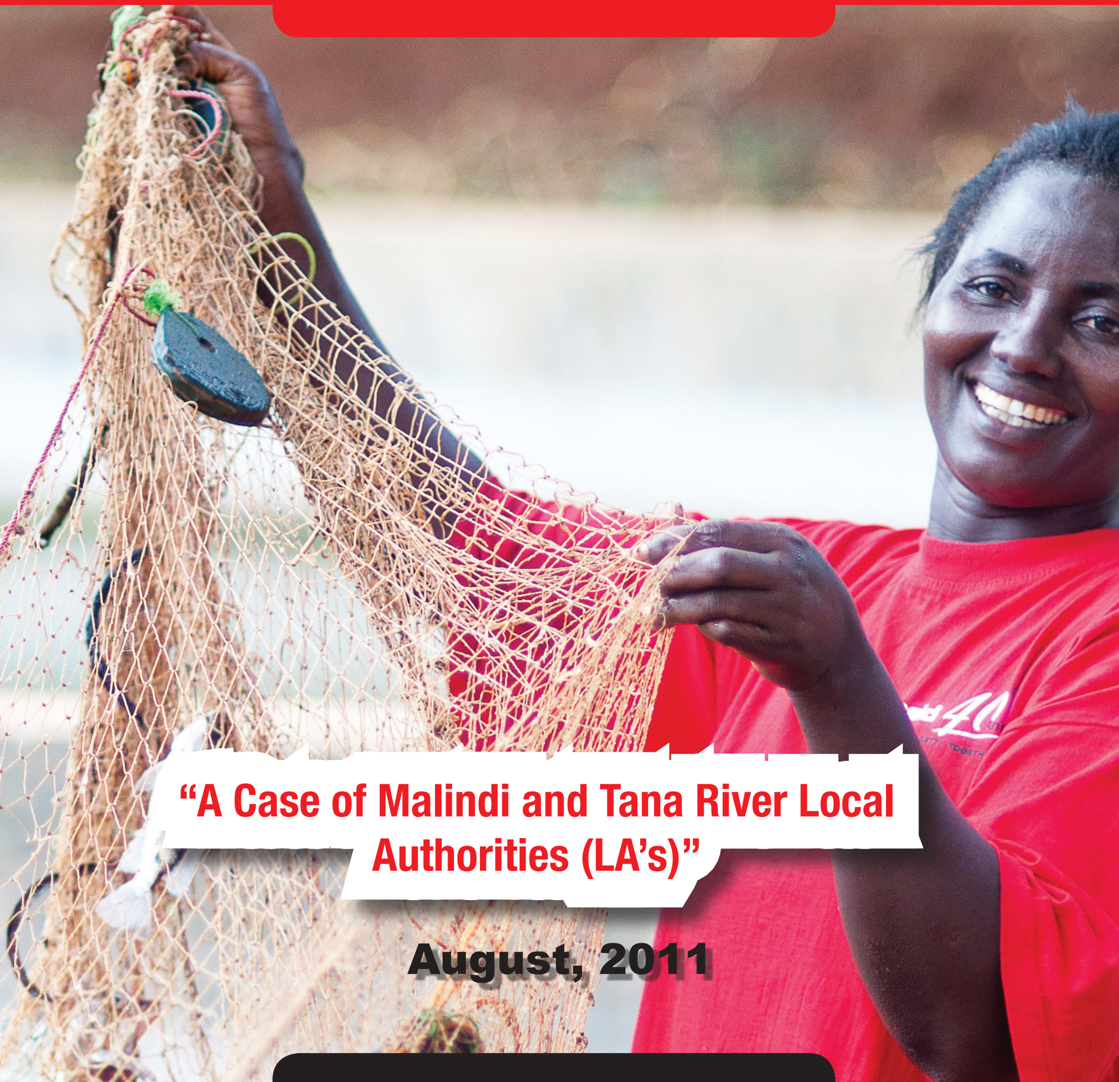
actionaid 40th Anniversary

The Analysis of Local Budgets and Alternative Investment Models in Kenya



"A Case of Malindi and Tana River Local Authorities (LA's)"

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CILOR	Contribution in Lieu of Rates
CBMS	Community Based Monitoring System
CSOs	Civil Society Organizations
CWEF	Constituency Women Enterprise Fund
CDF	Constituency Development Fund
DDO	District Development Officer
DC	District Commissioner
DED	German Development Service
DRC	District Roads Committees
DRE	District Roads Engineer
DI's	Development Initiatives
DPMU	District Planning and Management Unit
FGD's	Focus Group Discussions
FY	Fiscal/ Financial Year
GoK	Government of Kenya
IEC	Information Education Communication
IPD	Institute of Participatory Development
KRA	Kenya Revenue Authority
LA	Local Authorities
LATF	Local Authorities Transfer Fund
MDAs	Ministries, Departments and Agencies
MRF	Malindi Residents Forum
NIMES	National Integrated Monitoring System
OPCT	Old Persons Cash Transfer
PELRF	Poverty Eradication Loan Revolving Fund
RMLF	Road Maintenance Levy Fund
TISA	Institute for Social Accountability
YEDF	Youth Enterprise Development Fund

ActionAid International- Kenya (AAIK) is pleased to introduce this report on **"The Analysis of Local Budgets and Alternative Investment Models in Kenya: a case of Malindi and Tana River Local Authorities."** AAIK believes that this report will go a long way to adding value and knowledge on participatory budgeting at the County and/or Local Authorities. This study appreciates that effective citizen engagement in local budgeting processes, participatory planning and decision making is an important ingredient not only to citizen empowerment, but also reforming the Government of Kenya (GoK) towards efficient, effective, affordable, accessible and quality services for all Kenyans.

Indeed, the study notes that an all-inclusive participation plays a critical role in enhancing transparency, credibility and accountability of the budget process at the local level. Although participation has been improving in Kenya over time especially at the budget formulation stage, it is however still low at the other stages of budget cycle.

This study further notes that adequate stakeholder participation in local budgeting is inhibited by a couple of factors, including; lack of awareness of existing mechanisms for citizens engagement in the budget process, inadequate capacity, inadequate legal and institutional frameworks among others, which in a way affects investment models. This report highlights the existing avenues as provided legally and otherwise in which citizens can engage in the budget process but at the same time also make a comparison of best practices in participatory budgeting. It is expected that you shall find this report useful in further contributing to dialogue and the adoption of participatory budgeting in line with best practices.

In light of the importance this study, the study acknowledges that the promulgation of the New Constitution in August 2010 has significantly broadened and deepened the decentralization of resources and power to the local and/or county level in Kenya and indeed the budget making process. Therefore, this report reflects the spirit of and conforms to the New Constitution and requisite legislations that have been put in place. In summary, it is envisaged that the content of this report and the knowledge generated thereof, will be useful in informing the implementation of the devolved structures.

Bijay Kumar

Interim Country Director
ActionAid International Kenya (AAIK)

Acknowledgement

ActionAid International- Kenya (AAIK) is sincerely thankful to Mr. Kisamwa Lambi, a Public Finance consultant, for carrying out the study on **"The Analysis of Local Budgets and Alternative Investment Models in Kenya: a case of Malindi and Tana River Local Authorities"**. Indeed, his professional input and useful insights contributed to a successful study.

Special gratitude goes to Gilbert H. Muyumbu, the National Coordinator, Just & Democratic Governance and Benson Ireri, the Governance Officer, for conceptualizing the Terms of Reference (TOR) for this study. The AAIK appreciates the role of Nixon Otieno, the Head of Policy and Campaigns Department, for his excellent input in the research process. AAIK particularly notes the input of other departmental staff and their active participation during peer review meetings.

Indeed, AAIK warmly acknowledges the pivotal role played by Heads of Departments (HoD) in Malindi and Tana River districts for availing the necessary and required information in a timely fashion. Special thanks go to Municipal and County Clerks, Treasurers and Revenue officials, for their extraordinary support in examining their budgets. Their contribution significantly led to a successful completion of the study.

Introduction

This report constitutes an attempt by ActionAid International-Kenya (AAIK)[1] to analyze the current investment patterns/priorities of the local budgets and provide alternative models of investment for local and/or county governments in Kenya. The report is an output of a study[2] that was carried out in two Local Authorities (LA's), namely; Malindi and Tana River. The study assesses the budgets of:

- Malindi Municipal Council (MMC),
- County Council of Malindi (CCM),
- County Council of Tana River (CCTR),
- Local Authorities Transfer Funds (LATF) and Constituency Development Fund (CDF), and
- Line Ministries.

Indeed, the study examines the priorities for investment at the local and/or county level. For instance, it explains how Constituency Development Fund (CDF), Local Authorities Transfer Fund (LATF) and line ministry budgets are apportioned to various recurrent and development projects at the local level. This report is therefore, a product of broad-based consultations with various stakeholders, including Municipal and County Clerks, Treasurers, Revenue officials, Heads of Departments (HOD's) of line ministries, District Development Officers (DDO), managers of devolved funds, community representatives, among others. The broad-based consultation not only contributed to a thorough examination of local budgets, but also a successful study. This study is part of other ongoing policy work initiated by AAIK, aimed at eradicating poverty and ensuring social justice.

1 ActionAid International-Kenya (AAIK) is a unique partnership of people who are fighting for a better world: a world without poverty. AAIK initiates processes that eradicate poverty and ensure social justice through anti-poverty projects, local institutional capacity building and public policy.

2 This study was commissioned by AAIK in March 2011 in the sampled LA's. The study therefore, recommends for replication of its findings in other local and/or county governments.

Objectives of the study

The objectives of this study were to:

1. Analyze budgets of two (2) Local Governments drawn from two different counties that are proposed under the New Constitution. In particular, the analysis should focus on the total financial year budgets for these local government over the last three years (revenue generation), as well as the investment design/priorities/angle that these resources have been directed towards (this will be both an analysis from secondary information, as well as interviews with respective duty bearers);

2. Bring out the extent to which the community members have been involved in deciding how these resources are invested;

3. Provide a clear link between the place of access to information (in the New Constitution) and the transparency of budget information in improving the transparency, accountability, and subsequent effectiveness of these budgets, particularly at the local level; and

4. Provide a logical and practical alternative for investment of these local resources in the future. The alternative design should start with the FY 2011/12 for the two Local Authorities, and a proposal for implementation under the Devolved structures following the implementation of chapter 11 of the new constitution. Whereas the alternative will be largely drawn from the Local Authorities that will be analyzed, and broadly from the larger county governments covering the Local Authorities, the alternative model should be replicable enough to be duplicated in the rest of the county governments throughout the country. Other factors that the alternative model should focus on should be;
   a. Promotion of Social Protection, particularly of the poor and vulnerable people in the local communities,
   b. The place of such a model in contributing towards achievement of Kenya's Vision 2030,
   c. The place and strategies for ensuring qualitative input by the public (CSOs and the community members) in the local budgeting process; and

Rationale of the study

The rationale of this study is grounded in what is now a well-acknowledged fact, that the promulgation of the New Constitution in August 2010 provides a strong legal foundation for the enhancement of participatory governance through devolved structures. In light of the significance of devolution discourse, which is viewed as a people-centered strategy for eradication of poverty, promotion of equity, realization of Vision 2030 and while ensuring that social justice prevails, this study intends to empower the local and/or county-level stakeholders to effectively and efficiently engage in local budgeting, participatory planning and decision making in resource allocation for sustainable socio-economic development at the local level.

Theoretical Framework

This study is conceptualized within the broad framework of decentralization. The study notes that the Constitution of Kenya (CoK) 2010 has adopted a devolved system of government that entails substantial devolution of political, administrative and financial powers to county governments with a view to improving citizen participation, efficiency and responsiveness of service delivery. Functions that were previously performed by the central government have as a result been assigned to county governments including specification of the corresponding share of national revenues that must be given to counties to enable them to perform their responsibilities. Counties have also been given power to make policy and operational decisions regarding revenue generation and expenditure priorities. It is upon this premise that this study adopted decentralization framework. However, of importance is decentralization of power to lower units. Politics is basically about the allocation of values, which lead to these questions: who controls the allocation of these values under Local Authority Service Delivery Action Plan (LASDAP)? Are all stakeholders involved in local budgeting and project implementation? What is the relationship between national and local budgeting? These questions form the core of this study.

Methodological Approach

This study used both primary and secondary methods to collect data. At primary level, both quantitative and qualitative techniques were employed through personal interviews with key informants from LA's, devolved funds and line ministries. The informants included officials from the District Planning and Management Unit (DPMU), District Development Officers (DDO's) District Accountants (DA's), CDF Managers, Municipal and County Clerks, Revenue Officers, among others. In addition, Focus Group Discussions (FGD's) with sampled community members drawn from two Development Initiatives[3] (DI's) and officials of DPMU were held. The aim of holding FGD's was to among other things, bring out the extent in which the community members have been involved in local budgeting and allocation of resources.

At secondary level[4], the study assessed the fiscal receipts of line ministries and devolved funds and further examined the total revenue generated by LA's. The significance of secondary data was that it established priorities for possible alternative investment models especially on Social Protection, Vision 2030 and stakeholder's involvement in the local budgeting. Secondly, secondary data gave an in-depth understanding on local budgeting during interviews with HoD's. Indeed, analysis of secondary data involved examination of tens of relevant documents on local budgeting and alternative investment models. While quantitative data was used for statistical analysis, every attempt was made to gather and incorporate qualitative data to complement the quantitative one.

This study further obtained informed consent from all respondents prior to being interviewed. The methods of data analysis which have been used to tabulate and present the findings include; percentages, tables and figures. However, this study notes that access to information, in some instances, was challenging, hence the need for policy changes on Freedom of Information.

Structure of this Report

In line with its Terms of Reference (ToR), this report is structured as follows: the first chapter looks at the overview of local budgets in Kenya; the second chapter presents a critical analysis of Malindi and Tana River budgets and priorities for alternative investment; the third chapter brings out the extent in which the

3 The Development Initiatives (DI's) are Langobaya and Wenje.

4 Secondary data entailed examination of: Revenue and Expenditure Budget Estimates on Recurrent and Development Expenditures for LA's, District Development Plans, Authority to Incur Expenditure (AIE), Appropriations-In- Aid (AIA), among others.

community members have been involved in local budgeting and allocation of resources; chapter four provides a clear link between access to information (in the new constitution) and transparency of budget information; chapter five gives recommendations for alternative investment of local resources in promoting Social Protection Policy, Vision 2030 and stakeholder's involvement in the local budgeting. In addition, every chapter identifies a number of best-practice lessons, key findings and policy recommendations that will guide local budgeting in the new devolved structures in Kenya.

Main Findings

The main findings of this study are:

- Local authorities in rural areas rely on fiscal transfers from the national government for development projects compared to urban ones because they (rural authorities) generate little revenue from their sources. On the other hand, urban authorities generate more revenue from their internal sources than the amount allocated by the national government. For instance, in Malindi Municipal Council (urban authority) the locally generated revenue for FY 2007/08 was Kshs. 89,690,551 compared to Kshs. 60,798,150 from the central government. In County Council of Malindi (rural authority) total fiscal allocation from central government for FY's 2007/08, 2008/09 and 2009/10 was Kshs. 107,220,909 (53% of the total revenue) while internally generated revenue by the County Council was Kshs. 95,771,258 (47% of the total revenue).

- The funding for infrastructure projects (construction of schools, health centres, bore holes, etc) is higher than non-infrastructure projects (bursaries, Monitoring and Evaluation, sports activities, etc). Based on the finding of this study, this is so because national government has for decades, neglected infrastructure projects at the local level. Secondly, since infrastructure funding is high, it easily manipulated by authorities through flawed procurement of goods and services, which leads to stalled, incomplete and sometimes ghost projects. The table below shows a comparative analysis of Infrastructure and non-infrastructure funding in Galole Constituency in Tana River district.

Table I.I: Infrastructure and Non-infrastructure funding in Galole Constituency, Tana River District

FY	2007/08	2008/09	2009/10	Grand Total
Infrastructure projects	29,132,261	24,541,801	30,203,239	**83,877,596**
Non-infrastructure projects	11,790,327	16,381,087	13,752,267	**41,923,681**
Grand Total	40,922,588	40,922,888	43,955,506	125,801,277

- Aid, charities and donations to local authorities doesn't fit into national or local budgeting and hence it disorients budget cycle and process. In addition, since bilateral aid goes to development projects, the reporting mechanism is based on bilateral agreement, which makes it difficult for the Controller and Auditor-General when auditing utilization of public funds. Secondly, accounting for donor funds does not fall under GoK's Financial Year, which also makes it difficult to track the effectiveness of foreign aid. Therefore, this study recommends that donor aid should be captured and appropriated as revenue or appropriations-in-aid in the annual and forward budgets of County governments. Programmes to be funded by such aid should be developed by the County Executive and incorporated in county budgets for consideration and approval by the County Assemblies. The application and use of donor aid must also be governed by the principles of transparency, accountability, public participation, equitable development of the county, including making special provision for marginalized groups. Regulations on seeking, receipt, budgeting, use and accounting for such funds should be included as an integral part of the appropriate county financial management legislation.

Introduction and Overview of Budgeting

1.1. Introduction

This chapter introduces the concept of budgeting. Indeed, this section begins by defining budgeting and its significance to social-economic development. A budget is a government's financial plan outlining the major sources of revenue and how such revenues are to be expended. It defines in concrete terms, the direction of national policy, the plan of action, and the cost implications of government programmes and projects during the fiscal year, while at the same time identifying the resources required to implement them.

A budget is thus a planning tool which aims to achieve a number of objectives, namely: fiscal discipline, allocative and operational efficiency. The basic functions of the budget entail: collection and allocation of scarce resources to priority sectors; provision of public goods and services by government; and re-distribution of incomes. In addition, the budget strives to ensure economic stabilization, social order and harmony, as well as acting as a measure of government performance and accountability.

The preparation of budget is informed by national development plans which spell out the broad government policy objectives and are prepared to run for five year period. The actual budget making process involves the preparation of three main documents that outline the government expenditure plans namely the:

- Forward Budget;
- Annual Budget; and
- Supplementary Estimates.

Though the budget outlines resources to specific areas, it allows flexibility in resource reallocation to meet contingencies with the approval of parliament.

1.2. National Budget Making Cycle and Process

In most countries, the framework for the budgetary process is normally provided for under the basic law of a country with varying levels of detail. Usually, the basic law of a country only provides an outline of the rules that govern the budgetary process - detailed provisions on the process are contained in secondary legislation. Kenya has over the last 11 years been using Medium Term Expenditure Framework (MTEF) budgeting process (Ministry of Finance, 2009). MTEF is a broad approach to integrating policy-making, planning and budgeting over a 3-year period based on policy priorities.

The process is meant to ensure that there is certainty and consistency in funding for ministries and adequate measures for enforcing government to stick within its overall budget (aggregated hard budget constraint), while allowing for flexibility in expenditures between ministries and programmes. The Constitution assigns the Ministry for Finance the duty of drafting the national budget. The Constitution requires the Minister for Finance to "cause to be prepared and laid before the National Assembly in each financial year estimates of the revenues and expenditure of the GoK for the next following financial year. It also makes provision for central issues relating to the budgetary process including the establishment of the Consolidated Fund into which all public revenue must be paid; provisions for raising revenue through taxes; auditing the expenditure of public funds, among others.

The cycle of Kenya's budget process starts from July to June of every year. The process proceeds in three main stages, namely the:

- drafting stage,
- legislation stage, and
- implementation and audit stage process.

Table I.II: National Budget (MTEF) Cycle

July to August	Ministries revise and update their Strategic Plans (SP).
September to October	Treasury issues Budget Guidelines (BG). Ministries undertake Ministerial Public Expenditure Reviews (PER) and prepare their Sector Budget Plans (SBP) accordingly. Districts complete their MTEF budget plans, and then submitted them to the relevant ministries. The ministerial affiliates complete their budget plans and submit them to their administrative Ministry. Treasury issues Budget Outlook Paper (BOP) which the Sectors/Ministries use to reconcile their projections with available resources.
November to December	The Treasury finalizes the BOP and presents to the Cabinet. Ministries/SWGs finalize MPERs. The Treasury issues revised Budget Circular.
January	The Treasury and MOPND finalize review of sectoral priorities. Line ministries submit revised Budget Estimates.
Feb. to early March	Sectors submit their proposed budget plan to stakeholders during Sector Hearings for public debate and input.
March to early April	Budget Strategy Paper is finalized and submitted to Cabinet for approval. Ministries/agencies are given specific ceilings. First round of budget negotiations are held between MOF and Line Ministries.
April to early May	Second round of negotiations between MOF and Ministries on pending issues. If agreements are not reached, MOF reports these details to the Economic Committee of the Cabinet for further direction.

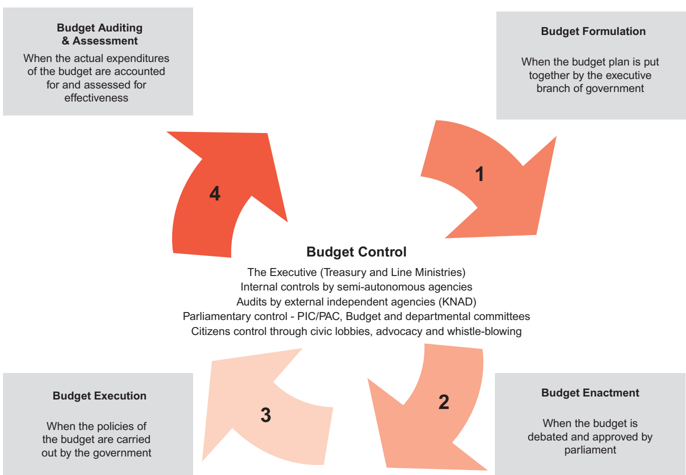
Late May	MOF completes consolidated budget plan and makes submission to the Minister for Finance who in turn presents it to the Cabinet.
June	The Minister for Finance submits proposed budget plan to the National Assembly for consideration and approval.

Table I.III: Examples of Participatory Approaches to Budgeting

1. The preparation of the Poverty Reduction Strategy Paper (PRSP) 2001-2004 which spells broad policy objectives to be addressed to trigger economic growth employment growth and poverty reduction involved the wider category of stakeholders, with special attention given to the "civil society especially the vulnerable groups and the private sector" beginning with the initial National Stakeholders Forum (Republic of Kenya, 2001).

2. The Medium Term Expenditure Framework (MTEF), Sectoral Working Groups (SWG) also incorporated private sector and Civil Society Organizations (CSO's) in the preparation of the budget.

Figure I.I: Budget Cycle in Kenya



1.3. Local Budgeting Cycle

1.3.1. Local Authorities Transfer Fund (LATF)

Budgeting under LATF begins with preparation of proposals. This is done by information gathering to guide LASDAP process and then link the information to strategic plan. This is followed by formation of LASDAP Technical Team. The primary responsibility of the Technical Team is to consult with local stakeholders on the activities for implementation and calculation of Resource Envelope (RE). The next stage involves preparation of the first draft LASDAP, which is done through consultative meetings with the stakeholders. The final draft LASDAP is then submitted to the Municipal Council for approval. Once the Council approves, LASDAP Monitoring Group is formed to ensure that all activities are implemented as outlined in the Council budget. The next stage involves the formation of Project Technical Teams Council whose main aim is to revise the Strategic Plan for approval by the Council. Once the Council approves, the budget is then submitted to the Minister for Local Government for approval during LA Budget Day. Project implementation starts immediately the budget is approved (See Annex II shows Annual LATF Budget Cycle).

1.3.2. Rationale for LATF Allocations

The criterion for LATF allocation is designed to ensure that funds are allocated in a predictable, transparent and fair manner as follows: a basic minimum of Kshs 1.5 million to each LA (6.6%); 60% allocated on the relative population of each LA and the remaining 33.4% is allocated based on urban population of LAs.

1.3.3. Formula for Allocation

LATF amount in region (X =Kshs 1.5 million + (60%) x Total National LATF Allocation budget) x population (X/total population)) + (33.4% x Total National LATF Allocation budget x urban population (X/total population.)

Figure I.II: LASDAP Budget Cycle

Steps	Month	Local Authority	Community
1	On going to September	Information gathering to guide LASDAP process and linkages to strategic plan	
2	September	Formation of LASDAP Technical Team	
3	September	Preparatory activities and Calculation of Resource Envelope	
4	October		Consultation Meetings
5	November	First Draft LASDAP Prepared	Consensus Meeting
7	November	Council Approval of LASDAP	LASDAP Monitoring Group Formed
8	November	LATF Conditionality Submission	Feedback Meetings
9	April	Council Budget Approval	
10	May	Formation of Project Technical Teams	
		Council approval of Strategic Plan Revisions	

Monitoring and Reporting by Community and Local Authority

10	May	Minister's Budget Approval	LA Budget Day	Monitoring and Reporting by Community and Local Authority
			Community Budget Day and Formation of Project Committees	
11	July to June	Implementation of The Projects		
12	On Going	Evaluation of LASDAP Process and Projects		

(TISA 2011)

1.4. Constituency Development Fund (CDF) Budget Cycle

Indeed, CDF was established in 2003 through the CDF Act (CDF Social Audit Guide, 2008). The fund aims to control imbalances in regional development brought about by partisan politics. It targets all constituency-level development projects, particularly those aiming at combating poverty at the grassroots. The fund comprises an annual budgetary allocation equivalent to 2.5% of the government's ordinary revenue. A motion seeking to increase this allocation to 7.5% of government revenue was recently passed in Parliament, but the President is yet to assent. Seventy five percent of the fund is allocated equally amongst the 210 constituencies. The remaining 25% is allocated according to constituency poverty levels.

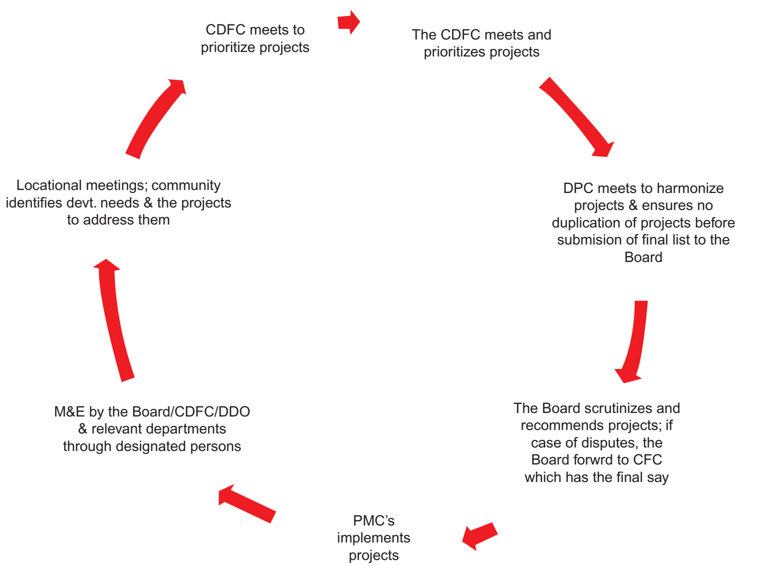
1.4.1. CDF Allocation and Rationale

The rules and regulations defining the operations of the fund are contained in the CDF (Amendment) Act, 2007. Allocations to respective constituencies are guided by the formula below: CDF Allocation = (0.75 by CDF) divide by 210) + (0.25 by CDF) by WCP) where CDF is the total allocation less (3% administration costs + 5% for emergency) WCP is the constituency contribution to national poverty.

1.4.2. How CDF Works

The CDF budget process consists of several stages. The first stage involves holding of locational meetings with community members to identify development needs and the projects to necessary to address the needs. The CDF Act assumes that the community is able to organize itself and identify the location's needs, and to prepare a priority of list of projects. Then the Constituency Development Fund Committee (CDFC) meets to prioritize projects. In this way, the CDFC has the power to select the final list of projects. Out of all project proposals received, the CDFC makes the final decision on which projects will receive funding in the coming year. Then the District Projects Committee (DPC) meets to harmonize projects and ensure no duplication before onward transmission to the Board. Once the Board receives the list of projects, it scrutinizes and recommends them; if any disputes it forwards them to Constituency Fund Committee (CFC) for arbitration. The Board then disburses funds to CDFC, which disburses monies to approved projects. This is followed by actual implementation of the projects by the Project Management Committees (PMC's). Indeed, Monitoring and Evaluation (M&E), by the Board/CDFC/DDO and relevant departments is done through designated committees or persons.

Figure I.III: The CDF Cycle



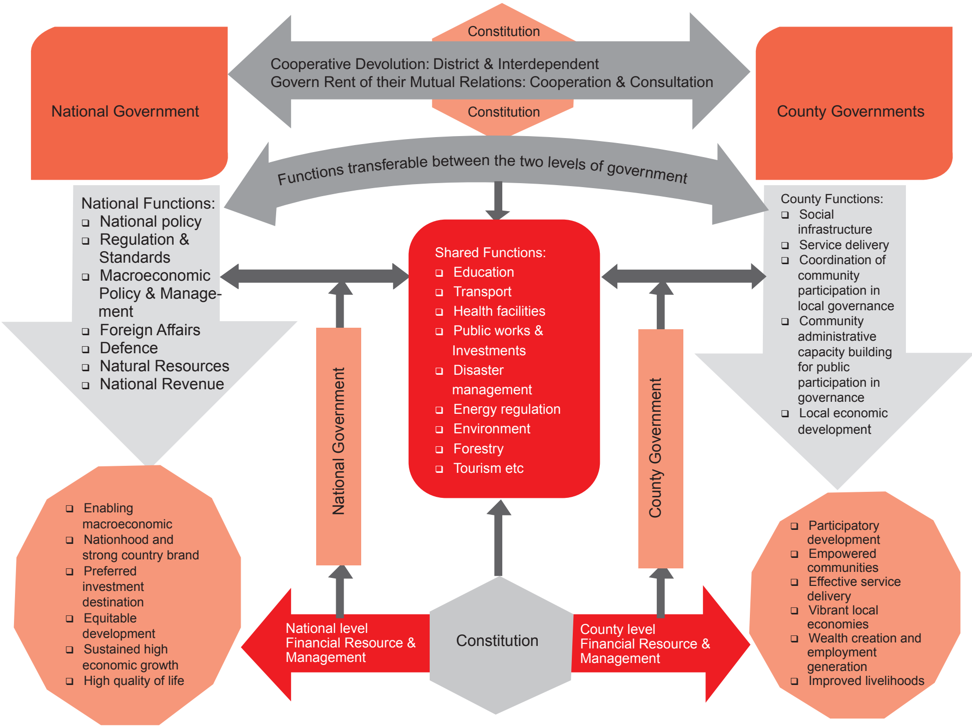
1.5. Critique of Budget Cycles

This study notes that the national and local budgeting under MTEF has faced a number of challenges in Kenya. Some of them include the following: macro economic instability leading to rapid inflation or deflation has sometimes rendered forward planning impossible; lack of quality and timely financial information on donor funding has made it difficult to track bi-lateral and multi-lateral funding; reported weak financial and institutional systems which in most cases don't adhere to budget ceiling; capacity and institutional weaknesses within line ministries to develop and present priority programmes that reflect the available resource envelops; lack of budgetary discipline e.g. supplementary allocations made during the year; projections made on the basis of over-estimated revenue sources sometimes leads to unrealistic budget.

1.6. Proposed Fiscal Decentralization Model

This study proposes the model in figure I.IV below for decentralization of resources and power in Kenya. The model shows national and county governments, that are distinct and interdependent and which are required to conduct their mutual relations through cooperation and consultation. Indeed, this study takes note of the fact that, unlike in other countries, Kenya has avoided the creation of a hierarchical unitary system of government where power and functions are given to sub-national governments by the central government which also retains the power of recall of such power. The responsibility of national government is national economic policy and planning, national standards, regulation, national public works, national statistics, immigration and citizenship, macroeconomic management, foreign affairs, defence and natural resources, while county governments have a role in the development and delivery local services.

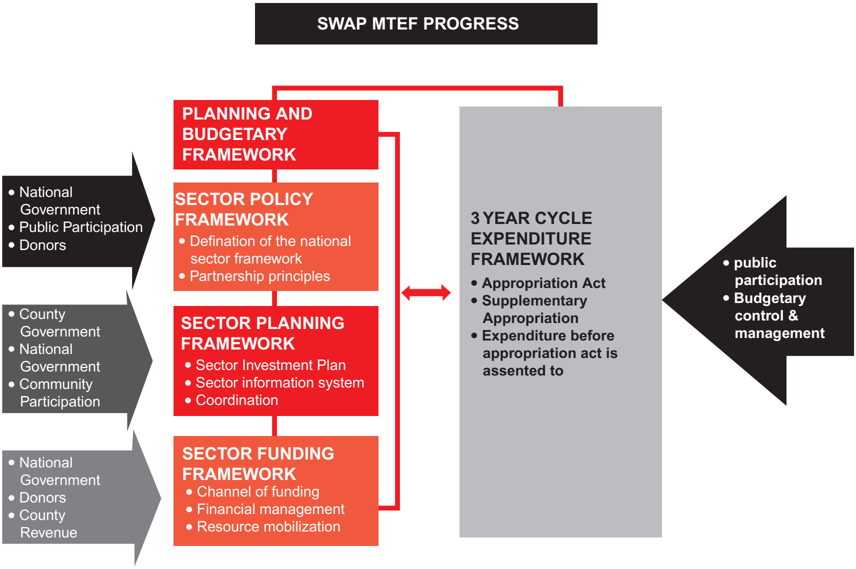
Figure I.IV A Model for Decentralization in Kenya



1.7. Proposed Model for National and Local Budgeting

This study has identified an effective, efficient and transparent framework that will address the weaknesses noted under MTEF. This study notes that with the constitution requirement that all County Strategic Plans and County Budget be based on SWAP towards effective delivery of services, it is appropriate to devise tools for such purpose. Although the operationalization of these tools will be spelt out in the policy and the relevant legislations, public participation needs to be captured in the proposed legislation. For purposes of effective, transparent and accountable local budgeting, the proposed County Planning and Budget Legislation will contain the details to be published annually in the Appropriation Act as envisaged in Article 224. The Act will contain development and recurrent expenditure with final approval of the County Assembly. It will further contain the procedure for withdrawal of Funds from the County Revenue Fund (CRF). Below is the proposed framework,

Figure I. V: Proposed National and Local Budgeting Framework



Source: KIPPRA, (2010).

1.7.1. Interpreting the Proposed Framework

This study notes that the two levels national and county governments, that are distinct and interdependent and which are required to conduct their mutual relations through cooperation and consultation. In addition, the Framework has avoided the creation of a hierarchical unitary system of government where power and functions are given to sub-national governments by the central government which also retains the power of recall of such power. In light of the significance of the framework, the national government is charged with the responsibility for national economic policy and planning, national standards, regulation, national public works, national statistics, immigration and citizenship, macroeconomic management, foreign affairs, defence and natural resources, while the county governments have been assigned a central role of service delivery at the devolved level.

Analysis of Malindi and Tana River Budgets & Revenue Generation

2.0 Main Objective

This chapter analyzes budgets of two LA's drawn from two different counties that are proposed under CoK, 2010. In particular, the analysis focuses on the total financial year budgets for these local government over the last three years (revenue generation), as well as the investment design/priorities/angle that these resources have been directed towards.

The analyses of revenue generated by the LA's and fiscal transfers from National to Local governments entailed examination of local budgets in reference to revenue and expenditure of Municipal and County Councils. In addition, an analysis of budgets for all Ministries, Departments and Agencies (MDAs) in the LA's was done. Indeed, critical analyses of fiscal transfers to devolved/decentralized funds in the LA's were carried out to establish total receipts and expenditure. The study analyzed Revenue and Expenditure of three Council budgets. These are; Malindi Municipal Council (MMC), Malindi County Council (MCC), and County Council of Tana River (CCTR).

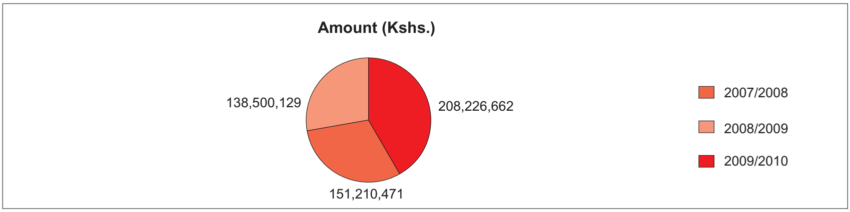
2.1 Malindi Municipal Council (MMC)

The section below presents the finds on Revenue and Expenditure of MMC.

2.1.1 Study Findings on Revenue Generation

In analyzing revenue of the LA's, the principal focus was on two main components. These are: the revenue generated by the local authorities and fiscal receipts channeled by the central government to the local authorities. Based on the findings of this study, Malindi Municipal Council, the total amount of revenue generated for FY's 2007/08, 2008/09 and 2009/10 is shown in the figure below.

Figure II.I: Total Grand Revenue



Source: Treasury Department, Malindi Municipal Council (2011)

2.1.2 Interpretation of Revenue Generation

Based on the findings of this study, out of grand revenue generated by MMC the General Management Unit of the Council, (which deals with impounding charges, court fines, sale of tender documents, etc) for FY 2007/08, 2008/09, and 2009/10 amounted to Kshs. 721,770; 1,354,247; and 729,450 respectively. The amount generated from court fines for FY 2008/09 was Kshs. 70,400. However, the Council could not account for revenue generated through court fines for the other FY's 2007/08 and 2009/2010, as the records showed zero revenue. Indeed, CoK 2010 provides that County Governments shall have reliable, stable and predictable sources and allocations of revenue to enable them to effectively perform their constitutional functions and to deliver services within their jurisdictions (Article 175) Article 203(1) (d) (j). The sources of such revenues and allocations include equitably shared national revenues, own revenues raised by respective counties, conditional and unconditional grants from the National Government, loans from the money and capital markets and grants from external agencies and local institutions.

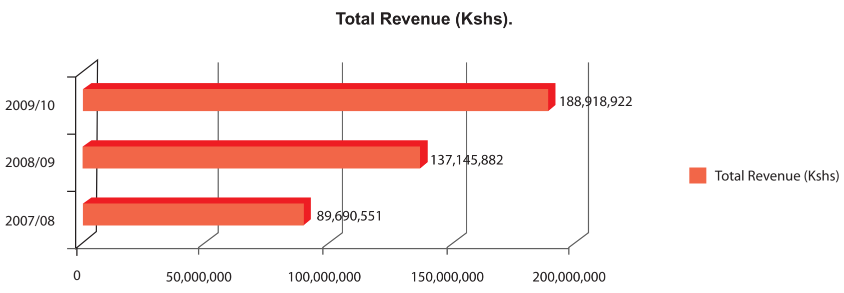
2.2 Internally Generated Revenue by MMC

The CoK 2010 notes that County governments may raise their own revenues by imposing taxes and charging fees for services. Such taxes should however be raised in a way that does not prejudice national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour (Article 209). The taxes and charges that county governments can impose or charge include: property rates; entertainment taxes; and any other tax authorized by an Act of Parliament (Article 209 (3c).

Based on the findings of this study, the envisaged legislation on County taxation should cover rating, valuation for rating, the criteria, steps and procedures for tax or fees calculation, tax collection procedures and should also specify the sanctions for non-compliance. Rating of properties in urban areas and cities should be based on both the improved and unimproved site values. Exemptions for payment of rates should be legislated against as this will deny Counties substantial revenues. The law should instead require all the National Government institutions, Independent Commissions, Independent Offices, State Corporations and Non-State Institutions to budget and pay rates due to their respective County Governments. One of key recommendations is the discontinuation of the Contribution In Lieu of Rates (CILOR) system currently in operation due to its ineffectiveness to file meaningful returns.

Based on the findings of this study, locally generated revenue was higher compared to receipts from the Central government to the MMC. For instance locally generated revenue (including Miscellaneous Income, Business Permits, Street Parking Fee, Hawkers Fees, and Market Fees) for FY 2007/08 was Kshs. 89,690,551 while receipts from Central govt. (including LATF, RMLF and CILOR) were Kshs. 60,798,150.

Figure II.II: Local Authority Own Revenue



Source: Treasury Department, MMC, 2011

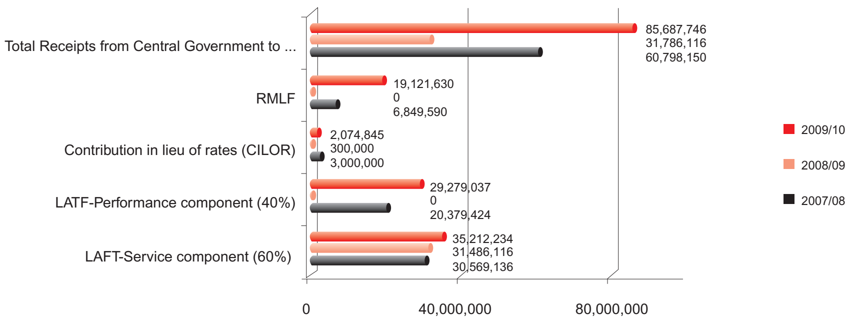
2.2.1. Emerging Issues on Internally Generated Revenue

In order to increase the amount generated by Counties locally, it is recommended that additional taxes that counties can be allowed to levy under the envisaged legislation include Royalty taxes levied on minerals and other natural resources within the county. For instance, minerals, game reserves, forestry and marine are just but few examples. Indeed Article 66(2) obliges Parliament, while regulating the use of land, to enact legislation that ensures that investment in property benefit local communities and their economies.

2.3. Fiscal Transfers/Receipts from National to LA's

Based on the findings of this study, the fiscal allocations must enable the Counties to deliver on their assigned functions, for the purpose of promoting development, reducing economic inequality among counties. While the allocation of revenues must pay attention to the efficiency of county governments, fiscal transfers must be stable and predictable and should provide sufficient flexibility for emergency needs. The allocation must also provide incentives to counties to mobilize own revenues. One of the key finding was that fiscal transfers/ receipts from National government (LATF, RMLF and CILOR) to Local government (MMC) increased from Kshs. 60,798,150 in FY 2007/08 to Kshs. 85,687,746 in FY 2009/10. The Total receipts, which are disbursed by the Treasury on annually for local development are shown in the figure below.

Figure II.III: Fiscal Transfers/ Receipts from Central Government to MMC



Source: Revenue Department, MMC (2011)

2.3.1. Emerging Issues on Fiscal Transfers to MMC

Indeed, the CoK 2010 provides for Intergovernmental Transfers that include General Purpose / Block Transfers, Equalization Grant, Conditional grants, Unconditional Grants. Since decentralized funds have in recent times accounted for a substantial share of transfers and have played an important role in financing development projects at the local level it is important to examine their role. AAK notes that allocation of revenues either between the national government and county governments or among county governments must be on the basis of the following principles set out in Article 203(1) of CoK 2010. In addition this study further notes that these principles require that national interest be taken into consideration in the allocation of national revenues and the determination of financial requirements by the national government should be done objectively.

2.3.2. Emerging Issues on Unaccounted Funds

Based on the findings of this study, allocation of LATF (40%) Performance Component and RMLF for FY 2008/09 was not posted in the books of accounts, hence unaccounted for. The missing funds translate to an average of Kshs. 24,829,231 and 12,985,610 respectively. Failure by MMC to account for the lost funds was as a result of poor accounting standards. All Local Authorities are required to prepare and report their accounts using the International Public Sector Accounting Standards (IPSAS). IPSAS are a set of accounting standards issued by the IPSAS Board for use by public sector entities around the world in the preparation of financial statements. These standards are based on International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB), an aspect that isn’t in place in MMC.

2.4. Expenditure of MMC

Further, the study examined the expenditure of MMC with a view to identifying the priorities for local development. The methodology entailed critical examination of dozens financial documents availed by the all departments of local authorities and in-depth interviews with Municipal Council officials, notably the Clerk, Treasurer and Chief Accountant. The primary objective of the interviews was to contextualize the financial data from about thirty (30) Budget Items/Heads. Indeed for purposes of clarity of data, intensive consultative meetings with Revenue Officials were done during the study period.

2.4.1. Study Findings on Expenditure of MMC

Figure II.IV: Expenditure for FY 2007/08

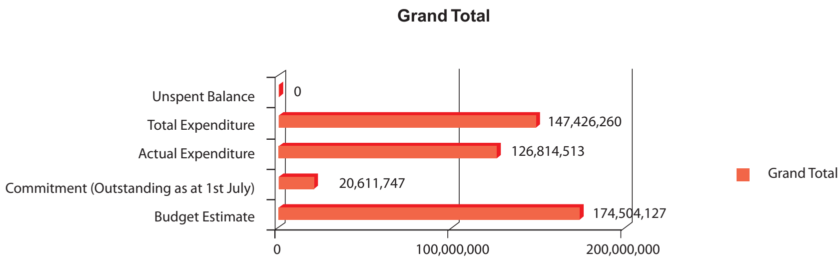


Figure II.V: Expenditure for FY 2008/09

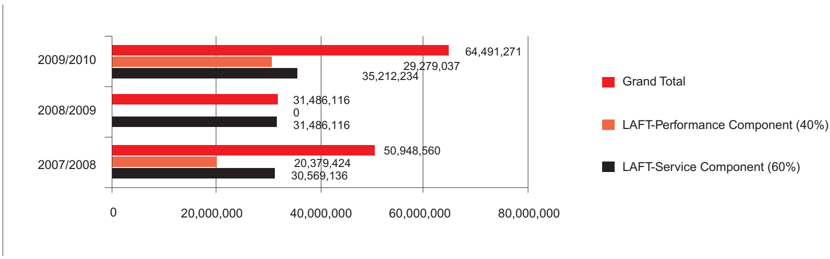
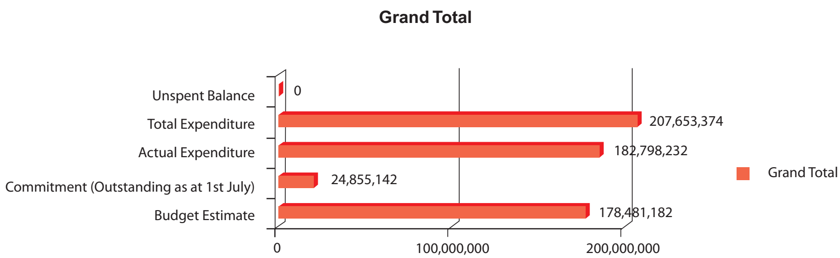


Figure II.VI: Expenditure for FY 2009/10



2.4.2. Interpretation of Findings on Expenditure

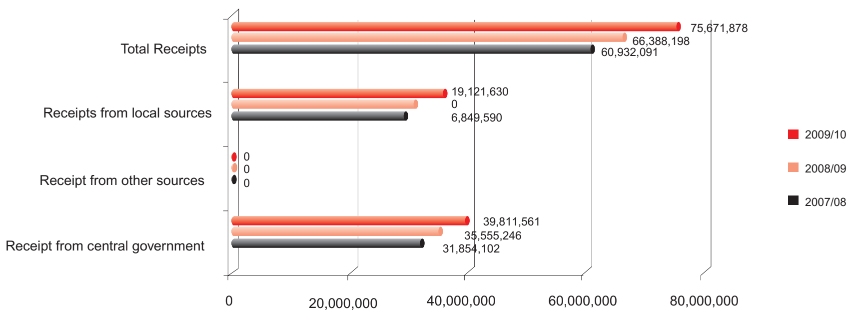
Based on the findings of this study, the actual expenditure of MMC was Kshs. 126,814,513 compared to Kshs. 236,014,535 and 182, 798, 232 for FY 2007/08, 2008/09, and 2009/10 respectively. The actual expenditure includes personnel costs (salaries, wages), Operations, Maintenance, Debt Repayment and Capital Exp. & Investments. Interestingly, the total expenditure for FY 2008/09 was Kshs. 351,482,939, slightly less than **combined expenditure** for both 2007/08 and 2009/10 of Kshs. 355,079,634. Indeed, increased expenditure in FY 2008/09 is financial allocation to grassroots development initiatives launched by GoK, aimed at jumpstarting the economy after the 2007 post-election violence. Also, based on the findings of this study, MMC recorded Zero/Nil unspent balance for the three FY's. This means that the Council spent all the funds allocated to it for each FY.

2.5. County Council of Malindi (CCM)

2.5.1. Study Findings on Revenue Generated

This section examines the revenue and expenditure of CCM. The examination of Council budget looked at three key sources of revenues, namely; receipts from central government, receipts from other sources and revenue generated locally. The figure below shows the findings of the revenue generation.

Figure II.VII: Revenue of CCM



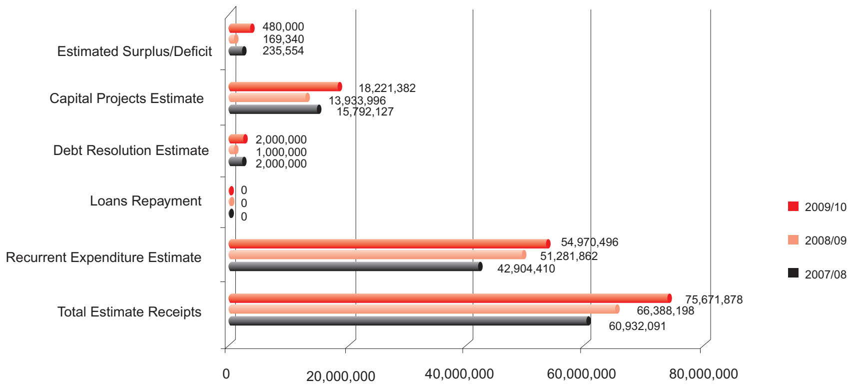
2.5.2. Interpretation of Findings

Based on the findings of this study, total fiscal allocation from Central Government for FY 2007/08, 2008/09 and 2009/10 was Kshs. 107,220,909 (53% of the total receipts) while revenue generated by the County Council amounted to Kshs. 95,771,258 (47% of the total receipts). Total receipts and revenue generated was Kshs. 202,992,167. However, MCC didn't receive any funds from other sources (donors, charities, donations).

2.6. Expenditure of CCM

Based on the findings of this study, the Council's total expenditure was Kshs. 202,107,273. The recurrent expenditure for FY 2007/08, 2008/09 and 2009/10 was Kshs. 42,904,410; 51,284,862; and 54,970,496 respectively, totaling to Kshs. 149,159,768 for the three FY's. This accounted for 74% of the total expenditure. Recurrent expenditure was higher compared to expenditure on capital projects, which Kshs. 47,947,505 for the FY's, was accounting for 24% of the total expenditure. In addition, the total expenditure on debt repayment owed to the Council was Kshs. Kshs. 5,000,000 (2% of the total expenditure) for the three FY's. Indeed, MCC had a budget surplus of Kshs. 884,894 (the surplus budget was not spent).

Figure II.VIII: Expenditure of CCM



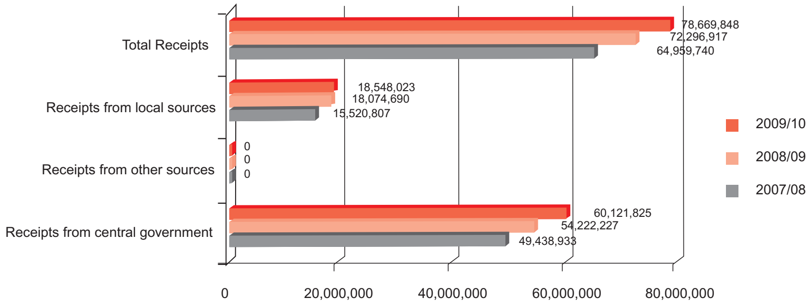
2.7. County Council of Tana River (CCTR)

This section presents an analysis of revenue and expenditure of the County Council of Tana River. The Council covers Tana River district, with its head quarters in Hola.

2.7.1. Study Findings on Revenue Generation

During the three FY's, the total revenue for County Council of Tana River was Kshs. 215,926,505. Out of the total revenue generated, local contribution was Kshs. 52,143,520 (24% of the total revenue) while central government contribution was Kshs.163, 782,985 (76% of the total revenue), as shown in the figure below.

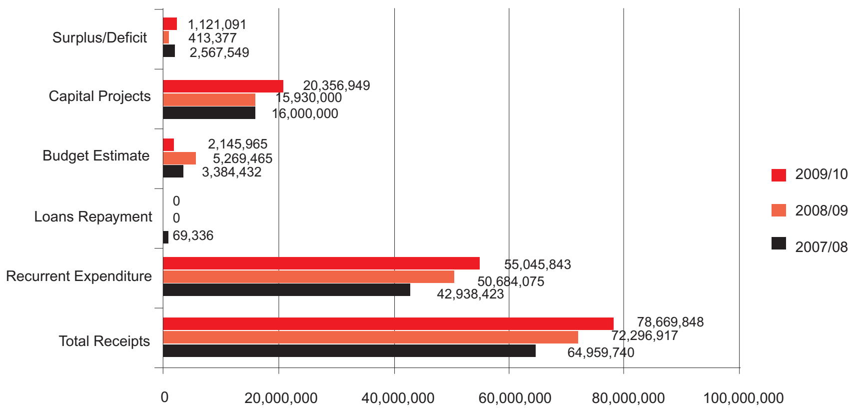
Figure II.IX: Revenue for County Council of Tana River



2.7.2. Expenditure of CCTR

The total expenditure for the Council for the three FY's was Kshs. 211,824,488. Out of the total expenditure, Kshs. 52,286,949 (25% of the total expenditure) was allocated to development/capital projects for the three FY's while Kshs. 10,799,862 (5% of the total expenditure) was spent on debt resolution. The Council repaid its loan of Kshs. 69,336 in the FY 2007/08. Recurrent expenditure was Kshs. 148,668,341 (70% of the total expenditure). However, the Council had a surplus of Kshs. 4,102,017. The figure below shows the breakdown.

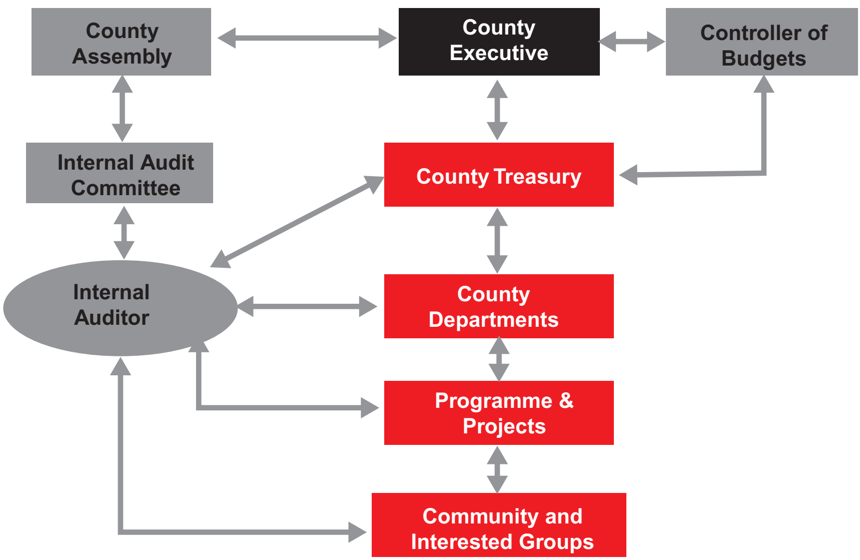
Figure II.X: Expenditure for County Council of Tana River



2.8. Emerging Issues Expenditure of Local Authorities

Articles 190 and 225 of CoK 2010 require all the county governments maintain proper and adequate financial management systems and to be fully accountable to the public on the expenditure and utilization of the funds of the county. Based on the findings of this study LA's have very weak expenditure mechanisms, which makes it easy for the County officials to allocate money on projects that add little value to the beneficiaries. It is with this in mind that this study proposes an Expenditure Control Mechanism (ECM). The mechanism will indicate the funds to be withdrawn from the Revenue Fund.

Figure II.XI: Model for County Expenditure



2.8.1. Interpretation of the County Expenditure Model

In the above figure, all the county funds as explained in the revenue section will all be consolidated in the County Revenue Fund. The Fund will contain own revenues and transfers from the national revenues, grants and borrowings. Secondly, the County Assemblies will vote for the budget as explained in the last section and the necessary Appropriations approved to facilitate expenditure by the various departments of the county. Indeed, it is anticipated that the County Treasury will seek quarterly approvals from the Controller of Budget for withdrawals from the revenues fund based on the needs and functions being undertaken by the various departments.

2.9. Debt Management at the Local Level

Based on the findings of this study, debt management has, to large extent, affected local budgeting. Therefore, this study recommends a clear legal and institutional framework for managing issues on local authority borrowing and debt management. Moreover, legislation on sovereign borrowing sets out the authority to borrow and delegate power from the body within the County which has the financial authority to the body that does the borrowing on behalf of the county. Therefore, this study recommends that the functional organization for public debt management should correspond to the spheres of debt management aspects that are identified; it is important to ensure effective coordination of county debt management initiatives with national fiscal and monetary policies while maintaining separate responsibility for each is an important aspect of debt management.

In addition, Counties need to formulate regulations and procedures which set out the explicit roles of the departments of state responsible for finance, county governments, foreign affairs, the central bank, capital markets authority, other agencies involved in loan operations and management at all stages of the loan cycle; in the case of a payment guarantee, the guarantor takes on an obligation to pay some of the entire principal amount of the debt and accrued interest if the borrower defaults. So the development and adoption of guidelines for the administration and management of guarantees at both the national and county levels is an important aspect of county public debt management.

2.20. Fiscal Transfers to Line Ministries

Analysis of ministerial budgets involved examination of fiscal allocation to all Ministries, Departments and Agencies (MDAs) with emphasis on receipts channeled to MDA's by the central government under the auspices of Authority to Incur Expenditure (AIE) and those generated at the local level under the umbrella of Appropriations-in-Aid (AIA). For purposes of accuracy of figures, purposive interviews with District Accountants (DA's) were conducted. The DA's are mandated by their Ministry of Finance to approve all receipts and expenditure of MDA's. Therefore, a combination AIE and AIA is equivalent to the total amount allocated to MDA's. In addition, Focus Group Discussion (FGD's) with a sample size of ten (10) Heads of Departments (HoD's) was held to, among other things; comprehend the concept of local budgets and fiscal decentralization.

2.21. Study Findings on Fiscal Transfers (Ministerial Allocations)

During FY 2008/09 and 2009/2010, the fiscal receipts (AIE's) to line ministries from the Treasury were Kshs. 1,569,227,998; recurrent expenditure was Kshs. 161,023,964.10 while the amount spent on development projects was Kshs. 1,302,019,291. Recurrent and development expenditure was 10% and 83% respectively. Based on the findings of this study, the expenditure on capital projects was very high compared to recurrent one, because of few recurrent (operational) costs in Tana River district. Indeed, most of the departments e.g. Ministry of Water and Irrigation have less than ten members of staff in the district. A small number of staff means less expenditure on recurrent, and hence more money is allocated to development projects.

In addition, a total of Kshs. 11,132,731.20 was generated by specific line ministries that charge user fees for service delivery. The user fee is referred to as AIA and includes ministries of Immigration, Public Health, Lands, and Water, among others. In the FY 2007/08, a total of Kshs. 3,702,508.60 was generated. In FY's 2008/09 and 2009/10, the AIA's were Kshs. 3,663,462.60 and 3,766,760 respectively.

Figure II.XII: Total AIE's for all Line Ministries vis-à-vis total Recurrent Expenditure

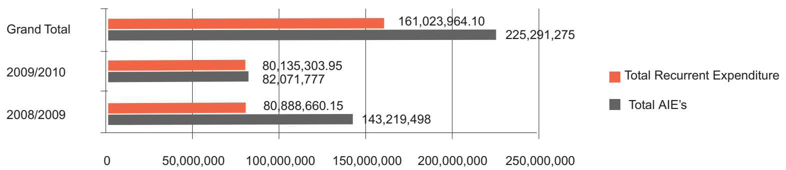


Figure II.XIII: Total AIE's for all Line Ministries vis-à-vis total Development Expenditure

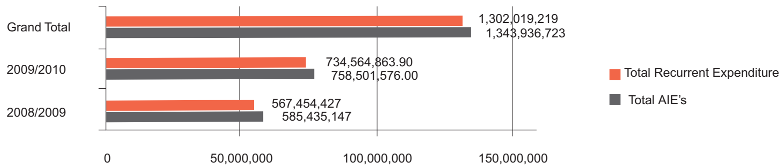
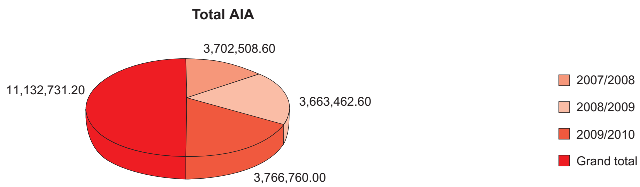


Figure II.IV: Total revenue collected locally under AIA



2.30. Devolved Funds

This section presents the findings of budgets of CDF and LATF for Malindi and Tana River LA's.

2.31. Local Authority Transfer Fund (LATF)

There are two major components for LATF allocation; service and performance. Based on the formula for allocation, sixty percent (60%) of LATF funds is goes to service component, while the remaining forty percent (40%) is given to performance.

2.32. Study Findings on LATF Allocation

In the FY 2008/09, LATF allocation in Malindi Municipal Council received Kshs. 31,486,116 under service component, which is 60% of the total allocation. The Council could not account for the remaining 40% allocation under performance component hence an average of Kshs. 21,000,000 may have been lost.

Figure II.V: LATF allocations in Malindi Municipal Council

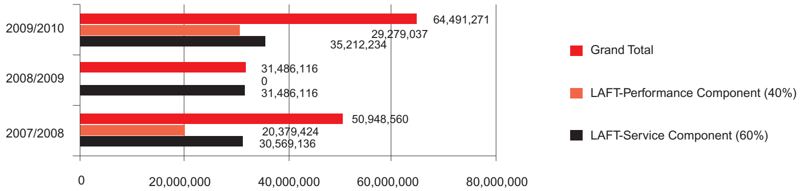


Figure II.VI: LATF Allocations for Malindi County Council

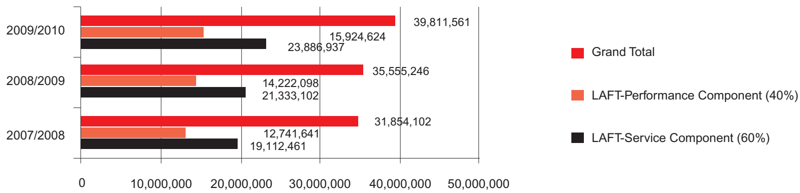


Figure II.VII: LATF Allocations for Tana River County Council

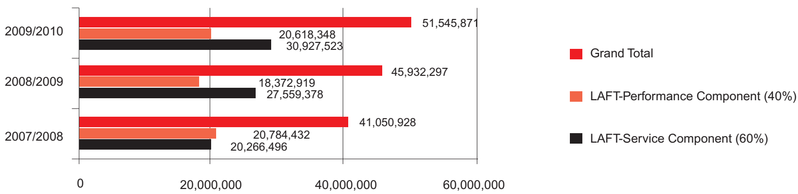
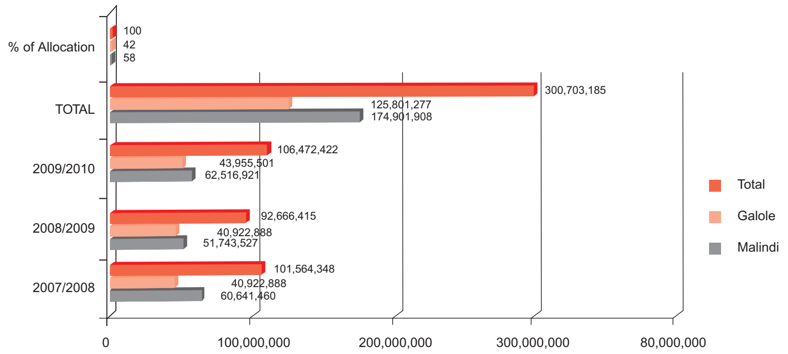


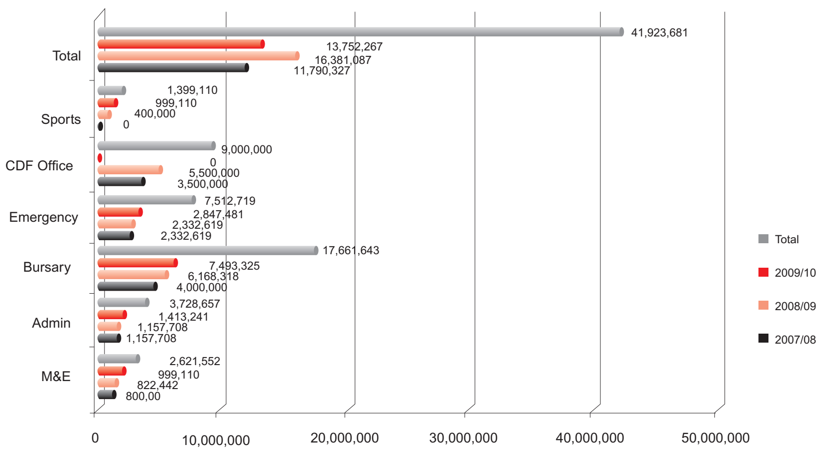
Figure II.VIII: CDF Allocation for Malindi and Galole Constituencies



Source: CDFC, Malindi and Galole Constituencies

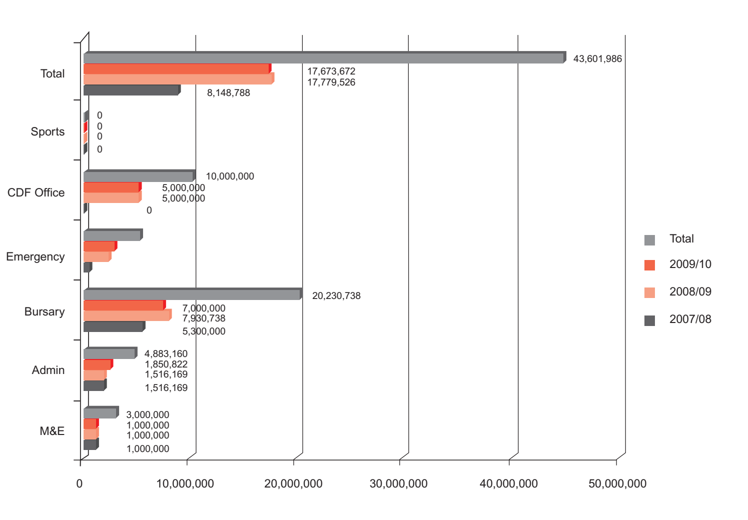
The table above shows a tendency towards equal distribution of CDF funds at the local level. However, Malindi Constituency has a higher share with 58%, while Galole has 42% respectively due to the fact that population and poverty levels are determinants in the allocation procedure.

Figure II.IX: Funding for Non- infrastructure Projects in Galole Constituency



Source: CDFC, Galole Constituency (2011)

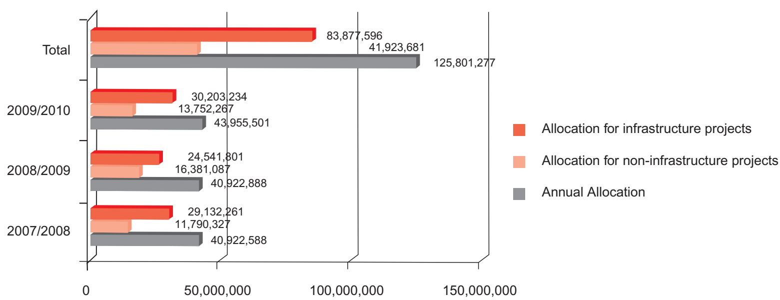
Figure II.XX: Funding for Non- infrastructure Projects in Malindi Constituency



Source: CDFC, Malindi Constituency)

A comparative analysis of Infrastructure (construction of schools, dispensaries, boreholes, etc) and Non-infrastructure Budgets in Galole Constituency is shown the figure below.

Figure II.XXI: Comparative Analysis of Infrastructure and Non-infrastructure Budgets in Galole Constituency



2.40. Emerging Policy Issues on Decentralized Funds

This study notes that although not directly provided for by the CoK 2010 in the context of revenue sharing, stakeholders were unanimous that decentralized funds should continue to be provided by the national government to counties, but to be managed by the county executive. The funds while considered important for development are believed to have been misused by politicians and this informs the call for their retention under the management of county governments.

Indeed, a key outcome of the FGD's on devolved funds was that since they are transfers to sub-national governments to finance functions that would otherwise be the responsibility of national governments, LATF and CDF would qualify as Intergovernmental fiscal transfers. These two funds should therefore be considered as part of the horizontal revenue sharing as they would finance functions assigned to county governments. However, AAIK proposes that decentralized funds which are conditional in nature (Constituency Bursary Fund, Free Primary Education Fund, Water Services Trust Fund and HIV/AIDS Community Initiative Account) could continue to be channeled to LA's.

The study recommends that other decentralized funds, with the exception of Rural Electrification Programme Levy Fund (REPLEF), are a combination of loan facilities available to individuals or groups to promote development of rural areas managed by entities of the national government. Consequently, there is no compelling reason to change the current system of managing these funds, except as proposed by the stakeholders. The offices of the responsible entities could be decentralized to the counties for efficient delivery of services.

Community Involvement in Effective Local Budgeting

3.0. Introduction

This chapter brings out the extent in which the community members have been involved in effective engagement in local budgeting, participatory planning and decision making in allocation of resources. It seeks to bring out an integrated meaning and understanding of citizen participation as a core element of a democratic developmental County as provided for in the CoK 2010 and further locates service delivery as both the rationale for and the core ingredient for citizen participation at any level of government. It also seeks to provide a conceptual overview of the good governance implications of citizen participation, the corresponding strategic objectives of citizen empowerment and operational modalities of direct citizen involvement in public affairs with a view to underscoring its cross-cutting importance for good governance in sustainable societies.

With CoK 2010, citizens enjoy a rich and broadened Bill of Rights, but more particularly as free people constructing their destinies within the framework of a Constitutional dispensation characterized by a much deeper and more disciplined understanding of local budgeting. Through the lenses of CoK 2010, direct citizen participation, as enshrined in the supreme law of the land (Article 1. (1) (2) (4)), consultations with Kenyans reveal that it is now anchored solidly in a value proposition and principle of governance (Articles: 10. (2) (a), (b), the operationalization of which will make a significant difference in the democratic development of Kenya.

3.1. Local Authorities Development Action Plans (LASDAP)

Local Authority Service Delivery Action Plan (LASDAP) process is a participatory practice involving the municipal (local) government and stakeholders in identifying projects and activities for a 3-year rolling programme with projects and activities to be included in the municipal budget under discussion. It focuses on poverty reduction with priority areas in health, education, infrastructure and upgrading of informal settlements. LASDAPs are prepared by local authorities in close consultation with local communities. It is one of the most important conditionality for accessing the Local Authorities Transfer Funds (LATF). The process provides opportunities for promoting greater community involvement in the local planning and subsequent ownership, effective implementation and sustainability of programmes and projects.

3.2. Study Findings on Citizen Engagement in LASDAP

Prior to 2005, the Municipal Council of Malindi was in a state of constant disorder due to riots by Council staff that had not been paid their salary arrears. LATF did not trickle down to the communities because the funds were used to settle debts that the council had accrued towards businessmen who had rendered service. The debt crisis had arisen because councillors had been paid six months advance salary and the council thus had a shortage of funds. The relationship between employees and councillors was riddled with mistrust and stakeholders criticized the poor service delivery of the council. Frequent transfers of Town clerks worsened the situation because there was no continuity of projects.

In light of improving local budgeting processes, stakeholders which comprised the Institute of Participatory Development (IPD), the German Development Service (DED) and the Council staff came together to analyze ways of improving local budgeting. It is out of this process that the Malindi Residents Forum was formed. It emerged during the analysis that revenue collectors in the Council were not submitting the revenues collected from taxpayers. As a result, the stakeholders committed to assist the government in revenue collection, which led to the formation of the Revenue Enhancement Committee. The Committee held meetings on a weekly basis and heads of department within the Council reported on how much revenue they had collected. Each stakeholder in Malindi was represented at forum meetings to monitor the revenue collection.

Indeed, enhancing stakeholder’s involvement in local budgeting consequently increased the revenues thereafter because Council workers realized they were being monitored and would have to account for revenues collected and utilized. Heads of department and even the Town Clerk were often called upon to account for any expenditure that was not clear. The monitoring process resulted in the improvement of revenue generation by the Council.

Thereafter the Council was able to use the LATF for its intended purposes. The Malindi Residents Forum (MRF) started organizing workshops at the ward level to sensitize the communities on the LATF and the LASDAP process. Workshops were held to educate the communities on development of proposals and the government planning process. These workshops were held in the months of August and September prior to government planning period. Communities were thus by the time of LASDAP meetings ready with concrete prioritized projects which they would never have developed during the one day sessions that are slotted for the LASDAP meetings. From the workshops, committees were formed at ward level that elected representative to form the MRF Board of management.

The MRF Board became the official mechanism for engagement with the Council. The chairman of the Board represented the forum at subsequent revenue enhancement meetings. As the partnership progressed it became evident that engagement at the ward level was not adequately representative of the communities. This was further devolved from the ward level to sub-locational levels. Due to inadequate representation at the ward level, engagement was finally devolved to school catchment areas. Within this structure all community members who benefited from the services of the school, would deliberate their problems and identify representatives who formed a village representative forum. The forum then elected a representative member to the ward level and the ward level then forwarded a representative to the Board. This ensured that the participatory process was all inclusive.

3.3. Emerging Issues on Citizen Participation in Local Budgeting

3.3.1. Citizen Participation as a Basic Human Right

Based on the findings of this study, a rights based approach to citizen participation requires that modalities be built into all decision making processes, including budgeting, environmental management, development project management etc. in order to enable citizens not only to enjoy the accruing benefits but, more importantly, to own the whole gamut of social development agenda and process. Whereas some of the modalities will require formal and statutory procedures at both the County and sub-County levels others will require broad policy frameworks or organic legislations by parliament that provide broad guidelines on citizen participation. Depending, of course, on the distribution of governmental functions between the national and county governments, the full import of citizen participation can only be realized if ordinary people in the counties and sub-counties can engage these devolved levels of government in both policy making and implementation.

This study notes that whether or not the platforms of their participation be monthly public Forums (at sub-County level), citizen monitoring and evaluation systems, public hearings, quarterly Revenue Expenditure Forums (at the County Level), procurement oversight committees (at County and sub-County levels), social budget Forums (County and sub-County levels), environmental management Committee (at all levels from the County down to the location), citizen driven County procurement oversight committees etc.,- the entailed citizen implementation must derive their institutional legitimacy and normative authority from statutory and binding policy commitment to the imperative of citizen participation at all levels of government.

Indeed, their mandate and powers should be protected in statutes, with operational procedures sufficiently detailed in the implementation program. Ideally they should be tagged on to more specified service delivery jurisdictions and not turned into all-purpose instruments and platforms for manipulation by more organized but less democratic forces within civil society. Experience in South Africa has shown that the few formal and statutory spaces designated for civic engagement are usually hogged by more organized CSO, leaving individual citizens and less formally organized sections of society excluded from participation. Yet, as far as the need for impacting change is concerned, it is the activities of less organized, more activist oriented actors who have registered the most impressive successes; with impacts that have brought the most significant changes in governance in South Africa. It is therefore imperative that such informal forms of citizen participation and their unique opportunities for participation are equally protected by relevant policy frameworks and subsidiary legislations.

3.3.2. Citizen Engagement in Democratic Governance

This study notes that there is need for openness and accountability. Indeed, the citizens have been pressing for the actualization of the underlying imperative for many years. In the process they have demonstrated unmistakable interest in having the relevant provisions of the Constitution implemented transparently.

There is no doubt that realizing this will require appropriate legislative measures that will place unhindered freedom of information and related citizens' rights and obligations squarely within the ambit of democratic openness.

Indeed, citizen participation enhances transparency of interaction in the public domain through such facilities as notice board announcements of job opportunities, recruitments information; social/participatory budgeting; opening the budget process to citizen participation; procurement transparency and oversight committees (part of which will be the requirement that procurement records, including a detailed contractor/supplier profiles be made available to the public); monthly revenue and expenditure Report; quarterly development status reports; bi-annual monitoring report prepared through the Sub-County Citizen Forums; County and Sub-County Assemblies ; monthly public revenue and expenditure forums; and quarterly face-to-face question and answer sessions with the governor and senator of each County.

The legislative elements of each of these instruments and platforms for citizen participation may vary from sector to sector and from County to County or from one Local Authority to another. But the overarching national legislation should spell out the normative and ideological foundation of the right of citizens to take part in the making of all decisions that affect their lives. From this the counties can take cue and come up with statutory measure that are not only consistent with relevant legislations at the national level but those that reflect the dynamic of citizen participation needs at that level. Whatever the case such elements must include: equality before the law, solidarity among citizens, accountability of public authorities and citizens, transparency, publicity of actions and intentions of the state/all its organs and state as an instrument of a balance of social forces in society, serving it rather than lording it on the stakeholders.

3.3.3. Citizen Participation in County Decision-Making

This study views citizen participation in decision making at the local level as significant. Indeed, the Constitution 2010 provides for the participation of the public in the exercise of the powers of the state and in making decisions through indirect and direct involvement of the people in the process of policy making (Article 232. (d) and participation in the legislative business of the National Assembly, Senate and County Assemblies. However, experience with CDF and LATF has found out that citizen participation is meaningless if the rules of engagement are unilaterally made away from popular participation and mutual accountability. The public, through FGDs, have been very clear that they would like to have more say in how they are governed, both within the realm of the economy and politics. And they are ready to benefit from relevant experiences in societies where citizen participation in decision making has borne social development fruits.

3.3.4. The Right of Access to Information towards Good Governance

This study notes that enforcement of democratic citizenship, their messages convey, requires informed engagement with public policy and effective citizen action. This is based on the assumption that: information is power and power to influence public policy decisions is the right of every citizen; every citizen is, therefore, entitled to easy access to and practical use of relevant information for society to benefit from his/her participation in its affairs; and for effective participation to benefit society it must rely on accessible, timely, accurate and user-friendly information.

The outcome of FGD's with DI's and HoD's was that every citizen has the right of access to information held by the State (in the Bill of Rights, Article 35). Hence, it was agreed that particular respect it will be necessary to revisit the provisions of the Freedom of Information Act with a view to synchronizing its legal mechanisms with the spirit of the expanded Bill of Rights. The stalled Bill seems to enjoy the support of civil society in general and a wide variety of interest groups in particular. What remains to be done is for a renewed attention and concerted effort to be directed at first-tracking its legislation, particularly given that it is one of the most important pillars of citizen participation.

3.3.5. Citizen Participation in Local Budgeting

This study acknowledges that freedom of information is an ingredient to good governance, meaningful participation, and efficiency-enhancing transparency. Indeed, good governance and transparency are stipulated in the Constitution by the requirement for County Assemblies to conduct their business in open manner and to hold sittings of its committees in public and to facilitate public participation and involvement of citizens in matters of public interest. Budget literacy, not only among the elite stakeholders in the urban areas, is a key ingredient of effective citizen participation. Access to budget information and citizen involvement in all stages of budget process will only be useful if the budget information is appropriately disaggregated to ensure maximum transparency with regard to cost per sector, County, sub County and ward basis. Only then can citizens appreciate their direct involvement in a process that makes meaning for them.

Access to Transparent Information for Local Budgeting

4.0. Introduction

This chapter provides a clear link between the place of access to information (in the New Constitution) and the transparency of budget information in improving in local budgeting. Indeed, transparent information and communication is the context in which the provisions of the CoK 2010 should be viewed. For instance, Article 35 (1) to (3) deals with Access to Information and Article 36 (1) to (3) makes provision for issues relating to Freedom of Association. Article 33 (1) to (3) makes provision for the Freedom of Information (FOI); Article 34(1) to (4) covers various aspects dealing with constitutional issues on the freedom of the media.

In principle, the appreciates the fact that the right to access information held by authorities often referred to as FOI is a fundamental human right recognized in International Law. Indeed, GoK has taken crucial steps towards recognition of the right in CoK 2010. Besides, Article 35 (1) states that every citizen has the right to access information held by the State and 35 (3) that the State shall publish and publicize any important information affecting the nation. The draft Freedom of Information (FOI) Bill 2007 is yet to be passed in Parliament (International Court of Justice (ICJ), 2007).

4.1. Access to Information Vis-à-Vis CoK 2010

Indeed, this study notes that Access to Information in the promotion of governance and the principle of citizen's participation has also been given adequate attention in the CoK 2010. Indeed, Article 34 with regards to the key question of freedom of the media. Article 34 (1) states that freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33(2).This Article provides that the state shall not exercise control over or interfere with any person engaged in broadcasting the production or circulation of any publication or the dissemination of information by any medium, or penalize any person for any opinion or view or content of any broadcast, publication or dissemination; broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures; among others.

Moreover Access to Information is crucial as a right in its own regard and is also central to the functioning of democracy and enforcement of other rights. Without freedom for information, State authorities or agents can selectively release good news whilst withholding damaging information. Such climates then breed corruption and human rights violations can remain unchanged. To guard against such a climate any policy on devolution should provide for legislation that requires counties to adopt principles of maximum openness. As the ICJ (2005) points out, any information held by a public body should in principle be openly accessible in recognition of the fact that public bodies hold information not for themselves but for the public good. Moreover, the Constitution has also made provisions on the core issues relating to the question of access to information. Under Article 35(1) to (3) the key provisions are: that every citizen has the right of access to:-

- information held by state,
- information held by another person and required for the exercise or protection of any right or fundamental freedom
- and that every person has the right to correction or deletion of misleading information that affects the person
- the state shall publish and publicize any important information affecting the nation.

4.2. Emerging Issues at the County Level

This study notes that for local budgets to be successful, the citizens must have access to information and be aware of their rights and responsibilities and the channels via which they can exercise them (Omolo, 2010). A study conducted by the IEA on the CDF showed that CDF is generally well known in many communities across Kenya's eight provinces (85%). However, the knowledge of regulations and specifics of CDF was very low (21%) and communities were unaware of costs of projects and disbursed amounts (IEA, 2006). Another study conducted in Turkana District by Oxfam GB showed that there were extremely low levels of awareness of the LASDAP process (18%). A majority of respondents (82%) were not aware.

Indeed, based on the findings of this study, the low levels of awareness are due to limited one-week period within which notice is given of LASDAP meetings. In a vast and remote district like Tana River, the one week notice is insufficient for effective outreach to the communities. Lack of funds for transport to access the remote areas further compounds the outreach. Similarly in Malindi, communities requested the Local Authorities to give them sufficient notice of the meetings to enable them hold prior consultative meetings for more effective engagement during the LASDAP meetings.

Overall, despite the existence of the structures, a number of people do not know of the spaces for participation. Even within the LASDAP process there is limited knowledge of the windows or opportunities for engagement. Further, though the structures exist there is little commitment to making them work on the part of duty bearers and there are at times deliberate steps to lock out citizen participation. This is achieved through postponement of meetings and lack of advertisement. Lack of an ingrained culture amongst the public officials to share information is a factor that greatly affects release of adequate information to the citizens.

This study notes that there is a tendency by Council officials to engage in the LASDAP process simply to fulfil funding requirements without a sincere commitment to enhance public participation. The cardinal condition for the disbursement of LATF to local authorities is the preparation of LASDAPs in which the communities participate (Oyugi and Kibua, 2006). Poor information management and failure to disclose information regarding local development alienates citizens from local development and provides opportunities for corruption (TISA, 2010).

4.3. Policy Recommendations

The study appreciates that the critical discourse in Kenya before the promulgation of CoK 2010 has been broadly dominated by criticism relating to the lack or absence of constitutional guarantees and legal protection of the press. Specific focus was on Freedom of Expression, Access to Information, Freedom of the Media and the statutory limitations. Some of the key ones include the Defamation Act, Preservation of Public Security Act, the Chief's Authority Act, the Official Secrets Act, Treason and Sedition as provided under the Penal Code Section 57 (I), the Prohibited Publications as provided as provided for under the Penal Code Section 52 (I) and (2), Films and Stage Play Act, Communications Act and the Kenya Broadcasting Corporation Act

In light of the significance of the media and communication, it is therefore important to note that CoK 2010 has made significant attempt in making fundamental constitutional provisions with regards to the freedom of expression in Article 33 (1) to (3), freedom of the media in Article 34 (1) to (3), access to information in Article 35 (1) to (3) and Article 36 (1) to (3) which has made provision for freedom of association.

Furthermore, the study appreciates the significance of the Bill of Rights in Chapter 4 Article 20 (1) makes provision that the Bill of Rights applies to all law and binds all state organs and all persons. Significantly, Section (2) provides that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom. Enjoyment of freedom is in this context given by the Constitution as fundamental right to every person. These provisions when taken together with the provisions in Article 33 to Article 36 (1) to (3) provides critical and significant constitutional guarantees on the press freedom, access to information and freedom of expression.

It is therefore envisaged that County and National governments by virtue of these provisions undertake as a matter of legal requirements and policies to enact the necessary legislation and amendments of the various existing Acts so far identified to bring them in line with CoK 2010.

Recommendations for Alternative Models of Investment in Local Authorities

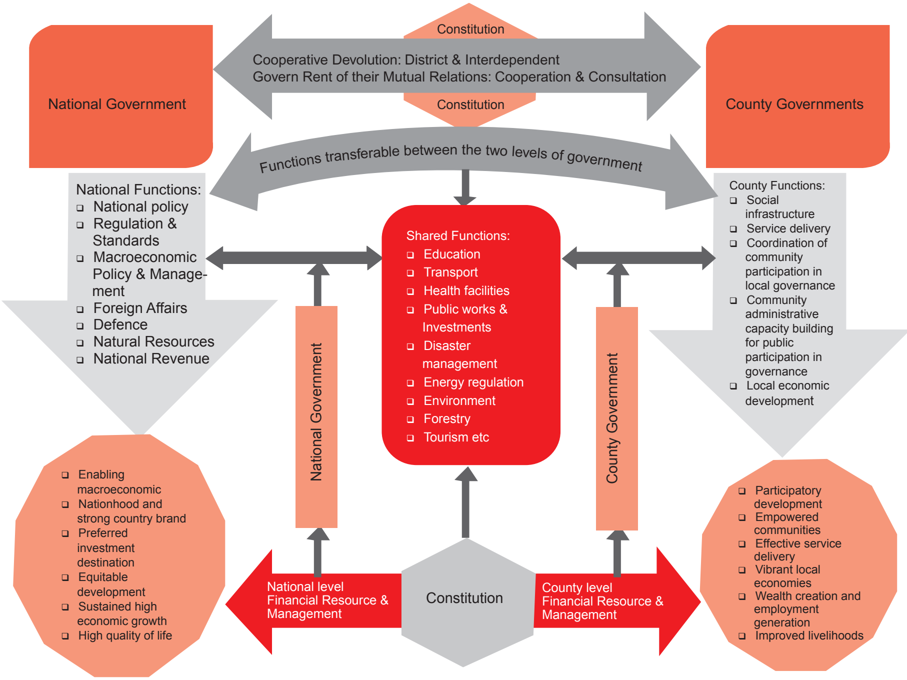
5.0. Main Objective

This chapter provides alternative models of investment of local resources for the two LA's starting from FY 2011/12. The focus of alternative models is on revenue generation and proposes recommendations of how County Governments can be self reliant. In light of the significance of analyzing local budgets, this study has identified four alternative models of investment[5] at the local/county level, in line with CoK 2010. These are:

5.1. Fiscal Decentralization Model

This model proposes the decentralization of resources and power from central to local authorities. The model shows national and county governments, that are distinct and interdependent and which are required to conduct their mutual relations through cooperation and consultation. As noted in chapter two, the responsibility of national government is national economic policy and planning, national standards, regulation, national public works, national statistics, immigration and citizenship, macroeconomic management, foreign affairs, defence and natural resources, while county governments have a role in the development and delivery local services.

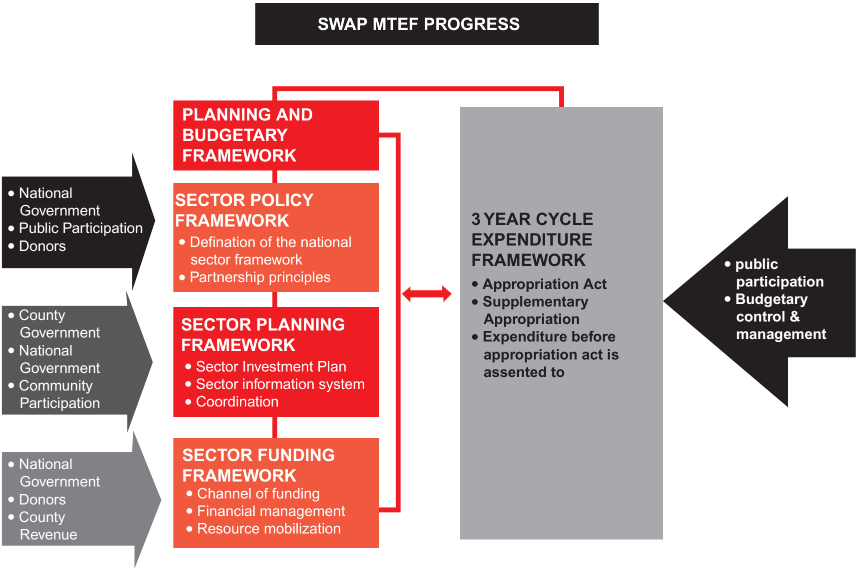
5 Paper prepared for the International Conference on Reforming local government: Closing the gap between democracy and efficiency to be held at the University Stuttgart on September 26-27, 2002.



5.2. National and Local Budgeting Model

This study recommends an effective, efficient and transparent model framework that will address the weaknesses noted under MTEF. For purposes of effective, transparent and accountable local budgeting, the proposed County Planning and Budget Legislation will contain the details to be published annually in the Appropriation Act as envisaged in Article 224. The Act will contain development and recurrent expenditure with final approval of the County Assembly. It will further contain the procedure for withdrawal of Funds from the County Revenue Fund (CRF). The model is shown below..

Proposed National and Local Budgeting Model



Source: KIPPRA, (2010).

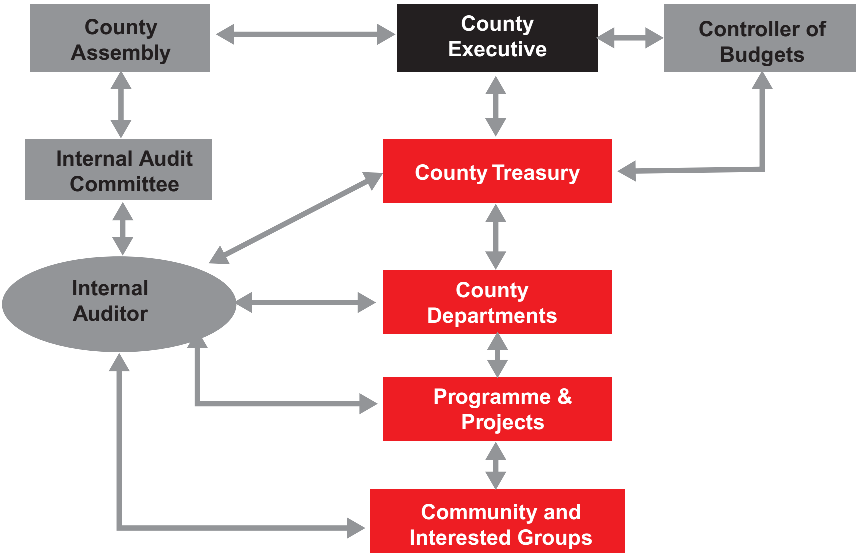
5.3. Revenue Management Model

Based on the findings of this study, this study envisages that the legislation on County Taxation Model should cover rating, valuation for rating, the criteria, steps and procedures for tax or fees calculation, tax collection procedures and should also specify the sanctions for non-compliance. Indeed, rating of properties in urban areas and cities should, for instance, be based on both the improved and unimproved site values. The study recommends that exemptions for payment of rates should be legislated against as this will deny Counties substantial revenues. Moreover, the study notes that the law should instead require all the National government institutions, Independent Commissions, Independent Offices, State Corporations and Non-State Institutions to budget and pay rates due to their respective County Governments.

Moreover, possible additional taxes that counties can be allowed to levy under the envisaged legislation include Royalty taxes levied on minerals and other natural resources within the county. These would include minerals, game reserves, forestry and marine. Indeed Article 66(2) obliges parliament, while regulating the use of land, to enact legislation that ensures that investment in property benefit local communities and their economies.

5.4. Model County Expenditure

Based on the findings of this study LA's have very weak expenditure mechanisms, which makes it easy for the County officials to allocate money on projects that add little value to the beneficiaries. It is with this in mind that this study proposes an Expenditure Control Mechanism (ECM). The mechanism will indicate the funds to be withdrawn from the Revenue Fund.



Model for County Expenditure

5.5. Aid Effectiveness Model

County governments may receive donor grants or aid either from foreign governments, non-governmental agencies, corporate institutions, philanthropists and individuals to support their social and economic development programmes. Such institutions include foreign national governments, local authorities, foundations, charities, international NGOs, private companies, relief and humanitarian agencies. Donor aid should be captured and appropriated as revenue or appropriations-in-aid in the annual and forward budgets of County Governments. Programmes to be funded by such aid should be developed by the County Executive and incorporated in county budgets for consideration and approval by the County Assemblies. The application and use of donor aid must also be governed by the principles of transparency, accountability, public participation, equitable development of the county, including making special provision for marginalized groups. Regulations on seeking, receipt, budgeting, use and accounting for such funds should be included as an integral part of the appropriate county financial management legislation. The national interest, national development priorities, fiscal and monetary policies shall also be taken into account.

In order to make Aid Effectiveness Model operational, this study proposes the establishment of Loans Council whose functions could be expanded to include dealing with matters relating to donor aid and grants to counties. The inclusiveness and representative nature of the Council will ensure the letter and spirit of the constitution with regard to observance of the requirement that the two levels of government are distinct, interdependent and are required to operate on the basis of cooperation and consultation, albeit in a devolved unitary national framework.

County governments may borrow only with the approval of their respective county assemblies and if the national government guarantees the loan (Article 212). The county governments should have the option of borrowing from both the money and capital markets either externally and internally. Article 213 specifies that legislation prescribing the terms and conditions under which the national government may guarantee loans be enacted. Borrowing should be governed by the need for prudence including ensuring borrowed moneys is used in a responsible way.

Focus Group Discussion (FGD) Guide

Below is a guide for leading the FGD's.

I. Introduction- 20 Minutes

- Welcome participants and introduce yourself.
- Explain the general purpose of the discussion and why the participants were chosen.
- Discuss the purpose and process of focus groups
- Outline general ground rules and discussion guidelines such as the importance of everyone speaking up, talking one at a time, and being prepared for the moderator to interrupt to assure that all the topics can be covered.
- Reviews break schedule and where the rest rooms are.
- Address the issue of confidentiality.
- Inform the group that information discussed is going to be analyzed as a whole and that participants' names will not be used in any analysis of the discussion.
- The FGD should have a minimum of six and maximum of twelve people
- There should be gender balance per FGD.

II. About the Study- 30 Minutes

ActionAid International Kenya (AAIK) has commissioned a study aimed at analyzing local budgets and providing alternative investment models in two Local Authorities (Las) in Kenya; namely, Malindi and Tana River. The main objectives of the study are:

1. To analyze budgets of Malindi and Tana River LA's with a focus on the total Financial Year (FY) allocations for the last three FY's, which are; (2009/10, 2008/09, 2007/08) with emphasis on the total revenue generated and priorities for investment.

2. To bring out the extent to which the community members have been involved in effective citizen engagement in local budgeting, participatory planning and decision making in resource allocation.
3. To provide a logical and practical alternative for investment of local resources for the two LA's starting from FY 2011/12 onwards and a proposal for implementation under the devolved structures in line with the new Constitution. The alternative model should promote: Social Protection Policy; achievement of Kenya's Vision 2030; and stakeholders involvement in the local budgeting process.
4. To provide a clear link between the place of access to information (in the new constitution) and the transparency of budget information in improving the transparency, accountability, and subsequent effectiveness of these budgets at the local level.

III. Instructions to Discussion Guidelines -10 minutes

We would like the discussion to be informal, so there's no need to wait for us to call on you to respond. In fact, we encourage you to respond directly to the comments other people make. If you don't understand a question, please let us know. We are here to ask questions, listen, and make sure everyone has a chance to share. If we seem to be stuck on a topic, we may interrupt you and if you aren't saying much, we may call on you directly. If we do this, please don't feel bad about it; it's just our way of making sure we obtain everyone's perspective and opinion is included. We do ask that we all keep each other's identities, participation and remarks private. We hope you'll feel free to speak openly and honestly. Let's begin. Let's find out some more about each other by going around the room one at a time. Tell us your first name and the job you have, where you practice, and the communities you serve. I'll start.

IV. Let's get started by discussing at the 2nd objective of the study (indicated on pg. 1)

1. What is your understanding of Local budgeting and resource allocation? (20 minutes)

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2. Let us briefly discuss the significance of citizen's engagement in local budgeting and resource allocation in this Local Authority. This includes CDF, LATF, & Line Ministries (20 minutes)

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3. To what extent has the community and citizens in this LA been involved in effective citizen engagement in local budgeting, participatory planning and decision making in resource allocation? This includes CDF, LATF, & Line Ministries (20 minutes)

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Let's discuss 3rd objective of the study

4. I want us to deliberate on the viable alternatives for investment of local resources for this LA, vis-à-vis devolved structures in the New Constitution. (20 minutes)

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Tea Break

5. The GoK has developed Social Protection Policy (SPP) a couple of years ago. What, in your opinion, is significant of SPP, as an investment model in this LA? (20 minutes)

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6. The GoK development blueprint is the Vision 2030. To what extent do you think devolution in the Constitution will achieve the goals of the Vision in this LA? (20 minutes)

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7. Let us deliberate on the role of stakeholders in enhancing, strengthening, broadening and deepening the understanding of local budget process in this LA? (20 minutes)

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Lunch Time

Let's discuss 4th objective of the study

8. What is the significance of access to information towards promoting transparency and accountability in local budgeting and allocation of resources? (20 minutes)

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9. The New Constitution says that citizens have the right to information. To what extent do you think community members in this LA will have access to information in order to promote transparency and accountability in local budgeting and allocation of resources? (20 minutes)

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10. At this point, I request you to raise any question that is relevant to the objectives of this study so that we can deliberate on it. (30 minutes)

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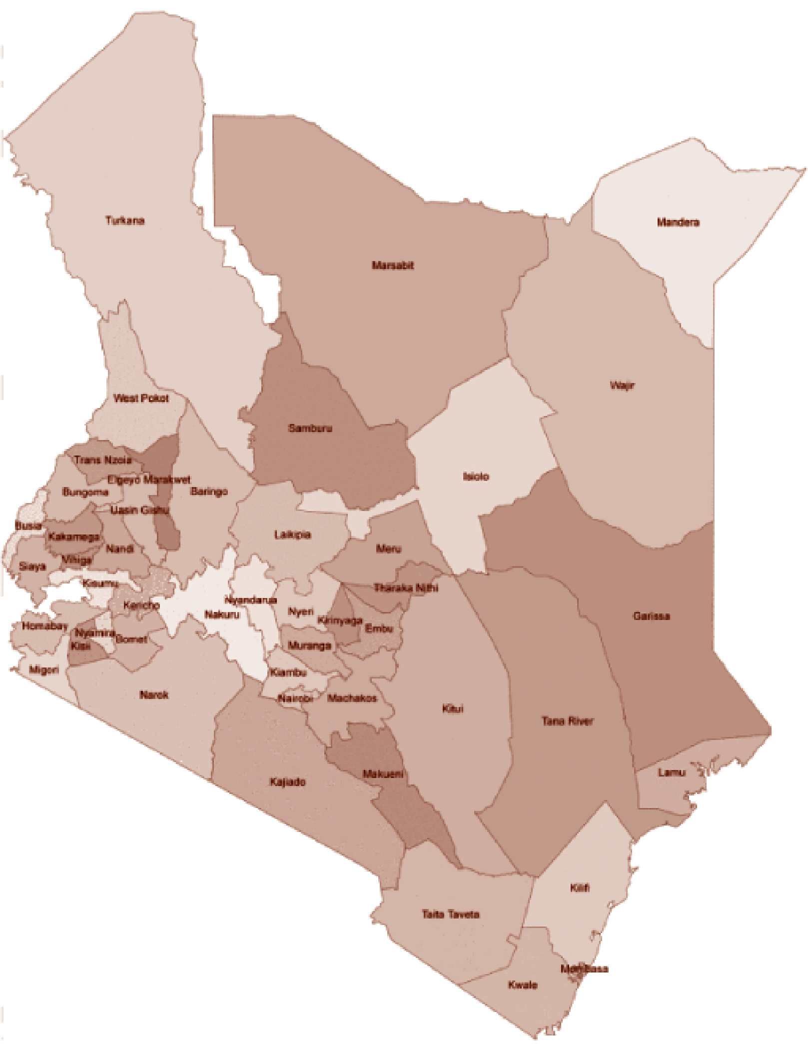
VI. End of FGD & Closing

- Closing remarks, thank the participants, and departure.

Counties in Kenya



Constitution of Kenya (2010): Nairobi, Government Printer.

Expenditure of County Council of Malindi: (FY 2007/2008, 2008/2009, 2009/2010), Local Authority Monitoring System.

Expenditure of County Council of Tana River: (FY 2007/2008, 2008/2009, 2009/2010), Local Authority Monitoring System.

Gikonyo W. (2008), The CDF Social Audit Guide: A Handbook for Communities, Nairobi, Ascent Ltd.

Institute for Participatory Development (IPD), Municipal Council of Malindi and German Development Service (2007) Participation in Partnership. Mombasa: Hamann.

Kantai, W. (2010) Lessons for Devolution: A Country Comparative Study in Devolution in Kenya, Prospects, Challenges and the Future. Mwenda (ed). IEA Research Paper No. 24.

Kibua T.N. and Mwabu G. (2008) Decentralization and Devolution in Kenya: New Approaches. Nairobi: University of Nairobi Press.

Kimani, F., Nekesa, P., Ndungu, B. (2009) Best Practices in Constituency Development Fund (CDF). Nairobi: Collaborative Centre for Gender and Development.

Legal Resources Foundation Trust (2009) Proposed Policy on Community Participation in the Governance of Devolved Funds. Nairobi: LRTF

Legal Resources Foundation Trust (2008) Proposed “Who pocketed My Money?” LASDAP, Whose Priority?” A report on LATF/LASDAP in Kenya: the Place of Citizens Participation in a Local Service Delivery Enterprise. Nairobi: LRTF

Ministry of Finance, Tana River District, (FY 2008/2009, 2009/2010) Authority to Incur Expenditure (Recurrent and Development)

Ministry of Finance, Tana River District, (FY 2007/2008, 2008/2009, 2009/2010) Appropriations-in Aid
Malindi District Development Plan (2008-2012)

Omolo, A. (2010) Devolution in Kenya: A Critical Review of Past and Present Frameworks in Devolution in Kenya, Prospects, Challenges and the Future. Mwenda (ed). IEA Research Paper No. 24

Oyugi, N. and Kibua, T. N (2006) Planning and Budgeting at the Grassroots Level: The Case of Local Authority Service Delivery Action Plans. Nairobi: IPAR

Revenue and Expenditure of Malindi Municipal Council (FY, 2008/2009, 2009/2010) Local Authority Integrated Financial Operations Management Systems.

Revenue of County Council of Malindi: (FY 2007/2008, 2008/2009, 2009/2010), Local Authority Monitoring System.

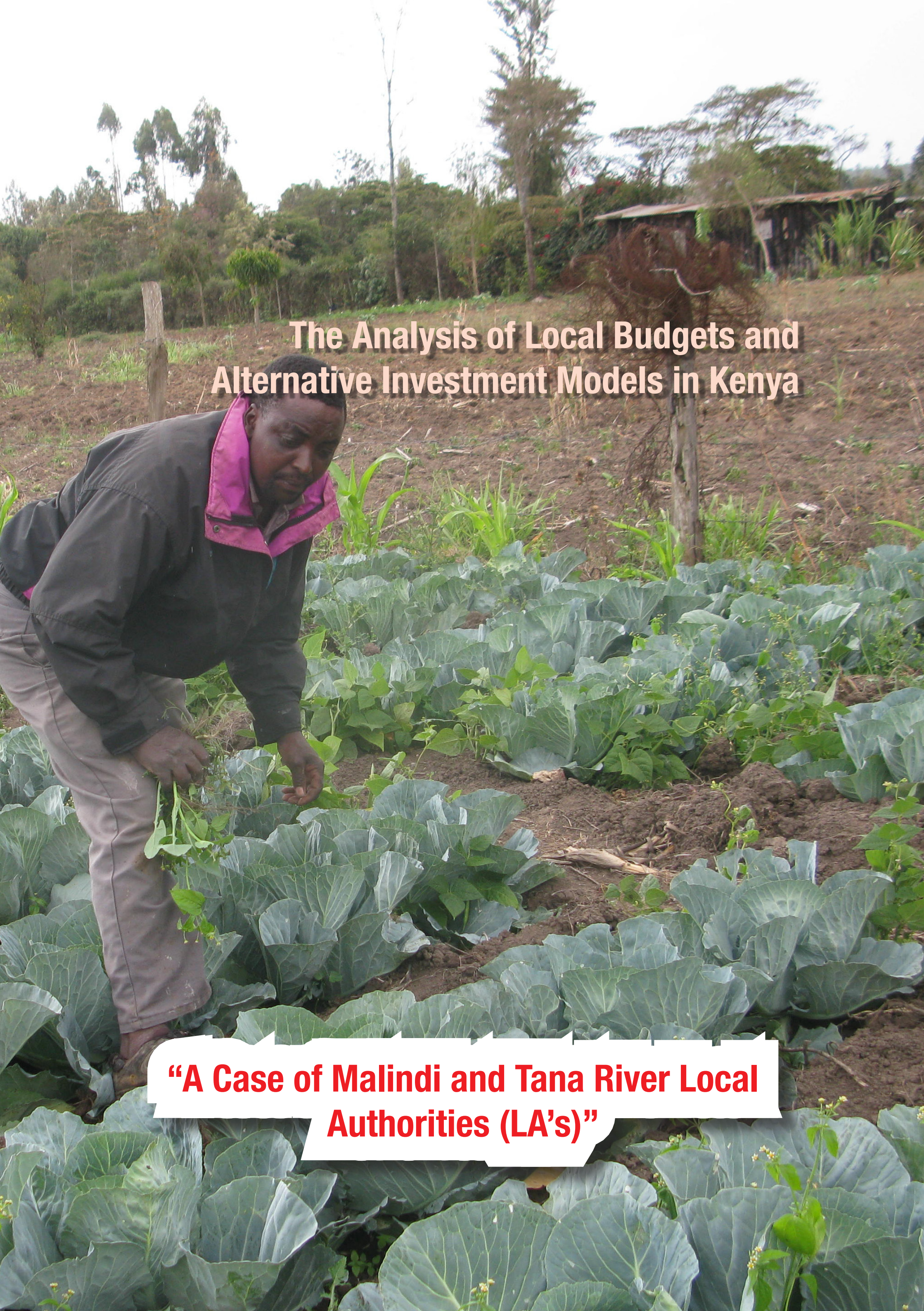
Revenue of County Council of Tana River: (FY 2007/2008, 2008/2009, 2009/2010), Local Authority Monitoring System.

TISA (2010) Policy and legislative Proposals aimed at Sound Planning, Accountability and Citizen Participation in County governments.

See Report on the Implementation of Devolved Government in Kenya.

Paper prepared for the International Conference on Reforming local government: Closing the gap between democracy and efficiency to be held at the University Stuttgart on September 26-27, 2002.

Notes



The Analysis of Local Budgets and Alternative Investment Models in Kenya

"A Case of Malindi and Tana River Local Authorities (LA's)"