

Chapter 6
Rights, Resources and the Politics of Accountability

**From protest to proactive action: building institutional accountability through
struggles for the right to housing**

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When are struggles for basic rights by weak social groups able to have an impact on public institutions and make them more responsive and accountable?¹ This chapter responds to this question by drawing from the experience of an ongoing struggle by council tenants in Mombasa, Kenya for decent housing conditions, secure tenure, functioning urban services, and an end to the grabbing of public land in the municipality.² Lessons from social movement literature suggest that in assessing the impact or effectiveness of such struggles it is necessary to pay attention not only to internal factors such as how the movement is organised, what resources it is able to mobilise, and the terms in which it articulates its claims, but also to external factors such as the nature of the state, the configuration of public institutions and the broader political context (Tarrow 1998; McAdam, Tarrow and Tilly 2001). In a paper exploring how citizens' exercise of voice may more directly influence policy and service delivery, and how public

¹ Throughout this paper, the term 'accountability' is understood as comprising two dimensions: answerability (that public officials/institutions are under obligation to justify their actions) and enforceability (that sanction follows failure to account and failure to perform and that citizens have redress for harm suffered) (see chapter 2). Responsiveness is used in the sense articulated by Goetz and Gaventa: 'the extent to which a public service agency demonstrates receptivity to the views, complaints and suggestions of service users, by implementing changes to its own structure, culture and service delivery patterns in order to deliver a more appropriate product' (Goetz and Gaventa 2001: 6).

² The author is part of a team of Institute of Development Studies (IDS) researchers that has had close interaction with the Mombasa council tenants for three years (since 2002). Part of the participatory action research involved facilitating their strategic planning. It is hoped that the reflections in this chapter will make further contributions to that process of shaping a strategic vision for the struggle.

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institutions can be more 'client-focused', Goetz and Gaventa employ a framework that breaks down this combined analysis of internal and external factors into three key questions (Goetz and Gaventa 2001: 10):

- 1 What is the social, cultural and economic power of the group? (This interrogates the extent to which there is a united and well-organised constituency that is able to articulate its entitlements clearly, able to attract allies in strategic places, and enjoys broad social support for its claims.)
- 2 What is the nature of the political system? (This interrogates the depth of procedural and substantive democracy: the manner in which executive, legislative and judicial power is organised, and the genuineness of political party competition based on ideas and programmes.)
- 3 What is the nature of the state and its bureaucracies? (This interrogates the extent to which there is a professional and relatively autonomous civil service, a level of commitment to reform in the bureaucratic culture and practice, and pro-poor responsiveness.)

These questions provide a useful framework for taking stock of and accounting for gains and losses of the council tenants' ten-year struggle in terms of ability to have an impact on public institutions and make them more accountable. But first, what is the context of the struggle: who is involved and what are the main issues?

Background

The city of Mombasa is Kenya's sea port and its second largest city, with a population of

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about 700,000.³ The city has an officially acknowledged housing crisis (Central Bureau of Statistics 1999: 15). The worst manifestation of the crisis is in the slums that have mushroomed in the city over the last ten years. But equally visible is the severe deterioration in the quality of existing low- and middle-income housing, which is also in short supply. Most people in this income group have only two options to choose from: on the one hand, the ‘Swahili’ type houses⁴ (built out of mud and mangrove poles) occupied by several families, each household having a single room.⁵ Cooking and toilet facilities are communal, with no proper sanitation services as they are located in unplanned, semi-permanent settlements. On the other hand, council-owned estates constructed in the colonial era that have not seen much maintenance since the mid-1980s. Among these estates are Tudor, Changamwe and Mzizima, where the tenants’ associations’ mobilisation work began.⁶

The tenants’ associations from these three estates joined together in November 2002 to form the Shelter Committee of ILISHE⁷ Trust, an umbrella organisation bringing together

³ The last population census was held in 1999. Mombasa’s population then was 643,168, with 181,849 households (Central Bureau of Statistics 1999: 15).

⁴ This is the most common type of housing available. The particular history of land tenure and administration in the coastal region has produced a high incidence of absentee landlordism, so it is common to find that the owner of the house is not the owner of the land, but collects rent from tenants who each rent a room and share bathroom facilities. Technically their tenure is insecure because they could be evicted and the structures demolished should the landowner claim the land back.

⁵ This single-room living arrangement is not unique to Mombasa. The 1999 census found that 59 per cent of urban households nationally live in a single room. In the capital city, Nairobi, the figure is 67 per cent (Central Bureau of Statistics: 1999: 18–19).

⁶ Unless otherwise stated, the information presented here about the estates was generated by the Tenants’ Associations from historical profiles, collective mapping exercises and interviews with key informants such as elderly residents and one active member of Changamwe Village Development Association who is a retired councillor and therefore had access to the council’s archives. Their findings were then presented and discussed at a workshop in April 2003 which the author and his associates helped to facilitate. See ‘Sharing Experiences and Mapping out Strategies for Advancing the Struggle for Shelter Rights’ (Joint workshop for Tudor, Mzizima and Changamwe Tenants’ Associations – Mombasa, Kenya, 15 and 24 April 2003).

⁷ ILISHE stands for ‘Ilimu Sheria’, Kiswahili for ‘legal awareness’.

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community-based groups in the Coast province. The Shelter Committee helps to mobilise other council tenants facing similar problems with the aim of ultimately getting all 18 council estates involved and active in the struggle. The tenants' struggle can be summed up as being about four issues: decent housing conditions, functioning urban services, secure tenure and fighting the grabbing of public land.

Decent housing conditions

Under the terms of the lease agreement, the council has an obligation to maintain the houses. The council has not undertaken routine maintenance tasks such as painting of the exterior, or repairs and replacements of the fixtures, since the early 1980s. Tenants are forbidden to make any 'alterations or additions whatsoever' to the flat or 'any fixtures and fittings therein' without the council's consent. The council's established practice of withholding consent notwithstanding, those tenants who can afford it have been forced by circumstances to resort to self-help measures such as replacing sinks, toilets, doors and windows, and even improvised wooden staircases. However, for tenants living in blocks with shared ablution facilities, the deterioration has not seen such mitigation; these tend to be poorer tenants and also it would take the agreement and financial contribution of several households to tackle these problems.

Functioning urban services

The city has been in economic decline for the last ten years (Gatabaki-Kamau *et al.* 2000: 1). This economic decline was made worse by politically motivated clashes just prior to the 1997 elections. Key sectors of the economy, such as tourism, suffered huge setbacks,

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as did the urban infrastructure.⁸ Water and sanitation services are poor in the city as a whole, but low-income areas are hardest hit. Estates such as Tudor have not had running water since 1995, a situation made worse by an ongoing dispute between the council and the state-operated National Water Conservation and Pipeline Corporation. Yet the tenants have continued to pay for water and sewerage services they do not receive, since these charges are included in their rent charges. Here, too, the tenants have resorted to self-help measures. A women's group in Tudor estate sank a borehole that sells water to the residents. People also buy water from vendors who cart water around the estates.

Secure tenure

As tenants with written lease agreements, the council tenants are more tenure-secure than most low-income residents of Mombasa. But tenure security is much more than having an official document: council tenants do not *feel* secure. Corrupt practices in the council's department of housing, irregular practices such as rigging waiting lists, and backdated eviction notices used to evict people without the benefit of the notice period required by the tenancy agreement all contribute to the feeling of insecurity. The tenants speak of an increasing trend of people having to *teremka* (go down the slope) literally and figuratively into the *muoroto* (slum) on the periphery of the estate because they have either been unable to pay the rent, or unable to fight off an irregular reallocation of their lease to another tenant favoured by some council official or councillor. Thus the search for tenure security is expressed first and foremost in demands for an end to corruption.

⁸ Following the 1997 clashes, average hotel occupancy fell to 26 per cent. The tourism sector suffered further setbacks with the embassy bombing in 1998. As of 1999, average hotel occupancy had fallen to 11 per cent (Gatabaki-Kamau *et al.* 2000: 2). The bombing of an Israeli-owned resort at the coast in 2002 further devastated Mombasa's economy.

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The search for tenure security also takes the form of demands for transfer of ownership to the tenants.

Fighting the grabbing of public land

In Kenya it is impossible to talk about the crisis in public housing without talking about land grabbing and therefore about corruption among bureaucrats and politicians. ‘Land grabbing’ has defined Kenyan politics, particularly in the 1990s, according to the Ndung’u Commission, which was set up in July 2003 to investigate illegal/irregular allocations of public land (Government of Kenya 2004). Land grabbing refers to irregular allocation of land set aside for public purposes, or any government-owned land, to private individuals or corporations. Many allocations did not follow the procedure laid down in the Government Lands Act. Allocations followed the exception rather than the rule: regular allocation procedure should go through an Allocation Committee. An exception permits the president (a power delegated to the Commissioner for Lands) in exceptional circumstances to bypass the allocations committee and give a direct grant through a letter of allocation. This became the standard procedure, doing away with scrutiny in all allocations.

Mombasa council tenants’ mobilisation efforts sprang from resistance to land grabbing, since Mzizima and Tudor estates were threatened with this fate in the mid-1990s. The council’s plans to sell off the estates were foiled by a combination of high-profile campaigns by the tenants and a hitch in the financing arrangements.

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The next three sections analyse the tenants' struggle through the lens of an adaptation of the framework suggested by Goetz and Gaventa to respond to the central question: when are struggles for basic rights by weak social groups able to impact on public institutions and make them more responsive and accountable? The next section will address how to assess a group's social, cultural and economic power, which is necessary to hold public institutions to account.

What is the social, political, cultural and economic power of the group?

Social and political power

This can be assessed on two counts: first, does the struggle have broad membership so as to command social legitimacy? Second, does it offer incentives for people to join and stay engaged in collective action?

There is an important question regarding the membership in social movements. In particular, who is in the tenants' struggle? Is its membership broadly representative of council tenants in Mombasa? As has already been stated, the struggle originated in three estates. The Shelter Committee formally started outreach activities in the other council estates in 2003. By December 2004 eight other estates had been added to the number. However, this represents a swelling in numbers rather than organic growth into a movement. It was precipitated by response to an immediate threat: in July 2004 the tenants received letters from the National Housing Corporation telling them that they would henceforth be required to pay their rent to the corporation, and also that the rent would be increased. This is on account of a dispute between the council and the

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corporation over outstanding amounts that the council owes to the corporation. The tenants mobilised and through ILISHE instructed a lawyer, who has since managed to secure a temporary injunction to prevent the National Housing Corporation from collecting any rent, pending hearing of a case filed by the tenants to determine whether the council or the corporation is the landlord.⁹

The links between the Shelter Committee and these eight estates are through key individuals rather than a critical mass, and therefore broad ownership of the struggle is something that needs to be cultivated. Discussion on how to expand the structure of decision making in the Shelter Committee so as to accommodate them is still at an exploratory stage. In terms of geographical spread, therefore, it is fair to say that the membership has not been broad enough to include a majority of the people affected by the issues central to the struggle.

Even within the three estates in which the struggle is most active, more could be done to achieve broader inclusiveness. With the discontinuation of the savings scheme there is no register of members as such, and so it is difficult to say with certainty how many are 'paid-up' members of the tenants' association in each estate. There is an identifiable core group that stays active, but mobilisation in the bulk of the estates has peaked and plateaued, depending on whether there was some imminent threat that called for unified resistance.

⁹ Personal communication with Justus Muniyithia, counsel for ILISHE, 18 April 2005. The case reference is *Wilson Ndolo and others v Municipal Council of Mombasa and National Housing Corporation*, Chief

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Does membership cut across divides? In terms of socio-economic class the group is relatively homogeneous. Therefore the divides that have mattered most are ethnicity and political party affiliation. The joint Shelter Committee has managed to function relatively smoothly, notwithstanding diversity in ethnic origin and political party affiliation. Coast province is characterised by a very particular politics of ethnicity that polarises ‘indigenous’ coastal peoples (*watu wa pwani*) and people from up-country (*watu wa bara*). The politically instigated clashes that preceded the 1997 general elections were fuelled by this polarisation. Political party affiliation broadly follows this pattern. The area has been a key stronghold of the former ruling party, KANU (the Kenya African National Union, in power for the last 40 years until the 2002 elections), and therefore coastal peoples are presumed to be KANU loyalists. Up-country people are presumed to support the former opposition, now in the governing coalition.

Tensions along these lines occasionally manifest themselves in relationships among the tenants and with external actors. There has been talk about the disruptive effect of the election campaigning seasons, when some tenants’ association officials double up as party activists. If they undertake door-to-door recruitment exercises for their party, will people not identify them with that party the next time they come on a mobilisation exercise for the estate’s tenants’ association? There was one acknowledged incident of a tenants’ association becoming deadlocked for months over unresolved differences between two officials belonging to rival political parties that had clashed during the campaign. This has subsequently been resolved following open discussion at the joint

Magistrate’s Court Case No. 4542 of 2004.

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Shelter Committee level and binding arbitration.¹⁰

In order for the group to acquire and maintain membership it needs to show that it has something to offer. They need to demonstrate this to persons who remain aloof [meaning in this context?] in the estates in which the tenants' associations have been active, as well as to the unreached estates. Those active in the struggle cite solidarity and the amplification of voice (*kupaza sauti kwa pamoja*) as the most significant benefits of belonging to the tenants' struggle. One other benefit cited is membership in ILISHE Trust, which promises support in the form of connections to professional organisations (legal aid providers, for example), access to the media, and a means to secure funding (even though the latter is not guaranteed). What is lacking is a clear articulation and popularisation of the ultimate vision or desired outcome of the struggle, whether that be winning the right to own their houses or clarity in and implementation of the council's obligations to maintain the houses and deliver services. Clear articulation of the long-term goal is important in view of the weight of immediate disincentives to joining this type of struggle. Housing in Mombasa is difficult to come by. Therefore council housing – with all its problems – is still desirable. Many would not want to jeopardise a tenancy status that is already precarious and expose themselves to reprisals in the form of evictions or, even worse, job losses for those tenants who are also council employees.

¹⁰ There is a tricky balance to strike between staying politically engaged as individual citizens free to form party or other affiliations, and at the same time building up (or at least not undermining) the inclusiveness and social legitimacy of the struggle. Open discussion is a good start and needs to become a regular practice, not just in response to extreme cases. In addition, perhaps it is time the group agreed to some general principles on their members' political engagement: for instance, agreeing not to use the tenants' association's name to further partisan activities, and not wearing party insignia to tenants' association events.

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People need to be persuaded that there are long-term benefits that make the risks in the short term worthwhile.

Cultural power

‘Cultural power’ is a useful label for exploring a group’s ability to influence public discourse on the issues that define the struggle. To paraphrase Goetz and Gaventa (2001: 41), it refers to the effective use of the media and other public forums to gain support for their cause and to shame and praise officials; the group’s ability to successfully challenge presumptions (especially official presumptions) about the group and their struggle; and the ability to build credibility by combining protest with constructive engagement.

Use of media to gain support and to shame and praise

The tenants’ struggle has used the media and public forums quite effectively, particularly when a specific threat was imminent. It was a high-profile media campaign that thwarted the council’s secret plans in 1997 to relocate Mzizima tenants (who are low-cadre employees of the council) so as to make room for a private housing development that would price out low-income earners from that neighbourhood.¹¹ In 2000 Mzizima tenants made their case before a presidential commission that had been set up to propose changes to the land law system.¹² Media publicity had earlier exposed planned evictions intended to make way for similar redevelopment in Tudor estate.¹³ Tudor tenants credit their campaign for the decision by the National Social Security Fund to withdraw from

¹¹ See Miano Kihu, ‘We’ll Resist Eviction by Council, Vow 114 Families’, *Sunday Nation*, 24 October 1999.

¹² Memorandum of Mzizima Staff Housing Estate to the Commission of Inquiry into the Land Law System in Kenya (the Njonjo Commission), 6 July 2000.

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negotiations for the financing of the redevelopment, which essentially halted the council's plans. In 1995 a concerted media campaign made the council shelve plans for a steep hike in rent, averting the full hearing of a court case that the tenants had initiated to challenge the rent increase.

The tenants now need to strategise for a more proactive media strategy that goes beyond mainstream media, particularly for the purpose of reaching into council estates in Mombasa. In order to win broad public support for reform of public housing policy nationally, the struggle also needs to be presented in terms of a vision for broader social transformation, articulating the struggle as being about offering an alternative vision rather than simply securing gains for the immediate constituency (Hunt 1990).¹⁴ For instance, the campaign to resist private real estate developers is being pursued not only on the basis that tenants who cannot afford high rents will be displaced, but more broadly to ensure city policies that put people's basic shelter rights ahead of profits.

Shaming and praising of officials could be sharpened and made more evidence-based. In tackling land grabbing, for instance, Changanwe residents carried out impressive investigative work and compiled a list of the reference numbers of all the illegally allocated plots, along with the names of the people to whom they had been allocated. Missing from the list, however, were the names of the officials involved in the allocations. The obstacles to obtaining this information are enormous (as the Ndung'u

¹³ See 'Council in KShs. 4b Project' *Daily Nation*, 19 July 1994.

¹⁴ Employing a Gramscian framework of analysis, Hunt refers to this process as one of counter-hegemony: 'the process by which subordinate classes challenge the dominant hegemony and seek to supplant it by articulating an alternative hegemony' (Hunt 1990: 312).

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Commission found out), but determined groups have been able to obtain it through a combination of formal and informal networks.

Challenging presumptions

The importance of challenging presumptions (especially official presumptions) about the group and its struggle cannot be overemphasised. In official discourse the tenants are perceived as no more than ungrateful beneficiaries of heavily subsidised housing. The tenants' own account is that it is they who subsidise the council: with the council's failure to carry out routine maintenance since the mid-1980s, tenants have been forced to carry out major repairs at their own expense to make the houses habitable, knowing full well that the council will never reimburse these 'unauthorised repairs', nor will they be able to remove fixtures they have installed at the end of their tenancy, as this will be treated as vandalism.

This is common knowledge among the tenants, but in public discourse on council housing it is not. Making it more explicit could change the way in which 'subsidy' is understood, thus legitimising the tenants' alternative account. Literature on social movements and rights suggests that, in order for weaker social groups to be able to institutionalise and consolidate their gains, they must work towards legitimising their alternative vision so that it becomes the 'hegemonic' position (the taken-for-granted way of thinking or doing things) (Hunt 1990).

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Building credibility by combining protest with constructive engagement

Has the tenants' struggle worked to build credibility by combining protest with constructive engagement? It has been easier for the council tenants to agree on what they are against than to agree on a shared vision for proactive action. Whereas many who are active in the Shelter Committee see the ultimate aim of the struggle in terms of being able to purchase the houses from the council, there are some who will be content if the council carries out repairs, involves the tenants by allowing them to contribute through their labour and ideas, and takes this contribution into account in calculating the new rents so that the resulting rent increment is not too large.¹⁵ There is also lack of agreement on the eligibility criteria for purchase, with some holding the view that only residents of at least ten years' standing should be allowed to participate (ILISHE 2002: 22). It will be necessary to carry out a detailed assessment of views among the residents so as to determine what vision is broadly representative. Engaging the council and other relevant public institutions on a constructive agenda will require the identifying and crafting of the key message, so that it can be targeted on the institutions most likely to intervene effectively. It will also require clear ideas for action, in the form of concrete, carefully budgeted proposals to the council.

Economic power

In the mid-1990s and into the late 1990s the tenants' associations in the three estates operated savings schemes, both to finance the struggle and to build up a funding base that would enable them to leverage financing for the purchase of the houses. These schemes have since lapsed. Except for *ad hoc* collections to deal with emergencies, there is no

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effort to fundraise among the membership. Now, since the joint Shelter Committee is one of the constituent committees of ILISHE Trust, ILISHE fundraises among donors and then makes allocations among the various areas of work. The tenants' work has made a significant contribution to ILISHE's funds by winning the 2002 Body Shop Award for Human Rights, which brought US\$75,000 to the organisation. It is fair to say that the initial determination to build financial self-sufficiency through savings in preparation for the eventuality of purchasing the houses has been replaced by a reliance on fundraising from donors through ILISHE on a 'project' basis. The award served to weaken further the previous emphasis on linking grassroots mobilisation with building up savings. On the whole, the economic power of the tenants' associations is very weak, made worse by fluctuations in the number of people actively involved in the struggle.

What is the nature of the political system?

The following features of the political system have had significant implications for the tenants' struggle: political party competition; the relationship between central and local government; public institutions' accountability to Parliament; and the degree of protection of citizens' rights from the excesses of politicians and bureaucrats.

Political party competition

In an ideal situation, parties compete on the basis of programmes and ideologies, and therefore social movements are able to form strategic alliances with any party whose agenda is congruent with the movement's goals so as to advance their struggle. The situation in Kenya is far from this ideal. Party politics since independence has lacked

¹⁵ This divergence of views emerged at a review meeting held at ILISHE, Mombasa, 14 December 2004.

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genuine competition among alternative policies. Following ten years of legally imposed single-party rule, Kenya has had three multi-party elections: in 1992, 1997 and 2002, the last of these unseating KANU (from central government as well as from Mombasa) for the first time in 40 years. Even though the major parties publish manifestos, their political rallies and public discourse in general is dominated by ethnic posturing rather than by issues (Gatabaki-Kamau *et al.* 2000 :75; Southall and Wood 1996; Mutunga 1999). The politics of ethnicity has acquired a peculiar sharpness in Mombasa and in Coast province generally since the clashes of the 1997 elections, intended to flush out *watu wa bara* (up-country people, people who are not regarded as indigenous to the coastal region).

This context cannot be ignored in analysing citizen engagement with public institutions. The areas in which the council estates are located are densely populated and therefore any organised group constitutes an attractive vote bank for local politicians and aspirants. The tenants' struggle has not escaped the politics of ethnicity. Among the tenants there are suspicions that the reason why the council has paid no attention to the state of the estates is because the majority of tenants are *watu wa bara* – up-country people.

The political climate plays a big role in determining the types of strategies citizens' collective action will adopt. In a party-based political system that is not defined by issues and programmes, patronage sets in. There have been moments of setback in mobilisation efforts, when the respective tenants' associations that make up the joint Shelter Committee were in disagreement about whether to align their interests (and therefore political support) with a particular politician.

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Relationship between central and local government

The relationship between central and local government in Kenya has been marked by determination by the former to control local affairs. The Local Government Act, which defines the functions of local authorities, gives a lot of oversight powers to the Minister for Local Government. For instance, local authorities need the Minister's approval for their budgets, employment decisions and the setting of local rates (such as property rates), as well as the Attorney-General's approval for any by-laws enacted. The 1998 Local Authorities Transfer Fund (LATF) Act requires central government to designate 5 per cent of income tax revenue to local governments, which is then allocated among the various councils on the basis of population and subject to the councils' submission of a detailed budget and service delivery plan (Smoke 2004). This allocation, in addition to local rates and licence fees, makes up most of the local councils' revenue.

With few sources of revenue and an unpredictable flow of central government allocations,¹⁶ municipal councils are still expected to provide a wide range of services. The pressure on local governments to raise revenue locally in meeting their service delivery mandate means that Mombasa municipality will be very reluctant to relinquish ownership of council estates that bring in a predictable and regular (though meagre) share of their revenue. It does not help that the economy of the city as a whole has been in decline since 1990 and therefore revenue from business licences and service charges has been falling (Gatabaki-Kamau *et al.* 2000:1). Income from council housing accounts for

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10 per cent of the council's revenue.¹⁷ The biggest expenditure item is salaries for the council's bloated workforce and the councillors' generous allowances.¹⁸ The irony was not lost on the tenants when a newspaper story on a council decision to increase rents by 30 per cent was published alongside a story on the councillors' vote to increase their own allowances by about 50 per cent.¹⁹

The relationship between central and local government is complicated further because the local government structure exists side by side with a provincial administration system under the Office of the President. This system is governed by a hierarchy that operates in a top-down fashion from Provincial Commissioner to District Commissioner, to a divisional administration at the sub-district level, then to a chief at the location level, assistant chief at the sub-location level and headman at the village level. The lines of authority and responsibility are not clearly defined and conflicts between councillors or council bureaucrats and district officials have often been bitter.²⁰

¹⁶ LATF is expected to make central government remittances more predictable but this is not yet the case. Using population as the basis for allocation is rigid and does not respond to changing needs, and is also contested (Smoke 2004).

¹⁷ The other revenue sources are: rates (taxes on land) 44 per cent; service charges 19 per cent; market fees and commercial rents 10 per cent; business licences 8 per cent; other revenues (from user fees for health services, for example, or nursery school fees) 9 per cent (Gatabaki-Kamau *et al.* 2000).

¹⁸ Salary arrears are a frequent cause of confrontation between the council and its employees. See, for example, 'Council Unable to Pay Arrears', *Daily Nation*, 4 January 1995.

¹⁹ See 'Council Increases Rents', *Sunday Nation*, 9 July 2000, p. 4. The same story also exposed institutionalised nepotism in employment, whereby each councillor had a quota of employees to bring in, and some councillors had exceeded their quota, resulting in overemployment and causing a bitter row at the council meeting.

²⁰ One source of conflict is with respect to a policy that was introduced in 1983, the District Focus for Rural Development. Under this policy, a District Development Committee is given the power to approve all development projects funded by the central government, even when those projects are proposed by the local authority (Government of Kenya 1987; Smoke 2004). The District Development Committee is chaired by the District Commissioner and in several cases DCs who did not have good relations with elected councillors have frustrated local authority projects.

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The council tenants encountered this tension in their fight against the grabbing of public land. After obtaining the details of ‘grabbed plots’ they tabled these lists before the Municipal Physical Planning Liaison Committee, which set up a task force chaired by the District Commissioner, comprising the Municipal Engineer, Provincial Commissioner and Physical Planning Officer – a mix between council bureaucrats and provincial administration officials. The task force confirmed that these plots had indeed been irregularly allocated and that the buildings erected on them did not comply with the building code, primarily because many of them blocked off access to public amenities. The task force recommended revocation of the building approval. This revocation needed to be issued by the Town Clerk. The plot owners are wealthy and politically well connected, both on the local and national political scene. The Town Clerk was reluctant to take any action that the councillors would not approve of. Two months later no action had been taken. In April 2001 the tenants’ association in Chagamwe estate wrote to the committee requesting permission to demolish an illegally erected wall on one of the grabbed plots that was blocking a road, seeing as the committee was afraid to take action against the grabbers. After a month of waiting in vain for a response from the committee, the residents mobilised and demolished the offending wall. In May 2001 the Provincial Commission wrote an urgent letter to the Town Clerk directing him not to approve any building plans for that plot, or ‘any transaction that would provoke residents’.

In terms of protocol the Provincial Commissioner has no authority to direct the Town Clerk. However, the Provincial Commissioner has a mandate to ‘maintain law and order’ within his jurisdiction, and the riotous demolition of the wall had turned this into a ‘law

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and order' issue. The District Commissioner serving in Mombasa at the time (DC Rotich) was particularly responsive to citizens' complaints about land grabbing, and the tenants and other groups took full advantage of this and drew in the provincial administration whenever they could.²¹ It is quite ironic that citizens would turn to the infamous provincial administration (reputed to be a top-down authoritarian and unresponsive structure) to reign in the excesses of their elected representatives (councillors). This should caution against too much faith in representative democracy as a means to secure accountability and responsiveness.

Public institutions' accountability to Parliament

If political accountability were functioning well, the tenants would be able to get their local MP to raise the issue in Parliament through questions to the Ministry of Local Government and/or Ministry of Lands and Housing and expect that action would be taken, for instance to compel the council to come up with a plan for proper maintenance of the estates or a plan for instituting a tenant purchase scheme. The tenants do not consider this to be a serious option because local MPs have been implicated in land grabs in the previous regime. Tough talk against corruption in the current regime notwithstanding, no action has been taken against them. Some MPs previously served as councillors and did nothing about poor housing conditions in the estates, and therefore the tenants seriously doubt that they can be relied upon to champion their cause in their new capacity as MPs. There is also a perception that approaching Parliament in Nairobi is a circuitous route, far removed from their reality, and there is no guarantee that the Ministry of Local Government will take action, let alone that the council will act on any

²¹ See 'Squatters Paid Shs. 2.4m' *Daily Nation*, 10 April 2001; ILISHE Trust 2002.

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directive the Ministry might issue. However, this route is worth a try, if for nothing else at least for the sake of building up a record and strengthening the case for more direct forms of accountability on the basis that the conventional representation-based system for political accountability has failed to serve citizens. The tenants' own proposal for Citizens' Committees in every ward as a forum for ongoing engagement with MPs and councillors expresses a desire for more direct forms of political accountability, but a case needs to be built up for them.

Protection of citizens' rights

Political power must be configured so as to ensure that the boundaries of the state–citizen relationship are observed and that citizens' rights are protected against the excesses of politicians and bureaucrats. In the case of council housing, protection is very weak and council tenants are rendered vulnerable. Kenya's constitution does not provide for a right to adequate housing²² or a right to an adequate standard of living. However, these are internationally recognised in the International Covenant on Economic, Social and Cultural Rights, to which Kenya is a signatory.²³ A draft constitution produced in March 2004 after a broadly consultative process of constitutional review does make proposals for recognition of a broad range of economic and social rights, including housing, but it is

²² The UN Committee on Economic, Social and Cultural Rights defines 'adequate housing' to include secure tenure. The other defining features are: availability of services (such as water, heating, lighting, refuse disposal), affordability, habitability (protection from damp, cold, heat, rain, structural hazards), accessibility (especially to vulnerable groups such as physically disabled, elderly, children), location (proximity to employment, schools, health services), and cultural adequacy. See UNCESCR, *General Comment No. 4, Right to Adequate Housing*, 1991, available at <http://www.ohchr.org/english/bodies/cescr/comments.htm>

²³ Kenya's constitution recognises a right to private property under Section 75 of the constitution, but this has been interpreted narrowly to refer to a right to compensation for compulsory acquisition of property by the state.

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not possible to predict whether or when this new constitution will be enacted.²⁴

There is no statute dealing with housing. The Housing Act (Chapter 117 of the Laws of Kenya) relates narrowly to the activities of the National Housing Corporation. A proposal is underway to enact a Housing Act that deals with housing broadly (Draft Sessional Paper 2002). Kenya has not had a national housing policy since 1967 (Sessional Paper No. 5 1966/7). The most recent population and housing census indicates an urgent need for such a policy in view of a major housing crisis in urban areas (Central Bureau of Statistics 1999). An updated policy is only in the process of being drafted by the Department of Housing, and is yet to be presented in Parliament for endorsement (Draft Sessional Paper 2002).

The legal and institutional framework governing council tenancy specifically is also inadequate. There is no national legislative framework regulating the manner in which councils manage housing. This is left to each council's own by-laws, and many councils have not even enacted specific by-laws to deal with housing. Although the Minister for Local Government in 1995 issued a legal notice in 1995 stipulating standards of habitability for buildings, these relate to new construction and there is no provision for their retroactive application to existing housing, nor any clear indication that local councils are also bound by the order as owners of buildings, in addition to being the enforcers of the order.²⁵

²⁴ See [http:// www.kenyaconstitution.org](http://www.kenyaconstitution.org).

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The laws that are intended to regulate landlord–tenant relations are not applicable where the government is the landlord. Councils as landlords are exempt from these general laws that spell out their obligations to their tenants. In addition, the law makes it less likely that council tenants will seek redress to hold councils to account. Government bodies (including local authorities) are exempt from the application of the Rent Restriction Act. The Rent Restriction Act sets up a Rent Restrictions Tribunal, which offers a cheap procedure for resolving disputes in a forum that is easier for low-income tenants to access. A low-income tenant is defined as any tenant paying less than Shs. 2,500 a month – just under £20. Under this law, a low-income tenant cannot be evicted or have their rent increased without an order from the Rent Restrictions Tribunal (Bodewes and Kwinga 2003: 227). The exemption of government-owned housing from the jurisdiction of the tribunal means that low-income tenants of council housing are easier to evict. If they wish to challenge their eviction they must pay for the more expensive court process, which they are rarely able to do, not only on account of cost, but for fear of reprisals and loss of the lease altogether.

The argument for a change in this aspect of law is strengthened in the face of the breakdown of accountability mechanisms at the level of council and central government responsibility. Council tenants are effectively denied access to justice. In order to protect the rights of council tenants as citizens a mechanism for redress is necessary, even if not judicial redress. This could take the form of an ombudsperson for public housing, or a special dispute resolution tribunal that deals with such disputes involving government

²⁵ *Kenya Gazette Supplement No. 44*, Legal Notice No. 257, The Local Government (Adoptive By-laws) Building (Amendment) Order, 7 July 1995.

housing and government land.

In order to play a significant facilitative role in the institutionalisation of gains made by struggling groups, rights must be understood and employed as part of a broader strategy of political contestation (Hunt 1990: 318, 319). A clear legal framework setting out rights and responsibilities in concrete areas goes a long way. However, a struggle that focused narrowly on securing legal recognition of a right to adequate housing, for instance, would be missing the opportunity for broader political engagement. Such engagement would entail articulating a link between inadequate (or lack of) housing and disenfranchisement: how it begets other forms of deprivation such as generalised insecurity, inability to access quality health and education services, gross under-investment of city government revenues in those areas, and citizens' lack of voice over the way in which the city's or state's revenue is spent (Appadurai 2001: 28).

What is the nature of the bureaucracy?

How responsive is the bureaucracy to the citizens who rely on its services? Is the bureaucracy professional and relatively autonomous? Does it have systems of fiscal and administrative accountability that function reasonably well?

Degree of responsiveness and autonomy

Conventional understanding expects the relationships of responsiveness and accountability to function as follows: bureaucracies involved in service delivery will be responsive to citizen needs, and accountable to elected officials (Goetz and Gaventa:

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2001). This expectation presumes that the bureaucrats have a measure of autonomy and that there exists a clear separation of powers between the civil service bureaucracy and the system of elected representatives. But bureaucrats in councils do not enjoy autonomy from councillors, and the functioning of the bureaucracy that runs council housing illustrates this. The council housing docket falls within the Directorate of Housing. But proposals by the director have to be endorsed by a resolution passed by the councillors. The tenants' associations learnt the hard way about the effect of the tangled relationship between bureaucrats and politicians in the council. One local councillor was very supportive of the tenants' efforts to get the estates converted into Tenant Purchase Schemes. The councillor managed to get the director of the housing development department on his side, and also cultivated support among a few more councillors. They planned to table a draft resolution at a full council meeting. Some tenants who are also council employees claim that the reason the proposals were never presented to the council is because as soon as the mayor got wind of it he summoned the director of housing and told him in no uncertain terms that if he tabled those proposals before the council he would be dismissed. Technically the mayor has no power to dismiss the director, since the director, like all civil servants, is recruited through the Public Service Commission, which is a central government body. He is therefore answerable to the Ministry of Local Government and not the council. However, it is not uncommon for mayors and councillors to use their influence to get civil servants dismissed or transferred to less attractive postings.

In this type of setting bureaucrats cannot afford to be responsive to citizens if to do so

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jeopardises their careers. Even leaving aside meddling mayors, the set-up gives no incentives to council bureaucrats to pay attention to complaints, views or suggestions of service users, because their terms of service are not linked to performance. The line of accountability only goes upwards to the Ministry, and no reference is made to citizens' assessment. Little wonder, then, that building alliances with bureaucrats has not been a feature of the council tenants' struggle. It would not make strategic sense for a movement to invest in cultivating long-term relationships with bureaucrats whose own tenure is so precarious.

Fiscal and administrative accountability

How efficient are the bureaucracy's systems of fiscal and administrative accountability?

Fiscal accountability through formal systems of auditing and financial accounting for the use of public resources is extremely weak. Ideally, fiscal accountability would mean relying first on the council's own internal auditing procedures to detect abuses, and, second, on the general review function performed by the office of the Comptroller and Auditor-General, who reports to Parliament on the use of public resources in all government agencies, including local authorities. The tenants are able to estimate the revenue that the council gets from the rent they pay, but their demands that the council make public its expenditure statements have met with no response from the council. This information is essential in enabling the tenants to build a case showing that it is possible for the council to carry out essential and urgent repairs (to leaking roofs, for example), and that tenants' offers to make labour contributions would make such repairs feasible. The tenants' suspicion is that the council routinely deploys revenue from the rents to pay

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salaries and has no plan setting aside a portion of the revenue for routine maintenance of the estates, a perception that is not helped by frequent worker strikes or strike threats over delayed or missed salaries.²⁶ Complete lack of transparency in the management of council finances only fuels such suspicions.

There is some hope as awareness spreads about the Local Authority Transfer Fund (LATF) and about the requirement that, as a condition of accessing the fund, councils develop a Local Authority Service Delivery Action Plan (LASDAP) in a participatory process that involves citizens in identifying priority projects. However, central to enabling meaningful direct citizen participation is the ability to access information on how the council operates. There is no provision for monitoring of the implementation process.

Administrative accountability operates through procedures that require bureaucracies to operate within their defined mandate and to report to ministers and legislatures. So in this case the directorate of the housing development department would be required to report to the Ministry responsible for housing, which would in turn be accountable to the relevant parliamentary committee, for instance the Public Investments Committee since the estates are public property. No such reporting appears to be required of the directorate. As a first step, such a report would provide an inventory of all housing owned by the council, which is important in the face of allegations that some have been 'privatised' informally; individual bureaucrats and councillors have sold them off or are collecting personal rents from them. That the Ndung'u Commission was unable to get

²⁶ See 'Council Unable to Pay Arrears', *Daily Nation*, 4 January 1995.

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such an inventory does suggest that councils have something to hide. The Commission complains that, of all the public institutions it had to interact with, local authorities were the most uncooperative. The Commission requisitioned from each local authority comprehensive lists of all public utility lands in its jurisdiction, as well as a list of all allocations to individuals and companies. The information supplied was grossly inadequate and the Commission concedes that it was unable to establish the full extent of land grabbing in areas administered by local authorities (Government of Kenya 2004: 39). This suggests that serious implementation of a simple reporting requirement has the potential to shake up the opaque council bureaucracy and expose irregularities.

The issue of land grabbing exposes administrative accountability failures at higher levels implicating the Commissioner of Lands and the Office of the President. As noted in the beginning, checks and balances such as the use of an Allocations Committee have been dispensed with in favour of unfettered allocation powers personified in the President or Commissioner. With respect to public land within townships the Commissioner of Lands is authorised to make such land available for sale subject to four conditions.²⁷ The first condition – only if such land is not required for public purposes – has evidently been breached. In Mombasa’s council estates incidents of sale of functioning marketplaces, school playgrounds, road reserves and parking lots attest to this. Second, the Commissioner must satisfy himself/herself that the land has been subdivided into plots clearly designated as suitable for residential or business purposes. This too has been breached: in Tudor, for instance, a commercial building with shops and bars has been built right in between residential blocks. Third, any buildings constructed on the plots

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must conform to specified building conditions. This must be verified by the Town Planning Officer and Town Engineer. This has been breached, as evidenced by structures on road or railway reserve land and others blocking off access to public amenities. Fourth, the land must be sold through an auction, preceded by advertisement and balloting ‘unless the President otherwise orders in any particular case’ [source?]. Records show that no auction for sale of public land has been held anywhere in the country in the last 50 years, and there is no documentation of a presidential order exempting specific plots from auction (Government of Kenya 2004: 11). A reasonable interpretation would presume that such presidential order must be in writing, even though the statute does not say so. It is difficult and futile to distinguish between allocations that had presidential exemption (issued verbally) and allocations made by low-level functionaries on the pretext of such presidential permission.²⁸

Ultimately, the overall expectation that public land allocations will be in the public interest has been gradually eroded as the scrutiny mechanisms have disappeared altogether.²⁹ The Ndung’u Commission confirmed and substantiated Kenyans’ suspicions that public land allocations were being used to reward political loyalty and to buy votes. The Commission found that allocations would intensify in the build-up to a general

²⁷ Sections 12–15 of the Government Lands Act, Chapter 280 of the Laws of Kenya (revised edition 1984).

²⁸ In the absence of transparent processes, fraud has characterised the public land allocation system. Examples include: direct allocations by the Commissioner of Lands without presidential delegation of powers; allocation of government land that was already alienated for other purposes; multiple allocations of the same piece of land; forged letters of allocation bearing the President’s name (which the Commissioner of Lands then acts upon to confer title); and even fake documents of title (Government of Kenya 2004: 75).

²⁹ Similar breaches of procedure became the norm in dealing with ‘special lands’ – lands protected by law on account of their ecological integrity, cultural significance and strategic importance such as forests, wetlands, historical sites and lands set aside for research and scientific installations (Government of Kenya 2004: 15). Breaches also plagued settlement lands purchased by the government for purposes of settling landless people.

election (Government of Kenya 2004).

The tenants' fight against land grabbing draws attention to issues of scale in struggles for accountability: weak groups organising at the local level will focus on local manifestations of a problem, their immediate experience of deprivation of rights, but the accountability failures are on a nation-wide scale. The local-level organising may at best change the behaviour of local powerful individuals or officials, but without changes in the policy environment that makes corrupt behaviour possible, even such slight gains at the local level become difficult to sustain.

Conclusion

The analysis of accountability and responsiveness in citizens' engagement with public service delivery institutions in the case of the Mombasa council tenants' struggle, through the lens of the framework proposed by Goetz and Gaventa, shows a gap between ideals and context-specific realities. It becomes clear why, after ten years of struggle, the only victories that the tenants can point to have been about staving off the worst harms. These are not small achievements by any measure: keeping well-connected business interests at bay is remarkable. However, their efforts have not imprinted a legacy on the public institutions they have engaged with – in the form of a positive change in policy at local or national government level, for instance, or institutionalised changes in the specific practices and procedures of the Housing Development Department or municipal council. This absence of a lasting legacy is explained by a combination of the factors explored

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above, namely: the group's fluctuating social and cultural power and narrow economic base; inability to sufficiently distance the group from a politics of patronage and ethnicity and cultivate a new way of engaging; and a bureaucracy in which accountability systems have broken down and public officials have no incentive to be responsive to service users. With respect to the problem of land grabbing, issues of scale make it difficult for the tenants' localised actions to have impact on accountability failures on a national scale.

Inevitably, the tenants' ongoing struggle will continue to face one key dilemma: they need sustained action for long-term institutionalisation of accountability mechanisms in the larger political context and in the relevant bureaucracies that play a major role in shaping the struggle. Yet struggles for basic rights often have a sense of urgency about improvement in one's condition, and therefore in order for people to join and stay committed there must be some indication that this will materialise sooner rather than later. This is not easy to resolve, but it seems there is no shortcut to gradually building a genuine movement: the shift from protest to proactive action is imperative.

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