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Any Analysis of Liberia's Local Government Act



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Acronyms:

| | |
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| CAO | County Administrative Officer |
| CDC | Coalition for Democratic Change |
| CDF | County Development Funds |
| CDO | County Development Officer |
| CEO | Chief Executive Officer |
| CFO | County Finance Officer |
| CSA | Civil Service Agency |
| CSC | County Service Center |
| DAO | District Administrative Officer |
| DC | District Commissioner |
| CDA | County Development Agenda |
| DDO | District Development Officer |
| DFO | District Finance Officer |
| GC | Governance Commission |
| LGA | Local Government Act |
| LGL | Local Government Law |
| LGP | Local Government Policy |
| LLA | Liberia Land Authority |
| LRA | Land Rights Act |
| MoGCSP | Ministry of Gender Children and Social Protection |
| UNDP | United Nations Development Program |
| UNMIL | United Nations Mission in Liberia |

Executive Summary:

As of November 23, 2018, when the Local Government Act (LGA) was published, it became enforceable as the legal and regulatory framework for decentralization. The Act repealed the Local Government Law constituting Title 20 of the Liberian Code of Laws Revised. Overall, the LGA is an integral part of governance reform in Liberia with a focus on decentralization while at the same time reaffirming the unity of the Republic. Through decentralization, citizens have the opportunity to engage in the governance of the state through the devolution of certain administrative, political and fiscal authorities from central government to local Government.

In pursuit of the above goal, the Act has the following specific objectives:

- To give effect to the Country's National Policy on Decentralization and Local Governance;
- To ensure democratic participation in, and control of, decision-making by the citizenry;
- To create and establish democratic, political, administrative and fiscal structures in local governance; and
- To ensure sources of revenues in support of local government administration and operations.

The purpose of this analysis is to identify gaps in the LGA and how they could impact on the achievement of the goal and objectives in the implementation of the law. The outcome of this analysis is to use the findings to develop policy briefs that will be used as policy and stakeholders engagements to advance short, medium and long term recommendations for reforms in the law. These reforms will focus on improved local governance and effective, efficient, inclusive and sustainable public service delivery.

Findings and Recommendations:

Political decentralization did not go far: The Act reinforces the centralization of political power in the presidency. It reaffirms the power of the President to appoint county administrators including superintendents, county administrative officer, county finance officer, county development officer, mayors and commissioners.

Recommendation: Amend Article 54(d) of the Liberian Constitution so that citizens can have the power to democratically elect their local political leaders, particularly, Superintendents. This will create the opportunity to engender political decentralization.

Local government structures and powers: The establishment of a county council in each county is a new structure within local government with regulatory power and authority to levy taxes, fines, issue licenses, approve annual county budget and to approve the county development plan and its implementation. By performing these tasks, the city council has oversight function and responsibilities. Yet, it has no role to play in the appointment of superintendent and other administrators who manage the county resources and the implementation of the development plan. Other than stating that the chair and other officials of the council shall be elected by the members, the law is silent on how citizens in the first place can become members of the county council.

Recommendations:

- Amend Chapter two (2) of the law and give the County Council the authority to appoint Mayors and other administrators such as the county administrative officer, county finance officer, and county development officer. Or;
- Amend Chapter two (2) and subject the appointment of CAO, CFO, and CDO to civil service regulation and procedures since these positions are technical.
- Chapter two (2) of the Act should be amended to include a provision that clearly states how citizens can become members of the county council.

Inconsistency in reporting mechanism of mayors: Unlike the mayor of Monrovia who reports to the President and the City Council, mayors of other cities report to their respective Superintendents and Councils. The councils have no oversight responsibility of mayors because they play no role in the appointment of mayors so why should mayors report to them?

Recommendation: Amend section 2.16j of the Act to call for mayors to either report to the superintendent as CEO of the county or to the President who has the appointing power. This would create a clear line of accountability.

Dual mechanisms for chieftaincy positions: Chiefs can be elected in keeping with constitutional provisions. Other than candidates not running as partisans for a chieftaincy position, there are no other eligibility criteria set for the elections of chiefs as required by Article 56(b). At the same time, chiefs can be provisionally appointed in the event where conditions do not allow for the enforcement of this Constitutional provision.

Recommendation: Given the current socio-economic reality, the Ministry responsible for local government and the Governance Commission in partnership with CSOs should undertake a nation-wide consultative process to gauge citizens' views on whether or not chiefs should be elected or appointed. This will inform policy makers whether to amend Article 56(b) or maintain it. There is no use having a constitutional provision that is not enforceable.

Devolution of fiscal responsibilities: The law is progressive when it comes to the devolution of fiscal matters. This include local revenue generation, own source revenue, revenue sharing, collection of fees and charges, and the establishment of an autonomous fiscal board to provide oversight for financial systems and procedures.

Recommendation: Central government should develop a capacity building program to support to the devolution of fiscal responsibilities to counties.

Undefined functions of administrative departments: The Act mandates the establishment of nine (9) administrative departments based on the capabilities of the counties but their functions are not defined.

Recommendation: The central government shall, through its relevant ministries and agencies undertake institutional capacity assessment of the counties and propose

measures leading to the establishment and functionality of County Administrative Departments as provided for under the Act.

Potential clash of governance structures: The Act calls for the Liberia Land Authority (LLA) to de-concentrate, delegate or devolve some of its functions (survey and land registration services) to local governments. The Act creating the LLA also calls for the establishment of county land institutions including the County Land Board (Section 43.3) and County Land Team (45.4). These structures will support the LLA at the county level to implement land surveys and registration of deeds and titles. The setting up of these various local governance structures could lead to a clash of authority.

Inclusion of women and marginalized groups in local governance: The Act lays out a clear framework to promote gender mainstreaming, participation and representation of women and marginalized groups in structures and decision-making of local governance. It, however, does not provide quantifiable indicators by which representation of women and marginalized groups can be measured. This is to ensure that women and those who are physically challenged are not under-represented.

Recommendation: Amend Sections 6.1, 6.2 and 6.7 to include quantifiable number of women and marginalized groups to be included in local governance structures. This will help to monitor compliance in terms of inclusiveness of local governance structures.

Devolved fiscal responsibilities versus centralized political structure: The law weighs more towards devolved fiscal responsibilities to local government. At the same time, political positions in the counties are still heavily influenced by the Presidency. This creates bottle-necks for downstream accountability.

Recommendation: The government should muster the political will to amend Article 56(a) of the Constitution through a national referendum for the election of county superintendent. Political decentralization will set the stage and create the opportunity for accountability in fiscal management of the operations of local government.

Limited emphasis on inclusive service delivery: The law, particularly what it intends to achieve (objective) does not explicitly mention inclusive and effective service delivery, one of the cardinal principles, rationale and objective of investing in decentralization.

Recommendation: Regulations that will be developed for the implementation of the Act should include measurable objectives around effective, efficient and inclusive public service delivery.

INTRODUCTION:

Decentralization has become an integral part of governance reform in developing as well as post-conflict countries in Africa, including Liberia. The logic or assumption behind decentralization efforts is threefold. First, centralized governance structures have not provided effective, efficient and inclusive service delivery to citizens. Second, centralized governance structures limit the participation of citizens in political, economic, and development decision-making processes. Third, centralized governance structures do not demonstrate accountability and transparency in the management of public resources.

The outcomes of decentralization efforts in other African countries have been mixed including arguments that it has created a new wave of local elite that use their power to control local communities and resources. Nonetheless, Liberia, in September, 2018 signed into law its Local Government Act (LGA) known as the Local Government Law (LGL) and was published into handbill on November 23, 2018. This followed several years of public debates and discourses led by the Governance Commission (GC). The LGA supersedes previous Local Governance Policy (LGP) and serves as the legal framework for the formulation of regulations and development of institutional structures, systems, and processes for the implementation de-concentrated, delegated or devolved functions to local governments.

Decentralization by its very nature threatens the status quo and it usually engenders national conversations on the pros and cons. In Liberia, there is a school of thought advanced by politicians, academics and civil society activists that centralization has not broadened the space for decision-making and has contributed to unfair distribution of national resources. They argued that participatory governance and economy development of ordinary citizens cannot be realized until political, fiscal and administrative powers are decentralized. On the other hand, opponents of decentralization which included influential persons in the Ellen Johnson government argued that the concept would create a federal form of government with sub-divisions with the potential to lead to political succession. Proponents of this argument further argued that local government will not be in the position to deliver effective services and program due to limited human resource capacity and incentives to attract qualified and experience individuals.

While these debates and counter debates may have contributed to the delay in the passage of the LGL two other issues served as impediments. The first one is the provision in the 1986 Constitution (Article 54) that gives the power to the President to appoint Superintendents who serve as the principal administrator of the county. The second was the lack of political will both within the Executive and Legislative Branches of Government to initiate a referendum to amend the clause mentioned above.

In the midst of the delay in the passage of the LGL, the government formulated the National Policy on Decentralization and Local Governance in 2012 to initiate some decentralization efforts. This led to the development of a de-concentration program with an objective to de-concentrate services to rural communities. The program is

implemented in six counties under the rubric of “Service Centers” with technical and institutional capacity-building support from the United Nations Development Program (UNDP) and other international development partners.

The second decentralization effort under the Sirleaf Administration included the introduction of the County Development Funds (CDFs) scheme in 2006 wherein allocations were made in the national budget to support locally driven development interventions at the county level. This scheme, which was well intentioned, was not properly conceptualized in terms of the legal, policy and institutional frameworks. The results of the CDFs are mixed but two factors that contributed to ineffective and inefficient implementation were:

(i) Development projects were politicized: members of the national legislature through the county caucuses, relying on the budget law influenced and manipulated the decision-making process of identifying and implementing projects.

(ii) The financial management system was weak and this led to corruption and mismanagement of resources.

The third initiative was the County Development Agenda (CDA) formulated alongside the Poverty Reduction Strategy (PRS) in 2008. The rationale of the CDA was to step down the implementation of the PRS by each county formulating a participatory development planning agenda through district to district consultation. Structures were developed at the county level but the program has been dormant and there is no available report on its outcomes.

The fourth decentralization effort was the establishment of the Regional Justice and Security Hub in Gbarnga, Bong County to deliver security and rule of law services to citizens of Bong, Nimba and Lofa with support from the United Nations Mission to Liberia (UNMIL). The hub provides infrastructural and logistical support to security institutions in these three counties so that they can be responsive in addressing security matters. While the hub continues to operate, there has been no independent assessment of the quality of services provided and its capacity to be sustainable.

Without documentation or knowledge on lessons learnt in the implementation of the above named decentralization efforts by the previous government, the Coalition for Democratic Change (CDC) led government has the legal mandate to implement the LGA following its passage in 2018. No law is perfect and it is against this background that this analysis was conducted to highlight some of the legal, policy and institutional gaps so that stakeholders involved in its implementation can be aware of the challenges that lie ahead and how they might mitigate them along the way.

The report is divided into several sections. Section one looks at the decentralization of political authority and how it enables citizens’ participation. Section two provides an overview of the decentralization of administrative functions and its implications for

efficient service delivery. The last section looks at the decentralization of fiscal management and how it will contribute to inclusive economic growth and development.

Decentralization of political and administrative authority:

The draft LGA of 2015 proposed a decentralized political authority operationalized through two local government structures. The first is composed of two separate but coordinated entities including the County Council and County Administration with the Superintendent as the Chief Executive Officer (CEO) including others such as Administrative and Finance Officers. The County Council as the highest decision-making body was accorded several powers and functions including the authority to levy taxes and rates, approve country development plan and confirm individuals nominated by the Superintendent. The second is the Sub--County Local Government comprising districts, chiefdoms, clans, general towns, and cities and townships. These sub structures were proposed in order to provide effective, efficient and sustainable delivery of, and access to public goods and services.

The draft LGA like the approved one recognized the Unitary Structure of the State but the draft LGA proposed that all layers of the local government structures described above be elected (Chapter 10). The elections of Paramount, Clan and Town Chiefs conform to Article 54(b) of the Liberian Constitution. However, the elections of Superintendents and District Officers are in contradiction to Article 54 (d) of the Constitution. Enforcing the elections of Superintendents and District Officers without amending Article 54 (d) could have been challenged legally.

County Council:

A County Council, as defined in the draft LGA is an elected body of a county having regulatory, representative and confirmatory functions and powers. This definition makes the structure a quasi-legislative organ of government with law-making, representational and oversight functions. However, the LGL under Chapter One (General Provisions) does not provide a definition for a County Council. Nonetheless, the LGL, Chapter two, Section 2.2 recognizes the County Council (CC) and outlines several powers and authorities similar to those contained in the draft LGA.

Unlike the LGA that explicitly stated that members of the CC shall be elected by citizens, the LGL does not say whether members of the CC shall be elected or appointed nor does it set a criteria by which one can become a member. Furthermore, the LGL does not say describe the composition of the CC but makes a provision (Section 2:11) on how a member can be removed: A member of the CC can be removed for cause through due process by a vote of two-thirds of the total membership of the Council. Removal for cause is a vague legal terminology that is subject to wide interpretation and abuse by an official that has the authority or power to remove a member.

Administrative Organ:

The county administration is comprised of five positions including the following:

- ❖ Superintendent

- ❖ County Administrative Officer
- ❖ County Finance Officer
- ❖ County Development Officer
- ❖ Heads of County Administrative Departments

These are the same positions that were proposed by the LGL. Except for the heads of county administrative departments who are appointed through civil service regulations and procedures, the Superintendent, County Administrative Officer (CAO), County Finance Officer (CFO), and County Development Officer (CDO) shall be appointed by the President with the consent of the Senate (Section 2.13(b)). This is contrary to what was suggested in the draft LGA. The draft LGA proposed that all non-elected county officials shall be appointed by the Superintendent from a list of eligible candidates submitted by the Civil Service Agency (CSA), taking into consideration equal representation of women and men to such positions (Section 11.2). The draft LGA further advanced that non-elected county officials have secured tenure of service, based on the provisions of the civil service policies, rules and regulations (Section 11.4).

Without the amendment of Article 54 of the constitution, there is legal reason for the President to appoint Superintendents. However, for the President to be given the authority to appoint technicians such as CAO, CFO, and CDO undermines the intent and overriding objective of decentralization. The appointment of individuals to these positions could be manipulated and influenced by political interest and not merit-based. Moreover, officials appointed by the President report to him or her and this can undermine the authority of the Superintendent as the chief administrator of the county. Instead of the LGL reducing the appointing power of the President, it gives and reinforces the centralization of political appointments by the President contrary to the intent, spirit, and goal of decentralization.

County Administrative Departments:

The law stipulates that each county may gradually establish administrative departments to manage devolved and delegated functions based on individual county needs, capabilities and local financial resources (Section 2.14f). This provision does not state the devolved and delegated functions that administrative departments are to implement. The provision is furthered silent on who has the responsibility to assess the institutional capacity at the county level to inform the establishment of administrative departments. Moreover, the conditions contained in the provision means that the establishment of departments is largely the responsibility of the counties and they can proceed to establish them at once or over a period of time.

Several departments were proposed to be established including:

- i. Planning, Revenue and Budget
- ii. Land, Environment and Natural Resource Management
- iii. Administration and Personnel
- iv. Public Works and Utilities
- v. Health and Social Welfare
- vi. Agriculture and Commerce

- vii. Education and Sports
- viii. Information, Cultural and Tourism
- ix. Community Enterprise Development Agency

All of these departments are supposed to plan and implement programs in collaboration with national government institutions and commissions (Section 2.14g) and directors for the different departments are to be appointed by the Superintendent based on civil service regulations and procedures (Section 2.14h). At the same time, the law is not clear on what functions these departments are to perform.

It would be of interest to assess how the Department of Land, Environment and Natural Resource Management will collaborate with the Liberian Land Authority (LLA) in the implementation of the Land Rights Act (LRL) particularly in the demarcation of Customary Land and the operation of the land governance structures that will be established.

The central government shall, through its relevant ministries and agencies, undertake institutional development measures leading to the establishment and functionality of County Administrative Departments as provided for in this Act.

District Administration:

Each district in a county is headed by a District Commissioner (DC) supported by three Officers including the District Administrative Officer (DAO), District Finance Officer (DFO), and District Development Officer (DDO). The duties and powers of these Officers are highlighted in Section 2.15. This provision does not say who has the authority to appoint these officers and how.

Chiefdom Administration:

The Chiefdom Administration consists of a Paramount Chief who shall be assisted by a Chiefdom Advisory Board, Chiefdom Clerk, Chiefdom Finance Officer and Chiefdom Office Assistant. The main function of the Paramount Chief is to oversee traditional practices and customs as long as they promote peace and do not violate the Constitution.

Clan Administration:

The Clan Administrative structure includes a Clan Advisory Council, Clan Chief, Clan Clerk, and Clan Office Assistant. The Advisory Council shall be appointed by the Clan Chief and comprised of five (5) members including elders, youth, women and prominent citizens and shall work without pay. The Council has two main duties:

- Advise on governance, development, peace, security and reconciliation issues;
- Participate in meetings and other activities.

The law outlines the functions of the Council. However, it falls short of laying out procedures for carrying out its duties in terms of frequency of meetings and mechanism for reporting back to the citizens of clan development accomplishments and seek citizens' inputs into future plans.

The Clan Chief shall be the principal representative of the Paramount Chief in the clan in the administration of local governance. He/she shall perform the following duties:

- a) Promote peace, reconciliation and development
- b) Advise on governance and security matters
- c) Coordinate the implementation of development programs
- d) Report to the Paramount Chief

Town Administration:

The Town Administrative structure is similar to the Clan and it includes a Town Advisory Council, Town Chief, referred to as General Town Chief, Town Clerk and Town Office Assistant. The functions of the Council and the duties of the Town Chief are similar to those outlined in the Clan structure. Like the Clan structure, there is no provision made for how the Town Council shall function, makes decision and report to the citizens of the town.

Elections of Chiefs:

Section 2.15x of the LGL provides for the elections of Paramount, Clan and Town Chiefs in accordance with the Constitution and on a non-partisan basis. This means that candidates for any of these positions cannot present themselves as political parties' candidates or campaign on a political party platform. The only Constitutional provision for the elections of the categories of Chiefs is Article 56b. This clause states that they shall be elected for a period of six years and may be re-elected and may be removed only by the President for proved misconduct.

This same Constitutional provision states that the Legislature shall enact laws to provide for their qualifications as may be required. However, the LGL does not include any provision on who can qualify to contest as a Paramount, Clan and Town Chief. Qualifications are necessary standards for individuals seeking an elected post. It appears, however, that members of the Legislature did not deem it a necessary element or requirement to be elected.

Provisional Appointment of Chiefs:

In the event wherein elections for chiefs cannot be held in accordance with Article 56b of the Constitution the law makes room for provisional appointments. The elders and members of the Chiefdoms, Clans and Towns shall in keeping with their traditions recommend individuals to the Minister for Local Government through the Superintendent the appointment of individuals to perform the duties of chiefs (Section 2.15y). These appointments shall be deemed as Acting Chiefs.

This clause gives the government an option not to hold elections for chiefs in keeping with Constitutional provisions. With the declining economic condition in the country and the difficulties the government is experiencing in funding by-elections in time, it is unlikely that holding elections for chiefs will be a priority for the government. The previous government under President Ellen Sirleaf did not regard the conduct of elections for chiefs as a priority because they were never held under her 12 years rule.

Most of the current batch of chiefs was never elected by their people. Some took on the position during the war when there were gaps while others were appointed by either former Presidents Taylor or Sirleaf. These appointments were without legal basis. Article 2.1y will give legitimacy to the appointment of future chiefs in contravention of Article 56b of the Constitution. Most parts of Liberia are governed by traditional and customary systems and processes. At the same time, the state is also evolving and influenced by concepts of a modern nation-state and this raises the question whether or not chiefs should continue to be elected or appointed and their relevancy in the development and governance of the country.

Cities, Townships and Boroughs:

Existing cities shall continue to enjoy their legal status under the LGL. However, after seven years from the date of the passage of the law, the Minister for local government shall report to the National Legislature on the status of the cities, townships and borough for reaffirmation subject to meeting the below criteria for a city (2.16d):

- A population of 10,000
- Availability of social services including electricity, pipe-borne water system, sewage services and waste collection
- Primary and junior high school
- Health clinics
- Sports and recreational facilities
- Cemetery
- Transportation infrastructure
- Transportation and communication infrastructures
- Business services including motel, restaurants and chops

These criteria are quite high and if they are adhered to many current places that enjoy city status could be reduced. For the provision of services, all cities, townships and boroughs shall be demarcated into wards (2.16f). Governance of cities, townships and boroughs is vested in councils through the wards. Council members are selected by residents of the wards.

City Mayors, other than Monrovia, Township Commissioners and Borough Administrators are appointed by the President subject to the consent of the Senate and they shall report to their respective councils and superintendents. For the Mayor of Monrovia, he or she shall be appointed by the President with the consent of the Senate and reports to the council and President. The law sets separate standards on accountability mechanism for Mayors. Unlike other cities, the Mayor of Monrovia does not report to the Superintendent but to the President.

For the effective delivery of services, cities, townships and boroughs are broken down into wards and representation on the council comes from the wards, and governance of these structures is vested in the councils. Appointing power should actually be vested in the councils that represent the people. Yet, the President, who is far removed from the counties, is given the authority to appoint city mayors, township commissioners and

borough administrators. City mayors in other counties have two mechanisms of reporting: to the council and superintendent and for Monrovia, to the council and President. By reporting to the council and superintendent who have no appointing power, it will be a challenge to see how mayors can be accountable to the people they serve.

In August 1979, the National Legislature passed a law entitled: “Act Regulating the time and election of City Mayors”. In 2008, the CDC and al challenged the constitutionality of the appointment of the Acting City Mayor of Zwedru by the President. In its ruling, the Supreme Court held that Act cited above ran contrary and was in conflict with the plain meaning of Article 54(d) of the 1986 Liberian Constitution. In its opinion, the Court further held that the appointment of officials of “**other political sub-divisions**” mentioned in Article 54 (d) included City Mayors. The appointment of City Mayors by the President in the LGA affirms the 2008 decision and opinion of the Supreme Court.

Chapter Four (4) deals with Financing of Local Governments:

Principles governing fiscal resources for local governments include (4.1):

- a) Establishment of adequate, identifiable, and reliable sources of own revenue;
- b) Implementation of a sustainable and recurring program of direct revenue sharing;
- c) Identification and authorization of local taxes to be levied;
- d) Ensure that all devolved and delegated functions are accompanied by the transfer of funds from central government for the implementation of those functions;
- e) Ensure that the allocations of transfers are based on a formula that adheres to internationally acceptable good governance standards and practices such as equity, transparency and accountability.

With regards, to point e), what is the formula that needs to be applied to adhere to internationally acceptable standards? For the first ten (10) years as of the date of the passage of this law, and except for Monrovia, revenues from real property tax and income from real property belong to the county that are to be shared among the various local government structures.

Revenues of Local Governments:

The law provides for local governments to generate revenues from different sectors (4.2) including:

- a) Revenues collected from their own sources;
- b) Transfers from central government;
- c) Social Development Funds;
- d) Grants from international development partners.

Own source revenues are defined as taxes generated from real property and income from said property as well as business licenses and permits, fees generated from professional licenses, fees from services and income from the rental of assets and public services (4.3).

Revenue Sharing:

For the first ten (10) years of the passage of the LGA, and except for Monrovia, the revenues from real property tax and income from property shall accrue to the county to be distributed among local government structures according to a formula to be established by the Local Government Fiscal Board (4.5). What is this formula to be developed to ensure equitable distribution of revenue? What happens when the first ten years elapsed? Will revenue generation by local government revert to central government?

Business Licenses and Permits:

Local government structures are given the authority to collect fees for issuance of annual business licenses and operating permits in keeping with the Revenue Code for individuals who practice a profession, or for operating trades or businesses (4.6).

Collection of fees: Local government is also accorded the authority to collect fees and the range of rates shall be set by the legislature. Within three years, the Ministries of Finance and the agency responsible for business licenses shall build the capacity of the local government structures to continue to collect fees (4.7). Fees shall be collected for the use of public spaces including operations of markets, transport parking stations, advertising billboards, and operations of cemeteries (4.8). Fees are also to be collected on public services directly provided including waste collection, maintenance of public toilets, sanitation, and operations of water wells (4.11). The councils of local government structures shall establish the rates of the charges. Two entities (legislature and councils) are given the responsibility to set range of charges to be collected.

Revenue from rental of assets:

County, city and township administrations are given the authority to generate local resources from the rental of assets (4.12) including:

- i. Administrative halls
- ii. School buildings
- iii. Soccer stadiums
- iv. Gymnasiums
- v. Other recreational facilities

The rental of these facilities should not, however, interfere with the main purpose for which they were created: to serve public services and access (4.12b). To ensure that rental fees are in line with the local economy, local government administrations should develop a regulation to guide this process so that there is consistency in charging individuals, public, and private institutions. Any regulation developed should be easily and visibly accessible to the public for the purpose of accountability.

Fees and charges for provision of delegated services:

County governments shall provide services on behalf of central government and collect fees and charges for the services provided (4.13a) which may include but not limited to:

- 1) Registration and issuance of birth and death certificates
- 2) Registration and issuance of marriage certificates
- 3) Reproduction of public records and documentations
- 4) Land registration
- 5) Building construction permits
- 6) Tribal land registries
- 7) Certification of herbalists

It is implied here that delegated services means services for which fees are charged for accessing them. This further means that education and health care are services that remain centralized. The Liberia Land Authority (LLA) is clothed with the legal authority for the registration of land and tribal land registries and by the law these functions are delegated to county governments. If not well coordinated, there could be duplications of functions and a potential clash of authority, thereby undermining the effective and efficient delivery of services.

The law further mandates that the Ministry of Finance in consultation with the respective delegating ministries and agencies set the rate for fees that will be charged and they are posted visibly and publicly at the centers where the services are provided (4.13b). This is intended to reaffirm the rights of citizens to services, right to public information and to engender public accountability and transparency in the provision of services.

In order to ensure compliance and quality of services provided, the law calls for delegating ministries and agencies to develop regulations that will outline the protocols, standards, and requirements for the provision of the delegated services (4.13c).

Fines:

The law provides that county, city and township governments may levy fines for violations of ordinances (4.14a). The operative word is “may” which implies an option. For the purpose of generating income for local governments, the law should make compulsory that fines should be levied for the breach of ordinances. In determining fines, the Ministries of Finance and Local government shall provide guidance and standards to local government structures (4.14b). This provision implies that there is no capacity at the sub-national and local level that the formulation of guide to levy fines should be guided by central government. Rates of fines established should be adopted by local government council and posted in public places (4.14c).

Transfers and Grants from Central Government:

Central government is mandated to transfer funds and grants to counties, cities, and townships (4.15). These transfers include general funds, development funds, funds for devolved functions, and funds for delegated functions. The local government fiscal board shall develop a formula for the equitable distribution of general, development and devolved funds.

Fiscal Board:

Section 4.26 calls for the establishment of an autonomous local government fiscal board to provide oversight of financial systems and procedures of local government structures and making recommendations to the Legislature on grant allocations to counties. The independence of the fiscal board lies in its ability to carry out analysis and make proposals to the Legislature independent of the Ministries of Finance and Local Government (4.27). The Board shall be comprised of seven (7) members appointed by the President from among experts. Even though the President shall appoint members of the Board, the chairperson shall be elected by all members (4.28). In theory, this provision is progressive.

Parameters for allocation of transfer funds:

In the allocation of grants to counties, cities and townships, the law proposes several factors that the fiscal board should consider to each category of transfer funds (4.30). These parameters include:

- Area (geographic, size and topography of territory)
- Socio-economic indicators such as poverty index and infrastructure distribution
- Population size and density

- Fiscal potential and capacity to generate tax
- Tenets of good governance including budget hearings, citizens' participation and consultations in the development and implementation of county development plan.

Indicators for consideration in determining development funds include population size and density, infrastructure distribution and size and geographic challenges. Prior to the passage of this law, county development funds allocated to counties were evenly distributed without taking into account demographic and infrastructural indicators.

Revenue Fund:

As part of the devolution of financial functions, revenue funds shall be established for county, cities, townships and boroughs (4.33d). Revenues generated by the various local government structures shall be deposited into the revenue fund. The finance officer is responsible for the management of revenue fund for effective and efficient cash management. The operations of the revenue fund shall be governed by a specified regulation to be developed by the Ministry of Finance.

Chapter (5) Development Planning Unit:

In order to coordinate and facilitate development projects and evaluate their implementation, each county shall establish a county development planning unit (5.1) and a county development planning process (5.2). This process shall be marred by broad-based consultations driven by a bottom-up approach. It shall be participatory, gender-sensitive and inclusive of residents, minorities, and marginalized members of communities and civil society organizations and the private sector. This planning process will take place every four years and will establish a four-year County Development Agenda (CDA) which shall be approved by the County Council and will be the main instrument driving all development programs. Similarly, a planning unit shall be set up at the district level responsible for developing district development plans that will feed into the CDA (5.4a).

The intent of the development planning process is to engender ownership. While the provision calls for representation of diverse stakeholders, the challenge will how the process is managed in a way that broad-based representation translates into effective participation.

Section 5.3 (b) calls for the CDA to be aligned with the national development priorities of central government. The development priorities of the counties may not necessarily be those of central government so for the law to mandate that CDA are aligned with central government's priorities is to reinforce the top-down approach to development. This runs contrary to the intent and spirit of decentralization.

Inclusive Local Governance (Chapter 6):

The Act calls for inclusiveness in local governance such as gender equality, women's empowerment and inclusion of marginalized groups including people living with

disabilities. On the issue of gender perspective, the Act underscores four basic principles (6.1):

- a. **Participation:** Equal access of women and men in decision-making.
- b. **Representation:** Equal access of women, men, minorities and people with disabilities in recruitment.
- c. **Protection:** Equal rights of women and girls from gender-based violence.
- d. **Capacity Development:** Design and implement gender-sensitive policies and programs that enhance the capacity of men, women and minorities to equal access to decision-making, work and other opportunities.

On the issues of participation and representation, the law stipulates that local governments shall ensure equal access to participation and representation of women but falls short of outlining how this is supposed to be done. There are no clear indicators to measure women's representation and participation in local government structures and decision-making processes. On the matter of protection, the Act calls for improving community mechanisms to prevent child abuse and SGBV. This appears to be a duplication of functions with the GBV Taskforce that already exists in counties and are operating under the Ministry of Gender, Children and Social Protection (MoGCSP).

At the level of capacity development, the law calls for training programs to enhance women's access to participation in local government leadership, decision-making, and employment and contractual opportunities (6.5). Mere training of women will not guarantee that they will be able to participate in local government leadership or access employment or contractual services without targets or measurable indicators. Under capacity development, the Act says that local government shall undertake affirmative action as contained in the Girls' Education Policy as a framework to invest in education of girls but does not indicate what that affirmative action is.

Transparency and Accountability in Local Government:

Chapter seven (7) of the Act deals with standards for transparency and accountability in the way local governments operate and this includes the adoption of systems and measures to prevent corruption and improve internal controls. Some of the measures include adoption of the Code of Conduct, adherence to the standards of the Liberia Anti-Corruption Commission (LACC), the Public Procurement and Concession Commission (PPCC) and the Civil Service regulations (7.1). Other standards include adherence to the Public Finance Management Act of 2009 (7.2).

Other areas of transparency include human resource management. Non-elected employees shall adhere to civil service rules and regulations (7.5i). Additionally, recruitment, retention, benefits, promotion, retirement, pension and managing grievances shall be subjected to the policies and regulations of the CSA (7.5a iii).

Land Governance and Management in Local Government (Chapter 8):

Under this chapter, two main issues are highlighted. The first deals with land governance and administration and the second focuses on harmonization of boundaries. The law specifically recognizes that all matters of land governance and

administration and functions including land acquisition, transfer, and survey, valuation, and alternative dispute resolution shall be handled by the LLA (8.1). While this provision recognizes the statutory function of the LLA in land governance and management, the law also calls for the establishment of a department at the county level to be called Department of Land, Environment, and Natural Resource Management (2.14f). The functions of this department are not clearly outlined.

On the issue of boundary harmonization, the law states that the LLA shall provide *advice and technical assistance* to the Minister responsible for local government in the administrative boundaries between counties, districts, and chiefdoms (8.2). This means that the Ministry responsible for local government is recognized as the legal entity to harmonize administrative boundaries in the counties.

The Act further provides that the LLA shall from time to time devolve certain of its functions and powers to the counties (8.3). The law does not name the functions that are to be devolved and no timeframe is set for the devolution of those functions. This makes compliance with this provision a challenge and will be left at the discretion of the LLA. Nonetheless, the Act states that immediately following the coming into effect of this law, two functions of the LLA shall be de-concentrated to local governments. They include: (i) survey notices; and (ii) land registration services including updating and storage of land record services (8.3).

Section 8.4 also calls for the devolution of the following activities: (i) survey services and (ii) land registration services as compared to section 8.3 that calls for these services to be de-concentrated. In order to facilitate the devolution and or delegation of these services, the LLA is required to build the capacity of local governments (8.4). The law intends to give authority to local governments to implement certain functions of land governance and administration but it is not clear on the mechanism: de-concentrated, delegated or devolved because these three terminologies are used inter-changeably.

Conclusion:

It is a general consensus among development practitioners that the centralization of political power and resource distribution have contributed and undermined democratic governance, citizens' participation in decision-making and limited their access to inclusive and quality service delivery. The LGA does not go far enough in terms of political decentralization due to the Constitutional constraint (Article 56a). It also reinforces the appointment powers of the President who is far removed from the socio-economic and political realities at the sub-national level.

Nonetheless, the LGA is an important first step in setting the legal framework for governance reforms: to de-concentrate, delegate and devolve certain functions from central government to local government. In order to actualize the transfer of these functions to local government, there must be a demonstration of firm and sustained political will by the central government in the allocation of resources.

Decentralization as a political and development concept does not guarantee broad-based representation and participation in decision-making processes and inclusive social service delivery. Decentralization through delegating and devolving functions is likely to achieve its desired results in a culture where public officials are held accountable for their actions or inactions. Transparency and accountability are terms in governance practices whether at the central and local level but are meaningless when impunity persists.

At the same time, democratic engagement and citizens' participation in decentralization efforts is likely to succeed if it is rooted in the following three principles:

Deliberative: Citizens are intentionally engaged and given the time and resources to digest, explore and discuss information with each other before being asked to give their opinion or recommendations. Engagement should build the skills of citizens to ask the right questions and find solutions in a participatory manner.

Responsive: The engagement process should come with a commitment from duty bearers to consider ideas and recommendations from citizens, and provide feedback on subsequent courses of action.

Legitimacy: That the voices, perspectives and ideas of citizens count in the entire process and when they feel that their participation is making a difference. This can be achieved by working systematically to involve civil society groups playing a facilitating role. Whichever approach is taken, it helps to clearly define the stakeholders being engaged and check that no single aspect the population is over or under represented.