



LOCAL INTEGRITY SYSTEM ASSESSMENT FOR KWALE COUNTY – KENYA



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ACRONYMS

CAJ	The Commission on Administrative Justice
CARNAC	The County Assembly Representatives Network Against Corruption
CDF	Constituency Development Fund
CECs	County Executive Committee members
CIDP	County Integrated Development Plan
CPSB	County Public Service Board
CRA	Commission on Revenue Allocation
CSOs	Civil Society Organisations
CSP	County Spatial Plan
DCI	Directorate of Criminal Investigations
EACC	Ethics and Anti-Corruption Commission
IBEC	Intergovernmental Budget and Economic Council
IEBC	Independent Electoral and Boundaries Commission
IFMIS	Integrated Financial Management Information System
JP	Jubilee Party
KANU	Kenya African National Union
LAs	Local Authorities
LASDAP	Local Authority Service Delivery Action Plan
LIS	Local Integrity System
MCA	Member of the County Assembly
NEMA	National Environment Management Authority
NIS	National Integrity Systems
NLC	National Land Commission
OAG	Auditor General
ОСОВ	Office of the Controller of Budget
ODM	Orange Democratic Movement
ODPP	Office of the Director of Public Prosecutions

PA	Personal Assistant
PFMA 2012	Public Finance Management Act 2012
PPDA,2015	Public Procurement and Asset Disposal Act 2015
PLWDs	Persons Living with Disabilities
TI-Kenya	Transparency International Kenya

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EXECUTIVE SUMMARY

The Local Integrity System (LIS) is a tool developed by Transparency International that assesses the roles, capacity and effectives of different actors within a local government in relation to anti-corruption, transparency, accountability and governance. This is intended to conduct an in-depth assessment of a county government and can be used to evaluate progress once used repeatedly over time.

In Kenya, similar studies have been conducted in the past for Kwale, Busia and Kisumu counties. This report, therefore, analyses the strides that have been made in Kwale County since the introduction of devolution and is also a reference to the study that was undertaken in 2014 in Kwale County.

Summary of the Assessment¹

Core government actors

The Kwale LIS assessment focused on four actors: The County Assembly, County Executive, the County Public Service and political parties. The summary of the assessment is presented as below:

Actor	Capacity	Role	Governance
County Assembly			
County Executive			
County Public Service (bureaucracy)			
Local Political Parties			
Average Strong	Weak		

The assessment found out that the Assembly members have clear understanding of their roles. They were able to exercise the oversight role in an independent manner and played the representation and legislation roles well. There was also clear separation of powers between the Executive and the Assembly. The assessment also found out that the Assembly was still in need of more resources in terms of human resource, operating space (meeting chambers) and finances.

On accountability, the study found out that there is no formal mechanism for complaining against the members of the County Assembly. The Assembly also needs to institute customised codes of conduct to monitor the integrity of the members.

The Executive had laid out strategies to help them carry roles out their functions as outlined in the constitution and other relevant laws. Much improvement was noted in terms of public involvement in decision making especially in the budget making process. The Executive however lacked domesticated rules to manage the county public service.

The county public service had recorded improvement in terms of revenue collection, thanks to automation that made the process less prone to manipulation and interference. On public procurement, the county had made notable progress on transparency. The list of prequalified vendors was posted on the county's website together with advertisements for open tenders. The county had also made attempts to publish contract awards on their website.

¹ The presentation of the findings for both the roles and functions is based on the traffic lights (Red=Weak, Amber = Average, Green= Strong)

The design of political parties within the country is still with a national outlook making it difficult for local political parties to flourish. For those that have local branches, there is no independence in decision making since such are made at the national level. The financing of political parties remains a grey area with the suspension of the Campaign Financing Regulations 2017.

Oversight and accountability functions

The Kwale LIS assessment focused on all six oversight and accountability structures as presented below:

Function	Capacity	Effectiveness
Complaints handling		
Auditing		
Oversight of couny government		
Investigation and exposure of corruption		
Awareness-raising and public education		
Social accountability		
Average Strong	Weak	

The assessment noted that the national anti-corruption agency - in this case the Ethics and Anti-Corruption Commission (EACC) - has the mandate to investigate corruption at the local level. However, subsequent prosecution and adjudication of these cases remains low.

External audits as carried out by the Office of the Auditor General (OAG) have been effective with notable improvement in the financial reporting and presentation by the county. The OAG however has not managed to offer technical support to the internal audit department within the county to strengthen their internal audit mechanism.

The Civil Society Organisations (CSOs) within the region have been very active in empowering the citizens to hold the government to account. However, a lot still needs to be done on awareness raising and the different avenues that the members of the public can engage their leaders.

Summary Recommendations

- Both the County Assembly and the County Executive should fast track the establishment of a complaints and feedback mechanism where citizens can make reports anonymously.
- The County Public Service Board (CSPB) should come up with a tailored code of conduct for all county staff. It should also fast track the signing of performance contracts.
- The County Government should allocate a budget to establish and launch a civic education department to spearhead mass education of citizens of Kwale County on their rights and responsibilities to safeguard the objects of devolution. This should also include the capacity building of citizens that serve in project oversight committees.
- The local political parties/ local branches should ensure that all special groups (including PLWDs) are represented in the County Assembly during the nomination exercises. They should also front names of persons from the special groups for elective positions.
- The CSOs should engage the members of the community appointed to Project Management Committees to enlighten them and empower them with the right information for them to play the oversight role in the specific projects as required.

SITUATIONAL ANALYSIS

History of devolution in kenya

The history of devolution in Kenya dates back to the pre-colonial period. At independence, Kenya inherited a highly devolved form of governance under the Majimbo system- the idea of political devolution of power to the country's regions. The independence constitution provided for devolution of certain taxes and financial powers to the seven regional authorities. In 1969, the 1963 independence constitution was replaced with a new text that changed the structure of the state from a federal (Majimbo) system to a unitary system.

In 1969, the government further diminished the importance of Local Authorities(LAs) by hiving off key functions and transferring them to the central government ministries, leaving only the provision of minor services to LAs. This served to raise the dependence of local communities upon the central government.² The central government further undermined the financial base of LAs by taking over sources of revenue such as Graduated Personal Tax (GPT) which it abolished in 1974.

In 1983 the government embarked on an ambitious de-concentration initiative- the District Focus for Rural Development (DFRD). The stated purpose of the DFRD was to change from top-down, sector based to integrated, participatory, bottom-up development planning. The centrepiece of the system was delegation of development planning and coordination to the District Development Committee (DDC), a consultative forum that brought together the civil servants at the district level, elected representatives and community leaders. The DDC was responsible for developing and coordinating implementation of the District Development Plan.³ However, it was not given full authority over funding and was not supported by any legal provision.

Operations of the LAs were hampered by several outstanding problems. There were low levels of financial management capacity as attested in their failure to forecast revenues and inability to collect revenues and the inability to offset statutory payments which raised council debts. Additionally, there was more spending on recurrent rather than development expenditure and duplication of roles between some other devolved funds such as the Constituency Development Fund (CDF). Moreover, there was weak and selective involvement of the community e.g. the community not being privy to tendering and procurement processes, lack of political will amongst councillors to facilitate empowerment of community and ineffective planning and weak human resource capacity by LAs which impeded the success of Local Authority Service Delivery Action Plan (LASDAP) initiative. Despite the many challenges, LAs occupied a critical space in the local arena before the promulgation of the new Constitution. By 2010, there were 175 local authorities in Kenya.

At the heart of the clamour for a new Constitution was the determination by citizens to have a greater say in governance and decision making, which led to the Constitution of Kenya 2010. The change of constitution in 2010 reintroduced devolved system of governance dividing the country into 47 counties with two key arms; the Executive headed by a Governor and an Assembly made up of members representing wards.

Oloo A. (2008) in Kibua, Thomas and Mwabu Germano (eds.). "Devolution and Democratic Governance.". In: Decentralization and Devolution in Kenya. NAIROBI: University of Nairobi Press;

³ Chitere, P.O and O.N. Ireri — District Focus for Rural Development in Kenya: Its Limitations as a Decentralisation and Participatory Planning Strategy and Prospects for the Future|| Institute of Policy Analysis and Research Discussion Paper No., 2004

The members of the County Assembly perform three major roles: legislative, oversight and representative as required by the law. This includes approving county plans and policies, vetting nominees for appointment to county public offices, approving the budget and expenditure of the County Government, and approving county development planning.

The day to day management of the County Assembly is under the office of the Clerk who also heads the County Assembly Service Board which is responsible for providing services and facilities to ensure the efficient and effective functioning of the County Assembly.

The County Executive comprises the Governor, the Deputy County Governor, County Executive Committee members (CECs), the County Secretary, County Chief Officers and the County Public Service Board (CPSB) which appoints officers, administrators and staff to implement the functions of the County Executive.

The Governor heads the County Government. Section 30 of the County Governments Act 2012 stipulates the roles of a County Governor. The Deputy Governor on the other hand deputises the Governor in the execution of the Governor's functions and performs any roles or responsibilities assigned by the Governor as a member of the County Executive Committee.

The functions of the County Executive Committee include: formulation and implementation of policies, development plans, programs and projects in the county. It also implements county legislation and national legislation within the county.

The County Executive and County Assembly complement each other. They coordinate and none is subordinate to the other. The County Executive exercises the executive authority of the County, while the County Assembly mainly provides oversight and enacts legislation which the County Executive is supposed to implement. The interdependence of the two is further validated by the position that a County Assembly exercises oversight over the County Executive Committee and any other county executive organs. It is also the County Assembly that approves the appointment of members to the County Executive Committee. Additionally, the Governor considers, approves and assents to Bills passed by the County Assembly and the County Executive Committee provides the County Assembly with full and regular reports on matters relating to the County.

The two levels of government – National and County, are distinct and interdependent. Schedule Four of the Constitution outlines functions to be carried out by each level of government. The transfer of these functions was envisioned to take place over a period of time under the supervision of the Transition Authority. The County Governor performs such state functions within the County as the President may from time to time assign on the basis of mutual consultations; and a County Executive Committee implements, within the County, national legislation to the extent that the legislation so requires.

BUDGETARY ALLOCATION FROM NATIONAL GOVERNMENT TO VARIOUS COUNTY GOVERNMENTS

Article 202 (1) of the Constitution provides that revenue raised nationally shall be shared equitably among national and county governments. Subsection (2) provides that counties may be given additional allocations from the national government's share of revenue, either conditionally or unconditionally.

The CRA is mandated to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government. The Constitution provides that at least 15% of the latest audited revenues of the national government as passed by the National Assembly shall be allocated to counties. Over the years, more than this percentage has been allocated to county governments, but the topic remains a contentious issue with counties pushing for at least 35% allocation.

For the Financial Year 2019/2020, the National Treasury recommended Kshs.310 billion as the equitable share to be allocated to counties in the Financial Year 2019/2020. This is 1% lower than the KShs.314 billion approved in the Division of Revenue Act 2018 and 2% higher than the revised figure of Kshs.304 billion in the Budget Review and Outlook Paper 2018. The CRA recommendation of KShs.336 billion is a 7% growth which is based on actual three-year average annual inflation. The differing recommendations is due to lack of consensus between the National Treasury and the CRA on the revenue growth factor that should be used to determine the growth of the equitable share between 2018/2019 and 2019/2020. The CRA proposed a three- year inflation average while the National Treasury is using the revenue collection rates to arrive at its proposal.⁴

However, the Division of Revenue Bill 2019 remained contentious with the National Assembly and Senate sharply divided over the amount that should be allocated to counties. Senators, supported by the CRA pushed for an allocation of KShs. 335 billion, while their counterparts in the National Assembly wanted the devolved units to be allocated KShs. 310 billion as proposed by the National Treasury. The National Assembly then passed a republished Division of Revenue Bill with KShs. 316.6 billion as equitable allocation to county governments, creating an impasse on the Bill. The impasse eventually resulted into a cash crunch at the counties; leading to a court case being filed by the Council of Governors and the Senate, where they sought an interpretation on how far recommendations of the CRA should be considered by the National Treasury in allocating funds and whether they were binding.

CORRUPTION AND DEVOLUTION

It turns out that the same corruption issues that bedevil the national government also took root at the counties. Some of the prevalent forms of corruption at the counties are: bribery, embezzlement of funds, procurement and the Integrated Financial Management Information System (IFMIS)-related irregularities, favouritism, nepotism, conflict of interest and shoddy implementation of projects.⁵

Massive audit queries have been raised regarding expenditure within the counties with the Senate Public Accounts and Investments Committee summoning various governors to respond to the audit queries which range from failure to give proper account of monies spent to understatement of cash and bank balances.

The Auditor General reported non-adherence to the Government Financial Regulations and Procedures. This was evidenced by counties entering into commitments without approved budgets or funds budgeted for goods, works and services, huge pending bills (some of whose accuracy and validity could not be verified), lack of proper documentation, payments to dubious contractors, inflation of prices of goods and services and irregular award of tenders. County assemblies have also been on the spot for claiming allowances they did not earn among other irregularities.

In the recent past, there have been high profile investigations, arrests and prosecution of suspects charged with corruption at the county level. However, both the EACC and ODPP face various challenges in execution of their respective mandates and they have stated the need for more capacity building, financial and human resources. In the year 2019, three governors were arraigned in court over corruption and economic crimes charges preferred against them. An additional six sitting governors were under investigation by EACC.

The Commission on Administrative Justice (CAJ) is mandated to investigate any act or omission in public administration in both national and county governments and to investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

When it comes to the fight against corruption at the counties, the Judiciary has been criticised numerous times for lenient bail terms, low number of convictions and massive delays in finalising corruption cases. This has led to the courts being deemed as a weak link in the fight against corruption. The recent decision by Lady Justice Mumbi Ngugi in Moses Kasaine Lenolkukal v ODPP is a step away from the norm. The honourable judge declined to revise orders issued by the trial court which prohibited the applicant from assessing the county government offices pending the hearing and determination of his case. In her ruling, Justice Ngugi stated that she looked beyond the interests of the individual holder of the constitutional office and considered the needs of the wider public interest. This decision portrays the huge role that the courts have in strengthening oversight over the counties, through interpretation and application of the law.

AUDITING AND OVERSIGHT STRUCTURES FOR THE LOCAL GOVERNMENTS

The County Assembly and the Senate are the main oversight structures for the county governments. In order to effectively discharge its mandate, the County Assembly has been given power under article 195 of the Constitution to summon any person to appear before it to give information, enforce attendance and compel the production of evidence. The oversight role of the Senate over the counties is limited to oversight over expenditure of national revenue allocated to counties. The Senate committee prepares reports on issues before it and can make recommendations to county governments and to relevant government agencies like the Directorate of Criminal Investigations (DCI), EACC and/or ODPP to take action according to their mandate. There are however documented delays in the review of the Auditor General reports at county and senate levels which in turn compromises the oversight structures as envisioned in the Constitution.

The Ministry of Devolution and Arid and Semi-Arid Lands reviews performance of the devolved units in order to inform policy and strategic action to improve service delivery. It also coordinates intergovernmental relations and provides support to county governments to enable them to perform their functions.

The National Treasury strengthens financial and fiscal relations between the national and county governments and also encourages support for the county governments. It assists county governments to develop their capacity for efficient, effective and transparent financial management. It provides logistical support to intergovernmental institutions overseeing intergovernmental fiscal relations such as the Intergovernmental Budget and Economic Council (IBEC).

The Office of the Controller of Budget (OCOB) is tasked with overseeing the implementation of the budget of the County Government by authorising withdrawals from public funds under articles 204, 206 and 207. On the other hand, the Auditor General audits and reports on the accounts of the County Government and any entities at the county level that are funded from public funds. An audit report is prepared and should confirm whether or not money has been utilised lawfully and in an effective way.

CHALLENGES FACING DEVOLUTION IN KENYA

Devolution has however not been without challenges. Disagreements between the Executive and the Assembly were rampant at the beginning of devolution which almost led to dissolution of the County Government of Makueni, citing irreconcilable differences that had made the citizens suffer at the expense of service delivery. Inherited work force from the defunct local authorities left counties with inflated wage bills. Due to lack of legislative capacity, there were delays in passing of important legislations like the Finance Act and approval of budgets, further incapacitating the counties.

There has been delays in dispatch of funds from the exchequer leading to failure of counties to meet their financial obligations and stalling of projects. To worsen the situation has been failure of counties to meet targets for own source revenue with poor mapping of the sources from which the defunct local authorities used to collect revenues.

The push and pull between the National Assembly and the Senate over the sharing of funds between the national and county governments has severally led to a cash crunch at the counties.

The low budget absorption rate and accumulation of pending bills as highlighted by both the OAG and OCOB have had a negative impact on delivery of goods and services to citizens. This also poses a fiscal risk with negative effects to the economy.

However, across the years there has been notable improvement with the national oversight bodies stepping in to offer support to counties.

ABOUT LOCAL INTEGRITY SYSTEM ASSESSMENT

Since the early 1980s there have been renewed efforts towards decentralisation; the transfer of powers from the central level of government to local governments. As a result, local governments are increasingly getting greater decision making, implementation and oversight powers over matters that concern them. Whether decentralisation results in greater corruption in comparison to centralised governance arrangements is still a matter of debate. However, the reality is that corruption is a problem at all levels of government. Both elected and appointed officials have to deal with the challenging task of separating their execution of public duties from private interests. At the local level this is exacerbated by the fact that many officials have greater vested interests based on family, friendships and business ties that can influence decision-making. In addition, remuneration at the local government level is, in many cases, low compared to the national level. More so, the institutions designed to hold public officials to account at the local level are not always well capacitated to adequately perform their duties and uphold public sector integrity.

A functioning Local Integrity System can play an important role in minimising the opportunities for corruption at the local level. A typical LIS incorporates a set of core actors that can be found in most local government configurations, namely: The Local Council (Assembly), a mayor or alderman (Executive), the Local Public Service, local political parties, local courts (judiciary) and local law and order enforcement units. It also encompasses a set of oversight and accountability functions which should be performed to ensure that the LIS is effective. These functions include complaints handling, local government auditing, central government oversight, investigation and exposure of corruption, awareness-raising and public education and social accountability.

Based on Transparency International's (TI) National Integrity Systems (NIS) approach, the LIS assessment combines the gathering of valid and reliable evidence on the performance of the local governance framework, actors and anti-corruption institutions with a consultative approach; engaging key stakeholders in the research, advocacy and planning elements of the project.

Given the diversity of local governance settings across the world, the LIS assessment framework places a strong emphasis on flexibility and adaptability to different local governance structures and contexts. In many localities, for example, there is limited separation of powers between the different branches of local government and different levels of autonomy from higher levels of government. As a result, the roles and responsibilities of the core actors, as well as responsibility for performing oversight and accountability functions, may vary considerably from place to place. Therefore, the LIS assessment framework can be adapted to accommodate these local variations.

Key objectives of the Local Integrity System assessment

- a) To identify specific weaknesses in the frameworks and procedures that act as hindrance towards an effective local integrity system.
- b) To provide an update of the current state of affairs within the county based on previous findings.
- c) Provide specific recommendations to address the weaknesses identified.

Methodology

The LIS was conducted in Kwale County between March and August 2019. The county was selected out of several engagements with TI-Kenya and following a similar assessment conducted in 2014. Therefore, the results would be important in evaluating any improvements and the recommendations would guide the advocacy activities within the county.

Data collection methods used included data desk review of existing laws, policy papers and existing reports. Key informant interviews were conducted with the various actors within the County Government and other key stakeholders and Focus Group Discussions done with the members of the community from all the sub-counties.⁶ All the indicators were assessed and values (strong, average, weak) assigned and presented using the traffic lights indicators (red, amber and green).

The assessment was based on two main components; a) Core Government Actors and b) Accountability and Oversight Functions.

a) Core Government Actors

The assessment was conducted for four Core Government Actors; The County Assembly, County Executive, County Public Service and local political parties. This was based on the following:

- i) Capacity This sought to ascertain the availability of resources and legal provisions among others to enable the actors to perform their roles effectively;
- ii) Role This appraised the clear understanding of roles and the mechanisms put in place to enable the actors perform such roles; and
- iii) Governance This assessed the mechanisms put in place to ensure transparency, integrity and accountability within the county.

b) Oversight and Accountability Functions

This was undertaken for six functions: Complaints handling auditing, centralised oversight of local government, investigation and exposure of corruption. awareness-raising and public education and Social accountability. The assessment was based on the following:

- i) Capacity This looked into the capacity for the function to be realised by either actor at the local level or at the national level; and
- ii) Effectiveness This assessed how effective the function was at the local level.

To bring this to a closer understanding of the assessment, below is an indicator used to assess the County Assembly:

Dimension	ROLE	<u> </u>
Indicator Number	1.5	
Indicator name	Repre	esentation
Indicator question(s)	(MCA encie Is the	hat extent do the Members of the County Assembly (s) represent the interests and priorities of their constitus in practice? ere effective and regular engagement between citizens the elected representatives in an institutionalised ner?
		MCAs are largely considered to represent the interests and priorities of their constituency
Assessment		MCAs are considered to represent the interests and priorities of their constituency to some extent
		MCAs are not considered to represent the interests and priorities of their constituency
Source of information	Obse	ervation interviews
Narrative comments		
Recommendation(s)		Advocacy target(s)

FINDINGS

1. COUNTY ASSEMBLY

Capacity

1.1 Adequate Resources: To what extent does the County Assembly have adequate resources to carry out its duties in practice?

The findings from the study indicated that the County Assembly staff are well facilitated in terms of infrastructure as they are now occupying the new offices of the County Assembly. On the other hand, the county was still in the process of constructing the assembly chambers but sessions were still ongoing at the old chambers. The elected MCAs were provided with offices located at the wards they represent. The Assembly was in the process of constructing its own offices within the wards which was being done in phases. At the moment, the offices are rented.

In terms of financial resources, the budget for the year 2018/2019 for the Kwale County Assembly amounted to KShs. 789,331,765.08. Out of this, the development budget was KShs. 256,755,006.87 and recurrent budget was KShs. 532,576,758.21.

The Assembly is well facilitated in terms of human resource though some departments like ICT are in need of more staff. The nominated MCAs are provided with a driver and a Personal Assistant (PA) while the elected MCAs have a driver, a PA and an administrator to man their offices. The budgetary allocation for the County Assembly training for the year 2018/2019 was KShs. 20 Million.⁸

1.2 Local elections: To what extent are local elections timely, free, fair and representative?



Section 110 of the Elections Act 2011 requires candidates, agents and every political party participating in an election or referendum to sign the Electoral Code of Conduct. By this they commit to adhere to the values and principles spelt out in the Constitution. The code ensures an environment conducive for free and fair elections and that the activity happens without fear, coercion, intimidation or reprisals of all parties involved.

The County Assembly of Kwale has 20 elected MCAs and 14 nominated MCAs; majority are from the Orange Democratic Movement(ODM) with 16 members, followed by Jubilee Party (JP) with 10 and the other small parties (Chama Cha Mashinani, African National Congress, New Democratic, The Kenya African National Union (KANU)) with 8 MCAs. There is no elected female MCA but there are 12 nominated MCAs therefore fulfilling the two-third gender rule. However, there is no person nominated to represent the interests of Persons Living with Disabilities(PLWDs).

During the 2017 elections, six petitions were filed by MCAs from Kwale protesting the results. Mr. Omar Hamisi Mohamed who had filed a petition for Kinondo Ward won the case and a by-election was held in April 2018; he won the election.

Two of those petitions filed were struck out with costs to the respondents while the rest are yet to be determined This points out to some irregularities experienced during the 2017 elections within the County.

⁷ Interview with the assembly staff

⁸ Kwale Programme-Based Budget FY 2018_2019

https://www.iebc.or.ke/uploads/resources/QtsJ82ENhg.pdf & https://www.iebc.or.ke/uploads/resources/57w8b69hGn.pdf?fb-clid=lwAR01kWVRGFZXPWVh Ns hF5UHknOmtVQ5p0hbdPH YYXYDMkZt99YRweFHQ

1.3 Independence: To what extent is the local Assembly independent from the Executive?



The role of both the County Assembly and the Executive is clearly spelt out in the County Governments Act 2012 in Part (3) and (5). The Constitution under articles 183 and 185 also spell out the role of the County Executive and the Assembly. The Assembly roles are majorly oversight, representation and legislation while that of the Executive is implementation of projects, plans, policies and laws. While playing the oversight role, the Constitution requires the County Assembly to do so while respecting the rule of separation of powers.

Majority of the MCAs are from the ODM party while the Governor is from the ruling party (JP). Both the arms of the County Government have been working together despite the political differences.

In practice, the Assembly is seen to be independent from the Executive. For example, during the vetting of the current members of the County Executive, seven were approved while three were rejected after failing to satisfy the panelists. The former were sworn into office in October 2018 while the latter were left out. In June 2019, different CECs were sworn in after successfully going through the vetting by the assembly.¹¹

1.4 Oversight of the County Executive: To what extent are the MCAs able to exercise and enforce their decisions and oversight role?

The County Assembly is mandated with the oversight role as stipulated under article 185 of the Constitution. Among other roles of the assembly are vetting of nominees for appointment to county public offices and approving the budget and expenditure of the County Government contained in section 8 of the County Governments Act 2012.

The MCAs in Kwale are taken for trainings on the Public Finance Management Act by the office of the Controller of Budget to enable them perform their oversight role well.

The Committee on Finance, Budget and Appropriation in the Assembly discusses the budget before it is passed. In the 2018/2019 budget report, the Assembly reallocated KShs. 149,000,000, which is approximately 1% of the total budget as required by the law, to fund wards development. The committee also proposed ward development changes for the various wards as per the needs of the residents.¹² The MCAs however felt that the 1% capping on reallocation of the budget curtails their oversight role.

The citizens however complained about some of the changes done in the budget reallocation since some of the views incorporated during the public participation forums by the County Executive were expunged in the final stages just before the approval of the budget. The implementation of projects by the County Executive was also a concern by the citizens, putting into question the effectiveness of the oversight role by the County Assembly.

Role

1.5 Representation: To what extent do the MCAs represent the interests and priorities of their constituency in practice?

Section 113 of the County Governments Act 2012 provides for mandatory public participation in county planning processes. The public should be involved and should have reasonable access to the process of formulating and implementing policies, laws and regulations, including the approval of development proposals, projects and budgets.

Kwale County enacted the Public Participation Act 2017 which introduced the public participation office. It allowed members of the public to present their petitions in accordance with the standing orders of the County Assembly.

The members of the public interact with the MCAs mostly during the budget making process. When the budget is presented to the Assembly for scrutiny and approval by the Executive, the Assembly goes back to the people to ensure that their proposals have been taken care of in the budget. The Public Participation Report is usually included in the budget report by the Committee on Finance, Budget and Appropriation in the Assembly. Respective ward development projects are also discussed in details. Although the Assembly conducts public participation whenever new Bills are discussed, there is need to ensure availability of such Bills early in advance to the public so that there can be sufficient feedback.

The MCAs also have offices within their wards and are provided with staff to take in any feedback from their electorate. It is however difficult to meet the MCA in person at the ward offices. The visibility of the MCAs by their electorate is mostly confined to public functions like during launch of projects, funerals, and weddings among others.

Transparency

1.6 Transparency of the local assembly: To what extent can citizens access relevant information on the local assembly and representatives?

The Access to Information Act 2016 states that every person has right to access information held by the State or any other person and where that information is required for the exercise or protection of any right or fundamental freedom. Section 5 of the Act gives citizens the right to access information on the procedure followed in the decision making process, including channels of supervision and accountability for all public entities.

The County Assembly has a website where information is posted. Some of the information posted include the Hansard reports, the committee members' reports, budgets, bills etc. The website however, needs to be updated regularly.

There is low awareness among citizens on their right to attend Assembly proceedings and listen into the deliberations and therefore they rarely attend. The County Assembly should therefore consider having sittings outside the chambers (Bunge Mashinani) to enlighten citizens on their role.

Accountability

1.7 Accountability of the Members of the County Assembly: To what extent are MCAs answerable for their actions in practice?

The national oversight bodies like the OAG, OCOB, CAJ, EACC have mandate to be watchdogs to State and public officers which include the MCAs. This is through external audits, budget approvals, complaints handling and corruption investigation.

There is no formal mechanism for complaining against the MCAs. However, one can raise a complaint against the staff or MCAs through the office of the Clerk who may direct it to the Speaker for a case affecting the MCAs

The electorate in a county ward may recall their MCA before the end of the term of the member on grounds of violating chapter 6 of the Constitution, mismanaging public resources and if convicted of an offence under the Elections Act.¹³ However, no MCA has ever been recalled to gauge the effectiveness of this allowance.

Integrity

1.8 Integrity of the Members of County Assembly: To what extent is the integrity of MCAs ensured?

The County Assembly of Kwale is still using the National County Public Human Resource Manual for guidelines on staff management.

In addition, chapter six of the Constitution outlines the principles of leadership and integrity to be followed by State and public officers.

The Public Officer Ethics Act contains a general code of conduct and ethics which covers major areas of concern for the MCAs. There are no specific rules and codes of conduct for the MCAs since as at the time of the study they were using the standing orders for the MCAs.

RECOMMENDATIONS

- 1. The County Assembly should fast track the establishment of a complaints and feedback mechanism where citizens can make reports anonymously about their MCAs.
- 2. The Assembly should appoint an internal audit committee as required by the Public Finance Management Act 2012.
- 3. The County Assembly Service Board should come up with specific code of conduct for the County Assembly.

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2. LOCAL EXECUTIVE

Capacity

2.1 Clear Functions: To what extent does the County Government have a clear and realistic strategy/action plan and a coherent set of functions?

The devolved functions are clearly spelt out in the Constitution of Kenya 2010, part (2) of the Fourth Schedule. Section (5) of the County Government Act 2012 further explains the functions of the county governments as assigned by the Constitution. Since 2013, the uptake of the devolved functions by the county governments has been gradual though there are complains of inadequate resources to handle huge functions like health.

Kwale County has already developed the fiver-year plan known as County Integrated Development Plan (CIDP) for the period 2017-2022 which is available publicly at the Council of Governors' website. The County Government has not uploaded the current CIDP on its website. The Public Finance and Management Act 2012 designates the mandate of developing a CIDP to the Department of Finance and Economic Planning. The CIDP is therefore developed with the available resources in mind making it achievable to a large extent.

2.2 Predictable resources: To what extent does the County government have access to the resources it requires to carry out its functions and deliver its vision?

Article 207 of the Constitution establishes a Revenue Fund for every county. Further to this, article 202 provides for equitable sharing of the national resources where county governments may be given additional allocations from the national government either conditionally or unconditionally. The Commission on Revenue Allocation is mandated with coming up with the County Revenue Allocation Formula. The County Allocation of Revenue Act for every year provides for the equitable allocation of revenue raised nationally among the county governments for the revenue raised in the previous year.

The total budget for Kwale County in the Financial Year 2018/2019 was KShs. 12 billion. To fund this, the county got approximately KShs. 7 billion from the national government, KShs.3 billion as income carried forward from the previous year, KShs. 300 million from county own source revenue while the rest came from conditional/unconditional grants and loans. Though the county has recently recorded improvement in revenue collection, a lot still needs to be done to increase the county own source revenue.

Disbursements of finances to the counties are done monthly which according to the county officials is a challenge to their planning especially on recurrent expenditure like payment of salaries. The grants from the national government that come through the specific ministries are delayed and sometimes do not reach the county, making the resources unpredictable.

Role

2.3 Management of the county public service: To what extent does the Executive effectively perform its role in terms of providing effective oversight of, and support, to the county public service?

Kwale County has an established County Public Service Board which is mandated with establishing/abolishing offices in the county public service and appointing persons to hold or act in those offices.¹⁴ The county is still using the County Public Service Human Resource Manual developed by the National Public Service Commission. The manual stipulates procedures to be followed in appointments, promotion or re-designation.

The CPSB is in the process of coming up with County Public Service Board Integrated Human Resource Plan and performance monitoring framework for staff. The CPSB plans to have all employees sign performance contracts by 2022.¹⁵ There exists a Human Resources Policies Guide that is still in its draft form. This is yet to be adopted by the County Assembly.

In terms of implementation, the performance contracts between the Governor and the CECs have already been signed. The CPSB is also in the process of customising the appraisal forms which will help in monitoring performance and guiding promotions.

2.4 Oversight of private providers of public goods: To what extent does the County Executive effectively perform its role in terms of holding private service providers of public goods accountable for the service delivery they are contracted for?

The county uses the Public Procurement and Asset Disposal Act 2015 (PPDA,2015) in its procurement regulations. Section 3 of the PPDA 2015 provides for the principles of public procurement which include maximisation of value for money. According to section 41, any person that has breached a contract for a procurement by a public entity including poor performance shall be debarred from participating in procurement. The procurement department is in charge of monitoring the performance of the service providers.

Kwale is one of the counties that has published the list of pre-qualified vendors on their website. A list of tenders for Kwale County is provided in the Public Procurement Information Portal (tenders.go.ke). The county has also made attempts to publish contract awards on their website as required by the PPDA 2015, section 119.

In practice, the ward administrators are involved in monitoring projects within their localities where the contractors cannot be paid without their approval. The county blacklists non-performing contractors and suppliers though the list is not publicly available.

https://kwalecountygov.com/kwale/index.php?option=com_content&view=featured&Itemid=853

https://www.cog.go.ke/downloads/category/106-county-integrated-development-plans-2018-2022?download=331:kwale-county-integrated-development-plan-2018-2022

2.5 Regulation of local business: To what extent does the County Government effectively perform its role in terms of regulating local businesses in an even-handed and effective manner?



The charges and trade licenses for businesses operating within the county are supposed to be contained in the Finance Bill for every financial year. However, as at the time of the study, the county had not enacted any Finance Act since 2017 and was in the process of debating the Finance Act for year 2018/2019. The Kwale County Quarrying Act 2016 contains regulations for quarrying activities in the county to ensure the safe and sustainable utilisation of land and environment.

Inspections by the county officers are conducted twice a year and by 31st March of very year, everyone is required to have complied with the business regulations in place. However, there were reported harassments by the officials while carrying out the inspections where vendors' property was damaged during transport or storage. To

When it comes to regulations on environment, there are overriding roles between the National and the County Government. This is because inasmuch as the effects on environment are felt within the county and there is a CEC in charge of environment and natural resources, the regulatory body, National Environment Management Authority (NEMA) is at national level.

Transparency

2.6 Budget transparency: To what extent does the local government present a clear and accessible budget?

Section 125 of the Public Finance Management Act 2012 (PFMA 2012) stipulates the budget making process which should be informed by the CIDP. The County Executive Member for Finance should ensure public participation in the budget making process. The citizens are given a chance to propose projects in the order of priority for every financial year. Development budget for Kwale County is usually distributed to the members of the public outlining the proposed projects per ward.

The PFMA 2012 also prescribes the format for budget estimates. Kwale County goes ahead to simplify the development budget which is presented per ward. It is simplified enough for someone with basic education to understand. Every financial year's budget must be presented to the County Assembly for approval.

When the proposed budget is presented for public participation, the citizens are allowed to prioritise the projects they would like implemented in the following financial year.

Accountability

2.7 Accountability of the County Executive: To what extent is the County Executive answerable for its actions?

The County Executive is accountable to the Assembly who are the people's representatives. According to section 39 of the County Government Act 2012, the CECs may be required to appear or respond to questions raised by a committee of the County Assembly. Before assuming their roles, the CECs go through vetting by the MCAs on behalf of the people.

¹⁶ Sub-county administrator interview

 $^{^{17}\,}$ FGD responses from citizens

The citizens are consulted during the budget making process through the public participation forums. The projects proposed during the forums are taken into consideration based on priority and availability of resources. There are however no mechanisms for citizens to complain directly against the Executive.

Integrity

2.8 Integrity of the local Executive: To what extent is the integrity of local Executive ensured?



Chapter six of the Constitution of Kenya 2010 stipulates the integrity requirements of State officers which include the members of the County Executive. State officers are required to behave in a manner that avoids conflict of interest while performing their official duties. They are also supposed to declare all gifts received by them in their official capacity.

The Leadership and Integrity Act 2012 provides for a general leadership and integrity code for effective administration of chapter six of the Constitution. The Act requires all public entities to keep a conflicts of interest and a gifts register.

The Public Officer Ethics Act 2003 contains the code of conduct for public officers in respect to conflicts of interest, sexual harassment, wealth declarations and nepotism among many other ethical issues.

There is however no national law that is exclusive on whistleblower protection.

In practice, the County Government of Kwale is still using the rules and codes of conduct that are provided nationally and haven't domesticated their own internal policies. The county does not keep the conflict of interest register nor a gifts register. However, during recruitment interviews and tender committee meetings, members are allowed to declare conflicts of interest and these are recorded in the relevant minutes.

Recommendations

- a) The County Executive should fast track the establishment of a complaints and feedback mechanism where citizens can make reports anonymously on the members of the Executive as well as the members of the Public Service Board and be able to follow up on the actions taken.
- b) The County Executive should ensure that the county website is regularly updated with information pertinent to the public including financial documents such as budgets, Annual Development Plans and Budget review outlook papers among other key documents.
- c) The County Government should allocate a budget to establish and launch a civic education department to spearhead mass education of citizens of Kwale County on their rights and responsibilities to safeguard the objects of devolution. This should also include the capacity building of citizens that serve in project oversight committees.

3. COUNTY PUBLIC SERVICE

Capacity

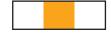
3.1 Ade	quate resource:	s: To what exten	t does the co	ounty public	service have	adequate :	financial,
infrastru	ictural and hun	nan resources to	effectively c	arry out its d	luties?		

As at the time of study the county staff were still housed within the offices that were used by the defunct local authorities. The CEC members were housed in different offices at different locations. The MCAs were still meeting in the old offices that were used by the defunct authorities although the Assembly staff including the Clerk were occupying a new office building for the Assembly. The county was however in the process of constructing new offices for the Executive and meeting chambers for the MCAs.

According to the Controller of Budget, the county spent KShs. 1.23 billion on personal emoluments in the first nine months of Financial Year 2018/2019 which represented a decrease of 29.9% compared to a similar period of Financial Year 2017/18 when the county spent KShs.1.76 billion. The county was therefore in the right path towards having sustainable wage bill as recommended by the OCOB in the previous reports.

The salaries for the county staff are as set by the Salaries and Remuneration Commission.

3.2 Independence: To what extent is the county public service free from external interference?



Recruitment for county public service should be guided by values and principles of public service spelt out in article 232 of the constitution. The County Public Service Human Resource Manual stipulates the rules and regulations for the recruitment and promotion of county staff. Recommendations for promotions should be forwarded to the CSPB by the responsible supervisors and should be based on merit, performance, experience and academic qualifications.

Kwale County Government advertises vacancies on the local dailies and also on the county website.

According to the staff interviewed there is minimal political interference but that does not affect service delivery to a large extent.

Role

3.3 To what extent is there an effective framework in place to safeguard transparency and integrity in local public procurement procedures?

Section 58(2) of the PPDA 2015 requires all procuring entities (including county governments) to ensure that their tender documents contain enough information to allow fairness, equitability, transparency, cost-effectiveness and competition among those who may wish to submit their applications. According to section 62, the applicants are required to include a declaration not to engage in corruption in their proposals.

Section 158 of the PPDA 2015 requires the procuring entities to submit their annual procurement plans to PPOA within 60 days after the beginning of the financial year.

The Act also provides for debarment of suppliers and outlines the reasons for that under section 41. The public officials are bound by the Leadership and Integrity Act and Public Officer Ethics Act while dealing with procurement matters.

3.4 Promoting social accountability and participation: To extent does the county public service promote social accountability mechanisms that provide local citizens with opportunity to interact with and make demands on county governments?

Section 16 (3) of the National Government –Constituency Development Fund Regulations 2016 gives the authority to the community to form a Project Management Committee whose function is to provide oversight on the implementation of the various projects within their locality.

Section 20(o) of the Health Act 2017 requires a county government to develop and promote public participation in the planning and management of local health facilities so as to promote broad ownership. The Basic Education Act 2013 introduces the boards of management for public schools. The major functions for the boards include promoting the best interests of the institution and its development while ensuring quality education for all pupils in accordance with the set standards under the law.

In practice, Project Management Committees are formed for each project being implemented within the county. These committees comprise representatives of the community who safeguard the community's interests and monitor projects.

There exist health management committees for the various hospitals in Kwale. They make up the health management team which takes part in decision making on health related matters at the county level.

Kwale County has also established boards of management for all public Early Childhood Development and Education Centres across the county.

3.5 Tax Collection: To what extent is local revenue collection fair and transparent?



Revenue collection regulations are contained in the Finance Acts for every financial year. For example, the 2018/2019 Finance Bill contained all fees and charges applicable as per the various county legislations making it easy for residents to look out for any specific charges.

When it comes to enforcement, Kwale County has partially automated the revenue collection method making it a bit transparent and free from manipulation. The county should however consider fully automating the system so that the business owners can access permits online once payment is done via M-PESA. This will cure delays in processing permits which is a corruption loophole.

On revenue analysis, the county generated a total of KShs.212.26 million from own sources of revenue during the first nine months of Financial Year 2018/19. This amount represented an increase of KShs.72.93 million compared to revenue collected during a similar period of the Financial Year 2017/18. This was a major progress because the county had been experiencing a sharp decline in revenue collection since 2014.

3.6 Protecting land and property rights: To what extent are land and property rights protected by the local government?

The county aspires to come up with a County Spatial Plan (CSP) before 2022, according to the CIDP. The preparation of the CSP commenced in April 2018. This followed a requirement by the County Governments Act 2012 in which all County Governments in Kenya should prepare and implement Geographical Information System(GIS) – based County Spatial Plans.

The Land Act 2012 has clear regulations regarding compensation of citizens for compulsory acquisition of land. According to the Land Rules 2017, when making compensation, the National Land Commission (NLC) should consider the market value of the land and reasonable expenses incidental to the relocation of any of the citizens among other factors.

Though the mandate of acquisition of land for public use largely rests with the NLC, when acquiring land for development projects, the County Government of Kwale rides on its residents' goodwill for them to donate the land. The county however prioritises on the land formerly owned by the local authority for development projects.

The citizens can contest land use decisions by either the County Government or the NLC. This is mostly by going to court to get an injunction or holding peaceful demonstrations. For instance, in July 2019, the Interior Cabinet Secretary suspended evictions of people occupying land which had been leased to Kwale International Sugar Company by the National Government. This was after the residents protested against the displacement saying they had lived in the place for long and were not sure of compensation.¹⁸

3.7 Administrative transparency: To what extent is there transparency in financial, human resource and information management of the local public sector?

The Public Officer Ethics Act requires all public officers to declare their income, assets and liabilities of self, spouse or spouses and dependent children under the age of 18 years to the EACC once every two years. The declarations are however not publicly available and can only be accessed after approval. Even after applying for approval, the Act requires that the applicant shows to the satisfaction of EACC that he or she has a legitimate interest. It also requires that the EACC grant an opportunity to the affected party to make representations on the matter before approving access, therefore making it close to impossible to access the declaration forms.

Vacancies for senior public officials in the county are made public through the county's website and mainstream media like the dailies.

There exists an asset register but this is not made public. It has to be requested officially and go through the approvals before its availed.

The Government of Kwale County has published the list of pre-qualified vendors on its website. A list of tenders for the county is posted on the Public Procurement Information Portal (tenders.go.ke). The county has also made attempts to publish contract awards on their website as required by the PPDA 2015, section 119.

¹⁸ https://barakafm.org/2019/03/14/residents-move-to-block-eviction-on-disputed-land/ http://www.kenyanews.go.ke/families-got-relief-after-gov-ernment-suspends-evictions/

3.8 Accountability of local public servants: To what extent are local public servants answerable for their actions in practice?

Section 47 of the County Governments Act requires the Executive Committee to design a performance management plan to evaluate performance of the county public service and the implementation of the county policies. The staff within the county have signed performance contracts and every new staff recruited must undertake the same.¹⁹

There is no official mechanism for citizens to complain against the county staff but the county is in the process of setting up such a mechanism.

Integrity

3.9 Integrity of local public servants: To what extent is the integrity of local public servants ensured?

The County Government of Kwale is still using the national County Public Human Resource Manual for guidelines on staff management guidelines.

In addition, chapter six of the Constitution outlines the principles of leadership and integrity to be followed by State and public officers.

The Public Officer Ethics Act contains a general code of conduct and ethics which covers major areas of concern for the county staff.

However, there exists no whistleblower protection mechanism (also lacking at the national level) and the county has not also domesticated the general rules and codes of conduct to fit the needs of the county.

Recommendations

- a) The finance department should automate their revenue collection method fully to enable business owners to access the permits online once a payment is made. They should also clearly map out the sources of revenue and work towards increasing revenue collection.
- b) The CPSB should come up with specific code of conduct for all county staff. They should also fast track the signing of performance contracts.

4. LOCAL POLITICAL PARTIES

Capacity

4.1 Adequate resources: To what extent do the financial resources available to loca	al politica	al
parties allow for effective political competition?		

Section 23 of the Political Parties Act introduces the Political Parties Fund which should not be less than 0.3% of the revenue collected by the national government. Parties that qualify to access money from the Fund are those who secure at least 3% of the total number of votes at the preceding general elections. Such parties should also ensure representation of special interest groups in their leadership. The qualifying parties should also satisfy the number of elected members across the elective posts as set out in the Act.

Other sources of funds apart from the Political Parties Fund (for those who qualify) are membership fees; voluntary contributions from lawful sources, donations, bequests and grants from any other lawful source, not being from a non-citizen, foreign government, inter-governmental or non-governmental organisation; and the proceeds of any investment, project or undertaking in which the political party has an interest.

Section 12 of the Elections Campaign Financing Act 2013 requires the Independent Electoral and Boundaries Commission (IEBC) to gazette the limits on contributions; contributions from a single source, paid-up media coverage, loan forming part of a contribution, at least 12 months before a general election. IEBC issued regulations for the 2017 general elections but they were declared null and void by the National Assembly.

The major political parties in the country continue to receive media coverage at the disadvantage of the small parties.

4.2 Independence: To what extent are local political parties free from unwarranted	exte	rnal	
interference in their activities?			

Local branches of the national political parties are not independent in terms of policy and decision making. They are restricted when it comes to exercising discretion in terms of operations and decision making since the national political parties exercise control over decision making by the local branches.

Persons who fund the party control the party lists and the nomination process. For instance, some of the people who got nominations in the past elections were not in the party list sent to the national party. Candidates' agents were sent away from polling stations during nominations.²⁰

Role

4.3 Interest aggregation and representation: To what extent do local political parties aggregate and represent a broad range of social interests at the local level?

The code of conduct for political parties²¹ requires all political parties to develop and implement measures for the progressive realisation of representation and participation of the special interest

²⁰ Political party representative

²¹ Political parties Act 2011

groups in decision-making organs. One of the ways this is implemented in the Assembly is through nomination of people from special interests' groups.

In the 2017 general elections, the political parties represented in the Kwale County Assembly nominated 14 members. Out of these, 10 were women for the gender top up list, one youth, two from minority ethnic groups and one classified as from marginalised women.²²

With the suspension of the Campaign Financing Regulations 2017 by the National Assembly, it is hard to monitor other sources of funds for the political parties. With this, groups and individuals who fund political parties tend to control them for personal interests.

The other major challenge is the lack of laws on lobbying in the country. With the lack of regulations, business people and other interest groups may use that loophole to fund political parties with a hope of them pushing their agenda in the Assembly after the elections.

Transparency

4.4 Transparency of local political parties: To what extent is there transparency in the operations of local political parties?

Section 31 of the Political Parties Act requires all parties to keep proper books and records of account of the income, expenditure, assets and liabilities. Their financial statements are supposed to be presented to the Auditor General three months after the end of a financial year. All political parties should be audited and the reports submitted to the Registrar of Political Parties and tabled in Parliament. Any person shall be entitled to inspect the audited accounts filed by a political party and, upon payment of a fee prescribed by the Registrar, be issued copies of the audited accounts.

All registered parties are also required to declare their sources of funds and assets to the Registrar of Political Parties. The Registrar in return should publish in the gazette and at least one daily newspaper with nationwide circulation.

In practice, the audited accounts for the political parties are accessible at the registrar of political parties' office after paying a small administrative fee. There is however, no pro-active provision of such information on the party websites.

Accountability

4.5 Accountability of local political parties: To what extent is there effective oversight of local political parties?

The IEBC is mandated with regulating the financing of political parties. Under section 3, the Commission is responsible for regulation and administration of campaign financing, including setting spending limits and enforcing compliance with such limits.

IEBC issued regulations for the 2017 general elections which set the limits for donations but they were declared null and void by the National Assembly.

Integrity

4.6 Nomination and selection of local candidates: To what extent are local candidates selected in a fair and transparent manner?

The Political Parties Act requires the parties to respect, uphold and promote democratic practices through free, fair and credible political party nominations. The IEBC issues timelines for party primaries ahead of the general elections in accordance to the Elections Act. The qualifications and requirements for candidates contesting for elective positions together with nominees to Party Lists are also issued by the IEBC.²³

The 2017 General Elections party primaries were however marred by irregularities. These included bribery, violence, missing names (of both aspirants and candidates), defective voting materials, inconsistencies on opening and closing time, provision of security, harassment and duress (of both aspirants and candidates), intimidation and violence against the marginalised and the vulnerable etc.²⁴

Recommendation

1. The local political parties/ local branches should ensure that all special groups (including PLWDs) are represented in the County Assembly during the nomination exercises. They should also front names of persons from the special groups for elective positions.

²³ https://www.iebc.or.ke

 $^{24 \}quad http://www.knchr.org/Portals/0/Occasional Reports/Party%20 Nominations \% 20\% 20 Report \% 20-\% 20 KNCHR.pdf?ver=2017-05-15-110816-540$

OVERSIGHT AND ACCOUNTABILITY FUNCTIONS

5. COMPLAINTS HANDLING

Capacity

5.1 Access to a complaints mechanism: Is there an independent procedure (e.g. through an ombudsman or similar function) to deal with complaints of perceived unjust treatment by the County Government?

There exists the Commission on Administrative Justice (CAJ) also known as the 'Office of the Ombudsman' at the national level whose mandate is to handle complaints and cases of maladministration in public offices. Currently the CAJ has devolved and has an office in Mombasa among other regional offices. The offices in Mombasa serve the coastal region which includes Kwale County. As part of offering support to the county,

CAJ undertakes trainings on complaints mechanism and giving advice on setting up a complaints handling mechanism.

However, there is no official complaints and feedback mechanism set up by the county.

Effectiveness

5.2 Investigation of complaints: How effective is the complaints procedure in practice?

The Ombudsman has various ways to receive complaints from members of the public including through phone numbers, an email address and a web portal. Additionally, they have outlined the process and timelines of resolving complaints that is relatively easy.

6. AUDITING

Capacity

6.1 Provisions for County Government audits: To what extent are there regular audits of the County?

According to the Public Finance Management Act 2012, every County Government should conduct internal audits. While conducting the internal audits, the County Government is supposed to review the governance structures, conduct system audits,²⁵ verify the existence of assets, evaluate the procedures and policies and adequacy/reliability of information available to management for making decisions. A County Government is also supposed to put an auditing committee to oversight the internal audits.

In practice, the County Government of Kwale conducts regular internal audits and produces quarterly reports every financial year. The internal audit committee is however not in place yet.

Effectiveness

6.2 Effectiveness of County Government audits: How effective are County Government audits?

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The findings and recommendations arising from each internal audit assignment should be reported to the accounting officer (in this case, the Governor).²⁶ Afterwards, the final report, including the actions taken by the Governor should be reported to the audit committee. The Governor is also required to submit an action plan for the implementation of the recommendations to the chair of the audit committee.

In addition to supporting the accounting officers in their functions, one of the functions of the audit committee is following up on the implementation of the recommendations of internal and external auditors. Without the audit committee in place, it would be difficult to measure the effectiveness of the internal audits in Kwale.

6.3 Oversight of County Government auditing: To what extent is there effective oversight of County Government auditing?

The Office of the Auditor General is mandated with examining the county's books of accounts for any mismanagement/misuse of public funds. Section 9 of the Public Audit Act 2015 gives the OAG unrestricted access to all books, records, returns, reports, electronic or otherwise and other documents of public entities.

The Office of the Auditor General, after conducting the audits, issues an opinion based on the findings. The opinion for financial years 2013/14, 2014/15 and 2015/16 were disclaimers of opinion while that of 2017/17 was an adverse opinion and the 2017/18 was a qualified opinion for both the County Assembly and the Executive. This therefore means that at the start of devolution, the OAG was not provided with sufficient financial documents to enable him issue an opinion leading to him giving a disclaimer. The situation has however improved with time and in the Financial Year 2017/18, apart from the issues highlighted in the audit report, the financial statements for both the Executive and the Assembly were a fair representation of the financial situation of the county.²⁷

The OAG is yet to establish offices in every county which in this case would make it easier to offer technical support on a continuous basis. Addition of the OAG staff serving as liaison officers for the coastal region can also help in offering technical support to the county.

²⁶ PublicFinanceManagement_CountyGovernments_Regulations2015

²⁷ http://publicaudit.tikenya.org/

7. OVERSIGHT OF COUNTY GOVERNMENT

Capacity

7.1 Capacity for oversight of County Government: To what extent does the National Government have the necessary resources to effectively perform its assigned role in terms of overseeing the operations of the County Government?

The national oversight agencies include the OAG, OCOB and CAJ. As for the OAG, they audit the County Government accounts to ensure that public money is utilised for the intended purpose. The OCOB oversees the implementation of the budgets of county governments by authorising withdrawals from public coffers. On the other hand, the CAJ receives and investigates complaints on allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service.

In terms of capacity, the OCOB has devolved its offices to all 47 counties where it has the budget representatives to help in executing their mandate. In Kwale, the office is located near the County Government's offices. OAG and CAJ have regional offices across the country with the one that serves Kwale being the Coastal Region one located in Mombasa. In addition, the CAJ has offices at Kwale Huduma Centre.

Effectiveness

7.2 Effectiveness of oversight of County Government: How effective is central government in performing its assigned role in terms of oversight of County Government?

The OAG has been performing annual audits on both the County Assembly and the Executive. The reports are posted on the OAG's official website. The reports are tabled in the County Assembly and further discussed by the Committee on Public Investments and Accounts.

The CAJ has in the past trained the County Government of Kwale on complaints mechanism and advised it on setting up one. The OCOB has also in the past organised trainings for the Kwale County Assembly on budgeting matters.²⁸

8. INVESTIGATION AND EXPOSURE OF CORRUPTION

Capacity

8.1 Capacity for investigation and exposure of corruption: To what extent is there capacity for independent investigation and exposure of corruption at the local level?

The EACC has powers to investigate corruption at the local level drawing from its mandate under article 79 of the Constitution and the EACC Act. There is no local anti-corruption body but EACC has offices in Mombasa and its services can also be found at the Kwale Huduma Centre.

With regards to reporting on corruption matters, national and local media interest depends on the newsworthiness of the reports at any given time. For example, the Nation Media Group and the Standard Group have written articles on land fraud,²⁹ and audit queries³⁰ among others.

The EACC has been working with the County Government and in the past conducted a Corruption Risk Assessment(2016) to help them strengthen their systems.³¹ One of the recommendations for the county after the Corruption Risk Assessment was to establish an integrity committee, but which has not been implemented to date.

Effectiveness

8.2 Effectiveness of investigation and exposure of corruption: To what extent are cases of corruption in the local government actually investigated and exposed in practice?

The EACC is mandated with investigating corruption at the local level.³² The experience from the EACC is that the county has been a little shy to engage on anti-corruption matters.

In their Annual Report 2017/2018 the EACC reported that it was still investigating a case on allegation of irregular award of tender for the construction of Kwale County Headquarters in the Financial Year 2014/2015 with the amount involved being KShs. 462,197,054. Since the investigation was not completed in the previous financial year, the case was not forwarded to the Director of Public Prosecutions.

The conviction rate of the cases investigated by the EACC (nationally) has improved since it recorded an 80% conviction rate in the Financial Year 2017/2018 where out of the 49 cases concluded by the courts there were 39 convictions and 10 acquittals.

 $^{^{29} \ \} https://www.standardmedia.co.ke/article/2001336545/locals-reject-title-deeds-want-audit for the control of the con$

³⁰ https://www.nation.co.ke/counties/kwale/Ouko-queries-Sh3-4bn-dubious-expenditure-in-Kwale/ 3444918-5060810-3200enz/index.html

³¹ https://www.youtube.com/watch?v=OYv7GywYbHg

³² EACC Act 2011

9. ANTI-CORRUPTION AWARENESS-RAISING AND ADVOCACY

Capacity

9.1 Capacity for awareness-raising and advocacy on anti-corruption: To what extent is there capacity for educational activities, public information and advocacy on anti-corruption issues at the county level?

The EACC in celebrating the International Anti-Corruption Day annually holds anti-corruption weeks in counties to sensitise the public on the fight against corruption. Kwale is one of the counties that has benefitted from this as reported in their 2016/2017 Annual Report.³³

The County Assembly Representatives Network Against Corruption (CARNAC) is in the formative stage supported by TI-Kenya. The network is meant to advocate and lobby for the anti-Corruption agenda within the County Assembly which will have an effect also to the Executive and the entire county at large.

Effectiveness

9.2 Effectiveness of awareness-raising and advocacy on anti-corruption: To what extent are educational activities, public information and advocacy on anti-corruption issues at the local level successful in combating corruption?

The formation of CARNAC in Kwale has received support from the County Assembly led by the office of the Speaker and the Clerk. There is hope that this will help in pushing the anti-corruption agenda within the county once it is successfully operationalised. This has however not been without a few teething challenges.

10. SOCIAL ACCOUNTABILITY

Capacity

10.1 Capacity for social accountability: To what extent are non-governmental actors active in promoting social accountability to hold the County Government to account?

CSOs in the region have been very active in empowering the citizens to hold the government to account. They assist the community in drafting petitions and memoranda presented to the County Assembly. They also perform social audits, organise pre-budget meetings with the communities to empower them to engage in the budget-making process and assist the communities in forming project management committees which oversight project implementation within the respective wards.

The CSOs and NGOs working in the county include TI-Kenya, HURINET, Kwale Youth and Governance Consortium, LAMUKAMI CBO, Kwale County Natural Resource Network and National Taxpayers Association among many others.

Effectiveness

11.2 Effectiveness of social accountability: To what extent have social accountability initiatives by non-governmental actors been successful in holding the county government to account?



Some of the initiatives by CSOs in the region have been successful. One of the success stories by CSOs in Kwale which attracted national and international attention is the Makonde ethnic group story. On 10th October 2016, Kenya Human Rights Commission, Haki Center, MUHURI, Kwale Human Rights Network, Human Rights Agenda and Msambweni Human Rights Watch, together with other stakeholders and partners in Kwale staged a walk dubbed "Trekking against Statelessness" from Kwale to State House, Nairobi to seek audience with the President after several futile attempts to seek audience with the relevant authorities on the registration of those classified as stateless. Though not without confrontations with the police service, the Makonde people were finally able to meet the President who ordered that they be registered as citizens.³⁴

Kwale Welfare and Education Association (KWEA) has been training locals and empowering them to conduct social audits on education-related projects. The CSOs in the region have also been at the fore-front in mobilising citizens for public participation forums.³⁵

³⁴ https://www.khrc.or.ke/2015-03-04-10-37-01/blog/561-the-makonde-community-finally-recognized-as-kenyan-citizens.html

³⁵ Interview with a CSO representative

RECOMMENDATIONS

a) County Assembly

- 1. The County Assembly should fast track the establishment of a complaints and feedback mechanism where citizens can make reports anonymously about their MCAs.
- 2. The Assembly should appoint an internal audit committee as required by the Public Finance Management Act 2012.
- 3. The County Assembly Service Board should come up with a customised code of conduct for the County Assembly.

b) County Executive and County Public Service

- 1. The County Executive should fast track the establishment of a complaints and feedback mechanism where citizens can make reports anonymously on the members of the Executive as well as the members of the Public Service Board and be able to follow up on the actions taken.
- 2. The finance department should automate the revenue collection method fully to enable business owners to access the permits online once a payment is made. They should also clearly map out the sources of revenue and work towards increasing revenue collection.
- 3. The CPSB should come up with a tailored code of conduct for all county staff. They should also fast track the signing of performance contracts.
- 4. The County Executive should ensure that the county website is regularly updated with information pertinent to the public including financial documents such as budgets, Annual Development Plans and Budget review outlook papers among other key documents.
- 5. The County Government should allocate a budget to establish and launch a civic education department to spearhead mass education of citizens of Kwale County on their rights and responsibilities to safeguard the objects of devolution. This should also include the capacity building of citizens that serve in project oversight committees.

c) Political Parties

1. The County Assembly should fast track the establishment of a complaints and feedback mechanism where citizens can make reports anonymously about their MCAs.

c) Civil Society Organisations

- 1. The CSOs in the region should sensitise the public on their role in holding the government to account.
- 2. The CSOs should engage the members of the community appointed to Project Management Committees to enlighten them and empower them with the right information for them to play the oversight role in the specific projects as required.

ANNEX 1: RESPONDENTS

	County Executive
1	CEC Agriculture
2	CEC Land
3	CEC Water
4	CEC Health
5	Chief Officer, Finance and Economic Planning
6	Matuga Sub-County Administrator
7	Kinango Sub-County Administrator
8	Msambweni Sub-County Administrator
9	Lunga-Lunga Sub-County Administrator
10	Kinondo Ward Administrator
11	Dzombo Ward Administrator
12	Pongwe-Kikoneni Ward Administrator
13	Ukunda Ward Administrator
14	Tsimba Golini Ward Administrator
15	Tiwi Ward Administrator
	County Assembly
1	Human Resource department representative
	Haman Nessanse department representative
2	ICT department representative
3	
	ICT department representative
3	ICT department representative Procurement representative
3 4	ICT department representative Procurement representative Finance representative
3 4 5 6	ICT department representative Procurement representative Finance representative Transport representative
3 4 5 6	ICT department representative Procurement representative Finance representative Transport representative The Clerk's office
3 4 5 6 M	ICT department representative Procurement representative Finance representative Transport representative The Clerk's office embers of County Assembly (Total -10)
3 4 5 6 M	ICT department representative Procurement representative Finance representative Transport representative The Clerk's office embers of County Assembly (Total -10) Nominated female MCAs - 4
3 4 5 6 M 6 7	ICT department representative Procurement representative Finance representative Transport representative The Clerk's office embers of County Assembly (Total -10) Nominated female MCAs - 4 Elected male MCAs - 5
3 4 5 6 M 6 7	ICT department representative Procurement representative Finance representative Transport representative The Clerk's office embers of County Assembly (Total -10) Nominated female MCAs - 4 Elected male MCAs - 5 Nominated youth MCA - 1
3 4 5 6 M 6 7 8	ICT department representative Procurement representative Finance representative Transport representative The Clerk's office embers of County Assembly (Total -10) Nominated female MCAs - 4 Elected male MCAs - 5 Nominated youth MCA - 1 County Public Service

4	Nurse
5	ECDE teacher
6	Health records officer
7	Director- public works
8	Audit Officer
9	Director ECDE
10	Chairman - County Public Service board
Civil Society Organizations	
1	Kwale County Natural Resource Network
2	LAMUKANI CBO
3	Kwale Human Rights Network (HURINET)
4	Kwale Youth and Governance Consortium
5	Kwale Community Development Programme
Oversight Bodies	
1	Commission on Administrative Justice (CAJ)
2	Ethics and Anti-Corruption Commission (EACC)
3	Office of the Auditor General (OAG)
4	Office of the Controller of Budget (OCOB)
5	Kenya National Commission on Human Rights (KNCHR)
Political Parties	
1	Orange Democratic Party (ODM)
Media	
1	Nation Media Group
2	Radio Kaya
Focus Group Discussions	
1	Kasemeni Ward
2	Dzombo Ward
3	Kinondo Ward
4	Waa Ng'ombeni Ward
5	Pongwe Kikoneni Ward
6	Ukunda Ward



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