

**AFRICA FORUM ON LOCAL COUNCIL OVERSIGHT AND SOCIAL ACCOUNTABILITY  
(ALCOSA) PROJECT**

**STUDY ON LOCAL COUNCIL OVERSIGHT ROLE AND SOCIAL ACCOUNTABILITY IN  
KENYA**

**for the World Bank**

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## Table of Contents

1. Introduction .....	4
1.1 Background .....	4
1.2 Objective of the Study .....	5
1.3 Methodology .....	5
2. the LOCAL GOVERNMENT SYSTEM IN KENYA.....	7
2.1 Historical Context of the Local Governments .....	7
2.2 Categories of Local Authorities .....	9
2.3 Local Council Governance Institutions .....	10
2.4 Local Council Powers, Duties and Functions .....	16
2.4.1 Functions Common to all Local Councils.....	16
2.4.2 Functions Specific to Municipal Councils.....	17
2.4.3 Functions Specific to Municipal and Town Councils.....	17
2.5 Roles/Responsibilities of Political and Appointed Officials .....	18
2.6 The Oversight Role of the Central Government .....	19
3. INSTITUTIONAL ASSESSMENT OF local COUNCILS .....	22
3.1 The Electoral and Party System and Impact on Local Council Oversight .....	22
3.1.1 Election of Local Councillors.....	22
3.2 Council Capacity and Functionalities .....	24
4. CURRENT ACCOUNTABILITY AND OVERSIGHT SYSTEMS .....	24
4.1 Legal framework for Local Council Accountability and Oversight .....	25
4.2 The Practice (Formal and Informal systems) for Local Council Oversight and Accountability .....	26
4.2.1 Citizen Expectations .....	26
4.2.2 Citizens Interaction with Local Councillors and Appointed Officials .....	27
4.2.3 Informal oversight mechanisms .....	29
4.2.4 Informal accountability mechanisms.....	30
5. ROLE OF LOCAL COUNCILS IN PUBLIC FINANCIAL MANAGEMENT .....	33
5.1 Councillors Involvement in Planning and Budgeting .....	33
5.1.1 Planning.....	33
5.1.2 Budgeting.....	35
5.2 Involvement of Councillors in Audit .....	38
5.3 Involvement of Councillors in Human Resource Management .....	39
5.4 Involvement of Councillors in Procurement and Contract implementation .....	41
6. THE OVERSIGHT ROLE OF LOCAL COUNCILS IN SERVICE DELIVERY .....	43
6.1 Local Level Service Delivery in Education .....	43
6.2 Local Level Service Delivery in Health .....	45
6.3 Local Service Delivery – Agricultural Extension .....	45
6.4 Local Service Delivery – Water .....	46
7. CONCLUSION AND RECOMMENDATIONS .....	47

## ACRONYMS

ADC	African District Council
ALCOSA	Africa Local Council Oversight and Social Accountability
ALGAK	Association of Local Government Authorities of
BQs	Bills of Quantities
C&AG	Controller and Auditor General
CDF	Constituency Development Fund
CiLoR	Contribution in Lieu of Rates
CSOs	Civil Society Organisations
DAO	District Agricultural Officer
DC	District Commissioner
DEB	District Education Board
DED	German Development Service
DHMTs	District Health Management Teams
ECK	Electoral Commission of Kenya
FPE	Free Primary Education
FY	Fiscal/Financial Year
GOK	Government of Kenya
HR	Human Resources
IPAR	Institute of Policy Research and Analysis
KANU	Kenya African National Union
KEPH	Kenya Essential Package for Health
KERRA	Kenya Rural Roads Authority
KIPPRA	Kenya Institute of Policy Research and Analysis
KLGRP	Kenya Local Government Reform Programme
KRB	Kenya Roads Board
KURA	Kenya Urban Roads Authority
LA	Local Authority
LADP	Local Authority Development Programme
LAFMR	Local Authority Financial Management Regulations
LASDAP	Local Authority Service Delivery Action Plan
LATF	Local Authority Transfer Fund
LGA	Local Government Act
LGLA	Local Government Loan Authority
LOYA	Local Authority of the Year Award
MoLG	Ministry of Local Government
NALEP-IF	National Agriculture and Livestock Programme Implementation Framework
NGOs	None Government Organisation
NHIF	National Hospital Insurance Fund
NSSF	National Social Security Fund
ODPM	Office of the Deputy Prime Minister
PAC	Public Accounts Committee
PAYE	Pay As You Earn
PF	Provident Fund
PPOA	Public Procurement Oversight Authority
PSC	public Service Commission
SMCs	School Management Committees
ToR	Terms of Reference

# 1. INTRODUCTION

## 1.1 Background

Africa Local Council Oversight and Social Accountability (ALCOSA) project focuses on good governance and it aims to link good governance strategies to local decision making and service delivery mechanisms. Many services such as education, health, and social services are delivered at the local level and affect the poor (therefore have direct impact on the performance towards achieving the Millennium Development Goals). Not surprisingly, they are also affected by the local policy environment –to be shaped by more and more decentralized contexts. Stronger accountability (referring to the mechanisms or sanctions by which society holds government in check) and increased oversight (referring to the mechanisms or sanctions by which councillors hold their executive in check) provides a better institutional framework for effective delivery of such public services aiming at reducing poverty and promoting shared growth.

Local council oversight in decentralizing countries is an important component of institutional checks and balances and is a critical entry point to achieve good local governance and effective public services. Functioning local council oversight relies on the assumption that local elected representatives have more incentive to respond to the needs and preferences of local populations and that they are more downwardly accountable as compared to local bureaucrats.

There are three aspects of local council oversight that the project is particularly interested in: The role of elected local councillors in planning, overseeing service delivery, and their involvement in the public financial management processes<sup>1</sup>.

In Kenya, local council oversight is exercised within the framework of the Local Government Act, Cap 265 of the laws of Kenya. This is the principal statute governing the system of local government in the country. Local councils undertake their mandates/powers, functions and responsibilities on a permissive basis (i.e. councils can only do or control that which the Act and other relevant laws permit them to do). It would therefore be expected that the interaction between the political leaders (who are charged with the responsibility of formulating the necessary local policies and strategies and overseeing their implementation), the appointed officials (who are responsible for implementing these policies and managing service delivery) and the citizens (who are the service recipients and tax payers) would be prescribed in this principal statute. However, this is not the case. The law does not adequately define the respective roles and responsibilities of the local councillor, appointed officials and citizens. The Act mainly defines the functions of the local authority as a corporate body.

The hallmark of good local governance is a people centred approach that enhances participatory development and promotes equity, transparency and accountability in the management of resources and service delivery. Such an approach would provide avenues for the citizenry to voice their views, express their interests and preferences with a view to ensuring that council decision-making, with regard to resource allocation and service delivery, is responsive to their needs and priorities. An effective oversight mechanism will require that available channels of interaction between local councillors and citizens allow signals and preferences by the citizens to be translated into responsive policies by local councillors and plans and actions in by the appointed officials in the delivery of services.

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<sup>1</sup> ToR study on local council oversight role in Kenya.

In Kenya, the interaction between the three key players (local councillors, appointed officials and citizens) in local governance and service delivery is characterized by weak legislative and democratic structures, poor resource base; low technical capacity, ignorance of the law governing the operations of LAs, low institutional credibility; public apathy towards taxation and a multiplicity of parallel local service providers.

It is against this background that the Africa Local Council Oversight and Social Accountability (ALCOSA) Project has commissioned a study to assess the formal and informal processes through which local councillors interact with the local bureaucrats on the one hand and citizens are able to hold their local councillors accountable for their performances on the other hand.

## **1.2 Objective of the Study**

The study (TOR in appendix 1) seeks to identify the mechanisms or sanctions by which citizens hold their local council in check and by which councillors hold their executive in check in order to ensure effective delivery of services that are responsive to locally identified needs.

The specific objectives of the study are to:

- a) assess the mechanisms available to local councillors to inform and be informed by the local citizens about service delivery issues;
- b) assess the mechanisms available to local citizens to inform and sanction local councillors such that their views might enter into the decision making process;
- c) evaluate whether these channels allow signals and preferences by the citizens to be translated into oversight actions by local councillors and into more responsiveness by local governments;
- d) review the role of local council oversight in improving the service delivery;
- e) assess the extent to which citizens are able to hold their local councillors accountable for their performances;
- f) build in country and regional dialogue based on concrete analysis derived mainly from local deliberations.

## **1.3 Methodology**

The study was primarily a desk research. The information for the study was drawn from both primary and secondary sources. The primary sources included relevant laws, (among them the Local Government Act, LATF Act, the CDF Act, and other sector laws); policy documents the key one being Vision 2030; previous studies, reviews and evaluation reports on local government and local service delivery held at the KLGRP Secretariat and the Ministry of Local Government headquarters; and academic and research papers<sup>2</sup>. The secondary sources of

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<sup>2</sup> The list of reference documents is attached as Appendix 2

information on the other hand were gathered through interviews with key informants. These key informants included local councillors, officials from local councils, local services producers of outsourced services, consumers of local council services (e.g., user associations, neighbourhood associations, professional bodies, business community etc), officials from the Ministry of Local Government, the Kenya Local Government Associations and academics<sup>3</sup>.

### **1.3.1 Interview Questions**

In assessing the degree and effectiveness of the involvement of elected local councillors (in formal and informal processes) in local planning and the extent to which this involvement actually reflects the local preferences, the following questions were used to guide interviews with key informants.

- Q1. To what extent do local council policies formulated by councillors reflect local preferences and priorities?
- Q2. What is the degree of local councillors' involvement in planning and budgeting processes of a LA?
- Q3. To what extent do local councillors involvement in a local council's planning reflect the citizen's interest?
- Q4. How far is the allocation of local council resources through the budget consistent with the policies made by the council?
- Q5. To what extent does implementation of the local council policies address identified citizen needs and priorities?
- Q6. What mechanisms (formal and informal) exist for local councillors to inform and to be informed by the citizens in regard to service delivery?
- Q7. How far is service delivery in line with the local council policies?
- Q8. To what extent are the local council budgets consistent with the council plans?
- Q9. To what extent are the implemented activities consistent with the approved local council budget?
- Q10. To what extent are local council budgets results oriented in terms of responding to the identified citizen's needs and priorities?
- Q11. What evidence is there that citizens influence local council decisions through their elected representatives?
- Q12. What is your assessment of local councillor's capacity to understand and interpret financial information and its implications on service delivery?

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<sup>3</sup> The list of persons interviewed is attached as Appendix 3

## **2. THE LOCAL GOVERNMENT SYSTEM IN KENYA**

This chapter provides a description of the system of local government in Kenya, covering the historical context, the legal framework for establishment of LAs, the institutional structures and the functions, powers and responsibilities. It also describes the roles of both the political and appointed officials. It is intended to provide the contextual framework for local council operations, highlighting the prescribed governance systems and channels of interaction between the local politicians and the council bureaucrats and the oversight role of Central Government through the Ministry of Local Government (MoLG). This is covered under the following sub-sections:

1. Historical context of Local Government
2. Categories of Local Authorities
3. Local councils Governance Institutions;
4. Local Authorities Powers, Duties and Functions;
5. Roles and responsibilities of political and appointed officials;
6. The oversight role of the Central Government/MoLG

The system of Local Government in Kenya is established under the Local Government Act, Cap 265 of the Laws of Kenya. The system is composed of four categories of local governments, namely: a City Council, Municipal Councils, Town Councils and County Councils. A Local authority is, by law, a body corporate that can sue and be sued and is vested with both executive and legislative powers. The Act provides for administrative and legal powers, functions and responsibilities for Local Authorities (LAs) on a permissive basis. It also provides for sources of revenues to finance the functions and responsibilities permitted to LAs. Local Authorities are empowered to raise revenue from local taxes, fees and charges for services/facilities provided by the council within their area of jurisdiction. They also receive transfers from the central government through the Local Authorities Transfer Fund (LATF). Local Councils further receive funding from development partners in form of projects, financed either wholly or in partnership with the council or community based organisations. The current state of the law governing the local government system in Kenya is also a product of history and it is worth briefly examining the context from which it has evolved.

### **2.1 Historical Context of the Local Governments**

The Local Government Act was promulgated in 1963 by the Governor in Council as “the Local Government Regulations, 1963”<sup>4</sup>. The British colonial rule in Kenya was about to come to an end, to be succeeded by a democratically elected majority government. Hitherto, local authorities in Kenya had operated under the direct control (and often as if they were part) of the local colonial administration. Further, the membership to governing bodies (councils or boards) for the local authorities was, in most cases, through appointment by the colonial government bureaucrats rather than by democratic elections.

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<sup>4</sup> The Local Government Regulations, 1963 were renamed “The Local Government Act” pursuant to the Statute Law (Miscellaneous Amendment) Act, 1977 which empowered the Attorney General of the Republic of Kenya to include a revised edition of the Local Government Regulations, 1963 in the annual supplement of the Laws of Kenya as if the Regulations had been enacted as an Act of Parliament.

In the rural areas, there were two main types of local authorities – County Councils and African District Councils (ADCs). The County Councils were for the rural areas dominated by European settlers, the so called “White Highlands”. Under the Local Government (Council Councils) Ordinance, 1952, the members of a County Council were elected. However, only Europeans and other non-Africans could participate in the election of the members of a County Council. African District Councils on the other hand were local authorities introduced by the African District Council Ordinance, 1950 for the African rural areas, the so called African “reserves”. The Provincial Commissioner determined the number of members of an African District Council and he also appointed such members or decided that they will be elected by Africans living in the area of the ADC.

There were two types of local authorities for large urban centres - Municipalities and Townships. Municipalities were established under the Municipalities Ordinance, Cap 136 of the Laws of Kenya (1948 Edition) for the largest urban centres, usually with significant populations of European or Asian descent. These municipalities were Nairobi, Mombasa, Nakuru, Eldoret, Kitale and Kisumu. Membership in the governing bodies for these municipalities was usually reserved on racial community lines, with the Europeans enjoying the largest number of seats and Africans the least, if any. For example, in the City Council of Nairobi there were 9 European representatives, 7 Indian representatives, 2 persons nominated by the Nairobi County Council (and, therefore, Europeans), 3 Africans appointed by the Minister.

Townships were in two grades – ‘A’ and ‘B’, and were established under the Township Ordinance, Chapter 133 of the Laws of Kenya (1948 Edition). Grade ‘A’ townships were urban centre located in rural areas dominated by European settler but were too small to be classified as municipalities, while grade ‘B’ townships were in African “reserves”. Both grades of townships were administered by the District Commissioner of the administrative district where the township was located. However, in the case of grade ‘A’ townships the District Commissioner acted on the advice of a Township committee whose members were determined and appointed by the Provincial Commissioner. For a grade ‘B’ township, the District Commission did not have an advisory committee.

The above being the state of the local government system in Kenya in 1963, it was necessary to undertake some fundamental restructuring for local authorities to fit them in the imminent constitutional dispensation of a democratic government. This is quite clear from the words of the preamble to the Kenya (Local Government) Order in Council 1963<sup>5</sup>, part of which is reproduced in the following text box below:<sup>6</sup>

*“Whereas it is proposed that in due course there shall be established for Kenya a constitution making provision in relation to local government: And whereas it is expedient in order to facilitate the introduction of the said constitution that fresh provision be made in relation to local government in Kenya before the said constitution has been established by an Order in Council.....”*

Thus, the Local Government Regulations, 1963 consolidated the existing legislations dealing with the various categories local authorities in Kenya. Secondly, it abolished the racial

<sup>5</sup> L.N. 96 of 1963.

<sup>6</sup> The underlining in the textbox has been made by the author to highlight the motivation for the introduction of the legislation

character in the membership of the governing bodies for local authorities. Thirdly, it introduced elections as the means of appointment for the members to governing bodies for all local authorities. Fourthly, it eliminated the role of the provincial administration in the local authorities and thus increased their autonomy.

The Independence Constitution<sup>7</sup> established a federal system of government in Kenya and gave regional governments (called regional assemblies but more popularly known as “majimbo”) the principal responsibility for the delivery of local public services. The Constitution gave the regional governments substantial powers of control over matters concerning education, health, agriculture, livestock and police forces. Local authorities, as vehicles for local public service delivery, were also placed under the regional governments.

Kenya African National Union (KANU) (which was the dominant nationalist political party at Independence) had favoured a strong central government, arguing that such a government would foster national unity. After Kenya had gained independence KANU, with its majority in the National Assembly, moved fast to consolidate power and abolished the regional assemblies. Local authorities were brought under the oversight of the Minister for Local Government. In the same process of consolidating the power of the central government and, some have argued, to neutralize the influence of powerful local authority leaders with ambitions in national politics<sup>8</sup>, in 1969, Parliament enacted the Local Government (Transfer of Functions) Act, 1969<sup>9</sup> whereby the Government transferred to itself local authority functions in relation to education, public health and roads. It also transferred the graduated personal tax, which was a principal source of revenue for local authorities, to itself. The result of this enactment, as we shall see later, had serious implications for the role of local councils.

The second and last major change in the legal framework for the local government system occurred in 1984. In that year the Local Government Act was amended to take away the powers of local authorities to recruit, discipline or dismiss their staff. These powers were transferred to and vested in the Public Service Commission. The implications of this arrangement for the effective discharge by a local authority of its oversight responsibility on appointed officials are more exhaustively considered in other Chapters of this report.

## 2.2 Categories of Local Authorities

The system of local government in Kenya does not have a tiered structure, as is the case in the other East African Countries, but is made up of autonomous units. These units of local authorities are in four main categories, namely, city, municipal, county and town councils.<sup>10</sup>

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<sup>7</sup> The Independence of Kenya Order in Council (L.N. 718 of 1963). The independence constitution resulted from negotiations between the British Government, KANU and KADU, the two major nationalist’s political parties. During the negotiations KANU favoured a strong central Government while KADU demanded a devolved federal government System with a relatively weak central Government. The British colonial secretary was in agreement with the position taken by KADU and this is what was finally put in the constitution. On attaining full independence in KANU used its overwhelming parliamentary majority to amend the constitution and abolish the regional (Majimbo) government structure

<sup>8</sup> See Paul J. Smoke, *Local Government Finance in Developing Countries – The Case of Kenya* (1994)

<sup>9</sup> Act No.20 of 1969. The Local Government (Transfer of Functions) Act, 1969 did not affect municipal councils, of which only Nairobi, Mombasa, Nakuru, Kisumu, Kitale and Eldoret were then in existence. These local authorities are the only ones which continue to provide services in education and health sectors.

<sup>10</sup> In addition, the LGA recognizes a class of local authorities called “urban councils”. An urban council operates with the jurisdiction of, and is subordinate to, a county council. However, in fact, there are no existing urban councils at the present time.

Broadly speaking, county councils are rural local authorities, while municipal and town councils are urban local authorities. Usually, the area of jurisdiction of a county council corresponds to that of a central government administrative district unit. Municipal and town councils are established for large urban centres and their areas of jurisdiction are usually excised from that of county councils in which they are situated. For this reason, the areas of jurisdiction of most municipal and town councils are surrounded by the area of the county council from which they were hived.<sup>11</sup> Available information indicates that there are a total of 175 local authorities in Kenya, made up of 1 City council<sup>12</sup>, 45 Municipal Councils, 62 Town Councils and 67 County Councils<sup>13</sup>.

It is worth noting that the Act defines “the City of Nairobi” as follows: *“the City of Nairobi” means the area of the City Council of Nairobi incorporated by Royal Charter dated the 20<sup>th</sup> March, 1950, and any reference in this Act or any written law to a municipality or municipal council shall be construed as including a reference to the City of Nairobi or the City Council of Nairobi, as the case may require*”. Thus, the City Council of Nairobi is vested with the same powers and has the same functions and responsibilities as a municipal council.

## **2.3 Local Council Governance Institutions**

A local authority has both a political and an administrative arm. The political arm is made up of elected and nominated councillors. Nominated councillors are proposed by political parties, in the proportion of the parties’ representation among the elected councillors, and the law requires that the number of such nominated councillors shall not exceed a third of the elected councillors.<sup>14</sup> Once a council has been constituted, there is no distinction between an elected and a nominated councillor as regards his powers or status.

### **2.3.1 Local Council Political Arm**

The political arm of a local authority (which is called “the council”) conducts its business through a committee system. At the apex of a local authority’s governing structure is the ‘full council’. This is the governing body. The full council is made up of all the councillors in a local authority. The full council is headed by a chairman (in the case of a county or town council) or a mayor (in the case of a city and municipal council). The chairman or mayor and their deputies are elected biannually by all the councillors from among themselves. The full council meets regularly to receive and consider reports and proposals from its standing committees.

Every councillor, whether elected or nominated, must be a member in at least one standing committee of the local authority. Every standing committee is headed by a chairman, who is elected annually by the full council from among the councillors. Each standing committee is responsible for overseeing specified functions of the local authority. The number of committees will depend on the range of functions performed by a local authority. Consequently, the greater the range of functions performed by a local authority, the more the number of standing committees. It is also in the standing committees where planning and budgeting processes are first undertaken in a local authority.

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<sup>11</sup> Nairobi and Mombasa are the only two municipal councils whose areas of jurisdiction are not surrounded by that of any county council.

<sup>12</sup> Nairobi was conferred the status of a city by a Royal Charter in 1950. Mombasa and Kisumu are known as “cities” but there is no statutory or other instrument conferring the status of a city on any of them

<sup>13</sup> Ministry of Local Government

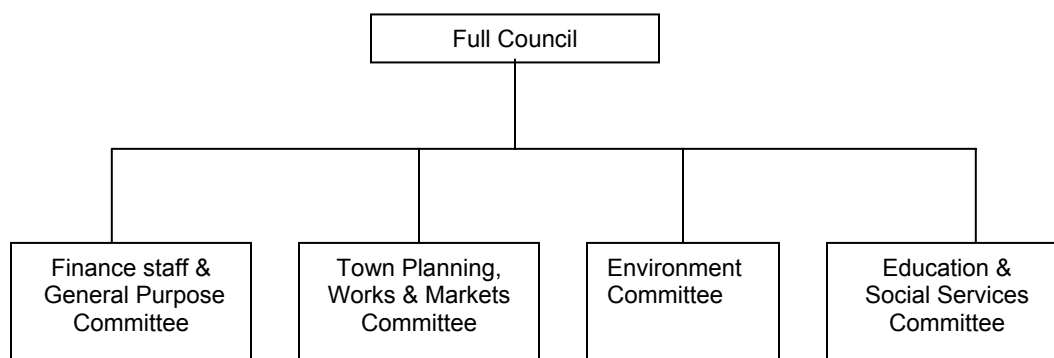
<sup>14</sup> There are numerous documented cases where the Minister nominated more councillors than is permitted by law or where political parties’ nominees were overlooked.

The standing committees to be found in most local authorities in Kenya include the following:

- Finance, Staff and General Purposes Committee
- Works Committee
- Planning Committee
- Social Services Committee
- Education Committee
- Health Committee
- Environment Committee
- Water and Sewerage Committee

The Finance, Staff and General Purpose Committee, among other things, supervises revenue and expenditure management, procurements, human resource management, receives audit reports and co-ordinates the general administration of a local authority. The Planning Committee concerns itself with the supervision of land use management, physical planning and zoning, building plans approvals, preparation and maintenance of valuation rolls and related matters. The Works Committee deals with the development, utilization, rehabilitation and maintenance of the physical infrastructure. The Social Services Committee deals with the supervision of community based organizations, community mobilization and advisory services, homes for destitute persons and (where there is no Education Committee) early childhood education. The Education Committee supervises the education function and this committee is most prominent in the older and larger urban centres which provide both early childhood and secondary education.<sup>15</sup> Like the Education Committee, the Health Committee is most prominent in the older and larger urban centres.<sup>16</sup> The Environment Committee supervises issues to do with the physical environment such as the establishment and maintenance of parks and recreational open spaces, forests, arboretums, pollution and environmental degradation, etc. The Figure 1 below shows a typical committee structure for a rural and urban local authority

**Figure 1a: Typical Committee Structure for a Rural Local Authority (Busia County Council).**

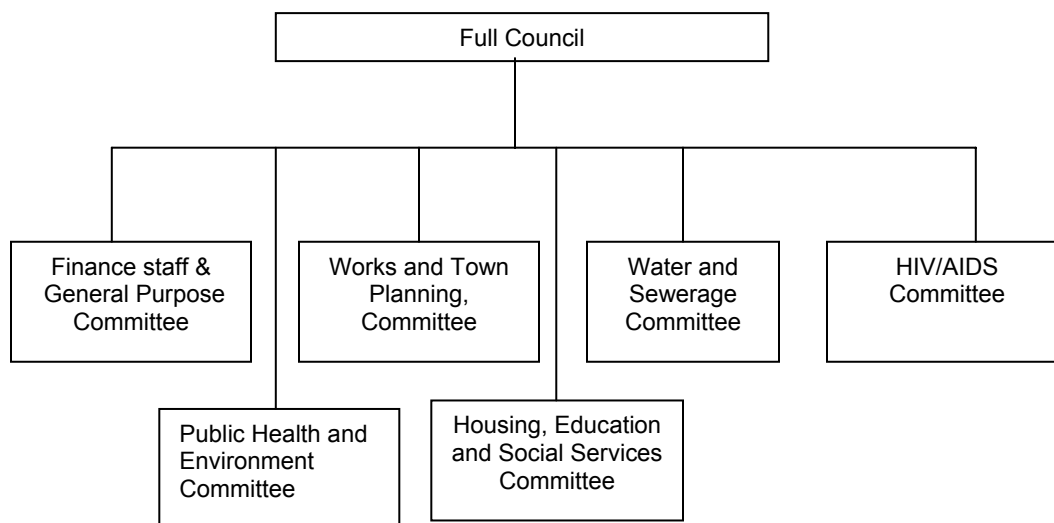


Source: *An Assessment of Service Delivery and Local Government in Kenya*, World Bank report, June 2002 pp 44

<sup>15</sup> These include the City of Nairobi and the Municipal Councils of Mombasa, Kitale, Kisumu, Eldoret and Nakuru.

<sup>16</sup> Prior to 1968, local authorities in Kenya had the mandate to provide a wide range of functions including health service, early childhood and primary education, development and maintenance of transport infra-structure (roads). This mandate was withdrawn and the functions transferred to the central government by the Local Authorities (Transfer of Functions) Act, 1968 as described under section 2.2 of this report.

**Figure 1b: A Typical Committee Structure for the Larger Urban Local Authority (Municipal Council of Nyeri)**



*Source: Constructed by author from information on the web site of Municipal Council of Nyeri.*

The Local Government Act gives councils both administrative and legislative powers. The Local Government Act empowers LAs to make By-laws in respect of all such matters as are necessary or desirable for maintenance of health, safety or well being of its inhabitants. Generally, the By-laws are made to control or regulate a function which the LA is permitted to undertake by the Local Government Act or some other written law (e.g. the Traffic Act, the Public Health Act, the Agriculture Act, etc). By way of example, a LA is empowered to provide garbage collection services and passes By-laws to regulate the activity. The By-laws may, and usually do, prescribe penal sanctions for any person failing to comply; and these sanctions are enforceable in a court of law like any other criminal offence. The city of Nairobi has a full fledged legal department including a prosecution unit and a magistrate court for enforcing city by-laws.

By-laws are made by a resolution of the full council. A draft of the By-laws is then forwarded to Minister for Local Government for approval. Before the Minister gives his approval, the draft By-laws are sent to the Attorney General for vetting. The comments of the AG are incorporated in the final version of the By-laws which the Minister approves. After the approval the LA is required to publish a notice of the making and approval of the By-laws in the official Kenya Gazette. The By-laws take effect from the date of publication of such notice.

### **2.3.2 Local Council Administrative Arm**

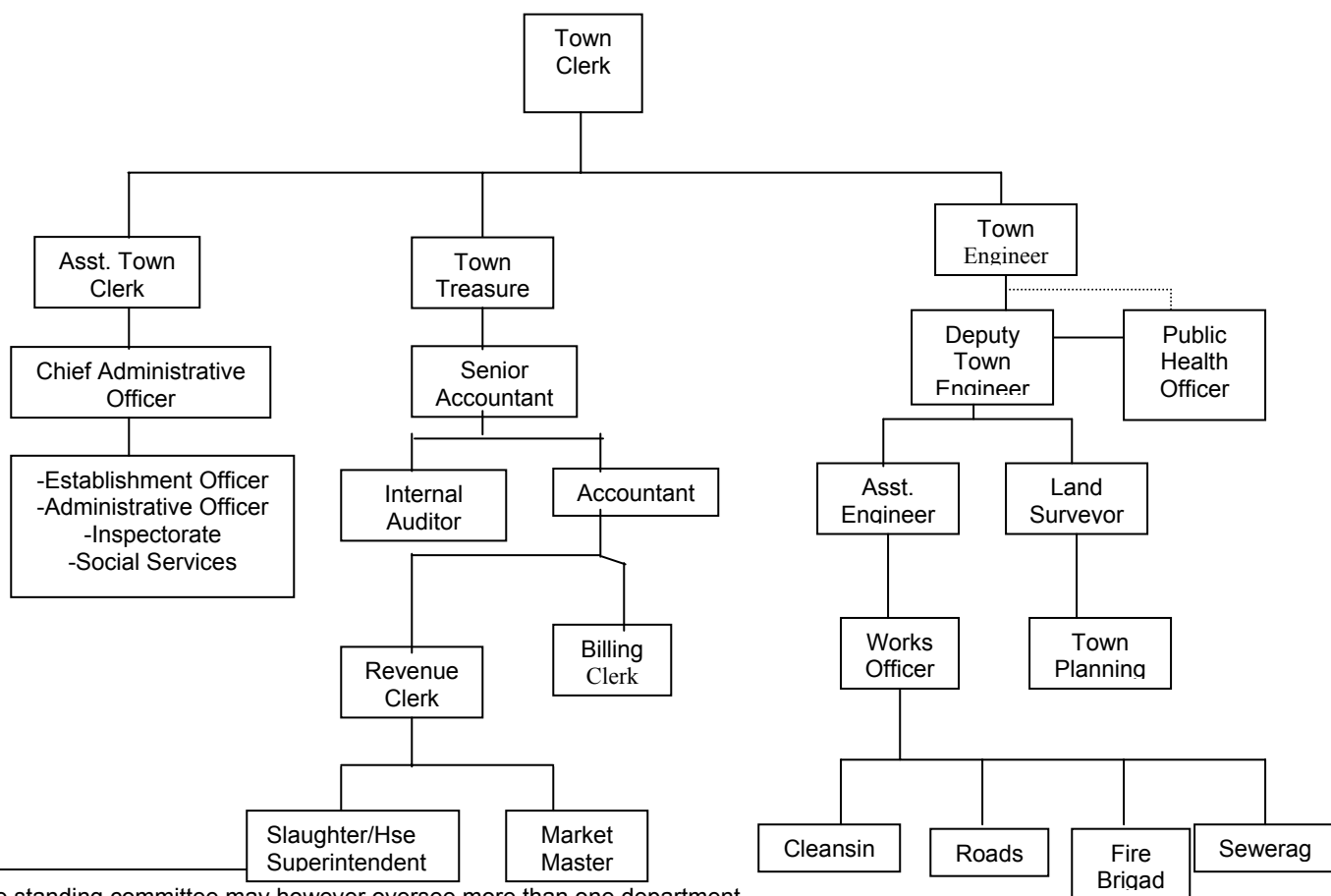
The executive or administrative arm of a local authority is made of departments. The number of departments depends on the size and the functions and services being undertaken by a local authority. Large local authorities, especially urban ones, usually have more departments. Typical departments in a local authority include administration, finance, planning, engineering, housing and social services, education and health. Departments are headed by technical or professional officers. These are appointed by the Public Service Commission (PSC). They are transferable from one local authority to another by the PSC, but the PSC appears to have delegated this function to Minister for Local Government.

Departments are divided into sections which are the operational levels in the execution of local authority services. For instance, the sections of the Engineers department for a typical local

authority include: works, roads and street lighting. The section is also headed by technical or professional officers appointed by the Public Service Commission. The sections supervise the front line services units such as schools, garbage collection crews, work teams, health centres.

Every department in a local authority reports to a particular committee of the council.<sup>17</sup> The general practice is for a departmental head to submit accountability/progress reports to the appropriate oversight committee at its regular meetings.<sup>18</sup> For example, the Treasurer, who is the head of the Finance Department, is required to place before the Finance and General Purposes Committee, at regular meetings, statements of monthly revenue and expenditures. During committee meetings, the departmental head normally responds to queries from councillors arising from the reports tabled before the committee. At these meetings, the departmental head also responds to any substantive motion brought by a councillor on concerns in relation to service delivery or any other issue. The internal organisation structure of LAs varies depending on their size. Larger LAs have more departments and Sections/units depending on the services they deliver and generally the urban LAs have more departments than the rural LAs and among the urban LAs Town Councils have fewer departments/sections. Figure 2 below shows a typical Local Authority administrative structure.

**Figure 2: A typical LA Administrative Structure (Machakos Municipal Council)<sup>19</sup>**



<sup>17</sup> One standing committee may however oversee more than one department.

<sup>18</sup> Most urban local authorities have monthly full council and committee meetings. The intervals between meetings for rural local authorities are usually longer.

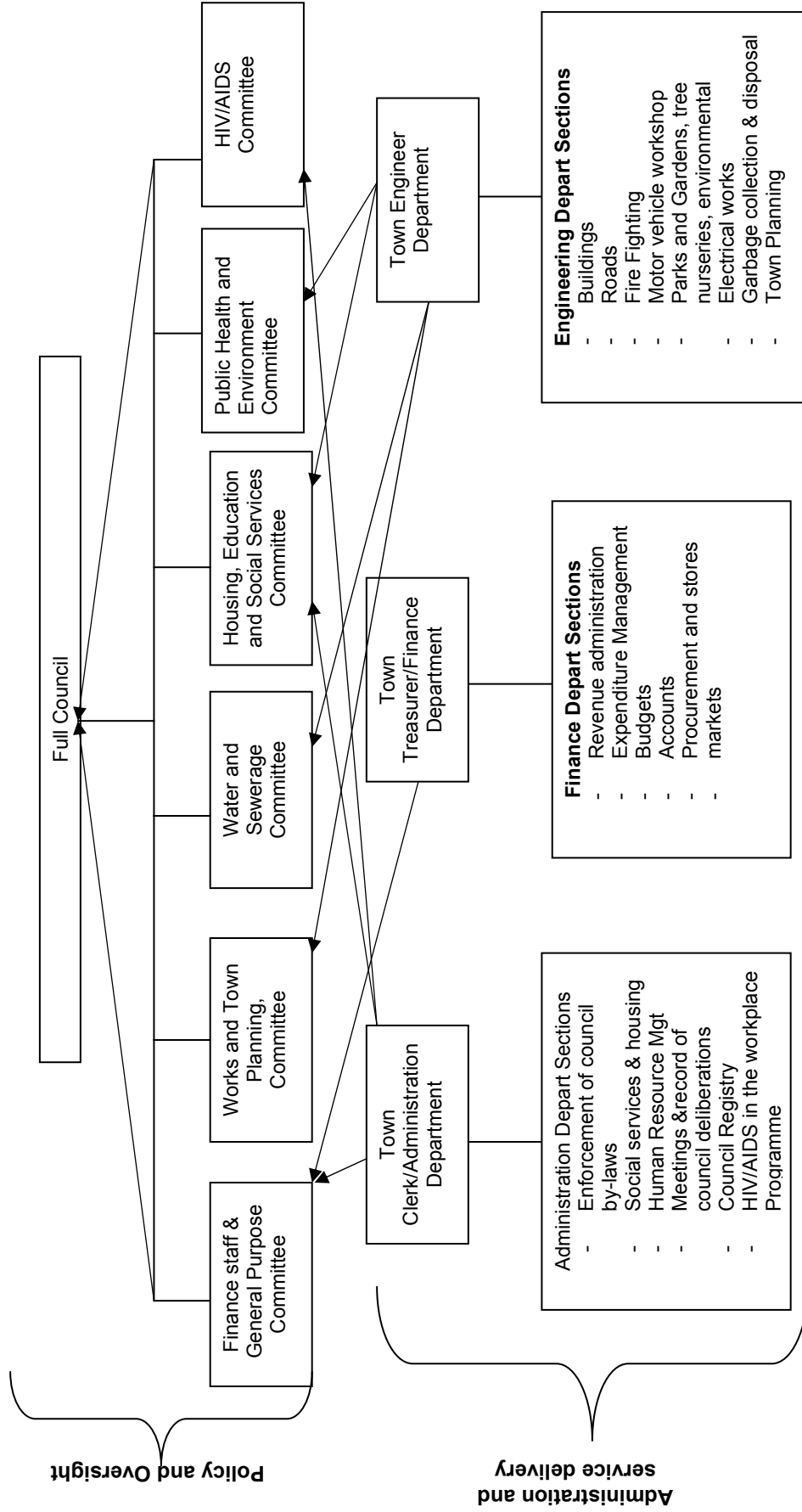
<sup>19</sup> Source: Steffensen, Naitore and Tidemand, A comparative analysis of Decentralisation in Kenya, Tanzania and Uganda, country study- Kenya 2004

Under the law, councillors have no executive powers<sup>20</sup>. A councillor can only act in the context of his/her participation in the corporate decisions of the local authority. It is only at a committee or full council meeting that a councillor can voice issues concerning the citizens that he/she represents, either by tabling a motion or generally during deliberations in those fora. A councillor has no direct authority over local service producers and his/her influence on them will depend on his/her influence in the relevant committee and, ultimately, in the full council. Experience has however shown that factionalism plays a prominent part in the decision making dynamics of a local authority. If a councillor is not within the loop of the dominant faction in a local authority, he/she may not be able to significantly influence decisions affecting the people he/she represents. Figure 3 below presents the Institutional arrangement for local council oversight in service delivery using the institutional structure from Municipal Council of Nyeri.

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<sup>20</sup> This point is more exhaustively considered in the next chapter of this report.

**Figure 3: Institutional Arrangement for Local Council Oversight in Service Delivery (example from Municipal Council of Nyeri)<sup>21</sup>**



<sup>21</sup> Source: Constructed by author from information on the Municipal Council of Nyeri Web site

## **2.4 Local Council Powers, Duties and Functions**

To enable local authorities perform their functions, the Local Government Act gives all local authorities certain administrative powers, including the power to enter into contracts and acquire land and other property; establish offices and buildings for the local authority's or public use; employ staff and provide for its welfare and to make by-laws.

Generally speaking, the Local Government Act permits local authorities to undertake various functions. The only mandatory function for LAs is to provide for the burial of destitute within their areas of jurisdiction although in practice this applies mainly to urban LAs. In practice LAs opt to provide services that are relevant to their local communities and which are not being provided by the central government through sector ministries. The choice of the services to be undertaken is also determined by the LA's capacity (financial and Technical) to deliver. The Act does not impose any obligation on a local authority to perform any function or to provide any service to its citizens. The choice of which function or public service to perform or provide is left to a local authority to determine.

Some functions may be performed by all local authorities, but the power to perform some particular functions is restricted to specified categories of local authorities. Below, we look at functions that are common to all local councils and those that are reserved for certain categories of local councils. It can be generally said that no functions are exclusively reserved for county councils.

### ***2.4.1 Functions Common to all Local Councils***

All local authorities in Kenya, whatever their category, may perform any of the following functions within their areas of jurisdiction:

- a) *Establish and maintain public markets.* Public markets in rural areas are open or enclosed yards where residents meet to buy or sell their agricultural produce or animals. The markets in rural areas are run by county councils who provide them with administrative and cleaning services. In urban areas, public markets are usually large covered sheds owned by the municipal or town council concerned.
- b) *Provide sanitation services.* In rural areas, county councils provide garbage collection and street cleaning in the market centers. In the large urban centers such as townships and municipalities, the councils provide garbage collection services, street cleaning, sewerage and public toilets.
- c) *Establish and maintain woodlands, forests and botanical gardens.* Forests and woodlands are usually to be found in rural areas and a few county councils, especially in the wetter parts of the country, own them. Botanical gardens are not common except for the arboretum in the city of Nairobi.
- d) *Establish and maintain recreation grounds and facilities.* This is most common in urban areas where there are public parks.
- e) *Promote art and culture by establishing and maintaining public galleries, theatres, museum, music bands, etc.*

- f) *Establish and maintain game parks and wildlife sanctuaries.* A few county councils have their own game reserves.
- g) *Provide social services.* Some local authorities run homes for destitute persons. Most local authorities also run nursery schools.
- h) *Land use planning.* In rural areas county councils are supposed to control the establishment of shops (in and outside market centers) while in urban areas, municipal and town councils approve building plans for any development within their areas.

#### **2.4.2 Functions Specific to Municipal Councils**

There are some functions that are reserved exclusively to the municipal councils. These functions include:

- a) *The provision of health services.* Only municipalities can establish or maintain hospitals, maternity services, health centers or dispensaries. Prior to 1969, even county councils were providing the service, but this function was transferred to the central government under the Local Authorities (Transfer of Functions) Act, 1969<sup>22</sup> except in the case of municipal councils. However, only the old municipal authorities of Nairobi, Mombasa, Kisumu, Nakuru, Eldoret and Kitale are running health services in their areas.
- b) *Establishment and maintenance of schools and educational institutions.* The situation is exactly the same as that of the provision of health services. It is only reserved for municipal councils of which only the old ones referred to above run schools and educational institutions.

#### **2.4.3 Functions Specific to Municipal and Town Councils**

Municipal councils and town councils are also given powers to enable them to control or regulate the peculiarly urban environment. Thus they are empowered to:-

- a) Provide street lighting;
- b) Name or number streets and buildings;
- c) Establish and maintain fire fighting capability and other emergency services such as ambulances;
- d) Create, establish and maintain ornamental gardens and parks;
- e) Establish and maintain public cemeteries and crematoria;
- f) Establish and maintain sewerage systems;
- g) Control advertisements and decorations on the streets; and
- h) Control and regulate the carrying on of various trades and occupations within its jurisdiction.

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<sup>22</sup> See footnote 5, *supra*

## 2.5 Roles/Responsibilities of Political and Appointed Officials

As mentioned earlier, the local authority is made up of a political arm (councillors) and an administrative arm (local bureaucrats). Each arm of the LA is charged with specific responsibilities that are designed to create an environment for effective oversight and accountability in council operations. The political arm is responsible for formulating the local policies to guide council operations and is also responsible for overseeing the implementation of these policies by the local bureaucrats. On the other hand the appointed officials have the responsibility for translating the policies into plans, budgets and programmes for implementing those policies. Table 2.1 below summarises the roles of the elected and appointed official in key functions of the LA

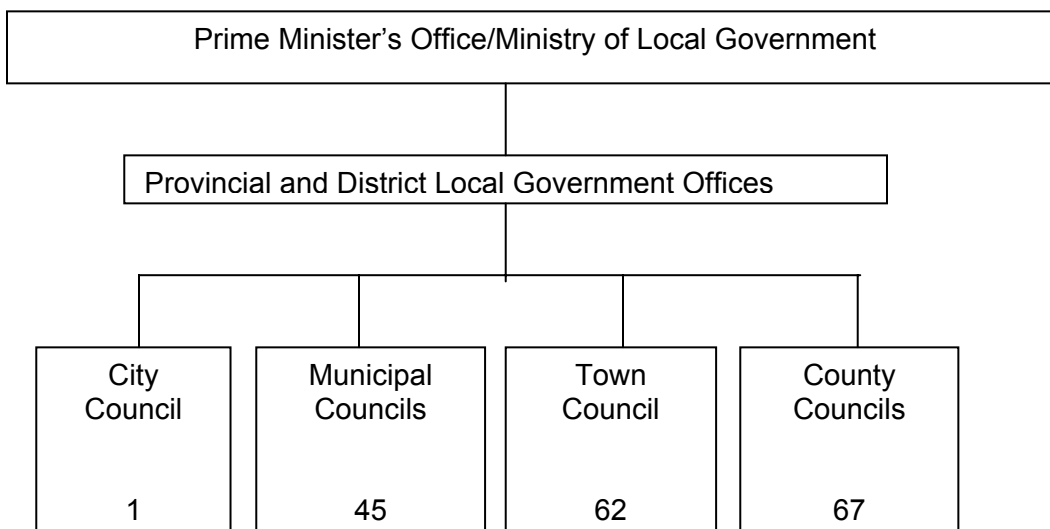
**Table 2.1 Roles of elected and appointed officials in key functions of LA.**

<b>Selected Functions</b>	<b>Role of councillors</b>	<b>Role of Appointed officials</b>
Financial Management and Accountability	<ul style="list-style-type: none"> <li>• Scrutiny and approval of budget</li> <li>• Discussion and action on audit it reports</li> <li>• Monitoring the implementation of the budget through progress reports</li> </ul>	<ul style="list-style-type: none"> <li>• Preparation of the annual plans and budget</li> <li>• Maintenance of proper books of accounts and preparation of final accounts for audit by C&amp;AG</li> <li>• Ensure an operational Internal Audit function</li> </ul>
Development planning	<ul style="list-style-type: none"> <li>• mobilise community and participate in identifying planning priorities in consultation with their electorate and other stakeholders</li> <li>• The Council approves the development plans and LASDAP</li> </ul>	<ul style="list-style-type: none"> <li>• Formulates the LADP and LASDAP with input from political leaders, community and NGOs/CSOs</li> </ul>
Human Resource Management	<ul style="list-style-type: none"> <li>• The Council recommends staffing structures and establishment for approval by the MoLG;</li> <li>• Recruits lower cadre employees (scale 10-25)</li> </ul>	<ul style="list-style-type: none"> <li>• Maintenance of the personnel records</li> <li>• Conducting staff appraisals;</li> <li>• Make submissions to the PSC in regard to recruitment, confirmation and disciplining of staff</li> </ul>
Human Resource Development	<ul style="list-style-type: none"> <li>• Participates in induction and other policy makers training.</li> </ul>	<ul style="list-style-type: none"> <li>• Sources and facilitates training and other capacity building activities</li> </ul>
Procurement	<ul style="list-style-type: none"> <li>• Reviews and approves annual procurement plan</li> <li>• Reviews quarterly procurement reports</li> <li>• Approves disposal of LA assets including sale of land and buildings</li> </ul>	<ul style="list-style-type: none"> <li>• Constitute the LA Tender Committee, adjudicate tenders and award contracts.</li> <li>• prepares quarterly annual procurement plans</li> <li>• prepares quarterly procurement reports</li> </ul>
Supervision and Monitoring	<ul style="list-style-type: none"> <li>• Standing Committees discuss progress reports from relevant departments to monitor performance</li> <li>• Ask questions on matters relevant to service delivery performance.</li> </ul>	<ul style="list-style-type: none"> <li>• Deliver service and supervise day to day activities</li> <li>• Monitor progress of service delivery and project implementation</li> <li>• Compile departmental progress and performance reports</li> <li>• Respond to questions raised in committees</li> </ul>

## 2.6 The Oversight Role of the Central Government

The Office of the Deputy Prime Minister and Ministry of Local Government (ODPM/MoLG) is charged with both oversight and advisory responsibility over LAs. The responsibility include ensuring compliance with legislative and regulatory requirements, providing technical support and advice, monitoring the financial management performance and providing capacity building support to LAs as well as spearheading the local government reform agenda. The oversight responsibility aims at ensuring prudent management of financial resources of the council, improved services delivery to local communities, proper accountability of appointed officials and effective participation and involvement of the citizens in the decision-making process on matters pertaining to service delivery and development as well as empowering them to demand accountability from their elected representatives. It has however been observed that this responsibility has resulted in interventions that have curtailed rather than facilitated effective oversight by the local councils. For example, the requirement for numerous approvals including approval of council budgets, adjustment of levels of fees and charges, filling of vacant positions in council establishment, raising finances by way of borrowing from financial institutions or any other third party etc. Below is a diagrammatic representation of the institutional arrangements for local authorities and their relationship to the MoLG oversight structure

**Figure 4: Institutional Arrangements for the Local Government System in Kenya.**



The ODPM/MoLG undertakes its oversight and advisory roles over local authorities through various departments at its head office and through field offices at the provincial<sup>23</sup> levels. The key departments of the ODPM/MoLG and their functions which concern local authorities are as shown below:

**Table 2.2 ODPM/MoLG Departments and Functions**

Department	Functions
Administration	<ul style="list-style-type: none"> <li>Spearhead implementation of local government sector reforms through the Kenya Local Government Reform Programme secretariat.</li> <li>Support preparation and implementation of policies and strategies for local economic development.</li> </ul>

<sup>23</sup> The ODPM/ MoLG has posted Provincial Local government Officers (PLGOs) at the provincial Headquarters except Nairobi. Nairobi City Council is served directly by the ministry's head office. The PLGOs oversee the LAs within their provinces, especially with regard to LAs' compliance with provisions of the law and direction in ministerial circulars. The PLGOs also preside over the Provincial Budget Committees that review the LAs' budget before recommending them to the Minister for approval.

	<ul style="list-style-type: none"> <li>• Determine boundaries of LAs in consultation with the Electoral Commission of Kenya.</li> <li>• Development and management of human resources.</li> <li>• Coordinate Local Government sector research, data management and dissemination</li> </ul>
Local Authorities Inspectorate	<ul style="list-style-type: none"> <li>• Monitoring compliance with the prescribed legislative and regulatory requirements by LAs;</li> <li>• Review and approval Local Authorities budget and proposals for adjusting the level fees, and other charges.</li> <li>• Coordination of routine and statutory inspections of accounts and operations of Local Authorities</li> <li>• Follow-up on implementation of the findings of the Controller and Auditor General's report.</li> <li>• Facilitate training and capacity building on financial management in Local Authorities.</li> <li>• Advise on the distribution of asset and liabilities of Local Authorities upon establishment.</li> </ul>
Urban Development	<ul style="list-style-type: none"> <li>• Guidance and Provision of technical Assistance to Local Authorities in infrastructure, project planning and management.</li> <li>• Initiation, formulation and implementation of urban and regional development policies and urban growth strategies in Liaison with Local Authorities and other agencies.</li> <li>• Assisting Local Authorities in the preparation and implementation of long term development plans and programmes.</li> <li>• Supporting Local Authorities in planning and implementation of improvement of informal settlements.</li> <li>• Promotion of socio-economic development planning in Local Authorities.</li> <li>• Guidance and promotion of Land use management in Local Authorities.</li> <li>• Support Local Authorities in development of environmental management programmes.</li> <li>• Guidance and promotion of disaster management programmes in Local Authorities.</li> <li>• Liaison with other agencies on housing development and human settlement policies and programmes.</li> <li>• Advise Local Authorities on matters relating to Valuation Rolls, Valuation for Rating and Contribution in Lieu of Rates.</li> </ul>
Markets <sup>24</sup>	<ul style="list-style-type: none"> <li>• facilitate wholesale and retail market development in local Authorities</li> <li>• establish programmes that favor vulnerable groups</li> <li>• Prepare market projects for implementation and ensure current markets are restructured to enhance operational efficiency</li> </ul>

In addition to MoLG, there also other statutory bodies charged with overseeing LA operations. The main ones are the Public Accounts Committee (PAC) of parliament, the Public Service Commission (PSC), the Public Procurement Oversight Authority (PPO) and the Controller and Auditor General (C&AG).

<sup>24</sup> Markets, as facilities where citizens trade in various commodities, are not only important sources of revenue for LAs but also create an enabling environment for local economic growth. Establishment of markets (especially in urban LAs) is also used as a planning tool to control itinerant trading on street and other public places. Because of the importance of markets the ODOM/MoLG has created a depart that coordinates the establishment and development of markets by LAs.

The office of the C&AG is responsible for carrying out audits on the books of local authorities to express an opinion on the same. The PAC discusses C&AG audit reports on LAs and submits reports with recommendations to MoLG for follow up. The PPOA oversees procurement and disposal of assets by public entities including LAs. The PSC on the other hand is charged with the responsibility of recruiting, deploying and disciplining LA officers.

### **3. INSTITUTIONAL ASSESSMENT OF LOCAL COUNCILS**

This chapter describes the system of electing local councillors including the eligibility criteria. It will also examine the place and influence of party politics in the decision-making processes in local councils. It will also explore how the political party dynamics impact on the oversight role of the councillors. To the extent possible, it will examine the capacities of local councillors in relation to their oversight responsibilities and the institutional environment (in terms of physical facilities and other resources) under which they undertake these responsibilities.

The chapter is intended to provide, an assessment of the environment in which councillors exercise their oversight and accountability function. This will be discussed under the following subsections:

- The Electoral and party system and impact on council oversight
- Council capacity and functionalities

#### **3.1 The Electoral and Party System and Impact on Local Council Oversight**

##### ***3.1.1 Election of Local Councillors***

Generally, the election of local councillors is held nationally every five years. However, under section 58 of the Local Government Act, the election of councillors must coincide with parliamentary and presidential elections. Therefore, whenever Parliament is dissolved and a general election is called for the election of the President and the Members of Parliament, local authorities are also simultaneously dissolved and election for local councillors must also be held.

Under sections 53A, 53B and 53C the Minister for Local Government is empowered to make rules and regulations prescribing the qualification and disqualification for election of local councillors. The main criteria for eligibility to be elected as a councillor are:

1. A Kenyan citizen aged over 18 years
2. Membership of/nomination by a registered political party;
3. Registration as a voter in the local authority where they wish to offer themselves for election.
4. Able to read, write and speak at least one of the official languages (English/Kiswahili).
5. Not a serving officer in the public service
6. Not adjudged a bankrupt
7. Not convicted of a criminal offence at least 12 months before the elections
8. Not sitting member of parliament
9. Not been charged by an inspector under section 236 of the LG Act within 5 years before the election.

The Electoral Commission of Kenya (ECK) conducts LA elections. The candidate in an election who garners the highest number of votes is declared by ECK to be the duly elected councillor. Subsequently, the councillor-elect is required to subscribe to an oath of office before performing the functions of the office of a councillor. If the councillor elect fails to take the oath of office within two months of his election, he loses the seat and a by-election must be held for the electoral area concerned.

The council is made up of elected councillors nominated councillors. The nominated councillors are proposed by political parties in the proportion of the parties' representation among the elected councillors. The power to nominate councillors to local councils is vested in the Minister. Prior to 1997 the Minister nominated persons to represent special interests in LAs. For example, women, people with disability, or persons with special skills/expertise. But in practice the provision was used to nominate

pro-establishment persons. With the reintroduction of multiparty politics in Kenya (1997) the law was changed to allow political parties to submit proposal for nomination of councillors to ECK. In making the proposals the political parties are supposed to take into account the principle of gender equality. However, in practice this is not always adhered to. It has been generally observed that this provision is used to reward party royalists.

The procedure is for political parties to submit their proposed nominees to the ECK and the ECK, after satisfying itself such proposed nominees meet the basic qualification for being elected a councillor, forwards the names of the proposed nominees to the Minister for Local Government, who is under the law the person who nominates the councillors to specific local councils. The law requires that the number of such nominated councillors shall not exceed a third of the elected councillors.<sup>25</sup> Once a council has been constituted, there is no distinction between an elected and a nominated councillor as regards his powers or status as a councillor.

In the recent past, a popular view has evolved that the mayors and chairmen of local councils should be elected directly by citizens for a period of five years; rather than being elected by the councillors on a two years' term, as is presently the case. This proposal was also contained in the draft Constitution that was put to a referendum in 2005. The arguments in support of this proposal are twofold. One is that a mayor or chairman so elected would be insulated from the obligation to please his fellow councillors so as to retain his position in the council; and the other is, having been so freed of such obligation, he can provide true leadership to the local authority so that it can offer the services it is mandated to provide. If or when this proposal is finally given effect, the election of mayors and chairmen by citizens would mean that those leaders would be accountable to the electorate. However that accountability would only be notional unless the legislative framework is changed to redefine their functions and responsibilities and those of councillors generally.

### 3.1.2 Place of Party Politics in LAs

According to Kenya Gazette Notice No. 474, published on January 25, 2008, there are 2456 elected councillors<sup>26</sup> the majority of whom belong to the four main political parties as shown in the table below:

**Table 3.1 Total Number of Elected Councillors by Political Parties**

<b>Political Party</b>	<b>No. Of Elected Councillors</b>
ODM	1046
PNU	435
KANU	240
ODM-K	187
OTHERS	548
<b>Total</b>	<b>2456</b>

The law provides that in addition to the elected councillors there should be nominated councillors whose number should not exceed a third of the elected councillors. Therefore, the nominated councillors would, at most, be 815 persons; and the total number of councillors in the country would be 3271 councillors.

<sup>25</sup> There are however, numerous documented cases of over nomination of councillors or where political parties' nominees have been overlooked. Recently, the current Minister for Local Government revoked the nomination of some councillors who had been nominated irregularly and some of the revocations have been challenged in court.

<sup>26</sup> This information will be updated in the next draft report after a review of other official records to establish the current position, particularly as some local authority elections had not been held at the date of the Gazette Notice.

As observed in the previous section, one of the main qualifications of a councillor is that he must be a member of a registered political. This means that the councillor is subject to the sponsoring political party's ideologies and agenda. Ideally, when one political party dominates a council membership, it would be expected that there would be harmony and greater consensus in council decisions. This would enable the council to more effectively exercise its oversight role over appointed officials and enhance service delivery to its citizens.

This may also mean that the dominant political party in the LA will use its numerical superiority to promote policies and programmes that advance with their party's agenda leading to factionalism on party lines within LAs. Experience has shown that factionalism plays a prominent part in the decision-making dynamics of a local authority. Consequently where a councillor is not within the loop of the dominant faction in a local authority, he/she may not be able to significantly influence decisions affecting the people he/she represents.

The personal experience of the author, confirmed by interviews of other professionals in local government management, however indicates that political party affiliations do not significantly influence councillors as regards the local authority operations. Where factionalism develops, it is not always based on political party affiliations but rather on the personal agenda of councillors and local community interests.

### **3.1.3 Councillors Remuneration**

Section 150 of the Local Government Act provides that a local authority may, with the approval of the minister pay to councillors subsistence/travelling allowance or loss of earning or any other type of expenditure incurred for the purpose of enabling him to perform his duties as a councillor. Sub-section 2 allows the LAs (with the approval of the Minister) to pay councillors a flat rate allowance in lieu of these allowances. In practice councillors are paid a flat rate monthly allowance which is set by the Minister for different categories of LAs. For each category of LA there three rates, i.e for Council Mayors/chairman, chairmen of committees and other councillors.

Councillor's allowances are paid from the revenues raised by the council including the transfers received from the central government through the LATF. However, the LATF Regulations have introduced a conditionality that requires the LAs to use 60% of the LATF annual allocation for capital projects identified by the community through the LASDAP process.

### **3.2 Council Capacity and Functionalities**

It is not possible within the scope of this study to assess council capacities and functionalities. There is no centrally available data either in the parent Ministry or at ALGAK on individual councillors on matters such as the education levels, occupations, age, economic status, etc. This information would have to be gathered from individual LAs; assuming of course they have it. The same constraint of paucity of data applies to the LAs' capacities as institutions, in terms of physical and administrative infrastructure, equipments, etc.

## **4. CURRENT ACCOUNTABILITY AND OVERSIGHT SYSTEMS**

This chapter examines the accountability and oversight mechanism provided by the law with specific reference to the roles of the councillors, council officers and the citizens to assess whether they:

- a) are complied with in practice
- b) facilitate/enhance responsiveness of local councillors citizen preferences and priorities in the councils decision-making process and service delivery
- c) contribute to reducing corruption and keeping the abuse of power in check
- d) increase learning capacity and effectiveness of public authorities
- e) constrain effective local council oversight and accountability

The chapter also examines the practical application of the prescribed mechanisms and the utilisation of informal interactions between the councillors/appointed officials/citizens and civil society organisations in the context of local service delivery.

This is presented under the following subsection:

- Legal framework for Local Council Accountability and Oversight (role of the central government, councillors, appointed officials, citizens,)
- Practice ( Formal and informal systems)

#### **4.1 Legal framework for Local Council Accountability and Oversight**

Elected local councillors, through their involvement in local council planning processes, are expected to best represent the interests of the local citizens so that citizen preferences are ultimately reflected in policies made by the local council. Ideally, such policies as are set by elected local councillors should guide the budgeting and policy implementation processes that translate into service delivery which is responsive to the citizen needs and priorities. This expectation is based on the assumption that citizens are able to influence local decision-making through their local council representatives. Below, we examine the formal and informal channels of interaction between the three key participants in local council service delivery processes (i.e. the local councillor, the local bureaucrats, and the citizenry). In doing so we shall look at the citizens' expectations of their elected representatives, the statutory provisions for local councillors' powers and responsibilities and the formal and informal mechanisms for holding the appointed officers accountable and channels for meeting citizen expectations.

The only function that the law requires a councillor to undertake is to attend council meetings and participate in the deliberations. The law provides sanctions for a councillor's failure to attend meetings. Under section 64(1) of the Local Government Act, it provides inter-alia that *"\_if a councillor of a local authority without having obtained leave from the local authority, fails throughout a period of 4 consecutive months to attend any meeting(including committee meeting) of the local authority, he shall, unless the failure was due to some reason approved by the local authority, become disqualified from continuing to be a councillor of the local authority..."*

In the context of discharging their statutory obligation to attend and participate in council meetings, councillors are empowered to bring motions, for deliberation by the council, on matters relevant to the functions of the local authorities. They may also ask questions to the chair of the council or of any committee of that council. Such questions must be on matters relevant to the functions of the council. When a motion brought or question is asked to the full council, it is referred to the relevant committee for deliberation and report. It is worth noting that a councillor cannot address a motion or a question for a response directly from an appointed official of the local authority, such motion or question can only be addressed to the full council a committee for direction.

It is through the means of motions and question that a councillor as an individual can articulate the needs and priorities of his/her constituents. However, experience has shown that this vital avenue for championing the citizen's concerns is rarely utilized. The consequence of this is that citizens feel disconnected from the local authority as one of their principal channels for getting their views into the formal decision-making processes of the council is not effectively utilized.

While the law is lean on what a local councillor is permitted to do, it is quite comprehensive on what he/she is not permitted to do as demonstrated by the provision under section 86A of the Local Government Act, quoted in the text box below:

*"86A (1) No member of a local authority shall give orders with regard to any matter under the jurisdiction of that local authority or give instructions to any officer or employee of that local authority.*

*(2) No member of a LA shall, unless so authorised in writing by that LA or a committee thereof- (a) inspect land or premises which that LA has a right or duty to inspect ..... or give orders respecting works which are being carried out by or on behalf of that LA; or (b) engage in correspondence for or on behalf of that LA, particularly with regard to conveying decisions or instructions of that local authority.*

*(3) A member of a LA who contravenes any section of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings."*

From the forgoing statutory provisions, one can observe that councillors in their individual capacities have no direct oversight powers over local appointed officials unless they (councillors) have been specifically authorised in writing by the council or a committee of that council. A councillor risks criminal sanction if he contravenes the requirement that he should not directly engage with the local bureaucrats or attempts to directly supervise council activities. Section 86A (3) of the Local Government Act provides that a councillor who contravenes the provisions forbidding councillors (in their individual capacities) from directly giving orders or instructions to local bureaucrats or service providers "shall be guilty of an offence and shall be liable to a fine shillings ten thousand". Consequently, councillors can only exercise their oversight responsibility within the context of corporate decision of the local authority.

## **4.2 The Practice (Formal and Informal systems) for Local Council Oversight and Accountability**

### ***4.2.1 Citizen Expectations***

In electing local councillors, the electorate has certain expectations from those elected into office which includes the following:

- That the elected councillor will be the channel for their views, needs and preferences into the council decision-making process;
- That the councillor will facilitate the citizens' participation in project identification, planning and monitoring of implementation;
- The elected councillor will championed their cause in the council leading to policies, actions and resource allocation that is responsive to their needs and priorities;
- The councillor will be their watch dog in the council to ensure that their taxes are prudently managed by the appointed officers and public assets are safe guarded.
- That the councillor will keep them informed of the activities and the utilization of LA resources in meeting their identified needs and priorities.

Basically, these are valid expectations in an ideal world. However, in the real world of local governments in Kenya, the expectations may not always be met due to deficiencies in the legislative framework, inadequate capacity, lack of necessary resources and the dynamics of the political environment in which local councillors operate as more fully discussed in the sections below.

#### **4.2.2 Citizens Interaction with Local Councillors and Appointed Officials**

Outside their participation in electing their local councillors, there is no provision in the Local Government Act for involving citizens in the decision-making process of a LA. However, under the provisions in the LASDAP Regulations and Guidelines, issued under the Local Authorities Transfer Fund (LATF) Act, LAs are required to involve the community and other stakeholders in project identification, prioritization and monitoring of implementation. Under those provisions the citizens are involved in selecting the projects/activities to address citizen's needs using the available resource envelope. The present arrangement is inadequate because the citizens and other stakeholders are not involved beyond the selection of projects/activities included in the resource envelope. Further, the responsibility for identifying and inviting the stakeholders to the consultative forums remain that of the local council. Local authority may not always discharge this responsibility diligently.

A study on the impact of the LASDAP process conducted in 2007, has observed that *“The introduction of LATF with LASDAP as a planning tool, has led to the rejuvenation of several LAs and improved services to the citizens. The participatory process has, however, been compromised by Councillors and Chief Officers and the key stakeholders are often excluded. The residents remain apathetic, prioritisation of projects is notional and projects identified through the LASDAP are generally poorly implemented.”*<sup>27</sup>

ALGAK has proposed to the Parliamentary Committee on Local Government that the Local Government Act should be amended, within the context of decentralization, so as to anchor community (citizen's) involvement in all aspects of a local council's financial management process.

In the absence of statutory provision prescribing formal channels for engagement, in the context of service delivery, councillors and citizens have resorted to interacting through informal forums. The forums most commonly used include the following:

- **Personal audience**, where citizens meet councillors on a one to one basis and discuss specific issues of concern. (Unlike members of parliament, who have office facilities at their constituency, councillors do not enjoy such facilities hence such encounters take place at the councillor's residence or place of work);
- **Public 'barazas'** (public meetings), convened by a government administrator (chief) to discuss development issues and other matters of interest to local residents. During such meetings, citizens take the opportunity to air their views on various matters of concern, ranging from development to security;
- **Written or oral representations** by citizens to the LA on issues pertaining to service delivery or other concerns relevant to LA functions.
- **The media**, such as news paper articles and radio and TV talk shows, has increasingly become a popular way for citizens to bring their concerns to the attention of political leaders and the administration both at the local and national level.

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<sup>27</sup> Ministry of Local Government/KLGRP, Study on the Impact of the Local Authority Service Delivery Action Plan, Sept. 2007.

- **Street demonstrations and Mass Action** - driven by frustration where other avenues of ventilating their concerns are obstructed, citizens have resorted to mass action and street demonstrations have become a common phenomenon. They usually degenerate into riots and confrontation with the security apparatus. But the message is sent home loud and clearly that the citizenry is dissatisfied with the performance of their political/appointed officials.
- **Withholding payment of taxes**, such as property rates or business licences because of poor/lack of services. Good examples include the case of Karengata Residents Association who withheld property rates and went to court to restrain the City Council of Nairobi from enforcing collection of property rates from the residents, the business community in the Nairobi industrial area did the same to protest the poor state of roads in their area of operation. It was also reported in the media that a citizen in Meru municipality had sued Meru Municipal Council for damage to his motor vehicle occasioned by the poor condition of the road leading to his residence. He sought an injunction to restrain the council from enforcing collection of property rates from the property owners in his area until the council improved the condition of the road.

During interviews with informants, the following success stories of citizen involvement in service delivery were cited:

1. In 2000/2001, the then Mayor of Mombasa (Hon. Najib Balala) convened a citizen's baraza in a World Bank supported initiative for poverty reduction. During the meeting, citizens challenged local councillors on service delivery and projects undertaken by the council urging that they did not represent their priorities since the council had not consulted them nor involved them in the identification.
2. Malindi Municipal Council has developed a successful citizen's participatory process with the support of German Development Service (DED). The Ministry of Local Government has acknowledged the process as a best practice and granted approval to ALGAK, to replicate the concept in other willing local authorities.
3. The synchronized National Local Authorities Budget day where the chairman of the Finance Committee of every council reads the council's budget to the council and to the members of the public has enhanced citizen's awareness of local council activities. ALGAK proposes that Kenya borrows from the practice in Tanzania where there is a Local Government Day (in regional centres) to show case the activities/services undertaken by local councils.

As discussed above, the law provides no mechanisms for citizens to air their grievances and obtain redress for poor/lack of services provided by either the local council or the central government agents. As a result citizens have resorted to informal channels (discussed above) to seek redress. Occasionally the aggrieved person(s) have resorted to the judicial system for redress as the two cases cited above indicate. In practice this is both an expensive and drawn out process that many members of the community may not afford. However, in cases where the local service provision arrangement involve a user or community based committee such as school management committee, a rural water committee, or a health centre/clinic committee, the community channel their grievances through members of the committee or their councillor who is in most cases an ex-officio member of these local committees. Since the members of these committees are elected by and from the local community, the citizens have more influence on the management of the services through their voting power.

CBOs and NGOs also provide alternative avenues for citizens to voice their concerns and displeasure with service providers. The text box below presents an extract from a story in local news paper as an example of this.

Article appearing in the Daily Nation Newspaper on December 2, 2008 titled “Accountability- teams to monitor leaders’ work”

The Christian Partners Development Agency (a local NGO) has set up community neighbourhood Assemblies in constituencies (in Western Kenya) to audit the performance of MPs and other leaders to ensure improved service delivery..... The NGO which runs a governance and democracy programme has put MPs and Councillors on the spot for failing to deliver on their pledges and being a stumbling block in the quest to teach communities their rights. The NGO Executive Director, Mrs Alice Kirambi, said that communities from the Region were being sensitised on their rights so that they can hold their leaders accountable for their work. So far 70 committees are operational in the four districts and have prepared reports on the progress on the use of government funds and implementation of projects.....The reports touching on corruption, insecurity and poor service delivery had been forwarded to the provincial administration officials and the police for action. “If they fail to act we will go a step further and invite the Kenya anti-corruption Authority to move in and investigate the cases” she said.

*Source: Daily Nation Tuesday December 2, 2008*

#### **4.2.3 Informal oversight mechanisms**

In earlier parts of this report it was observed that a councillor has no direct oversight powers over the appointed officials of the council and that he can only contribute towards the making of corporate decisions by the council or its committees. In view of the limited formal channels for local councillors to exercise oversight over the appointed officials, a variety of informal methods have evolved through which councillors interact with appointed officials and their influence service delivery. These methods include:

- 1) **Informal caucuses** - where councillors and chief officers engage each other on specific issues relating to council activities. In the experience of the author during her tenure as a local authority officer, these informal sessions are used to resolve contentious issues before such matters come for deliberation in formal meetings of the council. However, while this mode of engagement between councillors and appointed officials does serve some useful purpose, it is subject to abuse. For example, cases of councillors and chief officers meeting informally and to allocate council land or houses to themselves or their relatives have been widely reported in the media. The allocation of houses in Woodley Estate in Nairobi is a case in point.
- 2) **Delegations** - It is quite common for local councillors to send delegations to the Minister for Local government to complain about unsatisfactory performance by the appointed officials. More often than not this delegation result in the transfer of chief officers from one local authority to another. It has further been observed in many studies that these transfers do not necessarily translate into improved performance in either the council from which they are transferred or from which they are transferred.
- 3) **Lockouts** - Councillors have also resorted to illegal and crude sanctions for perceived non performance by local bureaucrats such as forcefully ejecting those officers from their offices,

locking them out of council offices or rejecting officers posted to the local authority by the Ministry of Local Government.

#### ***4.2.4 Informal accountability mechanisms***

Other than the provisions for participation in the election of local councillors, the local Government Act is silent as relates to the interaction between local councillors and the citizens they represent. This means that, under the law, the only time a councillor is called to account to his constituents is during campaigns when he is seeking re-election. However, councillors and citizens have found ways to engage each other outside formal channels. These include:

- 1) **Community Mobilization** - Some councillors are actively engaged in community mobilization of their constituents around specific issues of concern in their electoral wards. In the process of so doing, citizens get the opportunity to voice their concerns, express their needs and demand response from the council through their councillor. Also the councillor gets the opportunity to explain the citizens what the council is doing to respond to previously communicated needs or preferences. For example, a councillor from Municipal Council of Meru, who is committed to raising the level of education in his electoral ward, has been mobilizing his constituents to raise funds for educating children who qualify to go to university from needy families. The fund raiser forum has been used as platform to engage the citizens.
- 2) **Social Gatherings** - During social gatherings such as weddings, funerals, cultural events, parents meetings in local school etc, it is a common practice for the local councillor to be given an opportunity to address such gatherings. They take this opportunity to inform the community about the activities being undertaken by the council.
- 3) **Public “Barazas”** – These are public meetings convened by the provincial administration (local Chief) to discuss developmental, security issues and other concerns in the community afford the local councillor the opportunity to interact with his constituents and other stakeholders such as NGOs, CBOs, development partners etc.
- 4) **“Meet The People” Meetings** - In 1997, in the context of expanding the democratic space in Kenya, the Public Order Act was amended whereby political leaders, including local councillors, were permitted to hold “meet the people” meetings. Previously, a permit from the local district administrator was required to hold any public meeting. Now a councillor can lawfully call a meeting of his constituents without first having to get a permit for it. He is also not required to notify the regulating authority (the police) before holding such a meeting. However, probably due to ignorance of the law, this avenue of engagement with citizens is rarely used.
- 5) **The Media** - In recent past, the media has played a key role in facilitating engagement between the political leaders (local and national) and the citizens. There has been widespread use of Radio and TV talk shows to highlight citizens concern on service delivery and use of local authority resources. In these talk shows political leaders are invited for live interviews and members of the public are allowed to call in with questions on matters relevant to local council operations. For example, in a recent live interview on vernacular radio station, a Nairobi Councillor voiced his frustration with the City Council’s administration on the irregular allocation of stalls by council officers in a space reserved for a vehicle parking lot around the recently constructed Muthurwa Market in his electoral ward. Also, both local and national newspapers have also often carried articles written by either councillors or members of the public highlighting concerns on service delivery and resource mismanagement in local councils as

evidenced by the following quote from an article in a rural news paper titled “*The County Council of Meru Central- a tax payer’s liability*”<sup>28</sup> written by a councillor from Meru County Council:

*“The County Council is run by a cartel. Whereas the councillor is supposed to be a policy maker, whose policies are implemented by the staff, he has been reduced to a mere spectator in what he little understands. The council is run by employees who see the councillors as meddlers..... The numerous trips by top officials, which draw huge allowances is a quick way of making money at the council. It will be most difficult to ascertain how much these officers carry away in a month in allowances due to the secrecy involved.....”*

## 6) Association of Local Government Authorities of Kenya (ALGAK)

The Association of Local Government Authorities of Kenya (ALGAK) is a voluntary membership organization that serves the interests of local authorities in Kenya. The association was established in 1959 by local authorities to facilitate the development of an effective and viable local government system and is currently operating under its revised constitution adopted in the year 2000. The association is registered as a society under the Society’s Act of the Laws of Kenya. However the association is recognized by neither the local Government Act nor the Constitution unlike the case of other local government associations in the region like ALAT in Tanzania, RALGA in Rwanda and SALGA in South Africa which are recognised in the constitutions of their countries. In the past the government viewed the Association with a lot of suspicion as a political lobby group, but this seems to have changed and in recent past the Association enjoys a healthy working relationship with the MoLG and the government in general. The Association is consulted on matters relating to LA and is involved in committees/forums where decisions affecting LAs are made and their input into policy documents or debate is regularly sought.

The association is funded by annual membership contributions and is mandated by the constitution (article 3) and the strategic plan<sup>29</sup> to:

- Lobby the Government and other stakeholders for the development of autonomous and sustainable local government system in Kenya;
- Advocate for good governance in member local authorities;
- Build the capacity of ALGAK members to maintain sustainable local government system in Kenya;
- Provide other services to members as needed from time to time and within the association’s resource availability these include development of management tools e.g. the councillors handbook, the Treasurers’ Manual, conducting policy makers training, facilitating members participation in local, regional and international forums etc

The association is currently involved in the review of the Local Government Act draft bill<sup>30</sup>. The ALGAK’s contribution in the draft bill include:

<sup>28</sup> South Imenti News, issue No 002, October-December 2008.

<sup>29</sup> Association of local Government authorities of Kenya (ALGAK) Strategic Plan 2007-2011

<sup>30</sup> Ministry of Local government (2008): Laws of Kenya; Preliminary bill on the Local Government Act Chapter 265

- Election of mayors and chairpersons to be done by electorate during the time of general election.
- Terms of office of Mayors and chairpersons to be five years and their allowances to be commensurate to their duties.
- Councillors allowances to be drawn from consolidated fund or from increased government grants. for example LATF could be increased upwards to 20% of the income tax.
- Mayors and Chairpersons should be vested with executive powers within their jurisdiction to enable them manage LAs effectively and efficiently.
- A Local government service commission should be established to deal with human resources matters.
- The enactment of a financing Act to address the financing of local authorities' programmes and activities including LAs financial sustainability. For example revamping of the dormant local government loans authority or established local government bank.
- A Local government training institution be established to address capacity building needs of councillors and officers.
- Establish a clear mechanism of LAs debt resolution including underwriting of these debts.

It is expected that once the above concerns and others imbedded in the draft are addressed, management and service delivery performance of LAs will improve.

In addition to providing a forum for engaging the government and contributing to the local government agenda and debate, ALGAK provides local councillors an opportunity to build their capacity to understand their role in the LA and to effectively discharge their oversight mandates. Through the various ALGAK committees and the annual general meeting, councillors get the opportunity to learn from each other and to collectively raise matters of concern.

The Association is a rich source of information for councillors, regarding local government operations local regionally and internationally through its network which include UN-HABITAT, Cities Alliance, South African Local government Association (SALGA); the Commonwealth Local government Forum (CLGF); United Cities of Local Government (UCLG); United Cities and Local Governments of Africa (UCLGA) and East African Local Government Association (EALGA) among others.

## 5. ROLE OF LOCAL COUNCILS IN PUBLIC FINANCIAL MANAGEMENT

The chapter explores the role and involvement of the councillors in public financial management processes with specific reference to:

- planning and budgeting
- budget execution
- auditing
- Human Resource Management
- procurement and contract implementation

The chapter is intended to evaluate the extent to which councillors' involvement in the public financial management processes influence resource allocation/utilisation in response to citizen preferences and priorities and leads to improved financial management practices.

The Ministry of Local Government is charged with the responsibility of supporting and supervising Local Authorities in carrying out their mandated functions, with special attention to financial management procedures and operations in LAs. Pursuant to the powers vested in the Minister, he issued the Local Authority Financial Management Regulation (LAFMR), 2007, revising the earlier regulations issued in 1986. The Regulations provides the benchmark against which MoLG measures the financial management systems and practices of Local Authorities, as well as the performance of the Local Authorities' management. The stated purpose of the Regulations is *"to provide the principles and procedures through which those working in Local Authorities should administer the funds entrusted to them in a manner that is standardised across the spectrum of Local Authorities, and ensure that all funds due are collected, applied according to budgetary provision and properly recorded and reported on. Through this process, the Local Authorities will fulfil their duty to the citizens to use well and account for the funds that they have received"*<sup>31</sup>.

The LAFMR is the principal regulatory and operational document governing the financial management function in LAs. It provides the roles and responsibilities for appointed, elected officials of the LA and other actors involved in LA financial management as well as the required operational procedures. In the sections below we examine the involvement of local councillors in various aspects of the LA financial management function.

### 5.1 Councillors Involvement in Planning and Budgeting

#### 5.1.1 Planning

The decision-making power in LAs is vested in the councillors corporately as the policy-makers. Councillors make decisions that guide development planning, priority setting, allocation and management of resources and the selection, implementation and monitoring of projects/programmes. As discussed earlier these decisions are made in the context of full council or committee meeting deliberations. However, outside the council and committee meetings, no procedures are provided, either in law or administratively, to guide the councillors on how to effectively execute these powers to achieve the goal of responding to their constituents needs and priorities.

The LASDAP Regulations issued under the LATF Act are the only planning tool that provides the councillor with a formal avenue for engaging in planning, project prioritisation, resource allocation, implementation and monitoring of development. Within the context of the LASDAP process, the local

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<sup>31</sup> Ministry of Local Government, Local Authority Financial Management Regulations, 2007.

Councillor plays a pivotal role of in mobilising his constituents and steering the LASDAP preparation process.

The Local Authority Transfer Fund (LATF) derives its mandate from the Local Authority Transfer Fund (LATF) Act of 1998. The Act was enacted to enable the Central Government to set aside annually monies calculated at 5% of national annual income tax to supplement efforts by local authorities to provide services as required by the Local Government Act. LATF is a block grant that transfers 5% of national income tax revenue to Local Authorities. LATF is distributed as follows: -

- 1.5 million to each local authority
- 60% in proportion to the total population of each local authority
- 40% in proportion to the urban population of each local authority

The allocation criteria exclude some major considerations such as poverty index, the spatial coverage of the local authority/area of jurisdiction as well as regional cost variations. The purpose of LATF is to supplement local government revenue so as to enhance their service delivery capacity. LATF is expected to lead to improved local services delivery; streamlined financial management and debt reduction in LAs. In this regards, the fund's intention within the local authorities reform programme is to serve as a policy instrument for transforming local authorities into effective, transparent and accountable services delivery institutions. The main conditionalities for accessing LATF include the following:

- 60% is allocated for service delivery and main condition is an approved LASDAP and 40% is allotted for financial management performance improvement;
- 60% of the service delivery component of the LATF allocation must be spent on capital projects in each local authority. (This means that a local authority must spend an amount equivalent to not less than 36% of the total LATF annual allocation on capital projects).
- Present to KLGPR a soft copy of the approved LA budget
- Present a debt reduction plan
- Present approved LASDAP
- Timely submission of annual accounts for audit by the Controller and auditor General.

The LATF advisory committee monitors and guides the operations of the fund to ensure that the provisions and the requirements in the Act and Regulations are followed by all local authorities. Failure to comply by LAs attracts penalties as described in the legal notice No. 22 of April, 2004. Under that legal notice LAs can loose 15%-40% and in a worse scenario 100% of the LATF allocation<sup>32</sup>. The LATF Service delivery and performance conditionality and the penalties form part of the accountability checks on local authorities' compliance to LATF Act. The other measures are the publication of the LATF allocations by the Ministry of Local Government and the LA budgets by the local authorities.

Further to this, the requirement under LATF for LAs to make available information on their performance (including LATF allocations, previous year's expenditure and revenue out turns, the LASDAP and service delivery information) has enhanced the information available to the public. This has contributed to an increase in the level of community participation in identifying and prioritising of development activities. It is hoped that with time this will improve the citizens' ability to hold the elected and

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<sup>32</sup> It has been observed that although the majority of LAs meet these access conditions, in practice the fund may not be achieving its objective of improving service delivery. This has been partly attributed to the allocation of the funds to the various projects/activities. It is common practice to allocate the service delivery component of the funds equally between all the electoral wards. This leads to a fragmentation of the funds resulting in many small projects which undermines the over all impact of the fund on service delivery.

appointed officials accountable for the allocation and management of LA resources. On the hand, all reports required to access LATF funds (including the budgets, financial statements, revenue enhancement plans, debt resolution plans and the LASDAP) have to be presented to the full council for approval by passing the necessary council resolution. This presentation to the full council gives the councillors access to the relevant information that enhances their ability to hold the officers accountable. It is envisaged that this exposure will also equip the councillors with the necessary information to effectively provide feedback to their constituents on the performance of the LA.

After five years of LASDAP implementation, an impact study conducted in 2007 observed that “*whilst there are concerns over the quality of participation, the LAs legitimately argue that the introduction of LASDAP has enhanced citizen participation and provided the tools for more equitable and participatory allocation of resources from the LATF..... The introduction of LATF with LASDAP as a planning tool, has led to the rejuvenation of several LAs and improved services to the citizens. The participatory process has, however, been compromised by Councillors and Chief Officers and the key stakeholders are often excluded. The residents remain apathetic, prioritisation of projects is notional and projects identified through the LASDAP are generally poorly implemented*”<sup>33</sup>.

This has been partly attributed to the lack of an enabling legal framework that would ensure that the LASDAP process is integrated into the LA planning process and the engagement between the parties given a legally binding framework.

### **5.1.2 Budgeting**

The Council is responsible for the overall management of the financial affairs of the local authority. In this regard, the Council is required by law to establish a Finance Committee which is charged with the responsibility of overseeing, directing and supervising the financial management and accounting activities of the appointed officers. Additionally, every council is required to establish a separate Audit Committee for the purpose of receiving and evaluating independent appraisal reports and findings by the Internal Auditor, to oversee the activities and functions of the Internal Auditor and to receive, review audit report of the C&AG and to ensure that audit queries in the report of the C&AG are responded to by the officers concerned. If the council has not established the audit committee, then the full council becomes the audit committee. The Minister has also mandated the council to review the LAFMR from time to time and make such recommendations as the council considers desirable to the Minister.

The involvement of the local councillors in the budgeting process of the LA is only in the context of finance and audit committee deliberations. In this context, the main role of councillors as members of the finance committee is to scrutinise and recommend the annual plan and budget to full council for approval. In this regard, The Treasurer is required to prepare and submit (not later than 15<sup>th</sup> March of every year), a consolidated planning statements and annual budget estimates to the Finance Committee, taking into account the financial plans and budget estimates of the various committees and departments for the budget year, and including programmes, services and activities financed through both the recurrent budget and the Capital Programme, for consideration by the Finance Committee. The Treasurer should prepare and attach to the budget all forms required by the LATF Act and Regulations.

In addition to the presenting the annual financial budget to the finance committee the Treasure is required under the LAFMR to furnish the councillors with the following further details to facilitate their review of the annual budget:

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<sup>33</sup> Study on the Impact of the Local authority Service Delivery Action Plan,2007

- an assessment of the local situation anticipated for the year ahead;
- existing and future needs of communities residing in the geographical area administered by the local authority;
- goals, objectives and priorities of the Council, its departments and major programmes, with quantitative measures where possible;
- work programmes outlining recurrent services, activities, capital projects and expenditures to be accomplished by the Council, in order to achieve set objectives;
- results to be achieved as a result of carrying out the planned programmes, with quantitative measures where possible.

This information is intended to assist the councillors in assessing the extent to which the council policies, formulated by the councillors, have been translated into plans, programmes and activities which address the needs of the citizenry. It also provides the framework for evaluating the performance of the appointed officials in implementing the planned activities and in budget execution. On a quarterly basis the councillors receive progress and performance reports from heads of departments. They review those reports and make necessary recommendations for action. As discussed earlier in this report, councillors may also present written motions to the council which may include matters pertaining to LA financial management or they may ask questions touching on financial matters, and the appointed officials are under obligation to respond to such questions including providing documentary evidence to substantiate such response.

The LG Act provides for the public access to the budget information under section 212 (8), which states that the LA **may** publish a summary of the approved budget in a local newspaper or in any other manner, as they deem fit, and avail copies to interested citizens at a fee fixed by the LA. This is neither a requirement nor an obligation on the LA it is left to its discretion.

It has been observed in previous studies and confirmed by interviews during this study that the format of budgets and most financial reports are complex schedules and tables of figures that intimidate most of the target audience. Experience has also shown that most councillors lack the necessary technical capacity to effectively understand and interpret budgetary information. This was further affirmed during an interview with the Secretary General of the Association of Local Government Authorities of Kenya (ALGAK).

It is important therefore, to make financial information available to the target audience in a more simplified and user friendly format. The budget should contain information on the purpose of each operation, the resources to be applied and a measure of expected outputs. This is very important especially in visible sectors/services as tax payers can relate their taxes to tangible services. Use of charts and diagrams and percentages would go a long way in helping to get the message across about key indicators of performance. For example using percentages to analyse the budget figures can help the reader to gain some useful information more easily. For example providing summaries such as these below: (hypothetical example)

- local revenues make up 73% of total revenues and has been growing;
- Personnel and administration takes the lions share with 70.3% of resources;
- Community Services, which includes Youth, Women and Cultural Affairs is allocated only 0.8% resources;
- Environment received less than 50% of their budgetary allocation;
- development budget is only 13 % of the total expenditure;
- Procurement of Vehicles accounted for 35% of the LATF allocation etc.

This type of information would enable Councillors, and the average citizen to effectively participate in the resource allocation decision making process and champion for the need for re-allocations from an informed position.

The ongoing local government reforms have made big strides in improving access to LA financial information with a view to enhancing transparency and accountability. Over the past years, the achievements of Kenya Local Government Reform Programme (KLGRP) have contributed to re-building elementary credibility into Local Authorities by supporting the establishment of more responsive planning systems, and greater transparency and accountability. The major achievements of the KLGRP to-date include:

- The rationalisation and consolidation of various businesses licences into the single business permit,
- the introduction and institutionalisation of the Local Authority Transfer Fund (LATF), a performance incentivised discretionary grant for LAs, which has lead to the timely production of financial statements and annual accounts (for the first time in many years), debt reduction plans and revenue enhancement plans.
- the introduction of the Local Authorities Service Delivery Action Plans (LASDAP), to promote community participation in local development and service delivery (to energise the process and promote institutionalisation it has been made an access criterion for LATF),
- the development of the Local Authority Integrated Financial Operations Management System (LAIFOMS),.

The major platform for accessing detailed financial information for councillors is the information required for LATF disbursements. LAs are required to submit:

- a) A statement of actual receipts, expenditures and bank balances.
- b) A statement of debtors and creditors as specified in designed formats, showing how the LAs have complied with previous plans for debt payments and with certificates and signatures from the major creditors (clearance letter) on how the debt will be settled for the ongoing year. All payments to statutory creditors (PAYE, NSSF, PF, SF, NHIF) must be paid in the year they are due.
- c) An abstract of the LA accounts.
- d) A revenue enhancement plan for the coming FY.
- e) A service delivery plan (LASDAP), produced in a participatory manner described by LATF procedures with a three year rolling programme of projects and activities linked to the budget. (Clear procedures for involvement of citizens in the planning process as elaborated under the LATF).

Table 5.1 below presents an example of the typical performance requirements to qualify for FY 2006/07 LATF allocation.

**Table 5.1: LATF Performance Requirements for the FY 2006/07**

Submission Date	Documents Required
30 <sup>th</sup> September 2006	<ol style="list-style-type: none"> <li>1. A statement of receipts, payments and balances for the FY 2005/2006.</li> <li>2. A statement of debtors and creditors for the FY 2005/2006 with an explanation on the performance against previously signed debt reduction plan.</li> </ol>
<b>30<sup>th</sup> November 2006</b>	Approved Local Authority Service Delivery Action Plan (LASDAP) documenting that LA conducted a participatory planning process and developed a 3-year rolling program of projects and activities- the first year of which was to be incorporated into the next year's budget.
<b>31<sup>st</sup> December 2006</b>	Final accounts for the FY 2005/2006 submitted to the Controller and Auditor general for audit with copies to the Ministry of local Government and Ministry of Finance.
<b>28<sup>th</sup> February 2007</b>	A revenue enhancement plan (REP) outlining how the LA was going to improve its revenue mobilization during the FY 2007/2008.

Source: The LATF Annual Report FY 2006-2007 page 23-24

Before this information is submitted to MoLG it has to be presented to the Council for review and approval through a resolution of the Council. This affords the Councillors ample opportunity to exercise their oversight role and to hold the appointed officers accountable.

While information flow to the policy makers has improved, thus creating a supportive environment for local council oversight and accountability, the practice on the ground indicates mixed results. The institutional and technical capacities in LAs remain weak. The institutional arrangements for citizen participation is inadequate to ensure a comprehensive and all inclusive participation of citizens and the institutional capacity for MoLG to effectively supervise and monitor compliance with the requirements is also weak. At the LA level, there is lack of technical capacity to ensure timely and accurate preparation and dissemination of the required information. As discussed above the form of presenting the information may also presented an impediment for Councillors with modest levels of education. This adversely affects the effectiveness of local council oversight by the elected councillors.

Capacity building interventions designed to address these bottle necks are necessary in order to realise the objective of improved local council oversight, i.e. influencing decisions on resource allocation to target identified citizen needs and preferences and provide oversight on the management of LA resources by the appointed officials.

## 5.2 Involvement of Councillors in Audit

As members of the Audit committee Councillors are responsible for overseeing matters concerning external and internal audit and to receive and deliberate on reports from the internal and external auditors. Their oversight responsibility involves the following tasks:-

- reviewing the systems established to ensure sound public financial management and internal controls, as well as compliance with policies, laws, regulations procedures, plans, and ethics with a view to enhancing them in order to improve efficiency, transparency and accountability;
- approving the Council's audit policy, and the internal audit strategy and annual work plans;
- monitoring progress in the implementation of the internal audit annual work plan;  
Considering the objectives and scope of any work to be undertaken by the Internal Auditor to ensure that there are no conflicts of interest and that the independence of the Internal Auditor is not compromised;
- reviewing audit issues, findings and recommendations of the external auditors, the Local Government Inspectors, the Controller and Auditor-General and the Internal Auditor and recommending to the Council, through the Clerk, necessary corrective or preventive action;
- resolving unsettled and unimplemented audit queries and recommendations;
- initiating special audits and investigations on any allegations, concerns and complaints regarding corruption, lack of accountability and transparency in any department or establishment of the Council.

The involvement of local Councillors in the audit function in the LA, is a measure intended to strength their oversight role. It is also one of the mechanisms through which local councillors can apply sanctions for poor performance or mismanagement of LA resources by appointed officers. The degree of effectiveness in exercising this power depends largely on the effectiveness of the internal audit unit, the timely preparation the annual financial accounts as well as the timeliness of external audits. It is worth to note that in recent past the preparation of final accounts by LAs has improved as result of the requirement for accessing LATF and so as the audit by the office of C&AG. This puts a vital tool in the hands of the councillors for holding appointed officials accountable.

### **5.3 Involvement of Councillors in Human Resource Management**

The capacity of the public service to attract, retain and adequately motivate its personnel and build the requisite human resource capabilities is a prerequisite to improved service delivery. Legally, local authority officers are employees of a specific LA and are under the authority of the governing body (Council) of the local authority that should have the power to hire and fire them. However, in 1984 the powers of appointment and discipline of officers was transferred from Councils to the Public Service Commission through the Local Authority Officers Regulations, 1984.

As a result, LA personnel were divided into two categories, the management cadre made up of senior officers in salary scale 1-9 and the supervisory and service delivery cadre comprising of staff in salary scales 10-25. Positions in scales 1-9 (this cadre is made up of all managerial, technical and professional staff holding the positions of heads of department, deputies and all supervisory positions) are filled through a recruitment process that is led by the Public Service Commission (PSC) acting on behalf of the LA. The recruitment process for position in scale 10-25 is managed by the councillors and is usually highly politicised. This cadre of staff is made up of non-technical/professional personnel mainly clerks, artisans, administrative support, drivers, and other frontline service workers (eg.Sewerage attendants, market attendants, road work teams, water meter readers, parks attendants etc).Councillors view this as an opportunity to reward their political supporters. This has led to a bloated staff complement in most LAs. The recruitment process is conducted by the councillors after advertisement of the vacancies locally. The disciplinary proceedings for this cadre of staff are

spearheaded by the County/Town Clerk after recommendation from the relevant head of department. After investigations and response from the concerned employee, the Clerk makes a recommendation to the council for decision on the appropriate punishment including dismissal. However, the employee has a right to appeal against the decision to the PSC. On being presented with details of the complaint, the results of the investigation and the employee's answer to the charges, the PS reviews the case and may uphold or reject the council's decision in their ruling.

In the recruitment of the senior officers, the involvement of the Councillors is limited to the identification of the need for a specific professional/technical expertise in the council, approving the creation of the relevant position in the LA establishment and approving the request to PSC to go ahead and recruit an appropriately qualified person. However, this process is also subject to approval by MoLG (both the creation of position and the request for recruitment).

Subsequent to appointment, any deployment of senior staff from one LA to another is undertaken by MoLG often without consulting the respective councils. Rampant transfers of LA staff by MoLG have resulted in a number of adverse impacts. It has reduced staff morale and generated a sense of job insecurity whose spin-off has been a dented public image of the LAs as an employer hence making it difficult for them to attract and retain qualified personnel. The transfers also undermine service delivery in the affected LAs as the technical and professional leadership provided by the senior offices is frequently interrupted often for extended periods. It is very common for persons not suitably qualified to be appointed to act in senior positions for long periods awaiting the filling of the vacant position. This centralised control of LA HR management is also a source of frustration to Councillors as they have to contend with a process where their critical resource in service delivery is out of their control. These frustrations have been vented out in actions such as locking out senior officers who are perceived to be underperforming or mismanaging LA resources or rejecting senior officers deployed to their council by MoLG.

This situation has strong implications on the ability of local Councillors to hold appointed officers accountable for the prudent management of LA resources and efficient service delivery that is guided by the policies that they make and is responsive to citizens needs.

LAs continue to be plagued by wrangles between councillors and appointed officers ostensibly over the delineation of roles and responsibilities of the two parties. Councillors accusing officers of not respecting their powers and officers accusing the councillors of meddling in administrative matters. The intention of the Local Authority Officers Regulations of 1984 was to protect officers from harassment by councillors and thereby attract and retain qualified professionals into local government service. However, in practice this has not worked. Councillors continue to reject and lock out chief officers. Among the reasons given as to why councillors lock out officers was objection of a particular officer's transfer to their LA (on the basis that they are being transferred to their LA as a disciplinary measure), officers' refusal to support or condone councillors' excesses and lack or inadequate education on the part of the councillors on their role in the council.

The system of performance contract being implemented in the civil service is yet to be fully introduced in the local government service. Council Chairmen, Mayors and chairmen of finance committees have signed performance contracts with the Minister, committing local authorities to deliver on their LASDAP. Ideally, this should be cascaded to the County /Town Clerks, the Chief Officer and other supervisory officers, however this has not happened yet, it is said to be in the pipeline. ALGAK is of the view that while performance contracts can be used to improve efficiency and productivity of council officers, these contracts cannot abrogate the collective bargaining agreement for local authority employees. The Association has proposed an annual award, called "Local Authority of the Year Award" (LOYA) in

recognition of the best performing local authority as incentive for improving performance and as platform for image building for LAs.

#### **5.4 Involvement of Councillors in Procurement and Contract implementation**

Procurement is the major avenue for LA expenditure outside personnel expenses. Procurement refers to the acquisition of “goods, works or services” and refers to all functions related to “obtaining” such goods, works or services. The functions include the description of requirements as a beginning activity and the award of contracts as a result.

The Public Procurement and Disposal Act (PPA), 2005 and the Public Procurement and Disposal Regulations 2006, created an internal structure for undertaking public procurement that effectively removed local councillors from any direct involvement in the procurement process. Prior to the enactment of the PPA, councillors were members of the LA tender committee (a sub-committee of the finance Committee) that reviewed tenders/proposals, selected the successful tender/proposal and awarded procurement contracts.

The PPA requires all LAs as public procurement entities to establish a Tender Committee, a Procurement Committee, an Evaluation Committee and a procurement unit for the purpose of managing the procurement function in the council. The tender committee is chaired by the Town/County Clerk except in the case of city of Nairobi, Mombasa and Kisumu where the Clerk can appoint another head of department as the Chairperson. Each TC should have not less than 5 members drawn from heads of department, with the head of the PU as the secretary. The Procurement committee is required to have 5 members including a chairperson appointed by the Clerk from among the heads of department, the head finance and other three heads of department appointed by the Clerk. The Evaluation Committee (EC) is an ad hoc committee established to carry out technical and financial evaluation of the tenders or quotations falling within the threshold of the TC. The EC has three members appointed by the Clerk on the recommendation of head of the procurement unit. The TC and the PC have the same function, namely to process and award procurement contracts. The only difference is the threshold allocated to each by the Regulations. Generally, the TC has the higher threshold e.g. international and national open tenders and PC awards local closed tenders or quotations.

The procurement structure and entities referred to above apply to all procurement entities, i.e. all public bodies including LAs. The Act and the Regulations require that no procurement should be initiated unless funds are provided for in the budget of the procurement entity. The role of LAs is to allocate funds through the prescribed budgeting process for projects or activities it wishes to undertake and prepare a procurement plan to indicate when and how the procurement budget will be implemented.

There are no express provisions in the Act or in the Regulations on the role of a LA council (as the governing body) in the procurement process. However, as provided under the Local Government Act, departmental heads are required to table executive reports before appropriate committee(s) of the LA, such reports would include procurements undertaken during the period under review. The council may not be able to influence the procurement process, but it can ensure that procurements are within the council's budget and monitor implementation of council projects or activities.

Ideally this means that the councillors are now in a better position to provide oversight on the procurement function as they are no longer operationally involved in the process. In this regard, councillors review and approve annual procurement plans for the departments in the LA and monitor the performance against these plans through the quarterly procurement reports presented to them in the finance committee.

According to information received during interviews, the councillors are disgruntled with the current arrangement because they feel sidelined from an important function through which substantial resources of the council are expended. This has further polarised relations between chief officers and councillors.

## 6. THE OVERSIGHT ROLE OF LOCAL COUNCILS IN SERVICE DELIVERY

The chapter examines the oversight role of local councils in service delivery with specific reference to:

- Education;
- Primary health care;
- Agriculture extension; and
- Water and sanitation.

### 6.1 Local Level Service Delivery in Education

The policy Mission of the education sector is to promote, provide and coordinate lifelong education and training for sustainable national development. The Government's strategy in primary education is to work through strong partnership with all stakeholders, including communities, civil society, community based organisations (CBOs), NGOs, religious organisations, other government institutions, development partners and the private sector. The strategy focuses on improved transparency, accountability, decentralisation, team work and performance based management. The sector ministries are, therefore, responsible for promoting, facilitating, formulating policy guidelines on education, training and coordinating the development of the necessary human resources through education, training, research, science and technology, leaving the operations largely to the other partners.

At the local level, the service delivery functions are divided between the district education office (the deconcentrated level of the Ministry of Education), the District Education Boards (DEBs) and the School Management Committees (SMCs)<sup>34</sup> with Local Authorities playing a very minimal role except in the case of the 7 older municipalities (Nairobi, Mombasa, Kisumu, Nakuru, Kitale, Eldoret and Thika) that have a more substantial role in the provision of primary and secondary education. Most of the operations take place at the district level through the district education office and the District Education Board and at the school level coordinated by the SMCs. The table below summaries the division of roles and responsibilities for the delivery of education services at the local level.

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<sup>34</sup> A school Management Committee normally consists of 2 members nominated from the DEB, 2 from the sponsor/founder organisation, 8 representatives from the parents representing the various grades. And the head teacher who is the secretary of the SMC. Although the SMCs have representatives from the parents and the sponsors, the head teachers in practise have a strong role as secretary of the SMCs based on their in-depth knowledge about the functioning of the school and the education system in general.

**Table 6.1 Summary roles and responsibilities for the delivery of education services at the local level.**

Ministry of Ed HQ	District Ed Office and DE Board	Local Authority	School Management Committees
<ul style="list-style-type: none"> <li>• Policy formulation</li> <li>• setting standards/norms on education,</li> <li>• training and coordinating the development of the necessary human resources through, hiring and disciplinary measures for teachers through the TSC</li> <li>• Managing national examinations</li> <li>• Supervision, Inspection and monitoring</li> <li>• Funding through the capitation grant and CDF</li> </ul>	<ul style="list-style-type: none"> <li>• Core planning unit for primary education</li> <li>• coordinates recruitment of teachers and staffing of schools in the district.</li> <li>• makes recommendations for disciplinary measures for teachers to TSC</li> <li>• Support the SMCs through the engineer's / works department for design and bill of quantity Monitoring and inspection of school construction</li> </ul>	<ul style="list-style-type: none"> <li>• Development, operation and maintenance of schools (in the case of the 7 Municipalities</li> <li>• Limited monitoring and supervision role through the representation in the DEB</li> <li>• Only involved in small capital projects funded by LATF in the school construction/equipment and provision of bursaries</li> </ul>	<ul style="list-style-type: none"> <li>• Development, operation and maintenance of schools;</li> <li>• Management of funds received from MoE HQ, community, LA (LATF), CDF or other source</li> <li>• procurement of materials and contractors for the school</li> <li>• day to day monitoring and supervision of the running of the school</li> </ul>

It is evident from the above table that with the exception of 7 municipalities, LAs have a minimal role in the delivery of services in education. Their role to a large extent is limited to funding of small capital projects from the LATF and provision of bursaries to needy children. Their role in planning, operations, supervision and monitoring of the service delivery in education is limited to their representation in the District Education Board that is charged with the overall responsibility for coordinating, supervising and regulating the primary education in a district.

Since the introduction of Free Primary Education (FPE), most of the local service delivery is financed from the government budget supplemented by on-budget and off-budget project support from development partners. GOK funding comprises of teacher salaries, school construction, capitation grant, school feeding programme, the provincial and district administration offices among others. Local authorities (LAs) are an insignificant source of funding for the service delivery at the local level.

A recent study on decentralization, governance and service delivery in East Africa<sup>35</sup>, in assessing the impact of decentralized mode of service delivery in education, concludes that “the system is a hybrid model with mixed service delivery arrangements” and that, “very limited functions have been decentralized to the LAs, and these changes have focused on the relationship between the centre and the service delivery units, i.e. the primary schools.”

<sup>35</sup> Decentralisation, Governance and Service Delivery in East Africa, **KENYA Report** by Jesper Steffensen, Harriet Naitore and Gerhard van 't Land

## **6.2 Local Level Service Delivery in Health**

The main sector strategy in delivering health services in Kenya is the implementation of the Kenya Essential Package for Health (KEPH). A key feature of KEPH is the integration of community level activities into the formal health delivery system and the functional reclassification of all the five levels of facilities in the referral systems based on the type and quality of service they offer irrespective of whether they are owned and operated by the government or other health care service providers (such as Faith Based Organisations, NGOs, private sector or local authorities).

The basic health service delivery (primary health care) is primarily the responsibility of districts managed by District Health Management Teams (DHMTs). The Ministry of Health Headquarters is responsible for policy formulation, setting of standards/norms, resource mobilization, monitoring and evaluation, technical support, oversight of national referral hospitals and regulation while the provincial level is responsible for overseeing provincial hospitals and supervision and monitoring of districts. The districts are responsible for the day-to-day management of health services in the district and managing the resources that are received from the government and from cost sharing.

However, Local authorities have some role in the health service delivery, albeit limited to the bigger municipalities, i.e. Nairobi, Mombasa, Kisumu, Nakuru, Eldoret, Thika and Kitale. Some of these Municipalities own operate and manage health care facilities, mainly dispensaries and health centres and in the case of Nairobi a fully fledged hospital. Other LAs' participation in the delivery of health services is limited to the provision of the physical infrastructure (buildings and furniture) for dispensaries and health centres with the central government providing the medical personnel, equipment and supplies. A Health Board established recently, for Nairobi area, is charged with the responsibility of overseeing all health service delivery, provided by both Ministry of Health and the Nairobi City Council.

Due to their comparatively limited role in the delivery of health care services, LAs are considered as any other actor working within the sector in the context decentralised service delivery that is primarily through 'delegation' or 'de-concentration' rather than devolution.

As such local councillors have very limited oversight role in the provision of health care services and very remote interaction with the service providers as the service provision is outside the LA structure.

## **6.3 Local Service Delivery – Agricultural Extension**

The role of LAs in local service delivery in agriculture (in the form of agricultural extension) pre-dates independence. Prior to the country's independence, the African District Councils (the Local Authorities then), employed extension staff who were primarily engaged in promoting the introduction of cash crops such as tea, coffee, pyrethrum, improved breeds of daily cattle and hybrid varieties of maize. The extension officer's role was both advisory and regulatory. They made farm visits to advise/instruct farmers on various aspects of farming and livestock keeping as well as to inspect compliance with various requirements as stipulated by the government i.e. the 'dos' and 'don'ts'. After independence, the District African Councils were replaced by county Councils who continued the agricultural extension services. With the transfer of functions from Local Authorities to Central Government in 1969, the agricultural extension function was transferred to the then Ministry of Agriculture and Livestock and the county council extension staff were gradually absorbed by the ministry.

The Kenya report on the study on decentralisation, governance and service delivery in East Africa, observed that in general, the agriculture sector policy documents have very little attention for Local Governments per sé (as decentralisation is largely dealt with as delegation and/or de-concentration within the sector). The only exception is the National Agriculture and Livestock Development Programme Implementation Framework (NALEP-IF), 2001 which describes the role of LG as follows:

*“Local authorities under the Local Government Act have a broad mandate over the infrastructure in the areas under their jurisdiction. For example, they exercise control on the financing and construction of roads, water supplies and produce markets. They also levy charges on selected farm produce being transported from their districts or entering their local markets. They also play a role in the enforcement of certain regulations that may be of importance to agriculture. Additionally, they are important in environmental management either through their waste treatment and disposal functions or through their enforcement of relevant regulations. They can play important roles in the decentralization of extension services provided they accept to employ the needed staff. They can be important in ensuring accountability to farmers and others in the provision of services, if they play their rightful roles in educating farmers and acting as watchdogs”.*

In later documents local Authorities are however, not explicitly mentioned, and the sector has started to create its own governance structures. These structures are based on the deconcentrated units of the Line ministries and do not include local government units, (specifically the County Councils) as is illustrated in the text box below.

**Text Box 1: Agricultural Staff Nyando District**

*Nyando district has 5 divisions and 79 locations – The office of the DAO has a total of 59 members of staff, 12 of which are based at the district level, including 5 Subject Matter Specialists (SMS). Each of the divisions has between 7-11 members of staff, including the Frontline Extension Workers. In total there are 22 FEWs, hence many locations are ‘vacant’*

*Source: Local Level Service Delivery, Decentralisation and Governance for the Sectors of Agriculture, Education and Health; A Comparative Study of the Situation in Uganda, Kenya and Tanzania (Kenya Report) 2006.*

While, it is plausible that LAs could play an important role in local service delivery in the agriculture sector, a number of critical issues have also been raised concerning their capacity to effectively participate. These issues revolve around capacity including financial, human resources as well as institutional structures. Currently the development and maintenance of markets remains the main contribution of LAs towards supporting agriculture. Previously, maintenance of rural roads was the key role played by LAs but this was also withdrawn with the establishment of the Kenya Rural Road Authority (KeRRA) in 2007.

In effect this leaves local councillors oversight role limited to overseeing the development and management of markets. Markets can be viewed from two aspects, either as a service to the community, farmers included or a revenue generating activity for the LA. Either way the local councillors exercise their oversight function through receiving reports from the departmental heads in charge of markets or through the Treasurer’s financial performance reports.

#### **6.4 Local Service Delivery – Water**

The Water Act, 2002 vests the mandate of providing water services<sup>36</sup> in Kenya to Water Services Boards (WSBs). The WSBS are statutory boards constituted by the Minister for the time being responsible for the provision of water services. There are currently eight WSBs, with each WSB covering a specified region of the country. The area of jurisdiction of a WSB may extend over several administrative districts of the central government. The WSBs operate under a licence granted by the Water Services Regulatory Board (WSRB). No other person can be licensed by the WSRB to provide

<sup>36</sup> This includes the provision of sewerage services. The Water Act, 2002 has defined “water service” to mean ‘any service of or incidental to the supply of water or the provision of sewerage’.

water services within the area of jurisdiction of a particular WSB. However, in practice WSBs do not provide water services to consumers directly; they do so through agents (called 'Water Service Providers' (WSPs)). After appointing WSPs in its area of jurisdiction a WSB enters into a written agreement with that such WSPs setting out the terms of the relationship. Unlike was the case in the past, now LAs can only provide water services as agents of WSBs, and only through companies specially formed for that purpose by the concerned LAs<sup>37</sup>. WSPs are bound by the terms of the agency agreement hence, even where a water company is owned by an LA, such LA has limited say on how the company provides water services. Media reports indicate that public is not well informed of the fact of the removal of the function of providing water services from those LAs that were previously offering them. Quite often these LAs are still being blamed for failing to provide or rendering poor water services.

## 7. CONCLUSION AND RECOMMENDATIONS

The study examines the three main aspects of local council oversight identified in the ToR, i.e. the role of elected councillors in planning, overseeing service delivery and their involvement in public financial management with a view of assessing the degree of their involvement in these processes (formally and informally) and the extent to which such involvement helps to reflect local preferences in the planning and implementation of their LA's activities and programmes.

In respect to the involvement of local councillors in the planning processes and public financial management the study has the following key findings and conclusions:

1. The only function that the law requires a councillor to undertake is to attend council meetings and participate in the deliberations. The law provides sanctions for a councillor's failure to attend meetings.
2. The decision-making power in local councils is vested in councillors corporately as the policy-makers. Councillors make decisions that guide development planning, priority setting, allocation and management of resources and the selection, implementation and monitoring of projects/programmes in the context of council committee and the full council deliberations.
3. In the context of discharging their statutory obligation to attend and participate in council meetings, councillors are empowered to bring motions, for deliberation by the council, or ask questions on matters relevant to the functions of the local authority and the appointed officials are under obligation to respond including providing documentary evidence to substantiate their response.
4. Apart from their participation in election for local councillors, there is no legal provision for involving citizens in the decision-making process of a LA. However, under the provisions in the LASDAP Regulations and Guidelines, issued under the Local Authorities Transfer Fund (LATF) Act, LAs are required to involve the community and other stakeholders in project identification, prioritization and monitoring of implementation. The process has been faulted for not being comprehensive enough and all inclusive because the citizens and other stakeholders are not involved beyond the selection of projects/activities included in the resource envelope and the responsibility for identifying and inviting the stakeholders to the consultative forums remain that

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<sup>37</sup> For example, the Nairobi Water and Sewerage Company Limited is private company wholly owned by the City Council of Nairobi which is appointed an agent of the Athi Water Services Board to provide water services within the City of Nairobi.

of the local council and has been known to be subject to interference by both the councillors and appointed officers.

5. The Council is responsible for the overall management of the financial affairs of the local authority, a role that is exercised in the context of the finance and audit committee among others. In this regard councillors scrutinise and approve annual plans and budget, the annual procurement plan, discuss and recommend action on audit reports and monitor the implementation of the budget and performance in service delivery through progress reports. Through the reports produced as a requirement for accessing LATF councillors are afforded ample opportunity to hold appointed officials accountable for prudent management of resources and for providing services that are responsive to the local needs and preferences.
6. In addition to the formal channels of providing oversight and holding appointed officials accountable, councillors utilise a variety of informal process. These include among others, public 'barazas', the media, social events, meet the people meetings as well as personal consultations as a means of interacting with the citizens. and informal caucuses with chief officers, petitions to the MoLG and force ejection or lock out of officers from council offices.

In assessing the utilisation of these mechanisms and their effectiveness in improving the responsiveness of council resource allocation and service delivery to citizen preferences, the study has the following findings and conclusions:

1. Citizens still lack a comprehensive, all inclusive and legally binding mechanism for participating in the decision-making process in the council such that their concerns/views influence resource allocation and service delivery by their local council. The concept of citizens' participation that is provided for in the LASDAP process has been widely acclaimed, the only negative comment being only that the process is not anchored in the law and thus making difficult to enforce compliance by LAs<sup>38</sup>. The author recalls a case in Meru Municipal Council where, without involving the users, the council decided to construct a slaughterhouse some 5 km from town along a poorly maintained earth road. The butchers simply decided to take their animals to a more accessible private slaughterhouse, rendering the council's investment into a white elephant.
2. The main channel of influencing council decisions in support of locally identified needs and preference is through relevant motions and effective articulation of citizen needs in the council meetings. It has however been observed that this channel is not effectively utilised as decisions in the council are influenced by factional interests, personal agenda, local social and political environment. Further it has been noted that the capacity of local councillors to understand and interpret financial information so as to make informed decisions is at best limited.
3. The legislative framework for downward accountability is very weak, there are no requirements to provide citizens with information on council operations except for a summary of the LA's annual budget and even that is not obligatory but permissive. Outside the five year term of council citizens have no mechanisms of imposing any sanction on their elected councillor. Their influence on council decision-making relies on the initiative of their councillor and personal influence.

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<sup>38</sup> See Footnote 31 above

4. The local councils' service delivery mandates have been systematically eroded by centralising policies that have seen the transfer of the major and visible service sectors back to central government agencies, leaving local council with no clout in the service delivery arena. This has contributed to diminishing public confidence in the local council as service provider. This attitude undermines the councillors role in providing downward accountability as the community is looking to other major players in local service delivery and thus shifting their focus on who the should accountable for delivering desired development projects and services.
5. Another factor that has been found to contribute to further erode the credibility of the local council as service provider is their debt burden that is consuming a substantial amount of the annual LATF allocation at the expense of development projects and service delivery. The limited resources available to the council are further rendered ineffective by virtue of fragmentation through sharing it equally among the electoral Wards.
6. With regard to holding the appointed officials accountable, the study finds that the law gives powers by one hand and takes it away by the other hand. While the Local Government Act gives powers to the councillors over the operations of the LA as the policy makers and supreme governance organ, the Local Government Officers Regulations of 1984 issued under the same Act transferred the management of the most critical resource (HR) in service delivery to the central government (PSC for recruitment and discipline and MoLG for deployment). This leaves the councillors feeling disconnected and rendered powerless as their staff have divided royalties.
7. Information flow is critical for effective oversight and accountability. The study notes that access to information has been enhanced by the LATF reporting requirement, however, the usefulness of the information provided may not have much the volume in a number of ways. The information provided is mainly focused on inputs and processes. Accountability is judged on the degree of compliance with laid down procedures and reporting formats rather than the results of the activities undertaken. The study did not find any evidence to suggest that output budgeting is a requirement or a practice.

Similarly the planning and budgeting processes provided by legislation and administrative directives does not provide mechanisms for local councillors to develop strategic objectives to guide the budgeting and provide a tool for holding the appointed officers accountable.

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## Annex2: List f Persons Interviewed

Name	Disignation	Tel. Contact
Mr. Hamis Mboga	Secretary General, Association of Local Government Authorities of Kenya and Former Town Clerk of Mombasa Municipal Council, Meru Municipal Council and Runyenjes Municipal Council	020 249 695
Mr. Samuel Kiome	Councillor, Cathedral Ward, Meru Municipal Council And former Committee Clerk in the council	0724 307088
Ms Lydia Maingi	Retired Community Social Welfare officer, Meru Municipal Council	0733 735 739
Alhaji Mwendia	Nominated Councillor County Council of Meru	0728 931 672
Ms Joyce Boyani	Chief Administrative Officer Nairobi City Council	0722 386 423
Ms Lisa Kuria	Treasurer Loyangalani residents Association	0722 524 871
Mr. Nyaga Kamundi	Nairobi Lawyer, former Town Clerk Meru Municipal Council	0721 282 698
Mr. Njeru Kirira	Immediate Former Financial Secretary to the Treasury Previously CEO, Kenya Association of Hotelkeepers and Caterers.	020-343250 or 020-251167
Mr. David Muthoga	Property Developer, Nairobi	0722 518 583
Mr. Clement K. Mugambi	Legal Officer, Athi Water Services Board	0722 773 440
Mr. Alex Ouda Otieno	Councillor Mugumoini Ward, Chairman Finance Committee Nairobi City Council	0724 518 843
Mr. Zephania Muriithi	Prosecution officer, Office of the City Prosecutor, Nairobi City Council	0733 785 058
Mr. Gideon K. Mwobobia	Retired Town Clerk Meru Municipal Council, (had served in pre-independence local councils -the then Meru African District Council as an administrative Officer)	0722 752 439