

The politics of implementation or why institutional interaction matters: The role of traditional authorities in delivering pro-poor social policies in Kenya

Barbara Rohregger, Katja Bender, Bethuel Kinuthia, Esther Schüring, Grace Ikua, Nicky Pouw



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## Abstract

The paper contributes to the debate on the political economy of implementation of pro-poor social policy. It argues for a broadening of the debate, which is dominated by technocratic arguments, emphasizing the lack of financial resources, technology or skills as the major barriers for effective implementation. Describing the dynamic interplay of 'formal' operational programme structures and 'informal' traditional institutions in delivering the CT-OVC – the largest and oldest cash transfer programme in Kenya – it argues for the need to look more closely into the local political economy as an important mediating arena for implementing social policies. Implementation is heavily contingent upon the local social, political and institutional context that influences and shapes its outcomes. These processes are highly dynamic and ambivalent evolving between 'formal' and 'informal' structures and institutions. They may change over time and place, challenging the implicit assumption that programmes are evenly implemented across geographic and political entities.

**Keywords:** Social policies, Kenya, local political economy, traditional authorities, devolution

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## List of Abbreviations

AAC	Area Advisory Council
BWC	Beneficiary Welfare Committees
CT-OVC	Cash Transfer for Orphans and Vulnerable Children
CSAC	Constituency Social Assistance Committees
CCCS	County Coordinator for Children's Services
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HSNP	Hunger Safety Net Programme
LOCs	Location Committees
MP	Members of Parliament
MLEAA	Ministry of Labour and East-African Affairs
OPCT	Older People Cash Transfer
OVCs	Orphans and Vulnerable Children
PWSD-CT	Persons with Severe Disability Cash Transfer
SCCO	Sub-County Children's Officer
SCOSC	Sub-County OVC Sub-Committee

## Introduction

The idea that context and politics matter for the implementation of development interventions is nothing new. Over the last decade, a substantial set of literature has tried to show how different stakeholders, types of political regimes and overall socio-economic conditions shape social policy reform processes and outcomes in developing countries, often with an explicit policy goal (for example, Hickey 2007, Hickey 2009, Lavers and Hickey 2015, Bender 2013, Künzler 2016).

Most of the literature on the politics of social protection is however mainly concerned with what policy cycle models define the policy-formulation stage<sup>1</sup>. To what extent the local political context and institutional settings influence day-to-day implementation processes of pro-poor social protection interventions remains a relatively under-researched area and confined to often very specific operational features, such as targeting (for example, Pellisery 2005, Raabe et al. 2010, Shankar et al. 2011, Barrientos and Pellisery 2014, Wanyama and McCord 2017). While much empirical evidence of implementation challenges of pro-poor social policy intervention at local level exists (for Kenya see for example Calder et al. 2011), the debate about it is mainly reduced to technical shortcomings, such as imperfect data or lack of human capacity. Institutional or political aspects remain rather marginalized. If mentioned they are commonly framed as a barrier to smooth programme implementation providing an obstacle to effective and efficient delivery to the poor which in turn can only be overcome by investing in implementation structures still considered imperfect (Ibid, Cosgrove et al. 2011).

This article on the politics of implementation in the context of the Cash Transfer for Orphans and Vulnerable Children (CT-OVC) in Kenya takes a different approach. Discussing the role of traditional authorities in implementing Kenya's largest and oldest cash transfer programme, the article questions the general assumption that - once an operational structure has been designed and guidelines for its implementation developed - pro-poor social policies are implemented accordingly and what is more, evenly across different geographic and political entities. Instead, we will show that a re-interpretation and adaption of operations and institutions delivering them is taking place. Describing how formalized implementation processes and institutions of the Kenyan CT-OVC become enmeshed and adapted into the local political economy in three counties in Kenya the article argues for the need to look more closely into local political economics as an important mediating arena for implementing social policies. While technical constraints such as

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<sup>1</sup> Different models of policy cycle models exist that define varying numbers of policy stages (see for example Howlett et al. 2009 or Grindle and Thomas 1991).

limited human and financial capacity play a role, implementation is heavily contingent upon the local social and political context that influence and shape its outcomes. Rather than giving a static assessment of these institutional factors as either functional or dysfunctional in delivering effective social assistance programmes for the very poor, the article argues for an understanding of institutionalization processes as an interplay that evolves between 'formal' programme structures and 'informal' power structures and institutions<sup>2</sup>. This interplay is a highly dynamic and for that matter, ambivalent process that evolves over time. While programmes appear to settle into these local power-relations schemes, the institutionalization of the programme over time however appears to create a new institutional equilibrium in which 'formal' rules and regulations are getting engrained and differentiate themselves out as separate autonomous structures.

In doing so, the article aims at contributing to the largely missing debate on the political economy of implementation of pro-poor social policy. It argues for a broadening of the debate, which so far has been dominated by mainly technocratic arguments, emphasizing the lack of financial resources, technology or skills as the major barriers for effective implementation and overcoming institutional challenges and at the same time, identifying these dimensions as the major solutions to these problems.

Secondly, presenting empirical evidence on the role of traditional authorities in implementing the cash transfer, the article questions the widespread notion and approach in policy and research that tends to define so-called 'informal' or traditional institutional settings in strong antagonism to their formal counterparts<sup>1</sup>. Using an empirically grounded inductive approach that understands institutional change as a dynamic interplay of different sets of institutions, the article argues for a relational approach that understands 'informal' institutions as an integral part of the local social, political and administrative institutional set-up and on a level playing field with 'formal' institutions. Institutional arrangements may thus also comprise of a mixture of different types of institutions or hybrid forms of institutional equilibria. In doing so, it follows an historical comparative institutional analysis that understands institutions as "(...) *constraints* (italics in original) that influence social interactions and provide incentives to maintain regularities of behavior" (Greif 1998:80). Based on the game-theoretical principle of 'equilibrium', these constraints and rules are understood as being endogenous, i.e. outcomes of interactions between social forces and evolutionary historical processes rather than exogenously given and enforced from outside. Institutional change is thus understood as a reflection of the interaction of society's

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<sup>2</sup> The terms will be extensively discussed in the next section.

decision makers, their past institutions and the evolving environment in which they interact (Ibid.). A core idea of this approach is to identify the relevant rules of the game that determine actual behavior and constrain social forces rather than looking at the technically feasible rules (see also Hyden 2008). Such a functional approach (Benda-Beckmann 1994) also allows identifying informal institutions as having an important positive catalyst role with regard to the implementation of pro-poor policies. Local power structures and distributional mechanisms might differ from formal programme rules and regulations and underlie a different logic, but this does not necessarily always need to have negative consequences for the poor. This may also require a re-thinking and re-interpretation of “efficiency” and “effectiveness” in a new context.

Thirdly, debating implementation challenges at local level in Kenya, the article also contributes to the debate of institutional change in weak administrative settings (see for example Casson et al. 2010). Especially in developing countries where administrative institutional structures are weak, the delivery of social policies targeted at individual or households represents a huge challenge to local delivery structures. Local social, administrative and political structures, such as traditional authorities gain importance as important delivery structures that due to their knowledge and influence mediate policy outcomes in various ways. With reference to the resurging debates of traditional authorities as development brokers (for example, Baldwin 2013) and the debate about hybrid democracies in Africa (Logan 2009), the article aims at contributing to the current policy debate on how to react to implementation challenges in weak administrative contexts. Rather than engaging in a debate of informal institutions crowding out formalised practices thereby fostering existing power relations versus informal institutions being a necessary facilitator of institutional change towards formalized institutions, the article argues for a more dynamic and political perspective that will also need to come to grips with hybrid implementation structures.

This article proceeds as follows: the first section reviews the theoretical debates of institutional change focusing in particular on the dynamic interplay between formal and informal institutions and delivery mechanisms. Before turning to the empirical debate, the second part of the article gives a short overview of the institutional setting of Kenya, in particular the local level and the operational structure of the Cash Transfer Programme for Orphans and Vulnerable Children, which is a centrally managed. In the final two sections, empirical results are discussed in the light of the theoretical assumptions and conclusions drawn.

## **The rules of the game: Addressing the interplay between formal and informal institutions**

Anthropologists, sociologists, political scientists and economists have argued since long for the need to look closer into so-called 'informal' institutions<sup>3</sup> in order to get a better understanding of policy processes and their outcomes, in particular with regard to mediating access to resources (for example, Scott 1976, Zacher 1988, Benda-Beckmann et al. 1988; Hyden 2008, Powell and Di Maggio 1991, Putman 1993, O'Donnell 1996, Easter 2000, Helmke and Levitsky 2006, Voigt 2009, Carey et al. 2017). Such "informal institutionalized practices" (Carrey et al. 2017:4) also exist in highly institutionalized democracies and administrations, as shown by Lijphard (2012) in his famous account on the Dutch political system. They are however of particular relevance in developing countries where formal institutional and administrative settings tend to be weak and where so-called 'informal' institutions closely interact with 'formal' ones, often playing a key role in enabling or constraining political behavior and shaping institutional outcomes (for example Stone et al. 1996; Hyden 2008, Helmke and Levitsky 2006).

According to Voigt (2009) institutions are commonly characterised by two closely interrelated components, a) collectively shared rules and b) functioning sanctioning mechanisms. Based on these considerations institution are thus, defined as "commonly known rules that structure recurring patterns of interaction and are equipped with enforcement mechanisms that allow for sanctioning or threat of sanctioning in case of non-compliance." (Voigt 2009:27, own translation).

It is thus, not relevant whether institutions emanate from within a formal or informal context, the latter being characterised by rules and regulations that are usually not codified or unwritten. Moreover, it does not imply that informal institutions are necessarily everything that is non-formal being often defined in a rather derogatory way as patterned behaviour "comprised of norms, values and other elements of "culture"" (Carey et al. 2017; see also Helmke and Levitsky 2004). Rather, this approach puts both formal and informal institutions at a level-playing field emphasizing their functional dimension in shaping policy outcomes and institutional change and for that matter, the distribution of resources (see also Benda-Beckmann 1994). It shifts the gaze from an antagonistic and functionalist view that draws a clear line between formal and informal institutions as two completely different and separate sets of institutions towards a relational

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<sup>3</sup> Institutional economics often define them as well as "internal" institutions as opposed to "external" or formal ones (see for example Kiwit and Voigt 1995).

approach that focuses on the interplay of both in reproducing institutional change and policy outcomes, emphasizing their permeability (Benda-Beckmann 1988).

We argue that such broader view on institutional development and change enables to develop explanatory models that rather than focusing on actual or desired outcomes of institutional change centre on the process and dynamics of how institutional change is actually happening emphasizing agency as a key variable in reproducing institutions and change. This, we will argue may also have practical implications on how to deal with institutional change.

Secondly, such an approach does away with what is commonly called the “institutional myths” of formal rationalized government structures being the only ones producing efficient and effective behaviour and being more ‘ruly’ than informal institutions (Carey et al. 2017). While the importance of informal institutions in shaping formal institutional outcome and change is meanwhile recognized across all disciplines, the primacy of ‘formal’ rational structures over informal practices remains strong in research and policy.

While law clearly recognizes the importance of societal rules and regulations for the development of formalized law embodied in written codes and paragraphs, the primacy of formal codified law and respective sanctioning mechanisms over informal one is pervasive in much of the literature. This notion of the ‘rule of law’ as opposed to ‘unruly practices’ (O’Donnell 1996) has also dominated the neo-institutionalist strand of political science, in particular in the aftermath of 1989 and the breakdown of the post-soviet authoritarian regimes (see for example, Helmke and Levitsky 2004). It also resonates in the debate of good governance that argues that only the development of formalised rules and regulations would guarantee functioning institutions and thus development and growth (for a critical review, for example Grindle 2004; Chowdhury and Jomo 2012)

What is more, this conceptual approach also breaks with the implicit notion in much of the development literature and policy analysis of ‘informal’ institutions having a largely negative impact on the outcome of policy processes and resource distribution - usually in favour of the already powerful and rich. As Helmke and Levitsky (2004) argue, institutional thrift does not automatically go into the direction of ‘formalization’, thus giving way to the narrative “(...) in which informal institutional practices constrain behavior, reinforcing path dependency.” (Carey et al. 2017:4). Instead, ‘informal’ institutions and practices also have an important role in “correcting” the limitations of ‘formal’ ones (Stinchcombe 2001). Rather than ascribing a-priori certain characteristics to one or the other, such as legality, efficiency or effectiveness, we would like to emphasize the need to an empirically based approach that looks into how different actors



and institutions shape institutional mechanisms and distributional outcomes - no matter whether they have their origins in a 'formal' or 'informal' setting.

Many disciplines have meanwhile recognized the importance of agency in shaping the 'rules of the game' (Hyden 2008; Webster and Engberg-Pedersen 2002; Lavers and Hickey 2015). Rather than talking about 'unruly practices' there is much debate about hybrid democracies, in particular in the African context (Logan 2009). The sociological debate about informal institutions playing an important role in brokering development appears to experience a revival (Long 1990; Baldwin 2013). However, these processes and in particular the dynamics that develop between 'formal' and 'informal' institutions remain largely undefined or limited to specific case studies or specific phenomena, such as neo-patrimonial politics of clientilism or corruption (for example, Lawson 2009).

We argue for the need to capture the dynamics of interaction between 'formal' and 'informal' institutions in a more systematic and structured way in order to better understand and assess certain dynamics and in order to allow for a more comparative perspective across different regions and countries, as well as social policy interventions. Various typologies of different types of interaction that follow a more nuanced understanding exist (for example Kiwitt and Voigt 1994; for a summary see Voigt 2009). Here we will borrow from Helmke and Levitsky (2004), who in their debate on the critical role of informal institutions in shaping political behaviour and outcome argue for a more differentiated set of interactions between formal and informal institutions. Trying to overcome the simple antagonism of 'formal' institutions being characterised as functional or problem solving versus 'informal' institutions being dysfunctional or problem creating, they adopt a relational approach that describes the way in which informal and formal institutions interact (Ibid, Voigt 2009).

Their typology identifies four ideal types of formal-informal interaction. The latter are not static but describe fluid processes often taking place simultaneously within the same institution. Moreover, they turn our attention to the fact that although the predominance of 'informal' institutions may be a consequence of weak 'formal' institutions, this may not be necessarily the case. Also, the opposite may be true: even where formal institutions are strong, informal institutions may exist and be highly influential.

They start out from the assumption that policy outcomes may either be convergent, i.e. they match initial policy objectives, or divergent, i.e. meaning that they might substantially differ from intended policy objectives. Based on this notion, the concept defines four ideal types of outcomes that characterize the interplay between 'formal' and 'informal' institutions (see Table 1).

**Table 1:** A typology of informal institutions

<b>Outcomes</b>	<b>Effective Formal Institutions</b>	<b>Ineffective Formal Institutions</b>
<b>Convergent</b>	Complementary	Substitutive
<b>Divergent</b>	Accommodating	Competing

**Source:** Helmke and Levitsky (2004)

In a convergent setting, meaning that policy outcomes are achieved according to their initial objectives, intended informal institutions may assume a complementary function, supporting formal institutions in place and functioning as gap filler. They do not merely exist alongside effective formal institutions, but “(...) *play a key role in making effective the formal rules of the game*” (Ibid: 728). Examples would be informal social networks of civil servants that help to create solutions for better coordination. In an environment where formal institutions are weak or not enforced, informal institutions may assume a substitutive function, taking over successfully tasks, which formal institutions were designed for, but which they failed to achieve.

Conversely, in a diverging context, the interaction between formal and informal institutions may on the one hand take an accommodating turn. Despite effective formal institutions existing, “*informal institutions create incentive to behave in ways that alter the substantive effects of formal rules, without directly violating them.*” (Ibid: 729). The practice of rewarding loyal partisans with high-level civil service jobs by influencing official selection processes is a typical example. On the other hand, where formal structures are weak, informal institutions may structure incentives in ways that are incompatible with the formal rules. In this situation, multiple systems of legal obligations are created that exist in parallel and are competing with each other: in order to follow one rule, actors must violate one another. Most common examples are clientilism, patronage, clan politics or corruption (ibid.)

This also implies a shift in the notion of what we consider efficient and effective in order to measure the quality of institutional outcomes. As we will see, for agents in charge of the delivery of cash transfers it can be much more efficient and effective to rely on ‘informal’ institutions and diverge from ‘formal’ rules and regulations in order to achieve intended programme outcomes.

## **Methodology and data<sup>ii</sup>**

The paper is the result of a qualitative research focusing on the political economy of cash transfers in three Kenyan counties. The selection criteria for the research sites were 1) differences in poverty

incidences and 2) differences in per capita income (relatively high, medium and relatively low) and 3) differences in geographic setting, i.e. rural-urban. In Nairobi, research was conducted in Kibera, considered one of the biggest urban slums in Kenya. Nairobi has an average poverty rate of 21.8 percent and a poverty gap of 4 percent. Although no evidence exists, these data need to be considered considerably higher for Kibera. West-Pokot is a scarcely populated rural area in the North of Kenya and one of the most marginalised areas in terms of access to social services. The poverty rate is high at 66.3 percent with a poverty gap of 16 percent. Despite high poverty rates, income inequality is relatively low. West-Pokot and Nairobi rank among the five most equal counties in this respect. Kwale on the contrary is one of the counties with the highest rate of inequality both with regard to income and mean expenditures<sup>iii</sup>. Poverty rates are severe at 70.7 percent with a poverty gap of 42 percent (KNBIS and SID 2013). With regard to income levels no data are available. Instead, consumption expenditure patterns were used as a proxy to identify the sample: They show that Nairobi is one of the wealthiest counties in Kenya with only 9.8 percent of the population in the lowest quintile having a monthly consumption expenditure of less than Ksh. 1,440, 13.6 percent of the population are in the second quintile spending less than Ksh. 2,840 per month, in West-Pokot these numbers are significantly higher lying at 33 percent and 24 percent respectively. In Kwale county, expenditure patterns are even more pronounced: 56.1 percent of the population are in the first quintile while 9.9 percent are in the second. This also confirms the huge gap in income and expenditure between rural and urban areas (Ibid.).

Twenty-two interviews were conducted with local stakeholders engaged in the implementation of the CT-OVC. They included interviews with civil servants at county and sub-county level responsible for the implementation of the cash transfer programme, representatives of the local authorities, as well as representatives of local CT-OVC institutions created to facilitate the implementation of the programme. In addition, five interviews with representatives of agencies responsible for the implementation of the CT-OVC at national level were conducted, including two interviews with representatives of Kenyan research institutions and considered experts in the field as independent observers. Interview partners were purposefully selected following a review of policy documents and secondary data including peer-reviewed papers, other published and unpublished materials, the internet and other grey literature as well as through a stakeholder mapping.

The interviews mainly took place at the offices of the participants, mostly during working hours. In order to ensure consistency and comparability of information collected, semi-structured interview guidelines were developed for each stakeholder group. Questions centred around operational features of the CT-OVC and related implementation challenges, including roles and

responsibilities, issues of coordination and cooperation among various stakeholders involved in the delivery of the programme and across sectors, as well as ‘formal’ and ‘informal’ institutions. Interviews were recorded (where consent was given) and detailed notes taken for those individuals who did not consent to recording. All interviews were transcribed into Microsoft Word and analysed using Atlas.ti.

A second data source were legal (laws, regulations, decrees) and policy documents, including strategies, reports and evaluations and academic literature on Kenya and social protection, including books and articles.

For analysing the interviews and other text-material, we used a hermeneutic-interpretative approach. Trying to extrapolate the specificities of the local political economy and describe the processes as to how pro-poor programmes are being adapted and modified to fit the local context and institutional set-up, the analysis is based on historical comparative institutional analysis (Morgan et al. 2010). This implies an inductive analytical approach based on very context specific evidence and micro-theoretical models (Greif 1998).

## **Country background**

Kenya is one of the biggest economies in Africa. However, over the last years internal and external shocks have rendered growth rates highly volatile.<sup>4</sup> Growth has reached an all-time high at 8.4 percent in 2010, but has since then oscillated between 5 percent and 6 percent.<sup>5</sup> While exogenous factors have played a role in this, main contributors are endogenous factors, such as political uncertainty and increasingly frequent incidences of drought. The verdict of the high court to nullify elections of 8 August 2017 to run for re-election on 17 October 2017 and the devastating drought that is taking place in the North since the beginning of 2018 vividly confirm this fact. A gap in physical infrastructure (transport, water and energy) and ineffective governance, in particular the high incidence of corruption are considered the key bottleneck for the development of Kenya’s economy and society.<sup>6</sup>

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<sup>4</sup> These include in particular the post-election crisis, drought, the global financial and economic crisis, high international oil and food prices, and slowdown in global economic activity (Deloitte 2016).

<sup>5</sup> World Development Indicators: [29.05.2017]

<sup>6</sup> Footnote 5.

The majority of Kenyans live in the rural areas (almost 75 percent). This explains why agriculture continues to be the mainstay of Kenya's economy. Seven out of ten Kenyans living in rural areas are working in agriculture. While the share of working age population already reached 56 percent in 2014, this number will continue to rise rapidly over the next decade. The majority of the productive population will find an outcome in the informal sector economy, which already now employs almost 90 percent of the working population.<sup>7</sup>

Despite good economic performance, poverty in Kenya has substantially increased since the 1990s, from 21.5 percent in 1997 to 47 percent in 2005. Current estimates assume a decline to 42 percent in 2012.<sup>8</sup> Major reasons for overall increase in poverty are uneven and poor agricultural development paired with rising food and fuel prizes since 2009. Poverty in Kenya is markedly higher in rural (50 percent) than urban areas (34 percent). Ninety percent of Kenyans in the bottom 40 percent of the income distribution live in rural areas.<sup>9</sup> Poverty also varies across regions from a high of 74 percent in the North Eastern province to a low of 22 percent in Nairobi.

## **Local political and institutional structures**

After 22 years of one-party-rule, Kenya transitioned to multi-party in 1991 and since then, has experienced five democratic elections and adopted a new constitution in 2010. After the intense political violence in the aftermath of the 2007/2008 elections, which has brought the country almost at the brink of civil war, the new constitution was to represent a break with the past<sup>iv</sup>. The introduction of substantial checks- and balances aimed at significantly curtailing the powers of the executive branch<sup>v</sup> and the devolution of the government system were meant to put an end to the intense centralization of power that the Kenyan political system had witnessed over the years and which even the introduction of multi-party could not reverse (Hassan 2015).

Compared to other African countries, the degree of decentralisation that the new constitution provides is indeed quite substantial. Power was devolved to 47 newly created and elected county governments with the executive power exercised by governors and legislative powers vested in the county assemblies. County administrations are also responsible for the delivery of key services, including health care services. The constitution also introduced a bi-cameral parliament with an

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<sup>7</sup> Ibid.

<sup>8</sup> Poverty in Kenya was last measured in 2005 (Footnote 5).

<sup>9</sup> Footnote 5.

upper house (senate). Senators are directly elected by the counties and are supposed to protect the interests of county governments (Cheeseman et al. 2016). In terms of financing, county governments are supposed to receive not less than 15% of the national revenues. In addition, Central Government is required to set aside 0.5 percent of its revenues collected into an equalization fund to be used to provide basic services to marginalized areas in order to bring the level of these services (road, water, health facilities and electricity) to the level generally enjoyed by the rest of the population (Kempe 2015).

Although initially central government strongly resisted such far-reaching decentralisation the Act has been fully implemented in 2013. While the constitution guarantees the counties to receive not less than 15 percent of national revenues, D'Arcy and Cornell (2016) in their account note that this threshold has been reached by far: In 2015, more than 32 percent of national revenue have actually been committed to the counties (D'Arcy and Cornell 2016).<sup>vi</sup>

Devolution also meant a substantial re-shuffling of the local administrative apparatus. Up to 2015, the Provincial Authority was the core institution of local authority in Kenya. Designed as a prefectural authority in the local areas, its main task was to coordinate central government policies and development programmes. In addition, they arbitrated local conflicts (ranging from land to marriage disputes) and were in charge of local security (Hassan 2015).<sup>vii</sup> The traditional authorities, including Chiefs and Assistant Chiefs were formal members of this apparatus. Since independence, the Provincial Authority was used as the main arm of the executive power in Kenya in order to establish and exert presidential power in the most peripheral areas of Kenya. To this end, the provincial authorities were granted almost unlimited power, as long as they administered their sphere of influence to the satisfaction of the president in power (Oloo 2008).<sup>viii</sup>

In order to break the centralised power of the provincial authority in the newly devolved system, also the provincial administrative system has experienced substantial changes getting completely separated from the national sphere. The county governors are also in charge of most government functions apart from police and national security, which remained in the hand of national government. The provincial authorities were entirely abolished, and replaced by the National Administration as the new national government administrative system. Headed by a County Commissioner, the structure exists side by side with the elected county government. In accordance with the devolved government structure, the Country Commissioner is supposed to report to county governor (See Table 2).

However, despite the apparent success of devolution, observers note that this has not stopped the dominant political features of patronage and authoritarianism from working and exerting their

powers and influence by accommodating and skewing the new rules and regulations in their favour (Branch and Cheeseman 2010; Cheeseman et al. 2016). This also concerns decentral government structures, which despite decentralization remain a stronghold of national political influence at local level.<sup>ix</sup>

## **The conditional cash transfer programme for orphans and vulnerable children (CT-OVC)**

Whereas social policies in Kenya were traditionally focused on classical welfare measures in the formal sector economy, including health insurance or pensions for old age and invalidity, non-contributory schemes have increased substantially over the last decade in Kenya in order to combat rising poverty rates. There are currently more than 19 non-contributory programmes implemented across the country, including also the National Safety Net Programme (Inua Jamii) implemented by the Ministry of East-African Community, Labour and Social Protection and encompassing four major cash transfer programmes:

- The Hunger Safety Net Programme (HSNP) aiming at reducing extreme hunger and vulnerability among the poorest households in four arid areas in North Kenya (covering 100,000 households)
- The Older People Cash Transfer (OPCT) targeting poor and vulnerable older persons 65 and above (covering 203,011 households)
- The Persons with Severe Disability Cash Transfer (PWSD-CT) targeting adults and children with severe disabilities (covering 45,505 households)
- The Cash Transfer for Orphaned and Vulnerable Children (CT-OVC) targeting families living with OVCs (covering 365,000 households).<sup>10</sup>

The CT-OVC is the oldest and largest of Kenya's cash transfer programmes. Initiated in 2004 as a response to their rising number of orphans and vulnerable children due to HIV/AIDS<sup>x</sup>, it seeks to support families living with OVCs with regular cash transfers with the aim to encourage fostering and retention of such children within their families and communities and to promote their human capital development. More specifically, the programme aims at (1) increasing enrolment and retention rates of OVCs, (2) improving their health status through immunization, growth

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<sup>10</sup> According to estimates, Kenya has 2,400,000 orphans and vulnerable children (Gender and Equality Commission 2014).

monitoring and vitamin supplements, (3) increasing civil registration of children and their caregivers, (4) supporting households through training measures to better take care of their health and nutrition and, (5) managing HIV/AIDS (Social Protection Secretariat 2017). The programme which is a national programme managed by the Ministry of EAC, Labour and Social Protection provides KES 2,000 per household per month paid on a bi-monthly basis through the Kenya Commercial Bank and Equity Bank. An impact evaluation from 2009 suggests that the transfer has substantially increased receiving households' consumption levels, and made it easier to maintain their living standards while caring for OVCs. Significantly higher expenditures have been recorded for food, health, and clothing. Health expenses were particularly significant. The evaluation also shows that people spend the money on different types of food shifting to more nutritious and higher quality food and thus suggesting a positive impact on nutrition (The Kenya CT-OVC Evaluation Team 2012).

Despite being unconditioned, the cash transfer shows a positive impact on schooling, in particular at secondary level where school fees have to be paid and schools are fewer, thus implying higher travel costs. School attendance at secondary school level has increased by 9 percent as compared to the baseline. With regard to retention rates, it was shown that secondary-age children in intervention households are 0.096 fewer grades behind (about 7 per cent at the mean) and 5 per cent more likely to progress to the next grade between 2008 and 2009 compared to the baseline<sup>11</sup> (Kenya CT-OVC Evaluation Team 2012). The cash transfer also positively influenced dropout rates. The probability of returning to school among older children (age > 12 years) has increased by 2 percent (Ibid.)

The day-to-day implementation and supervision of the CT-OVC lies with the CT-OVC Secretariat at the Department of Children's Services at the Ministry of EAC, Labour and Social Policies. However, local administrative and political structures at the county and district level play an important role in programme implementation. These include the offices of the line ministry at the county and sub-county level (County and Sub-county Child officers) and new county government institutions that have been established in the context of devolved government and have been attributed a role with regard to the CT-OVC, in particular the CSACs (Constituency Social Assistance Committees). Furthermore, there are the CT-OVC institutions and mechanisms at

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<sup>11</sup> The indicator "grades behind" refers to the actual grade subtracted from 'expected' grade assuming on-time entry and no repetition. "Grade progression" refers to the fact whether or not the child moved up in grade between 2008 and 2009 (Kenya CT-OVC Evaluation Team 2012).



communal level, including the LOC and the BWC. Table 2 gives a basic overview of the roles and responsibilities.

**Table 2:** Administrative and Managing Structure CT-OVC

<b>National Level</b>	
<b>CT-OVC Secretariat in the Department of Children’s Services</b>	<ul style="list-style-type: none"> <li>Coordinate targeting processes</li> <li>Produce the lists of eligible households and coordinate logistics for enrolment</li> <li>Request cash transfers for payment service providers and approve payments to beneficiary households</li> <li>Coordinate programme promotion procedures</li> <li>Organize training for programme operations for central and local staff</li> <li>Documentation and reporting</li> </ul>
<b>County Level</b>	
<b>County Coordinator for Children’s Services (CCCS)</b>	<ul style="list-style-type: none"> <li>Supervision</li> <li>Management of sub-county coordinators, Management of resources together with county</li> <li>Addressing and forwarding complaints and grievances;</li> <li>Reporting</li> </ul>
<b>Sub-County Level</b>	
<b>Sub-County Children’s Officer (SCCO)</b>	<ul style="list-style-type: none"> <li>Administration of CT-OVC at sub-county level</li> <li>Supports targeting, enrolment, payments, monitoring, case management and complaints</li> <li>Training of local committees on their tasks (BWC, LOC)</li> <li>Reporting</li> <li>Works closely with SCASC, LOCs, BWCs and other members of the community</li> </ul>
<b>Area Advisory Council (AAC)<sup>xi</sup></b>	Coordination and supervision all activities and services for children at the sub-county level (meets quarterly)
<b>Constituency Social Assistance Committees (CSAC)</b>	Supervision of targeting processes and implementation of all social protection measures at the constituency level (national body)
<b>Sub-County OVC Sub-Committee (SCOSC)</b> Time bound to phases of programme expansion and targeting activities	<ul style="list-style-type: none"> <li>Supports the SCCOs with targeting process:</li> <li>Sensitisation of communities,</li> <li>Selection of enumerators to conduct targeting data collection;</li> <li>Validation of household lists;</li> <li>Supervision of the targeting process;</li> <li>Presentation of targeted households to AAC for approval</li> </ul>
<b>Community Level</b>	
<b>Location Committees<sup>xii</sup> (LOCs)</b> Time bound Elected by community members (disbanded after enrolment)	<ul style="list-style-type: none"> <li>Awareness of the programme among community members</li> <li>Support programme targeting:</li> <li>List households with OVCs</li> <li>Mobilize potential beneficiaries for community validation and enrolment</li> </ul>

<p><b>Beneficiary Welfare Committees (BWCs)</b> Elected by beneficiaries and must be a beneficiary of the CT-OVC programme</p>	<p>Disseminate information to beneficiaries (such as payment dates) Complaints and grievance system Compose lists of beneficiaries who did not receive a payment during a payment cycle to Sub-County Children’s Officers for follow-up Function of LOCs in locations where the programme is already operational but a scale-up is planned and a new targeting exercise needed</p>
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**Source:** Department of Children’s Service 2013

In 2014, the Constituency Social Assistance Committee (CSAC) has been introduced as a new supervisory body. It represents the Member of Parliament of the constituency level and is a parallel structure to the AAC representing the county government. The CSAC has a supervisory role with regard to all the social protection activities within an area. The committee consists of five representatives nominated by the Member of Parliament (MP) for the area, including two representatives of churches, two nominated by the Women’s Representatives and representatives of other line ministries having a stake in social protection at county level, such as Ministry of Education, Ministry of Labour, Ministry of Devolution and Planning the National Administration represented by County Commissioner.

In addition, local traditional authorities play an important role despite having no formal stake in the implementation of the programme. While these functions differ from one place to the other, as we will see further down, it is important to point out that in the Kenyan context traditional authorities are part of the formal government structure, thus ‘formal’ institutionalized structures. Their status as ‘informal’ or parallel institutions here refers to their role in the delivery of the CT-OVC despite them having no formalized function in the process at all.

### **Navigating the local political economy: The role of traditional authorities in implementing the CT-OVC**

Although the CT-OVC manual sets out a clear and detailed operational structure and accompanying rules and regulation for the programme, day-to-day implementation at local level differs quite substantially. Despite the fact that Chiefs, sub-chiefs and community elders do not have a formal function in the implementation of the CT-OVC, they are routinely at the centre stage of implementation processes playing a key role with regard to all major operational

functions (targeting, enrolment, monitoring, information, data collection, grievance and redress as well as disbursement). Whereas similar features can be observed across all three regions and counties, regional variations and differences exist.

### **Transaction costs of programme implementation**

For the street-level bureaucrats in charge of implementing the programme and interacting with the communities on a day-to-day basis, such as the sub-county child officers, traditional authorities provide a key partner institution that substantially facilitates programme implementation and reduces transaction costs.

Civil servants involved in the delivery of cash transfers and beneficiaries alike mention traditional authorities as playing an important complementary role with regard to targeting processes. This is especially important where communities are dispersed over great distances and in counties which in general are scarcely populated, such as West-Pokot. The fact that sub-chiefs representing these widely disbursed sub-communities are part of the LOC – despite this practice being against formal requirements and rules – guarantees that poor and vulnerable people who live at a great distance from the main community and who otherwise might be forgotten also have a chance to get enlisted and enrolled in the programme. As the LOC is usually constituted in the main community, LOC members tend to enlist people from the main location only because they are the ones they know. Here, the ‘unruly’ practice to include sub-chiefs into the LOC, allows Chiefs to acquire an important inclusionary function acting as a gap-filler for an effective but inadequate formal programme structure.

Evidence from West-Pokot suggests the role of Chiefs as having an important substituting function with regard to targeting was even more pronounced in the beginning of the programme. The initially established and formally engrained targeting process foreseeing a geographic poverty targeting in order to determine the poorest areas of Kenya and concentrate the disbursement of funds there, had quickly been abandoned for a targeting being guided by a strong regionalism guaranteeing each region and county an equal share of CT-OVC beneficiaries. This together with the limited funds available meant that the national scale-up of the programme involved only a very limited number of beneficiaries per location. To the local civil servants it did not make sense to initiate a complex targeting process in order to identify just a few beneficiaries. In order to shorten the process and reduce transaction costs, they instead asked traditional authorities to identify eligible beneficiaries.

Traditional authorities play an important role with regard to the facilitation and organisation of community meetings, so-called “*barazas*” where information on the programme is disseminated and targeting, enrolment, pay-outs or sensitization campaigns take place. Without the involvement of the traditional authorities, it would be very challenging for a sub-county officer to organise these community meetings. In all the interviews, local civil servants involved in the delivery of the programme emphasized this aspect over and over again. Although civil servants are aware about the ambivalent role of traditional authorities with regard to programme implementation, as the quotation below vividly shows, it appears impossible for civil-servants to by-pass them or enforce formal regulations preventing traditional authorities to be part of the LOC or the BWC. Civil servants simply depend on them in order to do their job.

*“The chiefs are supposed to be eliminated at the LOCs level. But now we have a problem, (...), you cannot do away with chiefs. One, depending on the challenges we face, this area is so expansive. These are the people who assist us, - together with BWC - to mobilise. These are the people who are most trusted by the public here. You cannot do anything without the chief. You say you do away with them, you are doomed. When the chief says something, it is like law, you see things moving. When the chief informs people that payment starts tomorrow, by tomorrow morning you see 500 people at the banks....” (Int. 166: Local civil servant)*

### **Gate-keepers for social protection**

Despite having an apparently positive complementary and sometimes substituting role in reducing transaction costs and facilitating programme implementation, the strong involvement of traditional authorities clearly comes at a cost. Although the manual advises to the contrary (Department of Children’s Services 2013), in many locations, sub-chiefs and community elders form part of the LOC. Even where they are not part of the committee, they still have a decisive role in key programme operations, such as targeting by “advising” programme structures.

*“You know targeting we only pinpoint after creating awareness we select groups of people called locational OVC committees who go to the ground to enlist the families*

*who they think are eligible for the program in collaboration with local leaders like I've said, like wazee wa mitaa (village elders) and all those.” (Sub-County Child Officer)*

This “advisory” function is perceived as being highly ambivalent though, as traditional authorities exert a considerable influence as to who may be included into the programme or excluded from it. Many stakeholders, including the local civil servants in charge of implementing the programme (County Child Officer, Sub-County Child Officers, representatives of the CSAC) and in particular, community members complain about Chiefs, sub-chiefs and community elders skewing targeting mechanisms in their favour enlisting own family members or kinsmen. It is considered open knowledge that chiefs enlist people whom they own a favour or in return for a share of the transfer every-time it comes. This would confirm the highly competitive relationship between traditional authorities and formalised targeting processes as widely described in the literature where informal rules and regulation of clientilism, ethnicity and kinship are crowding out formal rules and regulations, usually with negative exclusionary consequences for the poor and vulnerable whom access to the programme is denied (see for example Pellissery 2005; Casson et al. 2010; Crost and Kamphampati 2010; Marcesse 2018).

The powerful gatekeeping function of traditional authorities is even more pronounced with regard to their formal administrative role in the National Administration: As part of the national administrative system, Chiefs are in charge of issuing ID-cards at local level. Holding an ID-document is a core precondition in order to get enrolled in the programme and access the CT-OVC money in the bank. In the areas close to the border, where ethnic groups lead a life in which migration across national borders make up an integral part of their livelihoods, we found evidence that chiefs deny actual beneficiaries their ID because of their migration background defining them as non-Kenyans and thus, not eligible to the programme benefits. This led to severe conflicts with the formal programme management represented by the Sub-County Child Officer.

### **Conflict settlement**


Another important programme dimension where ‘formal’ programme structures and ‘informal’ local political and social structures collide is the grievance and redress mechanisms for CT-OVC. With regard to complaints mechanisms, the CT-OVC foresees that it is the beneficiary welfare committees representing the beneficiaries as the major mechanism through which complaints are to be channelled up the programme structure. However, we have found across all locations that it is actually the Chief to whom beneficiaries mostly turn to when they have complaints. The

historical dispute settlement function of the Chief, which is institutionalised in the context of the national administrative structure, renders him a trusted and highly experienced and accepted dispute settlement institution compared to the recently established BWCs. This is especially the case there where BWCs do not work or are inactive. However, we have found that it is also common practice where the BWC is very active and respected by the beneficiaries. In contrast to their role in targeting processes, which by beneficiaries and local civil servants alike is perceived highly ambivalent, their role in managing grievance and redress in the CT-OVC remains unchallenged by the various stakeholders. On the contrary, they are perceived as being more efficient and effective than 'formal' programme structures in managing complaints. This may also explain the fact why traditional authorities play an important role in selecting the BWC, which according to the manual is supposed to be elected by beneficiaries only and - being the representative body of beneficiaries - is supposed to encompass beneficiaries only in order to guarantee accountability and transparency. Instead, it is common practice that community elders or respected community members such as teachers or successful businessmen are often charged with managing the BWC. They usually also have the capacity to engage in the BWCs work which - apart from dispute settlement - also includes information dissemination and monitoring. Rather than being two parallel sets of institutions that complement each other, here both 'formal' and 'informal' institutions appear to collide into one re-interpreting the "rules of the game" according to local efficiency and effectiveness criteria but guaranteeing their basic function.

### **Putting the pieces together: Multiple roles for traditional authorities**

Traditional authorities thus represent highly effective and efficient agencies in delivering social policies that complement and partly also substitute formal institutions. Their social and political authority in some matters renders them more efficient and effective than formal programme structures, also in the eyes of the local civil servants. Despite the fact that most of them have a critical stance towards traditional authorities and complain about their corrupt behaviour, civil servants continue to involve them in order to reduce transaction costs and render programmes more efficient and effective. This extends also to other operational aspects that would require a lot of time and human resources, such as the collection of beneficiaries' telephone numbers in order to expand and update the database.

**Table 3:** Traditional authorities and their informal institutional role in the CT-OVC

Outcomes	Effective formal Institutions	Ineffective formal Institutions
<p><i>Convergent</i></p>  <p><i>Divergent</i></p>	<p><b>Complementary</b></p> <ul style="list-style-type: none"> <li>• Targeting socially stigmatised poor</li> <li>• Organizing <u>barazas</u></li> <li>• Collection of information on beneficiaries</li> </ul>	<p><b>Substitutive</b></p> <ul style="list-style-type: none"> <li>• Alternative complaints and grievance mechanisms for CT-OVC at community level (dispute settlement)</li> <li>• Targeting &amp; Enrolment during the first phase</li> </ul>
	<p><b>Accommodating</b></p> <ul style="list-style-type: none"> <li>• Distribution of Form 2 according to numbers of sub-areas rather than needs</li> </ul>	<p><b>Competing</b></p> <ul style="list-style-type: none"> <li>• Targeting based on criteria of kinship, ethnicity, bribing and other <u>clientilistic</u> structures</li> <li>• Membership in the LOC</li> <li>• Representation of the BWC</li> </ul>

**Source:** Author based on Helmke and Levitsky 2004

The degree to which the Chiefs and traditional authorities can exercise their function as gate-keepers and influence social protection implementation processes thus appears to be directly related to the human and technical resources and capacities of local civil servants that enable them to compete with local traditional authorities in mediating access to public services. Where they face major geographic, technical and financial constraints, they heavily depend on traditional authorities as partners in order to implement social protection programmes effectively and efficiently. This appears to be more the case in rural areas where administrative units cover much bigger and often scarcely populated areas and where transaction costs to get people informed, enrolled and cash transfers delivered are much higher. Many SCCOS complained about their heavy workload of which the CT-OVC is just one among many other child-related projects they are supposed to administer. In addition, communication is a major challenge in rural areas, as mobile devices often do not work. Many do not have a vehicle or the fuel to cover the distances necessary to carry out their work. Finally, as we have seen, civil servants depend on the social and political authority of the traditional authorities in order to involve the community as required by the CT-OVC.

In town, the situation is slightly different. Whereas transaction costs are lower in urban areas, which are usually densely populated and where beneficiaries are easier to reach living spatially

closer to the civil service and the state, also social cohesion is less. Chiefs still play a role in urban areas, their authority is however much more disputed and often in competition with other patrons, in particular political parties.

## **Navigating the local political economy: Additional factors influencing the role of traditional authorities in implementing the CT-OVC**

The previous paragraph has discussed multidimensional roles of traditional authorities in implementing the CT-OVC. Here, the role of contextual factors influencing the position of traditional authorities within the CT-OVC in general will be discussed. In particular, this section addresses the role of devolution, the specific local context and time.

### **Devolution**

Institutional equilibria established between or across formal and informal institutions are not static nor the same everywhere. Rather, they are fragile constellations being in a constant process of adaptation to new programme requirements or changes in the overall social, economic or political context. The devolution process that has been ongoing in Kenya since 2010 has substantially influenced the institutional development of the CT-OVC programme at local level. Contrary to the general arguments of devolution bringing social services closer to the poor (for example, Rees and Hossain 2010), it appears to have shifted the institutional equilibrium towards traditional authorities again, allowing the latter to increase their influence. Despite the CT-OVC being a national programme where local government levels formally have no influence at all with regard to its management and delivery, this did not prevent the programme and social protection policies in general to become more and more politicized at local level. Politicians at local level and the MPs at national level increasingly realize the political mileage that they can gain from the programme. As a result, they increase pressure on the local government institutions and traditional authorities to target potential voters skewing targeting processes even more.

### **Local context**

The described dynamics are however not the same everywhere. Local context influences the degree to which 'formal' and 'informal' institutions are interwoven in order to deliver the cash transfer programme. In town, where traditional authorities historically are less influential as compared to rural areas, these dynamics appear to play out more in favour of the 'formal' CT-OVC structures. This does however, not necessarily imply that competing forms of cooperation do



not exist, meaning that there is less corruption or less exclusion errors. Often it is simply the patrons that change from traditional authorities to political parties. Nonetheless, our research seems to suggest that in town, where local power relations are more based on party politics and political competition for votes are high, there are also more checks and balances in place.

## **Time**

Shifts in the institutional set-up towards the 'formal' rules of the game appear to depend on what commonly is referred to as "institutional learning". Where the CT-OVC is already in place for longer, 'formal' institutional rules and regulations appear to be more ingrained and commonly accepted. Usually people have a fairly good knowledge about the programme and its main operational features, including targeting, enrolment and complaints mechanisms. This appears to be "taming" to a certain extent the negative influence of the 'informal' institutions. However, as we have mentioned above, this is not automatic or irreversible. Devolution appears to reshuffle again the newly established equilibrium, partly "undoing" institutional learning processes.

## **Discussion**

The analysis of the political economy of implementation processes of the CT-OVC in Kenya at the local level shows that the formal administrative set-up of social policy interventions as described in the operational manual represent just one dimension of 'the rules of the game'. 'Informal' or 'parallel' institutions are equally important in making social policy work in Kenya, confirming the overall importance of these sets of institutions in determining policy outcomes (Wanyama and McCord 2017; Lavers and Hickey 2016 or Hyden 2008).

Much of the debate on design and development of social services discusses 'informal' institutions as having a largely negative impact on desired policy outcomes, i.e. reducing their pro-poor effects by limiting access for the poor or by slowing down implementation processes which influence needs to be avoided as much as possible (for example Calder et al. 2011). We have seen that the tendency of treating formal and informal institutions as two separate sets of institutions with informal institutions being considered as inferior because less efficient and effective than formal institutions does not allow to capture the dynamic realities on the ground. Rather than focusing on one or the other, evidence shows that implementation processes get enmeshed in a dynamic interplay between 'formal' and 'informal' institutions meditating access to resources. This hybrid institutional set-up does not only produce negative outcomes, but plays also an important

role in making social services accessible for the poor and thus has positive effects with regard to intended programme objectives. This is in particular the case in constrained administrative settings where street-level bureaucrats need to come to terms with the lack of human and financial resources, technological challenges, challenging geographic settings and slow bureaucratic practices. In this situation, informal structures play an important complementary role as gap filler.

The analysis shows that the informal institutions may also substitute formal ones where the latter are based on false assumptions or are simply “too young” to be able to compete with engrained institutional structures that are much more efficient and effective. In our analysis, we have seen that their substitutive functions mainly relate to the operational features of the CT-OVC based on so-called community-based local implementation mechanisms, such as the BWC or the LOC. The assumption behind this is that these mechanisms formed by local people and rooted locally have a better knowledge and understanding of local poverty and know where eligible people can be found, an important pre-condition for targeting. Also, community-based organisations are perceived to ensure more participation on part of the poor people, more inclusion and more transparency.

However, just because institutions are community-based, this does not mean that they are more transparent, equitable and just. Rather, evidence suggests that this depends on their capacities, in particular knowledge on programme structures and targeting criteria (training and information) and secondly, on their time to engage in such processes. Both are generally scarce resources in poor beneficiaries. In such a situation, two things happen: Institutions collide, meaning that influential community members, including traditional authorities, take over the representative body of beneficiaries in order to guarantee effective representation or beneficiaries fall back on other, already pre-existing institutions that they consider more effective and efficient and which they trust more. The important role of the Chief as a substituting dispute settlement mechanism for CT-OVC is a case in point.

The strong role of informal institutions in implementing the programme may also distort implementation processes leading to divergent outcomes with particularly negative consequences for the poor. However, the degree to which formal rules or changes in formal rules may act as a catalyst for informal institutional change depends very much on the overall power balance and the relative strength of both ‘formal’ and ‘informal’ institutions. This differs depending very much on the local political setting and on time, i.e. for how long a programme has already been in place.

It seems that in an urban setting where social cohesion is less, also the role of traditional authorities as an important parallel institution is reduced as compared to rural areas, where traditional authorities are very powerful and cannot be ignored. In addition, rural areas also face much more logistical and administrative constraints than urban areas. Street-level bureaucrats responsible for implementing the CT-OVC across vast geographic areas with a widely dispersed population and little available resources and logistical support tend to be in greater need of them to get their work done. A trade-off thus takes place where divergent behaviour is tolerated for the sake of enabling an efficient and effective implementation. In fact, we have found less evidence concerning complaints about traditional authorities influencing targeting practices in urban areas, even if this does not mean that other parallel institutions, such as political parties may play an important informal role as gatekeepers for the CT-OVC.

The institutional equilibrium established in-between 'formal' and 'informal' institutions in implementing CT-OVC at local level is not stable, but highly fragile and may shift over time. An important factor herein seems to be institutional learning processes (Watts et al. 2003). Where the CT-OVC already exists for longer, a greater awareness and understanding both on the recipient and implementation side exist with positive impact on the acceptance of formal rules and regulations and adherence to them. This shift does however not necessarily move in a linear way from the 'informal' to the 'formal'. As we have seen, powerful external shocks, such as the recent devolution may substantially reshuffle the local rules of implementation. At least from our data it appears that increasing politicization of the CT-OVC programme in Kenya in the process of devolution has strengthened the influence of traditional authorities as competing institutions in the implementation process, partly undoing the institutional learning that has been taking place.

The back and forth movements between convergent and divergent outcomes may take place simultaneously within the same institution. From a policy perspective, this suggests that there is need for a more differentiated appraisal of 'informal' institutions and their role in implementing social policies in Kenya and elsewhere. Rather than focusing on trying to limit their influence when designing operational programme structures, empirical evidence suggests that they simply cannot be ignored as important stakeholders in the day-to-day implementation process. There is need to better look on how 'formal' and 'informal' institutions can possibly be integrated and aligned in order to produce convergent, pro-poor policy outcomes rather than ignoring them as dysfunctional from the outset giving leeway to diverging goals that commonly run counter to the interests and needs of the most marginalized. This would also imply a re-consideration of qualities ascribed to these institutional settings. While efficiency and effectiveness are the buzzwords when it comes to discussing governance in weak administrative settings, we have shown that this is not

necessarily confined to 'formal' structures only. 'Informal' institutions may in this respect be much more efficient and effective in delivering social policies than formal ones and even more so, when they cooperate and join forces.

## **Conclusion**

In this article on the politics of implementation in Kenya's largest cash transfer programme CT-OVC, we have shown that despite not having a formal function in the implementation of the programme, Chiefs, sub-chiefs and community elders are routinely at the centre stage of implementation processes playing a key role with regard to all major operational functions (targeting, enrolment, monitoring, grievance and redress as well as disbursement). This does not always produce negative outcomes for the poor in terms of gaining access to pro-poor policies competing with formal institutional settings. On the contrary, we have shown that 'informal' institutions may have an important complementary and substitutive function in implementing social policies providing an important gap filler function for formal implementation structures.

Rather than viewing them as dysfunctional to effective and efficient programme implementation, the article has argued for the need to re-consider formal and informal institutions as part of the same institutional setting in which programmes are implemented and access to resources and their distribution are negotiated. Such a broader-based view on institutional change that emphasizes the interplay between formal and informal institutions as the institutional normality may also allow for broader perspective on how implementation challenges are being tackled which hitherto mainly concentrates on optimizing operational aspects of a programme structure without looking too much at the social, political, geographic, economic and administrative context in which it is embedded.

While the article has identified differences across geographic, social and demographic settings within Kenya in how formal and informal institutions interact and social policy programmes are implemented, there is need for further research to gain more in-depth knowledge on how context actually influences the implementation and delivery of national programmes that in principle are based on a homogeneous implementation structure.

The article has also shown that the interplay between formal and informal institutions is in a constant process of re-shuffling trying to establish new equilibria across formal and informal structures and logics. This does not necessarily always drift towards more formalised rules and

regulations. However, more research is needed to shed light on the nature of formal/informal institutional interaction across time and see whether there are commonalities across countries and programmes with regard to what is generally called 'institutional learning' and at the same time, factors that may reverse this process, as it seems to be the case with devolution in Kenya.

From a policy point of view, there is need for process evaluations of social policy programmes to dedicate much more time and thinking to the politics of implementation and on how the local institutional environment meaning both formal and informal mechanisms can be strengthened in order to increase pro-poor outcomes.

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<sup>i</sup> For a critique see Benda-Beckmann 1994, Midgley 1984; Voigt 2009.

<sup>ii</sup> This article is the outcome of a comparative research project on social policies and inclusive growth in Kenya and Ghana carried out between May 2015 and July 2017. Using both quantitative and qualitative data, the project looked into interaction effects of cash transfers and pro-poor health policies in Ghana and Kenya. The research also sought to address the political economy of pro-poor social policies focusing on the one hand, on the evolution of social policy reforms within and across different sub-policy sectors (cash transfers vs. social health protection), and on the other hand, on implementation process and challenges of pro-poor social policies.

<sup>iii</sup> In Kwale the mean expenditure of the poorest wards (Garashi and Ndavaya, respectively) is less than 13 percent of expenditure in the wealthiest ward in the county (KNBIS and SID, 2013: iv).

<sup>iv</sup> The constitution of 2010 did not represent the first attempt to decentralize Kenya. For a detailed history see Branch and Cheeseman (eds.) (2010).

<sup>v</sup> The constitution of 2010 introduced a pure presidential system with the separation of power, giving back substantial power to the parliament, including the allocation of budget between the various government levels, approval of key appointments to the state office of the judiciary and executive branch as well as their dismissal if non-performing, including cabinet ministers. The president can no longer prorogue nor dismiss parliament. In exchange, parliament for the first time can impeach and dismiss a president without having to fear for its own existence. It has also an important oversight function. No sitting member of the legislative can serve as a cabinet

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minister. The new constitution entails much ground breaking reforms, including but not limited to the creation of a more independent judiciary, the establishment of an independent land commission to oversee the allocation of public lands, the creation of an ethics and anti-corruption commission and an independent electorate and boundaries commission. In addition, the constitution entails a comprehensive bill of rights that guarantees all Kenyans basic economic, social and political rights (Kempe 2015)

<sup>vi</sup> Central Government is also required to set aside a 0.5 percent of its revenues collected into a equalization fund to be use to provide basic services to marginalized areas in order to bring the level of these services (road, water, health facilities and electricity) to the level generally enjoyed by the rest of the population (Kempe 2015).

<sup>vii</sup> The provincial administration consisted of a Provincial Commissioner who was assisted by a District Commissioner, District Officers, Chiefs and Assistant Chiefs. The Provincial Authority was a department in the Ministry of State for Provincial Administration and Internal Security in the Office of the President (Kempe 2014).

<sup>viii</sup> Hassan in his statement is more explicit about the Provincial Administration noting that, “ Before the new constitution, Kenyan rulers utilized the Provincial Administration (PA) - a large, centralized, and highly capable body – to suppress regime opponents, rig elections, and control civilian protests throughout the country” (Hassan 2015:588)

<sup>ix</sup> In this context it may be worthwhile noting that the zero draft of the Social Protection Act proposes the foundation of a national directorate for social protection which gives the national directorate the power to establish county and regional offices as necessary (Department of Social Protection 2016).

<sup>x</sup> The National Safety Net Programme (NSNP) - *Inua Jamii* – currently comprises four Cash Transfer Programmes: Cash Transfer to Orphans and Vulnerable Children (CT-OVC); Older Persons Cash Transfer (OPCT); and Persons with Severe Disability Cash Transfer (PwSD-CT); The Hunger Safety Net Programme (HSNP); Whereas the first three are run by the Ministry of Labour and East-African Affairs, the last one is implemented by the Ministry of Devolution and Planning.

<sup>xi</sup> The AAC is composed of the Sub-County Commissioner (chairperson), the Sub-County Children Officer (Secretary), the Sub-County Education Officer, Sub-County Labour Officer, the Sub-County Social Development Officer, Sub-County Statistics Officer, Sub-County Medical Officer of Health, Sub-County Registrar of Persons, Sub-County Registrar of Births and Deaths, Officer Commanding Police Division, Sub-County Information Officer, representatives of Non-governmental Organisation, representatives of Faith Based organisation, representatives of Community Based Organisation, representatives of private sector, Children’s Magistrate and an officer from local authorities (Department of Children’s Services 2013).

<sup>xii</sup> The LOC have been abolished and substituted by the CSAC which is now in charge of the targeting process at local level (see also Wanyam and McCord 2017). However, at the time of writing most of the county officers in our counties and wards were not aware of this changes insisting that the LOC did still exist. Also, the CSACs that we had been interviewing did describe their work as a supervisory activity indicating that the decision to abolish the LOC has been very recent.