the constitutional epochs in the history of Kenya. This will cover the development from 1900 to 1963 and 1963 to the present date.

2.1(A)

FROM TOWNSHIP TO MUNICIPALITY  
1904: TO 1963:

for the purposes of this paper the history of Nakuru can be traced back to 1904. At this time Nakuru which derives from the Maasai name meaning "the place of the winds" was composed of a few shops which had been opened by some "Dukawallahs" at the advent of the railway. At about this time also European settlers at the active encouragement of Sir Charles Eliot had begun establishing farms in and around Nakuru. This necessitated the establishment of towns where the settlers would acquire provisions and also a place to sell their produce; Lord Delamare had settled at Njoro, eleven kilometres due south of Nakuru at Roysambu to the east of the present position of Nakuru. Within the township a prominent "dukawallah", Ibrahim Karumbux, established his business - he was later to play a role in the local government of the town.

As a result of this, a proclamation was made on the twenty-eighth, February, 1904 by Sir Charles Eliot the commissioner of the then East African Protectorate declaring the township of Nakuru: "Within a circle having radius of one mile from the main entrance of the Railway Station at the centre". On third February, 1913 by a resending proclamation<sup>2</sup>, the boundaries of the township were enlarged using the same geometric method. This remained the case upto 1929 when the town was given a municipal board to run its affairs under the 1928 ordinance.

From 1904 to 1929 therefore Nakuru retained the status of a township. There is scanty material showing the functions of the township, in fact there is no evidence whatsoever whether a township board or council was ever elected or appointed. 3 The reasons for this state of affairs are not hard to pinpoint. It will be remembered that during this period there was little settlement. It is also apparent that any institutionalized forms of local government were not yet established. Nottingham 4 tells us that the earliest institution at this stage were the committees that had been organized in 1919 to master a local defence force and also in 1920 when Road Boards were established under the public roads and access ordinance. These countless were ad hoc with no statutory or executive powers. 5 In the light of this therefore, one can assume that the status conferred upon Nakuru was that of being a township Simpliciter without any institutions or functions specifically stipulated.

In 1929 by a proclamation Nakuru township was reconstructed as a municipal board. 6 Under the Local Government (municipalities) ordinance of 1928. The effect of the ordinance was to introduce a modern system of local government in the European settled areas as already noted in chapter one of this paper. The proclamation named eleven people into the board. Which consisted of eight Europeans and two Asians the Board was chaired by the Senior Commissioner. From 1929 until 1952 Nakuru remained under a municipal board.

With the constitution as a municipal board in that year, the local government system was now on a sounder footing and more able to discharge its duties as stipulated under the ordinance. Before we examine firstly the activities carried on by the Board and secondly the politics of colonialism as from 1929 to 1952 we will first examine the constitution of the municipal board from its inception upto 1952.

We have noted above that the Board consisted of nine Europeans and two Asians. However later in the year, two Europeans and the only two Asians resigned from the Board and in their place four Europeans were elected. The first elections were held on 4th July, 1929. In these election 6 Europeans were elected. Four other Europeans were nominated, by a further declaration 7 The membership of the Europeans was further enlarged.

By 1942 <sup>3</sup> Indians had been nominated into the board. In March 1943 the governor directed that of these three Indians nominated members two would be elected - election were held on 17th July, 1942 whence Dr. N.M. Shah and Umardin Kariubux were duly elected. Upto 1952 there was no African in the board although the prodamation already stated above had provided for two nominated places. In 1952 the African nominated seats were increased by one nominated member. Thus, by 1952 the municipal board was composed of Europeans - Six elected members two official members; one ~~Hudson~~ member for Nakuru county council.

Indian - Three elected members, one nominated member  
African - Three nominated members.

2.1(B)

THE ACTIVITIES OF THE MUNICIPAL BOARD

The municipal board of Nakuru was established over a predomintely European area it will therefore by only obvious to assume that the mayor thrust in its activities was towards the provision of essential services to the Europeans. In considering the activities, thus paper will summarize them into various sub headings: Public work, Housing and welfare and other miscellenous activities. The racide nature of these activities will then become clear.

2.1(B)(1)

PUBLIC WORKS

Probably one of the most important - and difficult problems which occupied the municipal board and infact the municipal council of Nakuru to the present date is that of water supply.

At the sixth meeting the Municipal Beard held on 11th December, 1929 it was resolved that the water supply which was previously under the public works department be taken over by the municipal board. On 27th October 1937 at the ninety - sixth meeting of the municipal Board a full water sedimentation and filtration scheme was adopted Mr. O. Fayje was appointed as clerk of the works for this project. The estimated cost for this project was £8,200. The scheme was duly completed early in 1941.

However, at this juncture, it became obvious that the water supply in the town would not be adequate for the fast-expanding population of the town. A consultant was appointed to study varuous projects to provide alternative water supply sources to the town. After this study, it was recommended that the water should be piped in for the malewad river some fifty one kilometres due East of Nakuru. The priject was initiated in 1949 as a long term project. It suffered however from lack of labour and the Mau-Mau insurgents but was eventually completed in 1956 at a total cost of £334,000.

.... /4

The scheme increased the water supply in such a way that it was considered adequate for the next twenty years.

In 1953 tenders were called for the construction of a sewerage system this system was intended to serve the greater part of the town. However it mainly developed the Northern part of the town, and the main commercial centre which was the main European centre the scheme was completed in 1956 again at a total cost of £334.00.

In 1956 a street Lighting project was initiated which was finally completed in the same year at a cost of £6,000. In 1957 in a bid to improve the road network in the town nearly eleven kilometers of road were built to tarmacadam standard again these roads linked the predominately European areas.

From the above, one can argue that by 1963 therefore, the municipal Board of Nakuru (later the Municipal Council of Nakuru as for 1952) led in the sphere of public works achieved some remarkable progress. The only shortcoming was that the development was focused on the European areas. The area of Housing and welfare will illustrate this aspect more clearly.

2.1(B)(ii)

#### WELFARE AND HOUSING

The development in this field was much slower than in the case of public works. The reasons for this was probably because the people who most needed these services were the African, ~~and~~ and to some smaller extent Asians. This<sup>is</sup> because these committees formed the bulk of the labour force and could not afford to build houses of their own. Whereas on the other hand, the Europeans were better placed to provide for themselves since they controlled the means of production. This paper intends to place particular emphasis on African housing because it is believed that the assertion above will be borne out more clearly.

There is little evidence to show when the Board or the initiated housing projects for the Africans. It is therefore tentatively suggested that like other towns Africans could have moved into the town and settled in areas which the board allowed them to and built slum tenements. This suggestion is supported by the fact that by 1953 there were plans being made to demolish slums which had sprung up at Bondeni and Kampi Somali 10

The earliest recorded projects involving housing for Africans was in 1947 when a temporary African location was set up. Here temporary Pise deterre. rooms were constructed to accommodate three hundred and twenty four people. Since there were single rooms its obvious that they were not family houses as such but in the nature of labour camps.

The next project recorded was in 1953 when a housing scheme comprising 312 room was completed this time there was an improvement in that each unit consisted of three "bed-spaces" (sic) a fireplace and cooking facilities. Toilets and <sup>Sanitary</sup> ~~Sanitary~~ facilities were of course comunal.

In 1956 22 two - roomed houses were constructed for the African and in the same year also a further 272 one roomed houses were completed in the African location. In 1958 a further 448 rooms were constructed for the African and a ~~tenant~~ - purchase housing scheme initiated both at the total cost of £54,563. In 1959 an African Housing scheme comprising 64 single room houses and 200 two - roomed houses was completed at a cost of £56,775. In 1960 a 7 Unit African tenant purchase scheme was initiated by the council. In 1961 a further scheme comprising 432 rooms was completed at a cost of £37,000. Finally in 1962 an African Housing Scheme comprising 1,056 rooms at a cost of £93,000 was completed.

Several condition can be drawn for the above developments: Firstly in <sup>conclusion</sup> ~~quatitative~~ terms, there is no doubt that the Board and later on the council spent a considerable sum of money on housing for africanas - approximately £400,000 upto 1956 the census in the town established that there were 15,000 Africans in the town or roughly 70% of the total population of the town which stood at 24,500. From the figures and could gather roughly about £402,000 was spent for housing in the Asian and European areas. Upto 1962 thus half the expenditure was on housing for Africans. These figures appear startling 12 Because they would infact imply that the council contrary to the usual trad in coloniation was more concerned with the welfare of the Africans. The figures are given by a European Town Clerk 13 and it would appear in order to take the statistics with a pinch of salt - for whatever they are worth. In real terms the figure is consonant with actual practice in that 50% was spent on 30% of the population.

As regards welfare, the council established an African community centre at Bondeni in 1951. This centre comprised a large hall for meetings, an adminstrative block, recreation block, information room and a library. In 1942 a Native Civil Hospital was completed by the council and a maternity wing established in 1942 and 1951.

According to the report of the Housing Affairs Committee, 14 All the projects in the African areas were self -financing through the sale of beer in the council beer halls and supplemented by grants from the government. Although there does not appear to be any mention of taxation of any form it is fair to asume that there was a tax levied on the African resident within the municipality as was the practice in all other areas of the country.

The observation by the committee therefore that the projects were self financing appears to reflect the fact because the revenue collected from taxes and house rent were enormous considering the size of the African population and the quality of the housing and sanitary facilities.

Despite all this however, and as already alluded to, the problem of proliferation of slums in the African areas was never arrested. In 1953 and 1958 various demolitions were carried out at Bondessa and the present day Kampu Somali which to date constitute the slum areas of Nakuru. It is therefore correct to conclude that the present state of affair was due to this colonial legacy which still permeates local government authorities in Nakuru and other local authorities in Kenya.

2.1(B)(iii) MISCELLANEOUS: HEALTH, EDUCATION  
AND SOCIAL SERVICES

It is in this area that the emphasis on services to Europeans comes out very clearly. By 1952 the council had established a modern Hospital for the Europeans although earlier in 1942 an African civil Hospital had been built.

In the sphere of education by 1963 there was eleven primary schools within the municipality in addition also, there were nursery schools established by the municipality, to cater for the Europeans, Asians and Africans separately. It is pertinent at this stage to observe that Education was not run by the municipality until 1952 when the council also participated actively in the establishment of the African stadium, Kamkunji stadium (which was then called the African Stadium) and a motor racing track near the lake. The council also initiated the lake Nakuru Royal Park in 1955. In 1955 also saw the adoption of the first complete layout plan of the town. Based on this plan the commercial, industrial and residential areas were delimited. By 1958 a substantial number of the plots had been developed. Private plots were developed and a Bus park and municipal market were completed in 1961 at a cost of £28,000.

2.1(C) THE POLITICS OF COLONIALISM:  
A SURVEY OF THE STRUCTURE,  
AIMS, POLICIES AND DECISION  
MAKING: 1929 TO 1963.

This period covers the municipality through two stages firstly as a municipal Board from 1929 to 1952 and secondly as a municipal council from 1952 to 1962.

The period 1929 to 1952 was one which the municipality was under the control of the District administration. The chairman of the Board was invariably also the District commissioner who held the position as



an official member. Due to this fact, it would seem as foregone conclusion therefore, that the Board was nothing more than an extension of the usual government administration. Infact the subordination of the board to the District administration was all but complete.

We have noted down elsewhere in this paper that the policies which were being carried out at this time were based on racial considerations put in the context of Nakuru this policy is borne out very clearly. Nakuru was seen as the capital of the white highlands and the development of the town therefore was a conscions reaction to this political fact. To illustrate this further one need only glance at the composition of the Board over the years upto 1952.

In 1929 the Board was under the chairmanship of Mr. Crewe - Read who was also the District commissioner. The Deputy was also a European. In 1933 to 1934 Mr Couldrey was the chairman. He was also chairman in 1937, to 1938, and 1941 to 1942 he also acted as deputy chairman in 1930, and 1939. Mr Griffiths was chairman in 1935 and 1940 and also Deputy chairman in 1934, 1938 and 1941. This shows that, the position of chairmen usually alternated between the same people infact the same pattern is repeated over the years upto 1952. 15

The trend above suggests that there was continuity in the policies of the Board and one can conclude therefore, that the Board was generally stable. It is also obvious, that in all these years the leaders were of course Europeans. The reason given for this stability was because:

" All the communities worked together in harmony within the council chambers and outside" 16.

This statement tends to assume that there was infact racial harmony within the municipality. To that extent, the statement is not entirely correct. In 1929 shortly after the inception of the Board the two nominated Asian members Mr Ibrahim Karimbux and Dr N.M. Shah resigned almost immediately. Although the reasons are not given one can visualize some friction cropping up between them and the overwhelming majority of the European members.

In relation to racial relationship with Africa the statement above could not have been more incorrect. It was only after 1947 that an African Advisory council was set up alongside the Board that there affairs were finally considered. By 1952 there were only two nominated places for the Africans in the provision of services one also notices a bias against the Africans - the question of harmony among the communities therefore does not arise. 17

From 1952 onwards with the conversion of the Board to a council, there was a more to involve the Africans into the activities of the council; In that year the Africans were added

one more nominated seat to make a total of three. Infact there was increased liberalization in the representation. In 1960 the first Asian Deputy Chairman was elected. In 1961 we find the first African elected, as Deputy Chairman. All these changes were as a result of political expediency; with the advent of independence struggles there was no other direction the development could take. The original ideas of developing Nakuru as an encluse of European rule in the "White Highlands was abandoned. As early as 1949 the election union had chronicled that:

"(We) must state positively and unequivocally that our first objective is the achievement of the greatest possible degree of local Government autonomy in the non-Native areas under European European Leadership" 18

along the same view it was also claimed that:

" Through local government lies the immediately available channel for the control of our affairs" 19.

These statements show that the Europeans were first and foremost motivated by a desire to create some areas exclusively reserved for themselves. To some extent, the Nakuru municipality served the purpose admirably upto the independence era. The initial hopes and desires were however crushed beneath the revolutionary fervour that had gripped the county and which they could not control. At this juncture, this paper will now examine the development of the system in the independence era.

3.1

HISTORICAL DEVELOPMENT OF  
THE LOCAL GOVERNMENT SYSTEM  
IN NAKURU: THE POST INDEPENDENCE  
ERA 1963 TO THE PRESENT DAY

As has already been stated in the previous chapter, the process of reform of local government involved a smooth transition based on the institutional framework which had already been established under colonial rule. Subject to a few radical changes occasioned by the change in the constitutional structure after independence, it can be stated that the history of Nakuru in the local government sphere conformed to the general framework.

The background to the changed position was reflected in a sessional paper published in 1961<sup>1</sup> which sought to reconstitute the local authorities. The paper was prepared in response to the Kenyan constitutional conference of 1960 whose stated aims were:

- "(a) To build a nation based on parliamentary institutions;  
and
- (b) To achieve a general acceptance by all of the rights of each community to remain in Kenya and play a part in public life<sup>2</sup>

In order to fulfil these aims it was recommended that there should be one electoral roll and that there would be no change in the "present law regarding qualifications of candidates, except that any racial element is omitted"<sup>3</sup> This, therefore, apart from the racial composition of the council the basic structure of the municipality in Nakuru was maintained.

The same sessional paper had also recommended that there should be one local government ordinance to "establish local authorities and to define their powers and duties".<sup>4</sup> It was towards this end that the Local Government regulations were published in 1963. The regulations were embodied in the Local Government Act 1977 (chapter 265 Laws of Kenya) These local Government Act remains as the consolidative ordinance to the present date. As indicated earlier the regulations were adopted in England and infact had been adopted substantially by th 1952 local government ordinance one can therefore conclude that far from altering the Local Government system, the new regulations ensured once and for all that there would be a unified system of Local Government based on English precepts and conventions<sup>5</sup> and this continuity was to be preserved the only changes therefore were in an extended range of activities, a majority of black faces

within the council and upto 1966 more powers which were cut down by the transfer of functions Act 1969 already referred to in chapter one.

On this basis, the development of the local government system after independence will involve at best a description of the activities carried out by the council upto the present date 6 based on the framework adopted in the previous chapter. ~~Share~~ 7 puts it thus:

"In spite of the discontinuity in power relationships imposed by independence, the high level of services and regulatory activities that had been established in the colonial period when Africans took over Urban Council were maintained"

This statement, it is submitted supports the proposition that the change in constitutional station was only reflected not on an institutional and pragmatic attempt to develop concepts and policies that would reflect a true defacto change put a purely superficial one of replacing white faces with black faces. That reform was clearly necessary is an issue which will be dealt with in the last chapter of this paper.

3:2

DEVELOPMENT PROJECTS AND  
ACTIVITIES OF THE MUNICIPAL  
COUNCIL

Having inherited a fairly 'healthy' local Government system. The problem faced by the municipal council in the period immediately after the independence were minimal. The thrust of development was therefore increasing the range of activities carried out by the council before independence, initiating new projects as well as developing those already existing and more importantly, ensuring that the pattern of development was integrated into the general structure of equality between the races necessitated by the new constitutional and political superstructure.

(A)

FINANCE

Before independence, the bulk of the revenue available to the municipal council was mainly through grants 8. Other sources of revenue included taxation, school fees and cesses and in 1951 a valuation role was drawn up which raised the unimproved site value of the town to £1,300,000. At independence problems arose as to what were to constitute the principle sources of Local Government revenue. When it was realised that the local authorities were incurring much expenditure in providing for basic services such as schools and hospitals. Nakuru was no exception to this particular problem.

...../3

As a measure to streamline this, the government introduced the Graduated personal Tax as the major source of revenue for the local authorities which was retroactively validated by the Graduated personal Tax Act of 1966. This however did not help much as most of the Local authorities faced with a shortage of staff, were unable to collect this tax. In its plan of action 9 the Government intended to use the District Commissioner to collect this tax. This will however be unsuccessful and led to the eventual scrapping of the tax.

The present position therefore is that Local authorities depend on a multitude of taxes which do not yield much in terms of revenue. This includes tolls on markets, stalls Licenses and services such as water. The other sources of revenue include rents on sites both improved and unimproved and revenue collected through house rents. Although no breakdown is given as to what proportion it makes in the total budget of the council it can be concluded that since these rates and taxes are not collected efficiently, there is room to argue that the council does not receive its full share of revenue from these sources. In the light of this therefore the present problems related to revenue can at least be attributed to this fact. Government grants still continue to play a major part as an important source of revenue. In Nakuru it constituted 18% of the total budget for the year 1981 which was set at £1,726,008.

Notwithstanding these problems however, the financial position of Nakuru municipal council has shown a remarkable improvement over the years. In contrast with the other Local authorities. In 1963 the total annual budget stood at £360,156 and had risen to £644,355 in 1973 the figure having nearly doubled in the space of ten years. There has been a steady growth in the expenditure and revenue of the council up to the present date. Last years expenditure was an impressive £1,726,008.

(B)

#### H O U S I N G   A N D   E D U C A T I O N

The phenomenal growth of the town has led to a rapidly increasing population in 1963 Nakuru a municipality had a population of 40,000 this had risen to 75,000 people in 1973 as per the 1979 Census, the population of Nakuru municipality is well over 140,000. This rapid growth in population has had a number of implications in the development of basic infrastructure within the town especially housing and the provision of education. The council has had to incur considerable expenditure in the provision of these two essential services and were it not for the intervention of the central Government through the Local Authority Loans Board

...../4

and the National Housing Corporation it is doubtful whether the council would have accomplished what it has.

Upto 1973 the council had spent approximately £407,388 <sup>11</sup> in nine estates in the various parts of the town. This expenditure was supplemented by projects initiated by the National Housing Corporation (NHC) "Section 58" which was a middle cost housing scheme was financed largely by funds made available by the NHC. There were also attempts to raise the standards of the low income housing estates by the demolition of the unsanitary and low quality Pise de terre houses which had been constructed during the colonial era. The Ex-Senior chief Komange Estate situated in the western suburb of the town was also initiated as a mortgage-purchase scheme by the National Housing Corporation in 1973. These projects have ensured that Nakuru has a less acute housing problem than most municipal councils in the country. The reason for this will be stated later in this chapter.

In the field of education, there was an attempt firstly to integrate the education system so that children of all races could attend any particular school. Within the municipality before 1963 there were eleven primary schools within the municipality which number has risen to more than 25 primary schools at present. This growth is as a result of the increase of population within the town. The provision of schools buildings and teachers had proved to be an intractable problem until 1969 when the Transfer of Functions Act was enacted. The provision of teachers and their payment has therefore become a concern of the central government. The municipal council also maintains two large nursery schools within the municipality.

(C) OTHER SERVICES : PUBLIC HEALTH ,  
ROADS , AND WELFARE

As already alluded to, these services were already in existence before independence. The role of the municipal council, therefore has been one of improving these existing services. In relation to public health, the municipality had had a manual role to play since the major services are provided by the central Government. The council does however maintain a number of health centres within the residential areas of the town.

The length of tarmac standard of road has also increased considerably over the years. The network of roads closely follows the physical planning report adopted in 1968 which report was prepared by the physical planning department of the ministry of lands and settlement. The network is however still far from satisfactory.

Provision of sewerage facilities has also been looked into with

the result that Nakuru is probably the cleanest <sup>town</sup> ~~with~~ in Kenya -  
at least upto 1973. The services have deteriorated the present  
time. <sup>12</sup>

In conclusion therefore one can argue that Nakuru to a great extent has managed to fulfil its function of providing services to the population. It would thus appear that Nakuru municipal council has been successful during difficult times and conditions of providing essential services while other local authorities were facing problems. If one were to judge the records of a local authority purely on the functions it has discharged, one would be missing <sup>the</sup> ~~at~~ points. A local authority may be carrying out its duties upto a level which one can argue that it has been successful, but the process to which it has arrived at such a stage may not have been considered. It is in the light of this anathema. Therefore, than one has to study the mechanics of decision making. A legalistic interpretation of the functions is also crucial in this respect. The next part of this paper will examine in some details the legal as well as political basis as used in the whole context of the paper to determine whether the municipal council has been ~~by~~ successful.

3.3

THE POLITICS OF INTERVENTION:  
PARTY POLITICS AND PRESSURE  
GROUPS

Since the basic structure of the local government system was carried over into the independence era one would expect the same policy decisions to occupy the municipal council, however, as has been stated in the first part of this chapter, independence necessitated a deemphasis on the racial considerations that had guided the policy decisions during the colonial era. With independence emphasis was now placed on complete all round development. In this section this paper will attempt to identify what considerations were taken into account in the activities of the municipal council, the existence of pressure groups and the controls imposed on the council by the central government and the ruling party K A N U

As early as 1961, the council's racial dichotomy was shattered. In that year S.J. Ojuka Andhoga were appointed as the town's Deputy Mayor, earlier on in 1960 Dr. N.M. Shah had been appointed Deputy mayor. In 1963 Geoffrey Kamau became mayor of the town from then on Africans have been consistently elected mayor upto the present date. The mayor issues which now guided policy decisions were now therefore based on other considerations which have been stated above.

Kon's  
Lason  
with } pow  
pre

Immediately after independence, local government was placed under the direct control of the Regional assemblies under the so called "Majimbo" independence constitution of 1963. An elaborate section in the constitution was provided for. This was meant to entrench the Local Government system as a regional as opposed to National concern. Nakuru under this system was under the control of the Rift Valley Regional assembly. The policy however developed into a fiasco after the KANU Government took over power in 1963. By adopting a policy of frustrating the Majimbo constitution the central government was able to effectively sabotage the provisions which resulted in the change embodied in the 1964 Republican constitution which removed the control of Local Government as a regional function into the broad structure controlled by the Minister for Local Government at Nairobi.

This "Zag-of-war" between the central government and the Regional assemblies clearly point out the importance of the local government system in the general political structure in the country. As a platform for political patronage and support it clearly plays a major role in determining local leadership and consequently a launching pad for National political activities.

In Nakuru the period 1964 to 1968 was relatively quiet as the Regional assembly had agreed to shift its control to the central Government with a minimum of fuss. This period can be seen as one of consolidation of the system into the new constitutional framework. The stability of the council is demonstrated by the fact that from 1963 to 1968 Nakuru had one mayor re-elected at every subsequent election<sup>14</sup> During this period also any resident of the town could be elected as a councillor so long as he qualified according to the rules laid down in the sessional paper already referred to.<sup>15</sup> The issue as to whether party politics should be introduced into the Local Government finally brought matters to a head in 1968.

In that year, Parliament introduced a procedural motion the parliament which sought to limit eligible candidates to those who had been validly nominated by a political party. In Nakuru a conflict arose as to who could nominate councillors to stand for the Election due to be held in June of the same year. It appears that the District K.A.N.U. Chairman Mr. David Waweru wanted to nominate his own candidates. A conflict arose between him and Mr. Kiplen who was then the District Branch Secretary. This resulted in a split with K.A.N.U. members threatening to vote for the other party K.P.U. if the issue was not resolved<sup>17</sup>

This intra-party conflict for some time threatened the

..../7

Change

Leitch



stability of the council. The crisis was however shortlived as the opposition party was banned in 1969. Thereafter the activities of the council were now controlled by K A N U after Kenya became a de facto One Party State. The danger of bringing party politics into the local government system is borne out by this debate.

The elections which were due to be held in June 1968 never materialized and had to be called off. Elections were however held in 1969 when Dr. Isaac Kirubi was elected Mayor, He was in office from that year upto 1974.

This period again was relatively quiet: The reason for this was probably because Nakuru had not as yet become the centre of political intrigue in Kenya. There was at this time also closed co-operation between the central Government and the council commenting on the development that the town had achieved during that period the Town Clerk observed:

"It must not be mentioned that the advances could not have been accomplished without the assistance, advice and co-operation of the Central Government....Nakuru people are always behind the Government .... It is their duty to ensure that Government policies are carried out effectively so that wananchi can enjoy the fruits of UHURU".<sup>18</sup>

The statement above clearly illustrates the role the central Government plays in the policy decisions of the council clearly, the statement is at variance with the proposition that local Government authorities maintain an autonomy. The implications of this statement will be tracked in the next chapter where a new role for local government will be examined in the light of the actual practice of local government.

The period after 1974 can be described as a period of widespread political intrigue in Nakuru. This state of affairs influences the activities of the council until 1980. Although no significant change can be noticed in the development of the town and the provision of essential services, the activities of these elsewhere forces in no small measure contributed to the distabilization of the council. The end result of this political intrigue was the widespead charges levelled at the council by various individuals in 1978 and 1980 these will be examined in greater detail below.

After the 1974 elections which were held on 6th September, Councillor S.M. Mburu Gichua was elected as mayor of the town by 10 votes to 8 received by his opponent Dr. Isaac Kirubi. Councillor Gathogo Mwitumi was elected Deputy mayor defeating his rival councillor Kipsoi by 10 votes to 7. The mayor, and Deputy mayor were both staunch members of G.EMA. with their election a new epoch was introduced in Nakuru. Thereafter, Nakuru became the hotbed of political snajus both locally and at the National level. The centrality of the town in the rise of G E M A was further enhanced by the fact that Kihaka Kimani the there MP for Nakuru North was a self-Proclaimed Don of Nakuru politics. Added to this the late President frequent visits to the town served to bring Nakuru into the political limelight.

Show

Although one cannot with any degree of certainty how the changes which occurred in 1974 influenced the broad spectrum of activities carried out by the council, several issues can be raised which to my mind are highly instructive. While giving his maiden speech, the mayor underscored the need to eradicate tribalism and clanism within the council<sup>19</sup>. This statement appeared to recognize the idea that there was some clear groupings within the municipal council which were a real danger to the council. Perhaps by this he was also tacitly recognizing his position as a linchpin the G E M A political machine within the municipal council.

The second issue regards the use of the council as a launching pad in their bid to amass wealth. While this statement cannot be supported on a study of the activities of the council, the subsequent prosperity of some of the leading councillors, can only be attributed to their position of influence within the local authority. The care of the mayor himself will illustrate this:

Mr. Mburu Gichua the then mayor had an extensive transport company based at Nakuru. It was alleged by the councillors that he had used 595 litres of petrol belonging to the council and that he had also used 6,000/= council money to pay for his telephone bills without authority from the council. A meeting was called in order that a vote of no-confidence be taken but the mayor and the then town clerk, Mr Eliphas Mburea had for a period of six months refused to convene a full council meeting. The town clerk also refused to enter the item in the agenda. Consequently, the members of the councillor applied to the court for a directive that the council should convene the meeting. The directive was accordingly issued on a full council meeting was held on March, 1st 1979 where a vote of no confidence was carried unanimously and councillor Joseck Thuo elected as Mayor.<sup>12</sup>

While opposing the adverse vote the Town Clerk sought to rely on Section 76(2) of the local Government Act which provide that:

"Except in the case of business required by these regulations or any other written law to be transacted at a meeting of a local authority, no business shall be transacted at a meeting of a local authority other than specified in the Notice relating thereto."

This contention of the Town Clerk was dismissed by Permanent secretary Mr S. Gĩathuini, who stated that a council had powers to meet and pass a vote of no confidence at any time. He also stated that the minister had the prerogative to approve or disapprove the dismissal of the town clerk under Regulation 127 of the local government Regulations. The regulation provides also that a special meeting had to be convened before such officers were removed; clearly if in this case the Town Clerk and the mayor conclude and prevent the convening of a meeting than the dismissal can be effected by other means. The mayor in turn appealed to the Minister to disallow the vote of no confidence as it was more political than legal. <sup>this</sup> ~~was~~ contention was <sup>also</sup> ~~who~~ dismissed.

The local government Act does not expressly provided for. <sup>this</sup> However, Section 14(2) provides that:

"On the election of the mayor the outgoing mayor shall preside:  
Provided that at the first meeting of the council after the constitution, and subsequently if the office of the outgoing mayor is vacant for any cause..... The councillor shall elect a chairman from among themselves (other than a candidate for the office of mayor) who shall preside for the purpose of such election (emphasis mine).

This section contemplates a situation where a mayor may be removed from office during his term of office the section is widely stated and it is submitted that it would impliedly include the taking of a vote of no confidence.

Although his removal can be justified in legal terms it has to be examined in the light of the prevailing political climate in Nakuru at that particular period with the establishment of a new political order. The eclipse of G E M A and the emergence of new political figures in Nakuru the old order could not survive as such ex-mayors claim that his removal was more .../10

political than legal appears to have some credibility. The New Mayor on assuming office declared that he would seek to create unity in the council and the serious rights that had emerged were to be bridged.<sup>22</sup> His assertions were proved wrong however as an even more acute crisis was faced by the council in the civic elections which were held between December and January of 1980.

3:4 THE POLITICS OF INTERVENTION :  
THE 1980 MAYORAL ELECTIONS -  
A SPECIAL CASE OF INTERVENTION

(A) THE BACKGROUND

As indicated earlier Nakuru had been catapulted into the forefront of political intrigue within the country. As a centre of GEMA interests in the Rift Valley it was seen as a place where the Kikuyus should establish their hegemony. This manouvre was successful upto 1978. With the new political order the underlying conflicts between the tribes was brought to the fore when the new political order and consequent shift in the power was established. Nakuru has also been a centre of the political aspirations of the Kalenjin and therefore the changed circumstances was ideal for them to exert some pressure within the municipality. This they sought to do. The conflict that arose therefore can be traced to this political wrangle between the two tribes and the other considerations were merely side-shows. The stage was how set for a not-too subtle form of intervention.

*Nakuru who*

*which?  
be clear  
man*

*here  
an  
pwr*

(B) THE ELECTIONS

Following the civic elections which were held together with the parliamentary elections in November 1979. The councillors elected convened a full council meeting as required by the regulations to elect a mayor as the first business of the council. On the 27th of December, 1979. Two candidates declared their interests to contest the mayoral seat Dr Isaac Kirubi, who had been mayor for 1969 to 1974 and councillor Raphael Korir. The council failed to agree unanimously as to who was to become mayor. The election were therefore called off for the next day on 28th the councillors could not elect a mayor and once again the elections were called off by the District commissioner Benjamin Ogol who set elections for 8th January 1980 expressing hope that by then the councillor would have agreed on their choice of mayor.

32  
 Come 8th January, still there was no agreement as to who was to become mayor. The councillor had arrived at 2.00 pm. but instead of going into the council chambers they had dispersed into two groups and finally dispersed at 5.00 pm. without having elected a mayor. Matters had now reached a critical stage Mr Charles Rubia the then Minister for Local Government intervened. In a speech made in Nakuru he hit at the "Political squabblers" within the town<sup>23</sup>. he claimed that:

"(It) is clear that there was a political wrangle which resulted in a rift and the elections got bogged"

Earlier on, The president had hit out at the political squabbles in Nakuru while addressing a public meeting in Nakuru he expressed his dissatisfaction and claimed that one of the candidates for the mayoral election was: "Trying to buy other councillors";

"Thus person has taken twelve councillors, led them to a store and locked them in so as to release them like sheep to the voting Hall. Is this really fair?"<sup>24</sup>  
 The president threatened to allow the residents of the town to ~~also~~ elect a mayor if the councillors could not elect one in so saying he was responding to the call of the residents who had appealed to Mr. Rubia to allow them to elect their mayor directly<sup>25</sup>  
 it appears that pressure had been applied on the candidates one of them stated that they were being forced to vote in an inexperienced mayor.<sup>26</sup>

On 9th January, 1980 the council met again and without much ado voted in a completely new candidate as mayor unopposed. Taken in the circumstances this is hardly surprising. What is surprising is the speed of the change. It appears that overnight the councillors, <sup>had made up their mind</sup> clearly, the circumstances can only point to one thing - the possibility that the councillor could have been in the intervening period coerced into voting in a compromise candidate councillor Daniel Kayi was elected unopposed while a nominated councillor John Arap Sambu was elected as deputy Mayor.

In his maiden speech the mayor declared that political groupings in Nakuru had been crushed he also stated that:

".... He would not like to see any type of tribalism, Nepotism or favouritism in the council. He asked the council to render him maximum assistance so that he might be able to serve the

..../12

Kalenyi  
 Aug-80

Yes -  
 for  
 su

When  
 Remo  
 K...

is it?

council and wananchi efficiently and to their satisfaction".<sup>27</sup>  
A clear admission of the fact that there was a serious rift  
within the council.

That the central Government chose to intervene at the  
particular juncture is crucial: It establishes very clearly  
and in the uncertain terms that the council was not autonomous.  
Its position is therefore to be conceptualized as an organ of  
the central government. That the president threatened to use  
extra-legal means to ensure that a mayor is elected is ~~also~~  
indicative. The Regulations do not provide for the residents  
of the municipality to elect the mayor. Clearly this  
default power' of the residents needed a legal basis before  
it could apply. It is therefore to be seen as a direct  
intervention of the local authority: It is submitted that the  
autonomous nature of a local authority is illusory.

(c) THE PRESENT STRUCTURE:

The Municipal Council of Nakuru has 21 Councillors of whom four were nominated to represent various interest in the town. Three Africans and Asain were duly appointed. The Council currently has four standing committees and three ad hoc committees.

Responding to questions put (see appendix 2) The acting Deputy Town Cl informed me that the Municipal Council was functioning quite efficiently at the present time. She attributes this to the fact the officers of the council carry out their duties with minimum interference from the council, although there are times when councillors come to seek special favours. She also informs me that the majority of the councillors are literate and know their duties as enumerated in the act, although some of them were aware that they were supposed to be an autonomous Unit.

Regarding finance, the Council faces difficulty in the fact that although the council prepares the budget well in advance. The Local Government Ministry takes inordinately long time to approve these budgets as required by the Local Government Regulations<sup>28</sup> by March 1982 the estimates had not yet been approved. In the meantime however the council has been carrying its activities usually the Minister approves estimates ex post facto: It is submitted therefore that regulation 213 is rendered otiose and does not serve the purpose which the legislature intended to serve.

The council does not usually engage in Litigation <sup>I am</sup> informed that since October, 1980 to the present date the council has not had case in court. The reasons for this is that most of the cases are considered trivial for example water bills and House Rents. Generally the residents of the Town rarely default particularly property owners who own Commercial sites. This is probably because they would not like to lose their plots.

As to the existence of pressure group within the municipality I was informed that there are no particular lobbyists, and the only form of pressure received is usually from individuals.

### 3.5 A COMPARATIVE STUDY: THE CASE OF MOMBASA MUNICIPALITY 29:

The municipality of Mombasa covers a land area of eighty one square kilometres according to the population census of 1979 the towns population has risen from 245,000 in 1969 to approximately 450,000. The Municipal Council as established in 1928 at almost the same period as Nakuru. Although the municipal council is relatively wealthy. It has undergone a difficult period of crisis in the period 1978 to 1979 when a commission has appointed to run the affair of the municipal council.

UNIVERSITY OF NAIROBI  
LIBRARY

The council provides a wide spectrum of services to the residents including many education, Public Health a wide variety of miscellaneous Social Welfare Services. In 1967 the Town has an annual income of K 1,633,000. In undertaking its duties the Council is faced with two major problems. The first problem is the drawing up of a comprehensive budget and the second is adapting these comprehensive annual budget to long term projects like the establishment of health centres over a long period of time. Clearly the council is constrained by the fact that long term projects have to be continually revised annually.

In a bid to rationalize the development targets over a long period the town treasurer asked the various committees to give the estimates which would be used to prepare a comprehensive development plan for a period of six years. This however was not successful as some of the committees were unable to send estimates. The plan was however prepared, but was completely ignored because according to the Town Treasurer, there was a shortage of planning staff. As Stren puts it.<sup>30</sup>

"In the absence of any long term framework within which to project recurrent and capital expenditure, the preparation of annual budgetary estimates. The second and most important mode of planning provides the focus for planning in all Local Authorities in Kenya.



The constraints on effective short term budgeting and co-ordination are more likely to be basic to the structure of Local Government than they are to be a result of the endemic crisis conditions."

Thus planing is to be seen on crucial to the success of the Local Authorities a fact which has not received sufficient attention in contemporary Local Government.

#### THE DECISION MAKING PROCESS:

The Finance Committee of the municepal council is involved in the preparation of the budget is required by the Local Government Regulations. The committee is composed of the Councillors and the officers of the council. Stren<sup>31</sup> states that during the meetings disagreements arise between the councillors and the officers. However, these differences were were usually ironed out through compromise - The officers would remind the councillor of the projects which would benefit their wards.

The presentation of the budget to the full council meeting is usually an occasion for rhetoric. learned and in depth analysis of the budget is never undertaken. Councillors take the opportunity to restate their dedication to the development of the wananchi and the Town as a whole. As such therefore, there is much rhetoric without a conscious realization of the role of planing this it is submitted weakens the local authority considerably.

Political considerations also influence decision of the muninipal council to valid example of such consideration is the case of housing. Like our towns in Kenya, the provision of housing is an important activity of local authorities. However most local authorities have not been able to cope with the demand for new houses. A crucial question arrises therefore as to what type of class of houses are to be built and over what period of time. Without a clear and detailed long term plan this is clearly impossible decisions as to which income groups are to be served by a particular housing scheme have to be taken an important role.

In ~~xx~~ November 1968 a press conference was called at the town hall in Mombasa. A report was read by the Municipal Engineer in the presence of the Mayor and other Civic Leaders.

The plan was quite ambitious to demolish all shims on the Island and replace them with houses for those displaced for a sum of £7.5 million. The Mayor expressed the concern of the council to the development of the town; that they were "progressive" and "interested in the development of the town"<sup>32</sup>

This plan was obviously unrealistic and there was little possibility of it meeting with the approval of the Ministry at Nairobi. Such political decisions were taken because of the existence of two contending groups within the municipal council.

The municipal council has also been constrained in its activities by administrative as well as financial considerations. In the first instance the local authority is expected to consult with the Ministry for Local Government, and the town planning department in the Ministry of Lands and Settlement before engaging in any activities particularly in the care housing. The council also has to consult with the National Housing Corporation on the aspect. Financially, the N.H.C. has also exerted control as it must approve the development projects as they arise, they vetoed the plan stated alone on Shim clearance. In 1968 the Central Government deducted 50% of all the revenue of Mombasa Municipality from G.P.T. without any prior consultation. The council was therefore severely constrained.

#### RESULTS OF THE CASE STUDIES:

##### A COMMENTARY.

After the case study undertaken plus the comparative study briefly started in this chapter as number of comments are pertinent.

##### The Local Authorities have never asserted their autonomy:

Infact far from asserting their autonomy, the councils have always insisted that they are the agents of the Central Government and are involved in implementing the policies of the Central Government Authorities are Autonomous is therefore not borne out by the facts.

L The theoretical construct that they

2. The Central Government Infact Controls The Local Authorities :

Through a variety of legal limitations, the Local Authority is severely constrained in the implementation of its policies. The most important of these constraints is financial. The ~~next~~ requirement of ministerial approval the dependence on grants from the Central Government and the effect of its long term planning by the conditions put by the National Housing Corporation render any autonomy that the council might have has superflous.

3. Lack of Adequate Trained Staff:

This ~~limitation~~ is crucial as it is the officers who implement the council's policies. The availability of trained staff is clearly an issue which must be considered if local authorities are to carry out their functions efficiently. This contributes also to a lack of long-term targets . .

term targets. The officers of the council are also insecure in their positions on the guarantees stated in the local Government Regulations once flouted.

Inexperienced Councillors: This is a problem faced by all the local authorities in Kenya. It is apparent that most Councillors were unaware of their actual right and duties under the Local Government regulations since Councillors are supposed to make policy decisions their inexperience and sometimes object ignorance does not augur well for the well being of any Local Authority.

The Role of Politics: Too often, the politicization of the council leads to problems. Squabbling and petty differences if brought into the council chambers have often brought the activities of the council to a standstill. An important question which has to be resolved is whether party or national politics should have a role to play in the local authority. On the other hand politics has after influenced the location of some housing developments or other service the need to rationalize the role of politics in the operation as a decision making process necessarily arises.

The Councils have been successful in providing essential services:

The important of the Council in this respect cannot be deprecated. All in all the Councils have contributed immensely in the development of basic infrastructure within the towns. Nakuru and Mombasa have developed into important industrial towns. The role of the local authority in this development must therefore be taken into account.

The Legal Framework: A legalistic interpretation of the dynamics of local Government is well right impossible. Since the Local Authority is constituted as a corporation it has rights as duties as provided for and the regulations. As far as can be established Nakuru has conformed to the legal constraints imposed by the regulations. The requirements of submission of estimates have been complied with each passing year. Apart from the issues surrounding the vote of no confidence taken in 1979 the conclusion drawn above is therefore valid. The Council has not been exceeding litigations and neither has it been sued - at least since 1979.

Arising from a consideration of the above, it is clear therefore, that the theoretical basis of local Government as conceptualized in England is not borne out by the practice of Local Authorities based on the prepositions above, A new theory of Local Government must be developed which would reflect the actual practise of local Government in Kenya. The last chapter of this paper will concern itself with this very fact. As the present moment, the premises and conceptions of Local Government as a theoretical and Legal entity clearly need re-appraisal. The theory must be developed and adapted to meet the local circumstances.

CHAPTER FOURABSTRACT: CONCLUSIONS DRAWN FROM THE CASE STUDY:

As has been indicated towards the end of the previous chapter the theoretical constructs hitherto presented on the role and purpose of the Local Government system within the Legal Framework of the administration Machinery of the state are clearly untenable. The theory that Local Government exists as a autonomous system within the state which has within the area of jurisdiction exclusive control over certain aspects of the development process is not borne out in practice; the theory that Local Government is a "political nursery" intended to ~~nurture~~<sup>nurture</sup> leadership cadres on the national level is all but farcial. These theories it is submitted would probably explain the role of Local Government in the more advance western democracies which have had a long experience in the development of this system, with a relatively well developed instutional framework and a generally literate society, the theoretical constructs above would probably function admirably.

In a developing country like Kenya, the emphasis is placed in all round drive for development. There is also a need to develop National Unity. It is submitted that Local Government has a role to play in this drive in the paper the present writer will attempt to lay down a framework under which Local Government would operate without changing its essential legal nature. This will be an attempt at a theory which is in live with the actual practice of Local Government in Kenya.

A NEW THEORY OF LOCAL GOVERNMENT:(A) THE BACKGROUND

In the introduction to this paper, the theoretical framework of the traditional Local Government was laid down. Brefly stated, Local Government was conceptualized as an Independent autonomous unit with complete legal personality in the pursuit of its affairs. It was also seen as a convenience arena for the resolution of inter-group conflicts in society. John Stuart Mill Saw it as a "nursery School" where political skeels and maturity could be gained.

Clearly, these theories, presume the autonomy of a Local Authority from any form of control ~~form~~ without the system; It was conceived as a closed amalgam of the wider state structure. The range of activities of these local authorities in Britain for example is extremely wide, covering Housing, Education, Social Welfare Services, Fire Brigades and even Police Force. In the activities the council are completely financially. This stated control of local authorities did not a large extent exist - neither was it necessary. The methods of control usually used in Britain is judicial control which is used mainly to ensure the local authorities perform their statutory duties as Hart puts it:<sup>1</sup>

" The Courts are limited to the bare Law they administer; They can at most , prevent any excess or misuse of powers, or compel the performance of duties"

Thus so long as the local authority conforms with the statutory requirements its autonomy is rarely interfered with. The other form of control e exercised was statutory. This is based on the supposition that in carrying out its activities, the local authority may interfere with public and private rights. To do this they must show that they are statutorily empowered: Thus laws are provided relating to rating, compulsory acquisition and other forms of taxation.

" Hence, local authorities to the extent to which they require powers to interfere with individual or public rights must obtain those powers in such form as will make them part of the law of the land. For this purpose resort must be had to parliament which alone can freely make and alter the Law, and the powers of Local Authorities must be statutory"<sup>2</sup>

There are therefore instances where there is some form of control exercised by the Central Government. This is in relation to Education<sup>3</sup> and also financial control through the system of grants<sup>4</sup> Cross<sup>5</sup> states however.

"It is safe to say that Central Government Departments have no legal control of the work of local authorities other than that directly conferred by statute. All formal control which the Departments exercise must stem from a specific statutory provision".

The inevitable conclusion to be drawn here is therefore that as a general rule the Central Government exercises minimal control over the activities of the Local Authorities in Britain and thus their theory of local government suits their prevailing local conditions.

In Kenya the existence of myriad of control measures render the independence of the Local Authorities a veritable myth. In developing a theory of local government therefore, a major concern will be an examination of these controls and their desecrability; will the mere removal of these controls provide us with a suitable local government or do we infact need the controls?

(B) THE THEORY:

We start from the premise that in Kenya what we need most is overall national development. In order to effectively carry out this the need for control planning is essential. In this respect there should be attempts at Co-ordinating all activities at the National Level in order to ensure that all aspects in the drive to development are considered. It is submitted that local government has a role to play in this respect if one views it out nerely as a corporation which by legal nature is independent of the national policies; it is part and parcel of the state machinery; to advocate for its independence therefore is anathema to the actual reality. It is the submission of this paper that local Government is not an institution which exists solely to purfure diffuse democracy at the local level but is part and parcel of the wider concept of democracy on the wider level what then are the implications of such a theory?

There have been arguments advanced to the effect that Central Control of local authority is a form of paternalism or to use a niore voilent term - dictaforship. It has also been argued that the control exercised is a "hang-over" from the colonial era where local authorities were in a strait - jacket of controls devised by the Central Government<sup>6</sup>. While not seeing<sup>K</sup> to disagree with the cond<sup>t</sup>itions drawn, the remedies be percieves are at best piecemeal and would not in any way alter the nature of controls. It is a fact that most of the councillors are ~~alterate~~, expecting them to mention an effective democracy at the local level is purely unjustified optimism~~ism~~. The real influence and patronage by the National Leaders would obviously malitate against this,

It has also been argued that the financial position of the Local authorities should be improved by introducing a new form of tax. It has also been stated that some of the functions which were transferred to the Central Government should be returned to the Local Authorities. This again are piecemeal reforms. The real constraint is lack of adequate machinery, and trained technical staff. At best these will make the council unweildly. In its plan of action revealed in sessional paper No. 12 of 1967 the Government responded to the criticisms made by the commission of Inquiry which was established in 1966 and proposed a number of piecemeal reforms including:-

1. That there should be stronger financial controls
2. That the Number of Central Government Auditors be increased
3. That as more streamlined procedure for approving annual estimates be established.
4. That the District Commissioner should be allowed to vote on any excess expenditure commentary on this stren states that:

" The Central Government position that control and planning was appropriate criteria for the evaluation of the Local Government was consistent with the opinions of many economists and administrators".

Thus the Government although it has agreed that the Local authorities should be autonomous and remain as centres of democracy at the grassroots level, when it accepted the recommendations of the two councillors established in 1974 and 1979<sup>8</sup> appear to be devoted to a course which ensures more stringent controls.

The reality is therefore that as long as the central Government advocates form more stringent controls, as so long as the local authorities are constrained by lack of its independent sources of finance, its autonomous nature is neither possible nor desirable.



Commenting on the nature of the local authorities, the report of the Local Government commission of Inquiry 1966 found.

" Here and there some misconception about the autonomy of Local Authorities .... in point of fact the local authorities have little real autonomy ..... their expenditure and activities are very much subject to statutory controls. The lack of adequate staff to operate those controls is the cause of some of the current problems. The Ministry of Local Government must of necessity continue to be the body to decide and indeed apply any requisite control" 9

The above statement captures dramatically the actual practise of Local Government in Kenya, the assurances given by the Government therefore that it is its intention to establish an autonomous Local Government system is hortatory.

Maundu<sup>10</sup>, ~~perceives~~ perceives the role of local Government as one of contributing to nation building, that local Government should "create a sense of feeling of Nationality, implement national planning policies, to create and atmosphere of " order and integration and finally the ' aggregation of consensus' Although his arguments were based on the ~~circumstances~~ circumstances prevailing then as Kenya was still a young Nation. There was a real danger that Local Government could be used to further regional and tribal parochialism and also the fact that the local authorities at this time were on a shaky financial condition" The arguments are nonetheless valid even upto the present date.

On the basis of the argument, Maundu continues to state that:-

"The role of Local Government in Kenya therefore, should not be the preservation and perpetuation of localism and Local autonomy. By directing her energies to the development of the indigenous system of local Government which will contribute to Nation building, by tempering tribal and regional parochialism"12

In the same vein he concludes: It would be possible therefore to borrow the science of Government and management without endangering indigenous cultural ~~herents~~ herents".

The present writer seeks to disagree with the conditions reached by the above writer. While agreeing with the premises he has used in reaching the conclusion. It is obvious that modern local Government is alien to our administration structure before independence. Superimposing those values and institutions on the present structure would clearly be impossible. A change in the mode of production clearly entails as corresponding change in the institutional framework under which that mode of production operates. Under the capitalist system established therefore the superiority of the traditional forms of local authority is well nigh impossible.

The above argument however, should not be taken to mean that the administrative framework should be adopted in toto because it came with a new mode of production (to Kenya) like any other science. It clearly needs adaptation to local conditions - a fact already alluded to previously in this chapter.

What then should be the role of local Government as envisaged by this theory? Clearly local Government must of necessity be controlled by the Central Government: Commenting on the local Government in Nigeria Wraith<sup>13</sup> has argued that:

"(Councils) must now increasingly justify their role in terms of their contribution to economic development and National Unity, councils are expected to mesh their efforts with the machinery of National Planning and to respond sensitively to the National Priorities and National directives".

This is consistent with the argument which has run through this chapter. It is possible for local authorities to maintain their status within the legal framework. Even the criteria for testing their effectiveness has changed. Stren<sup>14</sup> appears to have had this aspect in mind when he wrote:

"While a basically English structure of local Government may have been admirably suited to provide a range of basic services while ensuring local control and participation. These are no longer sufficient criteria".

An important point raised by this statement is the idea of local participation in the basic framework of Government as a whole. The traditional theory of Local Government lays great emphasis on the aspect of participation of the local populace in the decision making process. It has been said that<sup>15</sup>

" It is the local Government that is closest to the people, that is most directly concerned with the day to day lives of the people and which consequently must be responsive to the needs and the welfare of the people. It is incumbent upon every local Government authority to exert its highest efforts to meet the legal standards which limit the exercise of its power"

It is stated in the outset that the new role does not in any way infringe the concept of Local Participation. We have stated that the basic legal framework under which the local authorities have been functioning should be maintained; together with this also, the election of Civic leaders should also be maintained. The only ~~stuff~~ here will therefore be only a realization that in conducting their activities local authorities will have to consider national issues before local issues. In any case there might not necessarily be any conflict between the local authorities participation in any activities vis-a-vis Central Government participation. The issue that remains to be resolved is whether party politics and pressure groups should continue to exist at the local Government level.

In presenting a strong case against party politics at the local level Mr. Okelo Odongo<sup>16</sup> asserted:-

" I think in the country, we need as many places as possible where we can talk as local people without there being any party politics involved ... each time party politics are mentioned common sense disappears, people start playing politics and on one really gets down to solving the problem".

Thus to him "politics" is essentially disruptive. Although there is much to commend in this argument, and here one must remember the sense in which politics is used in the paper i.e. in the cynical aspect stated in the introduction of this paper this will explain the crises councils face from time to time. However, if we conceptualize politics as a rational decision making process as Samoff<sup>17</sup> perceives of it then clearly his argument is untenable.

If we recognize the fact that Kenya is a de-facto one party state, the disruptive role played by politics is considerably minimized generally. It therefore follows that politics cannot with any degree of success be excluded from the sphere of local Government. Here I will do not more than quote in extension from Stren<sup>18</sup>.

"The role they play in the political process in each district The country and municipal councils are significant distributors of development funds jobs and positions of local prestige. As an arena for politics in Kenya, the councils have often given National prominent politicians a local political base and organizational network. Moreover, both the elected councillors and the local Government staff are becoming increasingly conscious of their group interests. At the very least the importance of local councillors in the Local KANU Branches should ensure party commitment to the continuation of the present structure of Local Government, and with the increasingly assertiveness by local people for more political control over their own areas, there is reason to believe that administrative officials are becoming more firmly convinced of the desirability of structures which bring the people into closer contact with the Government decision making"

#### 4.3 CONCLUSION:

This paper has sought to provide an empirical approach to the study of the local Government system in action it is not the claim of the present writer that the study is exhaustive. neither does, it make any lofty claims. It has been the purpose of this paper to try and rationalize the local Government system as a politico - legal entity within the state structure one crucial fact has emerged as a result of this study and that is the fact that all the theoretical constructs that have been presented about the process of local Government are not borne out.

The causes have been identified in this paper clearly therefore, there was a need for a re - appraisal of these theories. This paper in its own small way has attempted to make a contribution. It is hoped that it will provide a skeleton on which a new theory of local Government based on the exigencies of contemporary local Government in newly independent neo - colonial states will be built.

This paper has not chosen to recommend a total scrapping of the law that governs local Government this is because it is considered that it is well suited for the role envisaged by the new theory. The study has however been an attempt to bring in line with the legal framework the Local Government system. A study of a creation of the Law is clearly necessary in order that one may understand the dynamics of the legal framework and in that way identify the policy behind the Law.

A legal system whose stated policies and objectives are not borne out in the actual application must of necessity be a failure. The need to ~~establis~~ establish clear objectives & policies based on the actual practise cannot be deprecated.

As to whether the entire system of local Government has any future in in this country is a matter which is outside the scope of this paper. However the role stated above is dynamic, as new policy objectives evolve in the future, like any other politico - legal ~~quits~~, the system will of necessity undergo changes. Logically therefore there could be a stage when a theory based on a more advanced and developed economy would become necessary.

Law does not exist in a vacuum. This paper has used this preposition throughout. An analysis of dry legal rules does not really tell us much. It is hoped that the lack of an analysis of the legal rules concerning local Government has not in any way reduced the value of this research. Law must be seen in operation within the framework, it is established, analyzing the rule by itself does not indicate the policy considerations and the ends intended to be met by that particular legislation. If the paper therefore has appeared more of a sociological or political science exposition it unfortunately has no apologies to make.

Analyzing

1. For a Historical sketch see Generally  
JACKSON P.W. I Local Government  
BUTTERWORTHS LONDON 1970 2 ND P. 1 ff.  
Ed
2. KYD: Kyd on Corporations P 13 Quoted in  
CROSS: Principles of Local Government Law  
SWEET & MAXWELL LONDON 1962 2ND ED P.1
3. TALCOTT/SHILLS EDS: Theories of Society Vol. 1 P.227  
GLENCOE FREE PRESS 1961
4. BURKE F.K. Local Governace and Nation Building in  
E.Africa:  
SYRACUSE UNIVERSITY 1964 P5
5. Ibid at P9
6. Ibid at P9
7. Local Government Regulations Reg 144 (1963)
8. Ibid Reg. 145
9. Ibid Reg 149 (i)
10. Reg 146
11. Reg 148
12. Reg 201
13. Ochieng' Okore: The Relationship between the Central  
Government and the Local Authorities: "The  
Rider and the Horse"  
LL.B. THESIS 1977 UNIVERSITY OF NAIROBI
14. SAMOFF JOELL: LOCAL POLITICS and the Structure of power  
In Tanzania  
University of Wisconsin press 1974 P.5
15. Encyclo pædia of the social sciences  
ED. Edwin SELIGMAN, MACMILLAN PP. 225
16. DP Cit Note 14 at P5
17. OP Cit Note 15 at P.225.

1. No. 14/1924
2. Monone Omusale: Political and constitutional Aspects of The  
Origins and Development of Local Government  
In Kenya:  
P H D Thesis SYRACUSE UNIVERSITY 1974  
at PP. 104 ff.
3. Native Authority Ordinance Section 2
4. Ordinance No. 11 of 1937
5. Ordinance No. 30 of 1942
6. Papers Relating to the Closer Union of Kenya, Uganda and  
Tanzania Territory  
C O L O N I A L O F F I C E NO 57 at P. 14
7. Native Affairs Annual Report  
1927 P. 26.
8. Ordinance No. 12 of 1950.
9. Ibid See for example section 18 (1) Para A which provides them  
a Local Authority may enter into contracts.
10. Dispartch from the secretary of state for the colonies to the  
Governors of the African Territories  
25th February 1947.
11. Mitchell P. African After thoughts  
LONDON 1954 P. 259.
12. Ordinance No. 21 of 1928
13. Ordinance No. 19 of 1928.
14. Lord Altrincham: Kenya's opportunities, memories hopes and  
ideas FABER & FABER LONDON 1955 P. 171.
15. Ordinance No. 30 of 1952.
16. IBID Section 4.
17. Mary Parker: Political and Social Aspects of the Development  
of Municipal Government  
Colonial Office P. 276.

18. Ibid at P. 275

19. The Electors Union: The Kenya Plan  
Nairobi 1949 at P. 14.

20. See for example East Africa Standard

18th May 1965: The desolute of the Kakamega  
county council.

21. Act No 20 of 1969

S2 (a) Education, public health, roads and  
Graduated personal Tax were trasferred to the  
Central Government.



1. Proclamation of 1904. Official Gazette January 28th
2. Proclamation No. 7 of 1913.
3. K. M. LOUIS: Town Clerk 1947 - 1963: tells us that Nakuru's history from 1913 to 1929 was sketchily recorded" Paper entitled "The municipality".  
File O/13 Historical Data 1956.
4. NOTTINGHAM: Op. at P. 3.
5. NOTTINGHAM Op. at P. 3 although he is vague where he state that there was no local government "Outside the towns in Kenya" His meaning far from clear, From my research there does not appear to have been any instutionalized form of local government in Nakuru, although it was by then a fully fledged town.
6. Proclamation No. 17 of 1929.  
See further proclamation No. 114 of 1929. Which gives the constitution of the municipal Board: (a) two official members  
(b) Eight unofficial members: six elected and two nominated.  
(c) one representative of the Nakuru District council to be nominated.
7. Supra (above)
8. As there are no specific records of the activities from 1929 upto 1940 this paper will benefit from a generalized discussion of the initial problem experienced in several areas; from 1940 however the case study will be eased extensively; I am informed by the present Town Clerk that all their data for that period is either lost or destroyed.
9. One finds his explanation as to the provision of services to African in not relevant in this context; it is difficult to see how the Boards could be expected to provide for them if they did not provide for the Europeans themselves: The issue is therefore academic.
10. Historical Data File O/13 1956:  
Memorandum of councils' Action in Slum clearance 1953.  
V12: "This was a major decision of policy and one which the council courageously took"
11. From "The Municipality: K.M. Louis at pages 6 and 7.
12. Pre widespread consensus among text writers is that this council never undertook projects of such magnitude: See for Example Charles Mortimer: East African Standard 1953 8th May.  
Nottingham: Op. at P. 5

FOOTNOTES CHAPTER II

13. K. M. LOUIS: town clerk 1947 to 1963.
14. "Local Government in Nakuru".  
Papers in file O/13 Historical Data 1956
15. "The Municipality". Historical Data File O/13 of 1956 at page 2.
16. "The Municipality" Historical Data File O/13 of 1956
17. See for example. Sunday Post 19th October 1958 where the columnist castigates the African for complaining that the five shillings charged per month as fees for meals in Nursery schools as "excessive".
18. The Electors Union: The Kenya Plan 1949 Nairobi P. 13-14.
19. The Kenya weekly News: 8th April 1949.

1. Sessional paper No. 2 of 1961:  
 Kenya Colony and protectorate  
 Legislative Council  
"The Reconstitution of Local Authorities"  
 Government Printer Nairobi 1961.
2. Kenya Constitution conference 1960: Paragraph 11
3. Supra footnote 1 Para 7 (a)
4. Ibid, Paragraph 14 and 15
5. Ibid Paragraph 18 of the paper which recommended the enactment of some conventions which had developed as a peculiar feature of Local Government system in Britian for example the out is of Tredsmar as a fiduciary.
6. It is regretted that the present writer was unable to gather as much data as one could have wished. This state of affairs is in no way due to the present writers lack of industry but rather the complete lack of reliable material within the council offices. I was informed that records were destroyed parhadary between 1974 - 1979 the writer has had therefore to make do with newspaper reports and other sources of data. This contrasts rather poorly with the colonial era (incidentally the acting Deputy Town Clerk informed me that records that have existed for 15 years or more are destroyed; If this be trace then one wonders why there were extensive materials covering the colonial era: the ideas of open Government is all but to theoretical.
7. STREN R Local Government in Kenya: The Limits to development planning  
 University of Torronto  
 Mimed prepared for delivering at the Annual General Meeting of the African Shidies Association.  
 Montreal October, 15th to 18th 1969.
8. LA FONTAINE S.H. Local Government in Kenya the origins and Development.  
 Eagle Press Nairobi 1955 at P 41 60% of all revenue from Nakuru was from Government grants.
9. Sessional Paper No. 12 of 1967. Implementation measures to the Local Government Commission of Unqary report Loc. Cit Stren P.4
10. Interview with Miss B. Omweyo: Acting Deputy Town Clerk March 1982.
11. Source.  
 Historical Datoos: File O/13! Nakuru Brochure:  
 Prepared in 1979:
12. I am told it is because of "politics"!  
 Interview above: ~~10~~ 10.
13. Kenya Independence Constitution 1963 Chapter XIII

14. Geoffrey v N v Kamau.
15. Sessional paper No. 2 of 1961 Article 5(b)

FOOTNOTES CHAPTER 3

16. The Local Government Regulations Comendment) Bill No.12, 1968  
 See also: Official Report: The National Assembly 1st Parliament:  
 6th session 1968 vol. XIV  
 Finally passed as Act No. 31 of 1968.
  17. East African Standard: April 3rd, 1968 at P.9
  18. Despatch to the Permanent Secretary: Ministry for Local  
 Government: 7th November 1975.
  19. Minutes: Full Council Meeting: 6th September, 1974 Circ. Comm  
 minutes 3 at P 2.
- but but see
20. Minutes: Full Council Meeting: 30th April, 1975 Minute 57.  
 There was a request by a Councillor to develop some plots -  
 one Councillor declared his interest as required under regulation  
 89 of the local Government Regulations and left the meeting - thus  
 it appears that the council came on its activities as prescuted  
 by the law - needless to say however the resolution was duly pass  
 passed.
  21. Weekly Review: 2nd March, 1979 at Page 6.
  22. Loc Cit above at page 7.
  23. Daily Nation: January 10th, 1980 P I & P.14
  24. Daily Nation above at page II
  25. This account is hared on Newspaper Reports: see  
Daily Nation of 10th and 11th January, 1980  
Weekly Review: January 18th, 1980
  26. This could only be in reference to councillor Raphael Korir as the  
 other candidate Dr. Isaac Kirubi had already been a Mayor in 1969  
 to 1974.
  27. Full council: Minutes 10th January, 1980 page 5.
  28. Local Government Regulation 213.
  29. This brief comparrative Analysis is condensed from stren:  
 0 Op. cit footnote 7. P. 5 - 11. the study was done in 1969  
 attempts have been made to update the study wherever possible.
  30. Ibid at P. 7
  31. Ibid at P 8
  32. Ibid at P 10
  33. Act. No. 2 of 1968 Section 2(b)

1. HART: Introduction to the Law of Local Government and Administration  
Butterworths 1968 LONDON 8th Edition page 380.
2. IBID P. 289.
3. The Education Act 1944 Section 1 (England)
4. The Miscellenous Financial Provisions Act Section 3  
Which deals with police graits suspect to the approval of the  
secretary of state ( England)
5. CROSS OP cit page 161
6. OKORE. O.B. OP cit LL.B dissertation 1977 at page 27 ff
7. IBID
8. The Ndegwa Common Report para 625 and 636.
9. Report of the Local Government Commission of Inquiry  
Government Printer 1966 Nairobi P 10
10. MAUNDU P. Evolution and Role of Local Government and Nation Building  
in Kenya  
M.A. Thesis Syracuse University 1965 P. 176 ff
- 11/ See for example East African Standard 18th May 1965  
problems faced by councils resulting in the disolution
- 12.- OP cit P. 178
13. Nigerian Government and Politics ED MACKINTOSH  
George Allen and Unwin London 1966 P 264
14. OP cit P 1
15. Limitations on the Exercise of Power by Local Government Authorities in  
Kenya  
BROWN WOOD D.O.J. MIMED: Kenya Institute of Administration Kabete  
1968 P 18
- 16 Official Report House of Representitivies Vol XI Coll 1722 -1723
- 17 Samoff OP cit Footnote 14 Introduction
- 18 OP cit P. 15.