



# CITIZEN PARTICIPATION IN COUNTY INTEGRATED DEVELOPMENT PLANNING AND BUDGETING PROCESSES IN KENYA

A CASE OF FIVE COUNTIES

**Trócaire**

 **Irish Aid**  
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# Glossary

<b>ADP</b>	Annual Development Plan
<b>AG</b>	Attorney General
<b>CBEF</b>	County Budget and Economic Forum
<b>CDB</b>	County Development Board
<b>CECM</b>	County Executive Committee Member
<b>CFSP</b>	County Fiscal Strategy Paper
<b>CGs</b>	County Governments
<b>CGA</b>	County Government Act
<b>CGA2012</b>	County Government Act (2012)
<b>CIDP</b>	County Integrated Development Plan
<b>CIMES</b>	County Integrated Monitoring and Evaluation System
<b>CLIDP</b>	Community-Level Infrastructure Development Programme
<b>OCOB</b>	Office of Controller of Budget
<b>CoB</b>	Controller of Budget
<b>CoG</b>	Council of Governors
<b>CoK</b>	Constitution of Kenya
<b>CSO</b>	Civil Society Organization
<b>DoPPs</b>	Drivers of Public Participation
<b>FGD</b>	Focus Group Discussion
<b>FY</b>	Financial Year
<b>GDI</b>	Gender Development Index
<b>GDP</b>	Gross Domestic Product
<b>HE</b>	His Excellency
<b>HPI</b>	Human Poverty Index
<b>HRBA</b>	Human Rights Based Approach to Development
<b>IDP</b>	Integrated Development Planning
<b>KII</b>	Key Informant Interviews
<b>M&amp;E</b>	Monitoring & Evaluation
<b>MCA</b>	Member of County Assembly
<b>MoDP</b>	Ministry of Devolution and Planning
<b>NCCPPA</b>	Nairobi City County Public Participation Act (2015)
<b>NCPPA</b>	Nakuru County Public Participation Act (2016)
<b>NG-CDF</b>	National Government Constituencies Development Fund
<b>NGO</b>	Non-Governmental Organisation
<b>OECD</b>	Organisation Economic Cooperation & Development
<b>PANEL</b>	Participation, Accountability, Non-Discrimination, Equality and Legality
<b>PFMA</b>	Public Finance Management Act (2012)
<b>PIC</b>	Project Implementation Committee
<b>PP</b>	Public Participation
<b>TCPPA</b>	Turkana County Public Participation Act (2014)
<b>UACA</b>	Urban Areas and Cities Act (2011)
<b>UNDP</b>	United Nations Development Programme
<b>WWII</b>	World War Two

# ABOUT TRÓCAIRE

A vertical blue bar with a white, textured, brush-like pattern, positioned to the right of the word 'TRÓCAIRE'.

One of the most powerful questions that have ever been asked is: Why are people poor and oppressed? Trócaire, an Irish development agency, works with numerous partners globally in response to this critical question. Trócaire was established in 1973 by the Catholic Bishops of Ireland, and its work is inspired by Catholic Social Teachings with an overarching commitment to social justice. Globally, the work of the organisation focuses on accountable governance and human rights, natural resource use and resource rights, women's empowerment, and humanitarian preparedness and response. Trócaire works in over 20 countries across Africa, Asia, Latin America and the Middle East, and has been in Kenya for 30 years, working with over 25 local partner organisations.

Trócaire Kenya brings about change by enhancing the capacity of communities to protect and promote their own well-being and the needs of the most vulnerable in the face of a wide range of threats from inter-ethnic conflict to poor governance, gender based violence, violence against women and girls, political incitement and environmental shocks such as drought and flooding. We believe that the future well-being of Kenya and its citizens lies in the resilience of communities and their ability to understand, prevent and respond to violence and conflict, prepare for and respond to emergencies, recognise and elect effective leaders, manage and distribute common resources, support equitable access to services and to reflect on, and change practices that bring harm to its population.

# EXECUTIVE SUMMARY

Integrated development planning has its roots in the centralised planning processes that began in the colonial era and became more institutionalised after independence through Kenya's National development planning system. Following the adoption of the 2010 Constitution of Kenya and creation of a devolved system of government, integrated planning was decentralised. County governments are thus mandated to undertake elaborate and participatory planning processes resulting in County Integrated Development Plans (CIDPs). To implement the CIDP, county governments are further required to develop Annual Development Plans (ADPs) which form the basis of budgeting for development projects. County governments have a constitutional obligation to facilitate public participation in all decision-making processes, including the development and adoption of CIDPs and ADPs. This study was therefore conducted to assess levels of public participation in the formulation and implementation of CIDPs and ADPs in five counties, namely Turkana, Tharaka Nithi, Kitui, Nakuru and Nairobi.

The Human Rights Based Approach (HRBA) to development provided the analytical framework for this study. HRBA provides a normative framework for identifying rights and obligations of citizens and county officials respectively in upholding participation in the integrated planning processes. The study applied qualitative methods in obtaining and analysing data from ordinary citizens, county officials, civil society stakeholders and national government officials. A total of 425 respondents (comprising 340 FGD participants and 85 key informants) were interviewed during the study. Additional data was obtained from a literature review to complement and verify findings from the field.

The first CIDPs were developed in 2013 with the second generation CIDPs developed in 2017. In 2017, Trócaire commissioned a study to analyse the legal framework of CIDPs 2013 and the budgetary process to establish opportunities for public participation available therein and the citizens' perceptions on public participation in the five target counties. Also critical to the study was the extent to which county governments facilitated meaningful public participation in compliance with the law and best practice. Awareness of the challenges, opportunities and lessons learnt in the process was also significant to supporting improved public participation in the CIDPs 2017 and subsequent budgetary processes in the five target counties.

### Some of the Key Findings are:

- **The Constitution has Provided Sufficient Anchorage for both Integrated Planning and Public Participation.** Through Article 10, the constitution has sufficiently embraced HRBA. Courts have generated progressive jurisprudence clarifying what meaningful and adequate participation entails.
- **The County Government Act (CGA)** is the principal legislation, elaborating constitutional principles on participation and integrated planning. To further decentralise planning to sub-county units, the Urban Areas and Cities Act (UACA) provides a framework for towns, municipalities and cities. However, the UACA has more explicit human rights language than CGA and therefore has better prospects of facilitating HRBA in participatory planning processes.
- **The Public Finance Management Act (PFMA)** outlines the budget making process and details institutional responsibilities. It creates opportunities for public participation processes such as County Budget and Economic Forums (CBEF). However, the law does not clearly provide a link between the ADP and CIDP.
- **Enactment of Public Participation Laws:** among the five target counties, Nakuru, Nairobi and Turkana have enacted county public participation laws in line with the CGA requirements. These laws embrace HBRA principles and elaborate the obligations of counties in facilitating public participation in their governance and development mandates. However, they vary greatly in their elaboration of institutional responsibilities.
- **Awareness of Existence of CIDPs:** awareness is generally low among FGD participants, with Nakuru County exhibiting the highest level of awareness (25%) and Tharaka Nithi the lowest (7.5%). Few respondents had seen copies of the first generation CIDPs published by their respective counties with women faring worse than men in awareness levels. However, residents of Nakuru, Turkana and Kitui counties were better equipped since their CGs had made more efforts to produce and disseminate popular versions of the documents.
- **Participation in Formulation of CIDPs 2013:** with evidently low levels of awareness of CIDPs it followed that there were equally low levels of participation in the process across the board. Counties needed to sensitise their citizens more on the CIDP process but their facilitation efforts were hampered by capacity constraints, a persistent culture of opacity and strict timelines in formulating CIDPs.
- **Participation in Implementation of CIDPs 2013:** there was limited participation across the board. County authorities contributed to this problem by failing to provide project monitoring mechanisms and facilitate citizen consultations over CIDP reviews. Consequently, there were high incidences of non-completion of projects, abandonment of CIDP priorities and limited linkage between the CIDP and the budget process.
- **Knowledge on Process and Content of CIDPs 2013:** Similarly, the study revealed low levels of knowledge of the steps entailing formulation of CIDPs and the resultant priorities due to little awareness of and participation in the process. However, respondents from Kitui fared better than others due to deliberate sensitization efforts by the County authority and Civil Society Organizations (CSOs).
- **Awareness on Steps and Participation in Budget Processes Between 2013/17 (Special Emphasis on ADP Process):** Only less than 10 out of 340 Focus Group Discussion (FGD) respondents had seen the ADP document and/or taken part in public hearings. However, knowledge of the budget process was higher given that more FGD respondents indicated that they had participated in budget hearings and/or had seen a copy of the county budget. Those who went through the ADP process found it difficult to link it to the CIDP one. In addition, county authorities failed to fully observe public participation requirements on ADPs, and the ADP documents were highly repetitive of previous years' priorities. The ADP process in 2017/8 period also observed abrupt changes in priorities to accommodate the election promises of incoming governors. Hence there was a potential for discontinuity in implementation of CIDP priorities in the final year.

- Knowledge on Key Methods of Participation in Budget Process:** respondents revealed limited understanding of CBEFs. A majority of respondents (except in Nairobi) had taken part in budget hearings and therefore these remain the best-known participation mechanisms.
- County Governments’ Role in Facilitating PP in CIDP and Budget Process:** Respondents generally rated as poor the capacity and performance of county authorities. Even though Turkana, Nakuru and Nairobi Counties had enacted Public Participation (PP) laws, large parts of those laws remain inoperative due to lack of political will. Delays in establishing sub-county administrative mechanisms, inadequate funding of PP processes, poor organizational structure (mistrust and infighting) undermined implementation of PP in planning and budget processes.
- Responsiveness of Budget Mechanisms:** even though budget hearings were the best known participation mechanisms, respondents were unhappy with the poor planning, mobilisation and hurried facilitation which suggests that the intention was for citizens to rubberstamp predetermined outcomes. CBEF structures in all counties also lacked visibility and sufficient engagement of stakeholders and inter-governmental structures to facilitate participation in CIDPs as envisaged by law were yet to be established. This was attributed to power struggles between county governors and senators.

**Challenges and Opportunities for Advancing PP in CIDP and ADP Processes:**

Challenges	Opportunities
<ul style="list-style-type: none"> <li>• Stakeholders are not made aware of it by stakeholders.</li> <li>• Political interference and manipulation of the process.</li> <li>• Lack of coherent framework for participation.</li> <li>• Communication barriers (including linguistic difficulties inadequate channels etc.)</li> <li>• Poor mobilisation for public participation processes.</li> </ul>	<ul style="list-style-type: none"> <li>• Enhancing role of community elders in participation processes (particularly in Turkana).</li> <li>• Identification and support for community champions (animators) for the PP processes.</li> <li>• Establishment of project implementation committees (PICs) to facilitate involvement in CIDP implementation.</li> <li>• Establish public private partnerships.</li> </ul>



# 2017/8 CIDP Processes Across the Five Counties

- **Citizen Participation Levels:** awareness of the 2nd generation CIDP formulation process was much higher. At least one respondent in 20 out of 34 FGDs knew of a CIDP preparatory activity that was taking place in their locality. This was attributed to more publicity and that target county authorities had better mobilised and facilitated participation of residents. However, Nairobi fared poorly as respondents in nine out of the 12 FGDs were not aware of any CIDP preparatory activity carried out in the county.
- **Preferred Methods for Participation:** respondents suggested incorporation of Nyumba Kumi structures in the CIDP process due to their permeation in all villages and neighbourhoods. They also suggested the establishment of structures to oversee formulation of long-term plans that transcend CIDP to overcome the problem of discontinuities caused by change in leadership at county level.
- **Popular Expectations:** respondents called for broad-based participation in formulation of 2nd generation CIDPs, popularisation of CIDP documents, increased participation in project implementation, transparency in the budget process, operationalisation of public participation laws and, strengthening of country monitoring and evaluation systems.

## Recommendations:

Thematic Focus	Recommendations
<b>Legal Framework</b>	<ul style="list-style-type: none"> <li>· Implement the Urban Areas and Cities Act.</li> <li>· Review PFMA to provide long term planning and show clear link between CIDP and ADP.</li> <li>· All counties to pass and fully implement PP laws.</li> </ul>
<b>Citizen Awareness and Participation in CIDP and Budgeting Processes</b>	<p>Ministry of Devolution and Planning (MoDP) and Council of Governors (CoG) should provide clear guidance to counties on stakeholder engagement in ADPs and CIDPs.</p> <p>Counties to:</p> <ul style="list-style-type: none"> <li>· Produce simplified versions of CIDPs.</li> <li>· Establish integrated monitoring and evaluation systems to track implementation and impact of projects and use of funds to improve distribution of ADPs.</li> <li>· Strengthen CBEFs to engage better with stakeholders on CIDP and budget issues.</li> <li>· Increase civic education for stakeholders.</li> </ul>
<b>Strengthening Role of County Governments</b>	<ul style="list-style-type: none"> <li>· Build capacity of village administrators to drive PP.</li> <li>· Appoint village administrators at village level to reach the masses.</li> <li>· Finance public participation processes adequately.</li> <li>· Counties should build a culture of deliberation and consensus-building.</li> <li>· Promote inter-governmental dialogue on the CIDP process.</li> <li>· Incorporate <i>Nyumba Kumi</i> as a shared grassroots structure to boost the participation in CIDP and budget process.</li> </ul>
<b>Barriers to CIDPs and Budgeting Processes</b>	<ul style="list-style-type: none"> <li>· Establish civic education units to develop and roll out practical civic education programmes on CIDP and ADP processes.</li> <li>· Strengthen monitoring of CIDP process and feedback systems between citizens and duty-bearers.</li> <li>· Encourage social auditing of CIDP &amp; ADPs by CSOs.</li> <li>· Meet reasonable and sustainable financial expectations of citizens to encourage participation.</li> <li>· Develop appropriate participation methods in conflict prone areas.</li> <li>· Involve community elders in CIDP consultations.</li> <li>· Identify and support participation champions/animators.</li> </ul>

# Background and Introduction

# CHAPTER ONE

County governments are constitutionally mandated to provide basic services and implement specific national government policies on natural resources, environmental conservation<sup>1</sup>, community participation, as well as develop administrative capacity to effectively exercise appropriate governance among other functions.

The Constitution of Kenya and the County Government Act (CGA) has mandated counties to undertake planning to use limited resources to address the unlimited needs of the citizens.<sup>2</sup> The County Integrated Development Plan (CIDP) is the envisaged product of an elaborate integrated county planning process. The Government of Kenya defines integrated development planning as a process whereby economic, social, environmental, legal and spatial aspects of development are assembled by relevant governmental and non-governmental stakeholders to produce a plan for the benefit of local communities.<sup>3</sup> County budget preparation, adoption and implementation processes are to be anchored in the CIDP.

Section 125 & 126 of the Public Finance Management Act (PFMA 2016) lay out the budget cycle for counties and require each County to prepare an Annual Development Plan (ADP) to guide the budget making process. Ideally the ADP should scale down the ambitions of the CIDP into a one-year framework of priorities. Emergent priorities not reasonably envisaged in the CIDP may be incorporated in the ADP.

A hallmark of a good CIDP is an inclusive and participatory process.<sup>4</sup> The Government has defined public participation as the process where individuals, governmental and non-governmental groups influence decision-making in policy, legislation, service delivery, oversight and development matters.<sup>5</sup> In 2013, The Ministry of National Development and Planning released guidelines for preparation of CIDPs. The guidelines required counties to facilitate public participation in all aspects of formulation and implementation of CIDPs. By 2014, all counties had established CIDPs and were at various stages of implementation. After elections in 2017, the newly elected governors were required to initiate the formulation of new integrated plans.

According to the new CIDP guidelines, developing the new CIDP entails data collection and analysis, strategy, project and programme development as well as integration. Once completed, the Secretariat in charge of CIDP development verifies consistency of outcomes with the County Performance Management Framework, and submits this for approval to the county assembly. Notably, the CIDP process has been wrought with challenges and weaknesses that appear to have undermined public participation. First, the planning process is undermined by a weak legal framework<sup>6</sup> leading the government to issue periodic guidelines as the regulatory framework. Secondly, counties lack systematic procedures for undertaking public consultations with effective outcomes.<sup>7</sup> Thirdly, most counties at the onset of formulation of CIDPs were yet to fully establish programmes for civic education and public participation as required by law.<sup>8</sup> Finally, there are weak linkages between CIDP and ADP processes.<sup>9</sup> Consequently, there is limited assurance of transmission of CIDP priorities into the ADP priorities and the eventual transmission of these priorities into the county budget processes for any given financial year. Notably, official culture and attitude towards public participation remains tokenistic, with minimal commitment towards meaningful involvement of citizens. The High Court rightly noted that,

<sup>1</sup> Fourth Schedule to the Constitution of Kenya (2010); basic services include agriculture, health services, cultural activities, trade development and regulation, pre-primary education, village polytechnics, home craft centres

<sup>2</sup> Oduor C. "Handbook on county planning, County budgeting and social accountability," 2014 IEA & Uraia: Nairobi p18

<sup>3</sup> Republic of Kenya, "Draft revised guidelines for preparation of county integrated development plans", June 2017, The Presidency, Ministry of Devolution and Planning, pg.1

<sup>4</sup> Oduor, *supra* p19

<sup>5</sup> Republic of Kenya, "County public participation guidelines" January 2016, Ministry of Devolution & Planning & Council of Governors, e-copy at p. vii

<sup>6</sup> Republic of Kenya, "Ministry of Devolution & Planning, Strategic Plan 2013-7-Reviewed," June 2016, Ministry of Devolution & Planning: Nairobi p11

<sup>7</sup> Republic of Kenya, National Treasury, "The strategy for public financial management reforms in Kenya: 2013-2018," Public Financial Management Reform Programme: Nairobi p.23

<sup>8</sup> Kenya School of Government & World Bank, "One year on: review of County initiatives in public participation in the rollout of devolution" in Kenya Devolution, Working Paper No.5, (February 2015) at p1 accessed from <http://documents.worldbank.org/curated/en/187591468253782383/pdf>

<sup>9</sup> Both PFMA and CGA do not specifically require that ADP should be a product of the CIDP, though ideally, a connection between the two should be inferred.

“...public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of constitutional dictates”.<sup>10</sup>

It is against this background that Trócaire commissioned this study. Which focused on five counties, namely, Turkana, Nakuru, Tharaka Nithi, Kitui and Nairobi, where the organisation has been implementing various programmes.

As counties formulate the second generation CIDPs, the time is ripe to reflect on the extent of PP in all phases of development and implementation of CIDPs, its inclusion in the county budget process as anchored by ADPs, and assurance of adequate and meaningful public participation as required by law.

## Objectives of the Study

- a. To analyze the legal framework for CIDP & budgetary processes.**
- b. To collect citizens’ opinions on key aspects of public participation in CIDPs 2013.**
- c. To review the extent to which county governments facilitated public participation in the CIDPs 2013 & subsequent budgetary processes.**
- d. To examine the level of facilitation of meaningful public participation in the 2017 CIDP processes by the five target county governments in compliance with the law and best practices.**
- e. To identify challenges, opportunities and lessons learnt to improve PP in the CIDP 2017 and subsequent budget processes.**
- f. To recommend legal, policy and administrative measures to enhance and improve public participation in CIDP and subsequent budget processes.**

## Methodology

The study employed largely qualitative methods which entailed literature review, Key Informant Interviews (KII) and Focus Group Discussions (FGD) in the target counties. Basic quantitative methods were employed in quantifying key perceptions of FGD respondents.

The study applied purposive sampling as a non-probability sampling method. The geographical units of sampling were sub-counties<sup>11</sup> drawn from the five counties. For logistical purposes, the study aimed at a third of the sub-counties in each of the target counties. However, due to the expansiveness of Turkana, half of the sub-counties therein were sampled. Choice of sub-counties was guided by the need to ensure variability in livelihoods, climatic conditions, rural-urban divide, and ethnicity, among others. A total of 17 sub-counties were sampled from a possible 46 units within the five counties. The researchers ensured persons bearing special knowledge on public participation, CIDP and budgeting processes were identified and interviewed as key informants. FGD samples were drawn from men and women and ensured variability of each sample unit in terms of age, (dis)ability, ethnicity, occupation and academic backgrounds.

At the county level, key policymakers responsible for integrated planning and public participation were identified from among County Executive Committee Members, Chief Officers and Directors. Additionally, the study targeted the Clerk to the County Assembly (or responsible directors) and Departmental Committee Chairpersons (Finance and Planning). Senior National Government officials (County Commissioners and Sub-County Commissioners) were included in the samples whilst opinion leaders were drawn from civil society organisations and business leaders operating at the county level, therefore, providing a holistic view of the performance of county governments.

<sup>10</sup> *Petition No.532 of 2013 & Judicial Review Miscellaneous Application No.61 of 2014 (Consolidated)*

<sup>11</sup> *According to Section 48 (1) (b), of County Governments Act, a Sub-County is defined as the area currently delimited as a constituency by the Independent Electoral and Boundaries Commission (IEBC) for purposes of election of Member of Parliament under Article 89 of the Constitution of Kenya.*

# Data Collection Methods

## Literature Review

This entailed review of key documents from various sources to identify the key conceptual issues supporting integrated planning and public participation. The study also reviewed existing planning laws and official guidelines on planning and identification of best practices from comparable jurisdictions.

## Key Informant Interviews

The study employed key informant interviews (KIIs) as part of the qualitative approach. The participants in the KIIs were key county government officials drawn from departments responsible for planning, public administration and the public participation unit, county assembly officials (MCAs, Clerks etc.), CSO officials, private sector organizations, faith-based organizations, national government administrators, community elders and opinion leaders. Key informant schedules were developed separately for experts working for counties (and national governments) and non-state actors.

## Focus Group Discussions (FGDs)

The FGDs sought key perceptions of the ordinary residents on issues pertinent to the study and to triangulate against findings from other approaches.



## Trócaire's Approach to Accountable Governance

Since its foundation in 1973, protecting democratic space has been at the heart of Trócaire's development agenda. Our work is structured on a rights-based approach where we rigorously engage duty bearers nationally and internationally on key policy issues, and continue to support individuals and communities to better understand and claim their rights. Under our new Strategic Plan 2016-2020 - *For a Just and Sustainable Future*, human rights and democratic space is an overarching goal closely linked to the achievement of our goal areas on resource rights, women's empowerment and humanitarian response.

We work to:

- Support citizens to engage in policy monitoring and advocacy work.
- Carry out advocacy at local and national levels to protect democracy and civil society space.
- Promote transparent and open government principles, processes and institutions.
- Influence government authorities to take action to develop, adopt or operationalise laws and policies for the poor and marginalised.

## Integrated Planning & Budgeting and Public Participation and Practice

In theory and practice, Kenya's county integrated planning includes both economic and physical planning aspects. The implementation of integrated development planning and budgeting is dependent on incorporation of priorities in annual development plans and financing them through the annual budget. However, for the process to embrace priorities that resonate with the citizens and stakeholders, public participation is required.

### Dilemmas Faced in Planning

Planning in developing countries is characterised by dilemmas attributed to competing theories and approaches.

#### 1. Choice Between Comprehensive and Project-based Planning

Comprehensive plans address macroeconomic problems touching on various sectors to impact on the economic and social goals of a country.<sup>12</sup> Such plans depend on availability of sufficient, quality data and capacity in econometric modelling. Project-based planning identifies local priority development projects which if implemented will realise the economic and social goals of a country. Success of this approach is based on local participation in identification of these projects.

#### 2. Centralised and Decentralised Planning Systems

Developing countries inherited centralised planning systems from their colonial masters, which largely excluded citizens from decision-making processes.<sup>13</sup> However, they eventually adopted decentralised systems that embraced project-based planning and local participation. However, global economic chaos triggered by oil crises and commodity prices crash of the 1970s coupled with weakening governance systems forced these countries back to centralised planning systems.

#### 3. Prioritisation of Physical Capital Formation Over Human Resources Investment

The classical economic theorists held that physical capital formation was vital for development hence focus shifted to mobilisation of capital through domestic savings and foreign investments.<sup>14</sup> With time, policymakers realised that low investment in human capital (through provision of basic services e.g. education, health, amenities etc.) significantly limited economic growth and development. Public participation is therefore important in identifying and targeting human resource investments.

#### 4. Prioritisation of Agricultural Production or Industrialisation

The classical economic theory opined that industrialisation would create employment, cross-sector linkages and better prospects for export-led growth.<sup>15</sup> Agriculture was down played because of perceptions of limited linkages with other sectors and comparatively lower value of agricultural exports. However, experiences from East Asian economic tigers demonstrated that a thriving agricultural sector can stimulate industrial development and provide enough cross sectoral linkages leading to sustainable growth. It is therefore critical for small holders with the agricultural production expertise to participate in planning processes to ensure plans are drawn from local knowledge.

<sup>12</sup> | Kondonassis et al, *supra*

<sup>13</sup> | *Ibid*

<sup>14</sup> | *Ibid* p19

<sup>15</sup> | *Ibid* pp20-21

## 5. Integrating environmental concerns in the development process

Conventional planning approaches prioritised economic development over environmental protection.<sup>16</sup> Environmental disasters which occurred in the 1970s and 1980s revealed the inability of contemporary planning techniques and environmental agencies were created at the time to protect the environment.<sup>17</sup> The ecological modernisation theory stated that technological advancements coupled with robust economic development can support environmental protection and this gave prevalence to<sup>18</sup> integrated economic and environmental planning at national and sub-national levels.<sup>19</sup>

### HRBA and the Planning Process

The United Nations defines the Human Rights-Based Approach (HRBA) as a conceptual framework for the process of human development that is based on international human rights standards and directed to promoting and protecting human rights.<sup>20</sup> HRBA clearly outlines the rights and duties of participation in the planning process and requires the integration of human rights standards into all plans, policies, budgets, processes and institutions. Ultimately, HRBA promotes sustainability of development work and empowerment of people to participate in policy processes and hold duty-bearers accountable.<sup>21</sup>

This section examines Kenya's legal framework on public participation in the integrated planning process using HRBA lenses. These are the constitutional norms, laws on devolved governance, and specific county laws enacted in the target counties.

The HRBA is underpinned by the following principles:<sup>22</sup>

- **Participation:** citizens and non-state actors should contribute to the development and implementation of policies and laws.
- **Accountability and Transparency:** duty-bearers should disclose information to enable the right-holders to participate effectively in the development process. The legal framework should clearly apportion rights and duties among the right-holders (citizens, non-state actors with a focus on vulnerable and marginalised groups) and duty bearers, and foster mechanisms for their enforcement. This will reduce the risk of impunity and exclusion.
- **Non-discrimination and Equality:** the poor and most vulnerable in society should not be excluded from decision-making processes in development. Duty-bearers should endeavour to treat all persons and groups equally.
- **Empowerment:** the process of development and implementation of policies should build the capacities of the right-holders and duty bearers.
- **Linkage to Human Rights Standards:** In reference to human rights' standards as set out in international and domestic laws, the rights and duties of right-holders and duty-bearers are usually expressed in these norms. Therefore, to effectively operationalize them requires some form of structure into laws, policies and procedures.

<sup>16</sup> King P. Annadale D. & Bailey J. "A conceptual framework for integrated economic and environmental planning in Asia- a literature review", in *Journal of Environmental Assessment Policy and Management*, Vol. 2. No.3 (September 2000) pp. 279-315

<sup>17</sup> King et al *supra* at p. 282

<sup>18</sup> Goodland R & Daly H. "Environmental sustainability: universal and non-negotiable", in *Ecological Applications*, Vol.6 No.4 (1996) p3-13

<sup>19</sup> *Ibid* p.283

<sup>20</sup> OHCHR & United Nations, "Frequently asked questions on a human rights-based approach to development cooperation" 2006, United Nations: New York & Geneva, p15

<sup>21</sup> OHCHR & United Nations, *supra*

<sup>22</sup> *Ibid*; these principles usually go by the acronym PANEL



## Kenya's 2010 Constitution and Participation Framework

**The constitution recognises public participation as a principle of governance and national values** under Article 10.

The requirement to uphold Article 10 principles, including public participation, is binding on all state organs, state officers, public officers and all persons whenever they develop or apply law and policy. The term “all persons” suggests that public participation is binding on public authorities and private persons whenever they discharge functions of public nature or importance. The participation concept is also reflected in other articles of the constitution relating to environmental governance,<sup>23</sup> devolved governance,<sup>24</sup> public finance management<sup>25</sup> and public service.<sup>26</sup> This articulation coupled with numerous litigations brought under these provisions perhaps demonstrates **that public participation is among the most significant principles of governance under the 2010 constitution.**

Where rights of citizens (including participation) have been infringed, the constitution guarantees access to justice for any aggrieved person<sup>27</sup> thus promoting accountability.

**Parliament is required to adopt legislation providing for participation of residents in the governance of their urban areas and cities.**<sup>28</sup> To safeguard sovereignty and promote democracy (including public participation), the constitution establishes constitutional commissions and independent offices and depicts them as people's watchdogs.<sup>29</sup>

<sup>23</sup> Art 69 (1) (d) on public participation in protection and conservation of the environment;

<sup>24</sup> Art 174 (c) on participation of people devolved governance processes;

<sup>25</sup> Art 201 (a) on participation in public finance matters;

<sup>26</sup> Art 232 (1) (d) on participation in public policy making;

<sup>27</sup> Articles 22, 48 & 70 *ibid*.

<sup>28</sup> Article 184 (1) (c) *ibid*

<sup>29</sup> *In the Matter of the National Land Commission (2015) eKLR*

The constitution describes the integrated planning responsibilities of national and county governments under the fourth schedule. The national government is responsible for national economic policy and planning<sup>30</sup> whereas the county governments are responsible for county planning and development.<sup>31</sup> It further mandates national legislation to prescribe the structure of development plans and budgets and provide the manner of consultation between the national and county governments in preparation of plans and budgets.<sup>32</sup> It further empowers the county assemblies to approve plans and policies for resource management and development and management of infrastructure and institutions.<sup>33</sup> Thus, the approval power for CIDPs is founded on this broad constitutional power. Remarkably, the constitution is silent on preparation of development plans for the national government.

However, **the constitution lacks explicit guidance on what constitutes adequate and meaningful participation.** Courts have therefore endeavoured to provide this guidance through interpretation of the constitution in various landmark cases.

*“...it behoves the county assemblies in enacting legislation to ensure that the spirit of participation is attained both quantitatively and qualitatively...that it is the duty of the county assembly in such circumstances to exhort its constituents to participate in the process of enactment of such legislation by making use of many forums as possible such as churches, mosques, temples, public barazas, national and vernacular radio broadcasting stations and other avenues where the public are known to converge to disseminate information with respect to the intended action.”*

This therefore constitutes the quantitative threshold for participation. The qualitative aspect of adequacy of participation relates to the way the opportunity to participate is presented to the public and the access given to the materials of proposals to be considered.

The courts further seeks to ascertain the “quantity” of participation is enough to ensure fulfilment of the constitutional obligation.

The standard of “reasonableness” is qualified as follows:

- Nature and importance of legislation and the intensity of its impact on the public.
- Practical constraints such as time and costs (even though saving money should not be an excuse to justify inadequate opportunities for participation).
- Considerations on content, importance and urgency of enacting legislation.
- What a legislature/legislator considers as appropriate public involvement.

With regards to determining “meaningful” criteria of participation, the courts noted that participation should afford the public a reasonable opportunity to influence the decisions or actions about to be taken by authorities.

Ability of the public to influence decisions can be discerned in two ways, that is, by ensuring that the public participation process is **genuinely representative of diverse interests** and that the **public should be provided with adequate information and in a timely manner** to enable individuals participate effectively.

The court further underscored the need for legislators to provide information and build capacity of citizens to participate with information by building multiple mechanisms.

<sup>30</sup> Part I (9) of the Fourth Schedule to CoK 2010

<sup>31</sup> Part II (8) *ibid*

<sup>32</sup> Article 220 of CoK 2010

<sup>33</sup> Art 185 (4) *ibid*

# Public Participation and Integrated Planning & Budgeting Under National Laws

This section will review the key national legislations governing the subject such as the County Government Act, The Urban Areas and Cities Act and The Public Finance Management Act.

<sup>34</sup> S.107 *ibid*

<sup>35</sup> See Part II of UACA

<b>County Government Act:</b>	<ul style="list-style-type: none"> <li>· Governs the functions and operations of county governments.</li> <li>· Outlines the principles, citizen rights and duties for participation and identifies participation mechanisms and platforms.</li> <li>· Mandates the County Governments (CGs) to establish innovative and appropriate structures for participation.</li> <li>· Establishes the county development board to input to county development plans and budgets before they are tabled before the county assembly.</li> <li>· Mandates counties to design and implement civic education programmes using guidelines developed by the national government.</li> <li>· Guarantees citizens access to information held by CGs as well as offices to grant this access.</li> <li>· Elaborates provisions on county integrated planning, budgeting, financing, programme implementation and performance review.</li> <li>· Mandates counties to develop integrated development, sectoral, spatial, and cities and urban area plans as county planning frameworks.<sup>34</sup></li> </ul>
<b>The Urban Areas and Cities Act:</b>	<ul style="list-style-type: none"> <li>· Provides legal framework for classification, establishment, governance and participation of urban areas (classified as city, municipality or towns using a set criteria).<sup>35</sup></li> <li>· Delegates the management of cities and municipalities to a board and that of towns to a committee, as well as the day-to day running structure of the same.</li> <li>· Provides for establishment of citizen participation for a mandated to deliberate and present proposals to boards or committees on policy, legislation, budget, development plans and matters of concern to residents.</li> </ul>
<b>The Public Finance Management Act:</b>	<ul style="list-style-type: none"> <li>· Obligates CGs to uphold Article 10 principles and constitutional principles on public finance<sup>36</sup> and public participation in county PFM matters.</li> <li>· Vests responsibility for county public finance management and control in the respective county treasury.</li> <li>· Emphasises on accountability of the county treasury to the county assembly in all aspects of PFM.</li> <li>· Requires county treasury to involve public in development of key budget policy documents and budget process.</li> <li>· Requires the County Executive Committee Member (CECM) for Finance to publish approved budget estimates in a simple format and make it accessible to members of the public.</li> <li>· Requires the county treasury to develop regulations on grants administration by counties which provide for public disclosures and participation to uphold accountability.<sup>38</sup></li> <li>· Obligates the county assembly to consider public views before adopting recommendations on budget estimates presented to it by the county executive.</li> <li>· Obligates county assembly to consider and approve an Appropriations Bill which grants authority for the withdrawal of funds to meet approved expenditures, and a Finance Bill to approve revenue raising measures.</li> <li>· Establishes the County Budget and Economic Forum (CBEF) as a platform for consultation on key aspects of the budgeting process, economic and financial management matters.</li> </ul>
<b>County Laws on Public Participation and Integrated Planning and Budgeting</b>	<p>By the time of carrying out the study, only Nairobi, Nakuru and Turkana had enacted participation laws. Tharaka Nithi had published and tabled a bill on public participation in April 2014 but this never went beyond the 2nd reading stage at the county assembly. Kitui County Assembly<sup>39</sup> published a public participation bill that was never enacted due to disagreements within the county executive. No county had enacted a county planning law.</p>

<sup>36</sup> S.102 (1) of PFMA

<sup>37</sup> S.131 (6) of PFMA

<sup>38</sup> S.139 (2) of PFMA

<sup>39</sup> See the County Assembly Forum Bill Trackers accessed from [http://www.countyassembliesforum.org/index.php?option=com\\_content&view=article&layout=edit&id=176](http://www.countyassembliesforum.org/index.php?option=com_content&view=article&layout=edit&id=176)

Great legislative effort has been invested in actualising the constitutional principles and provisions. The County Government Act (CGA) has laid out the principles and elaborate provisions for participation, civic education and planning. The Urban Areas and Cities Act (UACA) that is currently implemented with support from the World Bank has further elaborated these principles as may be applicable for the respective urban areas. However, the UACA is more explicit in promoting rights language in planning processes than the CGA. The Public Finance Management Act (PFMA) has further elaborated on the planning processes and outlined institutional duties in the budgeting process. The county laws on participation analysed reveal considerable integration of HRBA principles in their layout. The nature of institutional obligations however considerably differs from county to county. This points to insufficiency of legislative standards for counties in this regard.

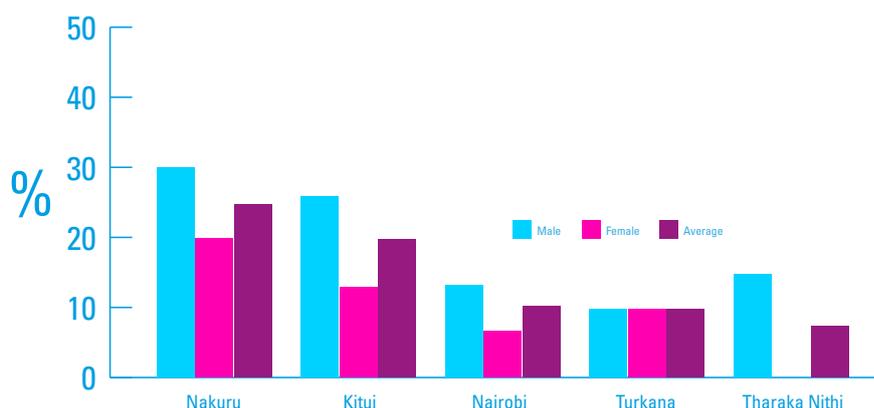


## Key Aspects of Public Participation in the CIDP 2013 Process and Subsequent Budgeting Processes: Citizens Perceptions

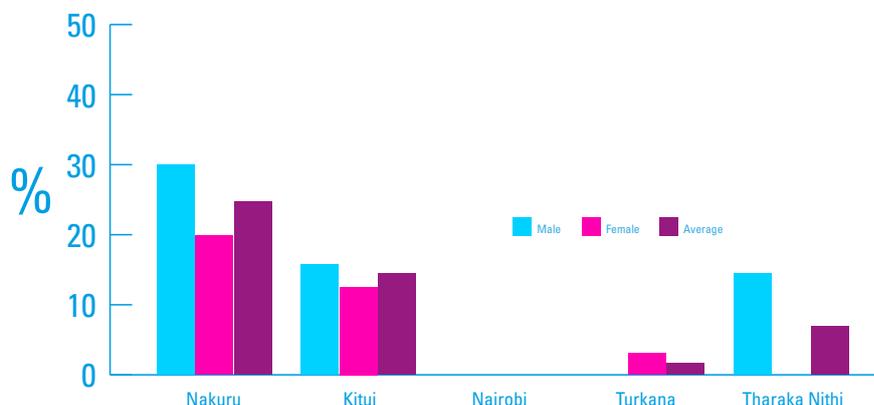
### Level of Awareness on Existence of CIDPs

The study sought to establish the level of awareness on the existence of the first generation CIDPs in the target counties. These entailed asking participants the questions, “how many of you have heard of CIDP?” and “how many of you have seen a copy of the CIDP?”

Responses from participants of this study seem to reveal that the level of awareness on existence of CIDP is low in all the counties with Nakuru County exhibiting the highest level of awareness (25%) and Tharaka Nithi the lowest (7.5%).



Nakuru County registered the highest proportion of participants who had seen a copy of their county’s CIDP. However, there was a dramatic decline in the percentage of participants who had ever seen a copy of CIDP in Nairobi and Turkana as below:



# Study Findings

## Introduction

This section contains the key findings from the field survey and is supplemented by document reviews. It gives a description of the target counties to better understand their contexts.

## Description of Project Areas

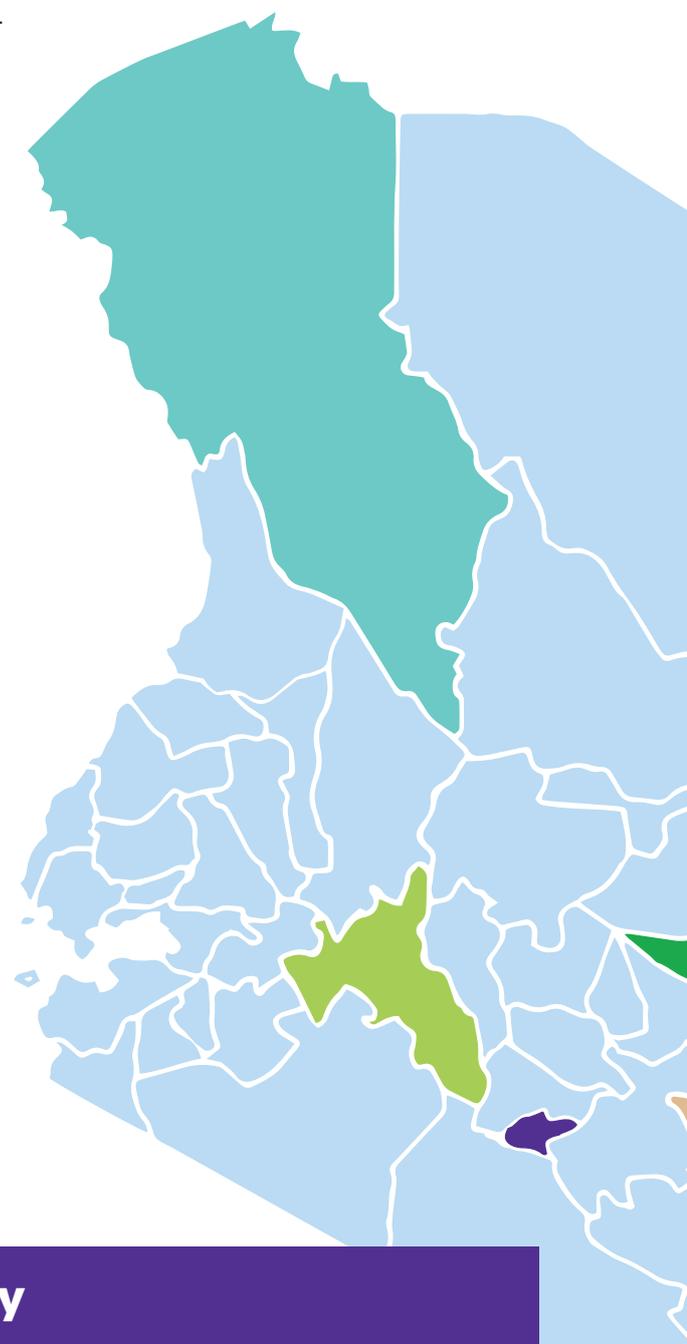
### Turkana County

Located on the North-Western tip of Kenya; comprises arid and semi-arid low-lying plains as well as mountain ranges.

Second largest county in Kenya; total surface area of 77,000 Km<sup>2</sup>; estimated population of 1,427,797.

At onset of devolution:-

- Only 190,566 (or 34%) people registered as voters, attributed to the nomadic lifestyles of its population and the persistent insecurity plaguing the South-Eastern parts of the county.
- Has six political constituencies, seven sub-counties and 30 Wards.
- Human Development Index (HDI) of 0.3331 against a national average 0.561 whereas Human Poverty Index (HPI) is estimated at 0.613 against a national average of 0.29.
- Gender Development Index (GDI) is estimated at 0.4943; hence the significant variation with the human index is indicative of significant gender inequalities afflicting the county.
- Literacy rates stood at 46% in 2013, among the lowest in Kenya.
- At the onset of devolution, the county had less than 9% of tarmacked roads, 25% mobile network coverage, and only 5% of households with electricity connection.
- The main livelihood includes livestock keeping, crop farming, fisheries and trade.



### Nairobi County

Kenya's economic and social capital, total area of 696 Km<sup>2</sup>.

Estimated population of 4,253,330 (2017 projections).

17 electoral constituencies, 85 Wards and 9 Sub-Counties.

At onset of devolution:-

- HDI of 0.641 owing to concentration of wealth and variety of amenities in the city.

- 76% of tarmacked roads, 298 Km of functional railway network, 95% mobile connectivity and 68% of households connected to electricity.

- High inequality as evidenced by a Gini co-efficient of 0.341 (against the lowest recorded in Turkana at 0.283).

- Hosts 2,683 registered NGOs and 1,408 registered cooperative societies; various undocumented self help groups in informal settlements.

## Nakuru County

Located in the heart of the former Rift Valley Province; area of 7,469 Km<sup>2</sup>.

Population of 2,046,395 people (2017 projections).

Comprises lowlands of Naivasha and Sola, the escarpment areas of Subukia and Mau as well as highland areas of Kuresoi, Molo, Njoro and Bahati.

Has 11 constituencies, 55 wards and nine sub-counties.

HDI of 0.5558 against national average of 0.561.

At onset of devolution:

- Had 911.9 km of tarmacked roads, 192 km of railway, mobile 91% mobile coverage & 34% of households connected to electricity.
- 50% of the total land area is under agricultural use; thriving tourism sector due to attractions such as Nakuru National Park, Mt. Longonot, and Menengai crater etc.
- Home to industrial and agro processing plants; hosts diatomite mining and geothermal production facilities.

## Tharaka Nithi County

Situated in the Mt. Kenya region comprising arid, stony and sandy marginal lowlands.

Land area of 2,662.1 Km<sup>2</sup> with population of 478,570 people (2017 projections).

Has six sub-counties and 15 wards.

At the onset of devolution:-

- Literacy rates stood at 69.75% against a national average of 78.1%.
- HDI mean score index was 0.5533 against the national average of 0.5601.
- Out of the 630 Kms of classified road network, only 48 kms were tarmacked, whereas mobile phone coverage was at 70%.
- Agriculture provides the main livelihood for households (80%) as well as dairy farming and agro forestry. Despite known deposits on iron, no exploitation has been done on the deposits.

## Kitui County

Located in the lower south-eastern region of Kenya spanning 30,496 Km<sup>2</sup> of largely arid and semi-arid climatic/ecological zone.

Population of 1,147,200 people, 8 electoral constituencies/administrative sub-counties and 40 wards.

At onset of devolution:-

- Poverty levels estimated at 63.5% compared to the national average of 46%.
- Literacy rates (62%) were lower than national level (71%).
- Had only about 225 km of tarmacked roads, mobile phone connectivity limited to urban areas, and with only 3.4% of households connected to electricity.
- Main economic activity is rain-fed subsistence farming; ranching done in the expansive arid areas.
- Untapped mineral potential in coal, iron and limestone and tourist attractions.
- Environmental degradation through soil erosion and felling of trees for fuel.
- 161 women groups, 312 youth groups and a various humanitarian agencies.

In Turkana County, a female respondent from Lokichar was the only one who had seen a copy of the CIDP. This was after she placed a request at a nearby sub-county office; a request that was only granted after she intimated that she had been sent by a local NGO.



*Tharaka Nithi and Nairobi received their CIDPs through their websites while Turkana’s popular version of the CIDP was distributed in hard copy through its Sub-County administration offices and this limited the circulation.*

All counties had posted their CIDPs on their websites except Tharaka Nithi. Nakuru, Turkana and Kitui Counties had also published their CIDPs in popular version formats for mass distribution. Notably, these counties were able to achieve this with support and in partnership with development partners (local civil society organisations in Nakuru and Kitui, and the UN in Turkana).

Turkana’s popular version of the CIDP was distributed through its sub-county administration offices and this limited the circulation. Tharaka Nithi and Nairobi city county governments did not employ alternative methods and formats to disseminate the CIDPs to the public beyond their websites. Thus, it can be inferred that limited citizen access to CIDPs in Tharaka Nithi, Nairobi and Turkana is linked to the inappropriate dissemination strategies employed by these counties.

In Tharaka Nithi County, the CIDP document was accessible from the county secretary’s office as well as the county assembly clerk’s office at a fee (cost of printing).<sup>53</sup> It was a 269 page document and the cost of photocopying would be beyond the reach of most of its residents.



*In Tharaka Nithi the CIDP was a 269 page document and the cost of photocopying would be beyond the reach of most of its residents.*

	<b>Website</b>	<b>Hard copy at a fee</b>
<b>Tharaka Nithi</b>	✓	✓
<b>Nakuru</b>	✓	✓
<b>Kitui</b>	✓	✓
<b>Turkana</b>		✓
<b>Nairobi</b>	✓	

<sup>53</sup> KI from Tharaka Nithi County Assembly

## Participation Levels in Formulation of CIDP 2013

All county respondents reported that some form of consultation was done in developing the first generation CIDPs. However, the FGD participants said that participation was minimal and restricted to urban (and largely male) residents and selected leaders. **In Turkana County**, only one FGD participant was present in the validation meetings organised by the CG prior to the approval of the first generation CIDP.<sup>54</sup> A significant number of respondents from more urban sub-counties (Turkana Central and Lokichar) exhibited awareness of the process and explained that community representatives had been invited to Lodwar to deliberate on the draft CIDP. However, respondents from Loima Sub-County (male and female) were completely unaware of the CIDP process.



**In Tharaka Nithi County**, FGD participants from the rural sub-county of Tharaka were unaware of the 2013 CIDP process and none of them had participated in it. However, in the urban sub-county of Chuka, most of the (male) respondents exhibited awareness of the 2013 CIDP process. They opined that some meetings were held to collect views from selected groups, particularly the business community. CSO representatives were invited to CIDP forums, but only after protesting over exclusion.

**In Nakuru**, it appeared that participation in the first generation CIDP process was discerned more in the urban areas of Nakuru Sub-County.<sup>55</sup> FGD participants who took part in the CIDP process indicated that they attended validation meetings and the launch of the final document. No participant (in all the FGDs held) took part in prioritisation forums, where likelihood of influencing the process was higher. The county government utilised social media, ward administrators and local residents' associations to mobilise for participation. However, FGD participants who attended these activities felt that participation was largely nominal, since the priorities had already been identified earlier and the final document could not be altered. It is also noteworthy that participation in CIDP activities had a gender dimension. In two of the three FGDs held for women, no person acknowledged having participated in the first generation CIDP process whereas in all the three FGDs held for men, some participants indicated that they took part in the process.

***“We find that when women participate... our participation is taken very lightly by the leaders. They are not letting us actually come out freely with our opinions and are not letting us actually give our priorities as we see them,”***

*Female FGD participant in Gilgil.*

<sup>54</sup> FGD participant representing persons with disabilities from Turkana Central

<sup>55</sup> This was attributed to the fact that CIDP validation and eventual launch was done in Nakuru town and therefore residents of the Sub-County had a good chance of knowing about the process

**In Nairobi**, whereas a significant number of FGD participants were aware of the 2013 CIDP process, very few (only male) participated in the CIDP formulation activities.<sup>56</sup> They took part in prioritisation meetings after receiving phone calls from county administrators, largely because they were acquainted with, or worked closely with, the said administrators. The prioritisation meetings were well organised and the facilitators applied participatory processes in ranking key issues/priorities.

**In Kitui County**, in all FGDs conducted, a significant number of participants acknowledged that the CG facilitated participation in the formulation of the first generation CIDP, right from the prioritisation meetings. In the Kitui West FGD, Ward Development Committees were set up as platforms for mobilising and aggregating views. The county government hired external consultants to collect views from the committees during public forums while the media and local NGOs were also successfully approached to mobilise citizens to participate in the meetings.

Even though the process was exhaustive, some FGD participants felt that the final CIDP document left out some key priorities identified by committees. Key informants from the target county generally admitted that the consultations were not exhaustive citing staff capacity constraints, low turnout by citizens largely due to lack of civic education, strict timelines set by law and the national treasury, and the capacity (culture and attitude) of county governments.

### Participation in Implementation of CIDP 2013

Citizen participation gives county government an incentive to adhere to identified CIDP priorities and complete projects satisfactorily.

In all the FGDs conducted, it emerged that only Kitui had established project monitoring mechanisms and only Turkana attempted to review its CIDP document. In Turkana where a review of the CIDP took place in 2015/6, only one FGD participant (from Loima) took part in the consultations. In general, therefore, participation in implementation of the CIDP was perceived to be equally low.

***“The other issue we have is the (non) completion of projects, I don’t know what they do with the money...the dispensary was built and was never completed... a market was also built, and they never completed. The market was built so that people can go and sell their products there, but people don’t go there.***  
*Male participant- Loima FGD*

<sup>56</sup> Prioritisation forums were said to have been held at a catholic church in Riruta and a social hall in Nyayo High Rise estate (which are middle class neighborhoods).

County	View of FGD Participants on Participation in Implementation of CDIP
<b>Nairobi</b>	<ul style="list-style-type: none"> <li>· No involvement in implementation particularly in infrastructure, health, education (bursaries), water and sanitation.</li> <li>· Could not distinguish between projects of CIDP and other national government mechanisms such as NG-CDF and NYS.</li> <li>· Youth participation limited to casual labour.</li> </ul>
<b>Nakuru</b>	<ul style="list-style-type: none"> <li>· CIDP priorities not fully implemented.</li> <li>· Poor involvement of stakeholders leading to incomplete or abandoned projects, mostly prevalent in Gilgil Sub-County.</li> <li>· Efforts of local CSOs to undertake social audits of projects had triggered some remedial action by the CG.</li> </ul>
<b>Tharaka Nithi</b>	<ul style="list-style-type: none"> <li>· Participants decried poor quality of project outputs (in health, water and infrastructure) due to low citizen involvement. This resulted in poor supervision of the projects.</li> </ul>
<b>Turkana</b>	<ul style="list-style-type: none"> <li>· Increased investments by the CG in social services and infrastructure development projects.</li> <li>· In Turkana Central, participants could not distinguish between CIDP and national government projects.</li> <li>· Largely incomplete and abandoned projects throughout the county.</li> </ul>
<b>Kitui</b>	<ul style="list-style-type: none"> <li>· Participants said CG made great effort to involve them in project implementation through the Community-Level Infrastructure Development Programme (CLIDP) especially in road projects.</li> </ul>

## Cross Cutting Issues

### In all Counties, there was a general feeling that:-

The poor track record of authorities in implementation of public policies automatically caused distrust in implementation of CIDP.

There were low completion rates of county projects evidenced by poor absorption rates of development budgets as reported by the controller of budget.<sup>57</sup>

Counties failed to adhere to the implementation of projects listed in the CIDP due to changes in annual project selection owing to unanticipated emergencies. The first generation CIDPs were specific to such an extent that they invited backlash from residents where projects could not be implemented for valid reasons.

Lack of effective monitoring and evaluation systems to underpin implementation of CIDP projects, further raises scepticism over the effectiveness of integrated development planning.<sup>58</sup> Uptake of the County Integrated Monitoring and Evaluation System (CIMES) was low due to lack of policy frameworks and slow pace in establishment of M&E units at the county level.<sup>59</sup>

<sup>57</sup> FGD respondent from Tharaka Nithi and Nakuru Town

<sup>58</sup> KI form Nairobi City County Executive

<sup>59</sup> Ministry of Devolution and Planning & Council of Governors, "Guidelines for the development of County integrated monitoring and evaluation system", March 2016 accessed from [http://www.cogkp.or.ke/cogkpdocuments.nsf/docs/CRES-A4HRJH/\\$FILE/CIMES-Handbook.pdf](http://www.cogkp.or.ke/cogkpdocuments.nsf/docs/CRES-A4HRJH/$FILE/CIMES-Handbook.pdf); at p7



## Level of Knowledge on Process and Content of CIDP 2013

### From the FGD conducted, it was clear that:-

- The CIDP process was unknown to residents, and this perhaps explained the low level of participation in its preparation and implementation.
- Mobilization of residents for specific events e.g. prioritisation meetings, validation meetings or public launch of final document was all the publicity given to CIDP processes.<sup>60</sup> There were minimal efforts by actors to sensitise citizens on the CIDP process therefore they lacked impact.
- Absence of ward administrators during CIDP development hampered sensitization and education of locals which would have increased participation.<sup>61</sup>
- In Kitui County, CIDP sensitization forums were used to discuss CIDP features. In Turkana, public participation forums are cynically referred to as “county meetings” since the CIDP process was alien to them.
- In Nairobi, participants failed to see linkage between the CIDP and county development projects initiated at the grassroots level.<sup>62</sup> Most FGD participants were not acquainted with the contents of the first generation CIDPs as the documents were not sufficiently disseminated.

***“I participated in 2013 and 2016 (budget prioritisation processes), the difference between those participation (processes)... in 2013 people were excited people liked it...people thought that devolution has come to their help, but as time went by, people began to lose morale to attend... because whatever you factored in was not budgeted for...was not implemented... being this demoralised people.”***

*Quote from Male participant at Chuka FGD*

## Awareness Level on Key Steps and Participation in Budget Processes Between 2013-7 (Special Focus on ADP Processes)

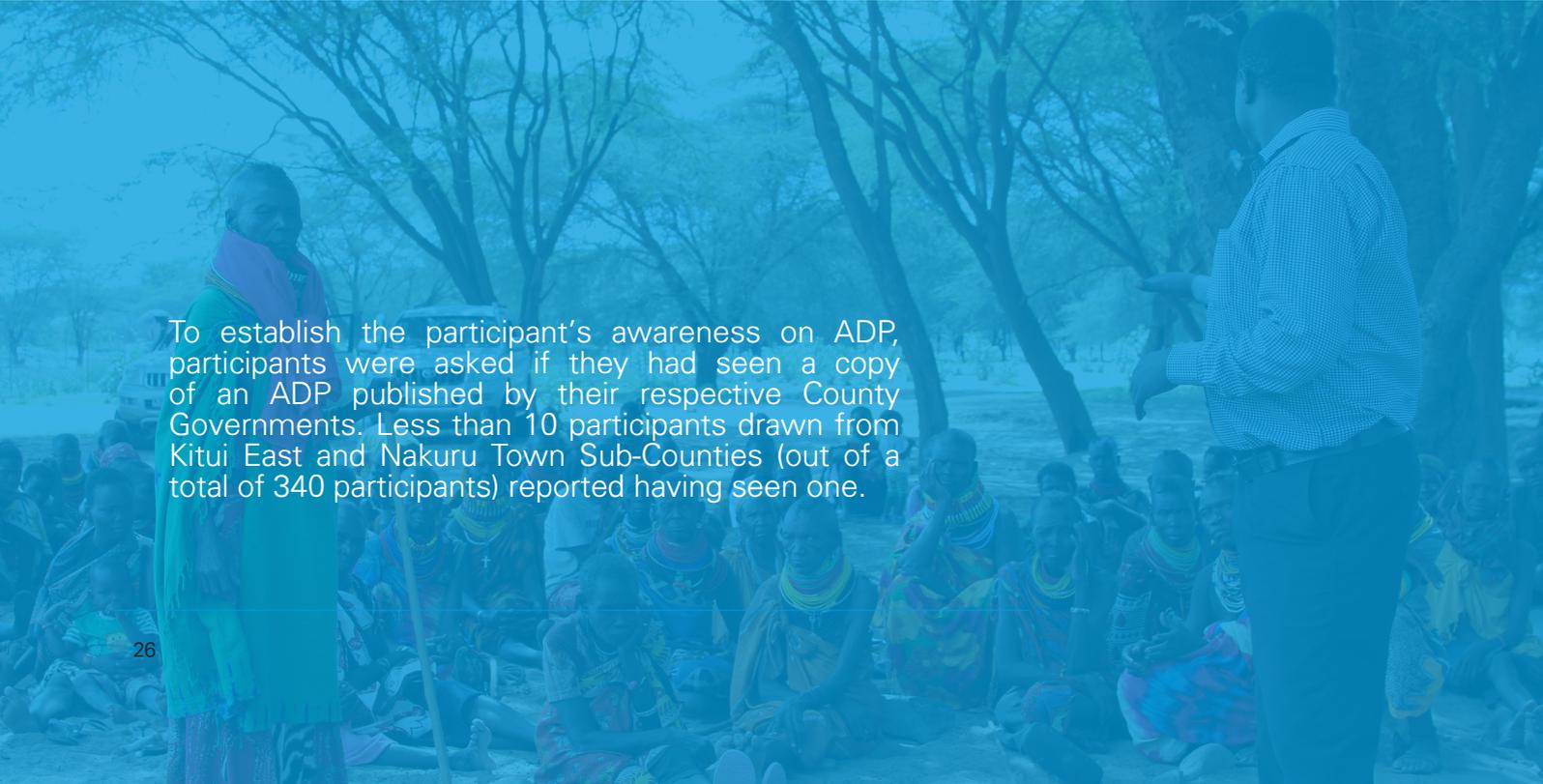
The study sought to establish the level of awareness among FGD participants on the Annual Development Planning (ADP), participation in the ADP process and awareness of key budget processes and how this links with the ADP and CIDP process. To establish the participant’s awareness on ADP, participants were asked if they had seen a copy of an ADP published by their respective county overnments. Less than 10 participants drawn from Kitui East and Nakuru Town Sub-Counties (out of a total of 340 participants) reported having seen one. Those who had seen a copy of ADP had also participated in public hearings on formulation of ADP convened by

<sup>60</sup> | Feedback from Kitui Central

<sup>61</sup> | Feedback from Lokichar Male FGD

<sup>62</sup> | FGD participants from Turkana County

<sup>63</sup> | 3 FGDs in Kitui; 2 FGDs in Nairobi; 5FGDs in Nakuru; 2FGDs in Tharaka and; 2FGDs in Turkana



To establish the participant’s awareness on ADP, participants were asked if they had seen a copy of an ADP published by their respective County Governments. Less than 10 participants drawn from Kitui East and Nakuru Town Sub-Counties (out of a total of 340 participants) reported having seen one.

their respective county governments in the FY 2016/7. The participants' knowledge of the ADP content was nevertheless scanty. Those who participated in an ADP process could not establish a link with the CIDP. This concern was aptly captured in the quote (inset). The ADP was therefore an alien concept in the minds of FGD participants. This perhaps could be the case with the ordinary Kenyan.

To establish awareness levels on the budget process, participants were asked if they had seen a copy of the annual budget from their respective counties. Out of the 34 FGDs conducted, there was at least one participant in 14 of the FGDs who indicated they had seen a copy of the budget. In Nakuru Town (male) FGDs recorded the highest number of (7) persons who had seen a copy of the budget.<sup>63</sup> Those who had seen the budget had also attended budget hearings where key steps entailed in the budget process were explained. Hence, these participants actively contributed to discussions on the budget process during the FGDs.

In all the FGDs conducted, despite low awareness of key budget process steps, most participants acknowledged CGs efforts to obtain views from citizens on budgets through public hearings.

Key informants from civil society demonstrated the highest level of awareness on the budget process and the ADP as compared to their counterparts. They however could not see the actual linkage between CIDP and ADPs and noted that a strict adherence to public participation can promote this linkage. In addition, public participation requirements for the ADP were not adhered to and there lacked punitive measures for non-adherence. They also opined that the ADP documents have the same priorities repeated every year pointing to the casual and mechanical nature of the process of developing them.

Key informants yielded the following perspectives on citizens' awareness and participation in the budgeting process and the ADP in particular:-

- **It is not clear which CIDP document should guide the preparation of the ADP for electoral transition years** such as the FY2018/9.<sup>64</sup> Ideally, the second generation CIDPs should guide the preparation of the ADP 2018/9. However, since counties have not finalised the second generation CIDPs, the 2018/7 ADP is derived from the 2013 CIDPs which expire in a couple of months. Thus, counties are likely to find themselves in a catch-22 situation unless they base the ADP 2018/9 on the draft second generation CIDPs.
- **CIDP attempts to harmonise three critical but problematic imperatives:** Governor's manifesto, public priorities and alignment of county policy priorities with those of the national government. Usually, the electoral promises of the county governor take precedence over the other imperatives.
- **CIDP is constrained by the requirement that it should be project-based.** CGs must identify and list project priorities to be implemented within five years. Dissonance arises between the ADP and CIDP since emergency priorities which were not anticipated by the CIDP emerge every year and must be implemented ADPs. Amending the CIDP to accommodate new priorities is not politically feasible due to the lengthy procedures entailed.<sup>65</sup>
- **There is limited or no linkage between the CIDP, ADP and the County Fiscal Strategy Paper (CFSP).**<sup>66</sup> No one in the approval process has detected this discrepancy, given that no county assembly has ever rejected budget proposals for this reason.

### **KII- Nairobi County Assembly**

***"In fact, CFSP in the last five years ...I think it was never anchored on the CIDP or ADP... it was never! In fact, I think the person who always made the ADP never used to talk to those who developed the CFSP, they never had any conversation ... because the documents were not talking to each other... there was never a linkage between the ADP and the CFSP...that's what I'm saying."***

<sup>64</sup> Ibid

<sup>65</sup> Ibid; similar sentiments were expressed by Turkana County Executive key informant

<sup>66</sup> Nairobi County Assembly key informant

## Level of Knowledge of Key Mechanisms of Participation in Budget Processes

In establishing this, the study focused on participants' understanding of budget hearings and County Budget and Economic Forums (CBEF).

Budget hearings are the best-known mechanisms of participation among the FGD participants. The participants were asked if they had taken part in budget hearings which would enhance their understanding of the purpose and workings of these forums. At least one FGD participant in 15 out of 34 FGDs had participated in budget hearings convened within their localities. No participant from Nairobi County had participated in any budget hearing.

The foregoing supports a similar finding by the Institute of Chartered Public Accountants of Kenya (ICPAK) in a survey conducted in 2014 which established that budget hearings were the most commonly used mechanisms for facilitating citizen participation in the budget process.<sup>67</sup>

Even though CBEF forums are critical mechanisms of participation in the budget process, most FGD participants were not aware of their existence. Only participants in three out of 34 FGDs could explain the role of CBEF and were fully aware of its existence in their counties. Though many admit the existence of CBEFs in their respective Counties.<sup>68</sup> This points to a glaring gap in knowledge, hence the need to publicise the work of CBEFs in the counties.

Effective and meaningful public participation may enhance the ADP process by interrogating the link between CIDP and ADP processes and demanding for more scrutiny of the contents of ADPs by the county assemblies.

## County Governments PP Facilitation Role in CIDP and Budget Processes

The HBRA places great emphasis on empowerment of both right-holders and duty-bearers for the realisation of human rights and freedoms. The right to participation would require citizens to have the right knowledge, skills and attitudes to engage in participation processes. This is also required of duty-bearers to make them responsive to the right to participation by right-holders. However, in addition to individual capacities, duty bearers require certain institutional capacities to competently discharge their public functions and mandates. County governments require appropriate legal frameworks, necessary institutional machinery, adequate budgetary resources and a supportive organisational culture. This section captures perceptions of respondents on the capacity of county governments in facilitating public participation in integrated development planning and budgetary processes.

## Capacity and Effectiveness (Including Responsiveness) of Key Duty Bearers in Facilitating PP

### a. Staff Capacity

Limited staff capacity in mobilising and facilitating public participation, especially at sub-county level, was a common theme in all 34 FGDs and responses from key informants. County officials admitted that sub-county staff lack vital skills and knowledge to carry out their PP duties.<sup>69</sup>

### b. Legal Frameworks

The study ascertained that the counties of Kitui and Tharaka Nithi were yet to enact PP laws as required by the County Government Act. In Kitui, the PP policy was developed by civil society groups as a citizen's initiative and presented

## KII- Tharaka Nithi Government – Executive

*“On capacity, we do not really have much because on these things (public participation) actually we need to be empowered... let me be sincere because since we came in to the system we have not been able to get to any training or to be taught. You see, these things you also need to be enlightened so that you are able to go out here and enlighten other people. So, we have not been empowered in terms of capacity.”*

<sup>67</sup> ICPAK, “Public finance building blocks for devolution: A baseline survey on devolution in Kenya with respect to public financial management systems- one year on,” 2014, ICPAK: Nairobi at p39

<sup>68</sup> These FGDs were held in Kitui County

<sup>69</sup> Tharaka Nithi County Executive key informant; A key informant from Tharaka Nithi County observes that even though the County Government has established a department with responsibility for training staff on public participation and devolution issues, little has since been done in this regard.

to the county assembly for consideration.<sup>70</sup> The assembly failed to prioritise the consideration of the policy.<sup>71</sup> However, the new governor appears more responsive to CSO-led advocacy for enactment of these laws.

Even though Turkana and Nairobi City County authorities have enacted PP laws, large parts of the frameworks remain dormant. For instance, there is no evidence that the Turkana County Government has complied with the legal requirement that at least 1% of County budget should be set aside for public participation. On the other hand, Nakuru County Government is perceived favourably by respondents in its efforts to implement the county public participation law.<sup>72</sup> This is affirmed by the existence of a programme supported by the World Bank which seeks to ensure effective implementation of the legal framework.

### c. Institutional Machinery

In **Kitui**, the absence of legally-sanctioned institutional frameworks for public participation, Kitui County is relying on structures established for the CLIDP programme to mobilise residents for development projects. It has no civic education programme in place, even though documents to support public participation initiatives (particularly regarding budget processes and CLIDP activities) are routinely produced and disseminated. The county has however appointed CoGs to coordinate delivery of services at the village level and disseminate vital information on government services and processes.

In **Turkana**, ward administrators have established effective committees to mobilise for public participation and also uses newspapers and local FM stations to promote it. The county is yet to appoint CoGs.

In **Nakuru**, there is a department with responsibility for public participation across government departments. 73 ward development committees have been established to mobilise participation with a complaint handling desk and a dedicated telephone line set up for this purpose. The county has also appointed CoGs.

In **Nairobi**, the CG Government is yet to operationalise the law on engagement with neighbourhood associations. This notwithstanding, the county government engages with neighbourhood associations on planning and budgeting issues owing to robust partnerships enlisted with CSOs operating within the county.

**Tharaka Nithi** had appointed CoGs during the tenure of the previous county governor but they were dismissed by the new governor since no law had been enacted to support their appointment.

### d. Budgetary Resources

**Kitui County** budget has no dedicated budget line for public participation, despite being supported under the budget line “feasibility studies”. In the FY 2016/7, the county budget allocated Ksh. 40 million for civic education but was mainly used for voter education (mobilising voters to register) and popularising the achievements of the previous county government.<sup>75</sup>

**Tharaka Nithi County** does not have budget lines to support public participation and civic education activities hence could not effectively facilitate public participation.

Despite **Turkana County** providing 1% of budget resources for PP, dedicated budget lines only appeared in the 2016/7 budget where Ksh. 77 million was

<sup>70</sup> According to a key informant, the proposal was spearheaded by The Institute for Social Accountability (TISA) and Caritas-Kitui

<sup>71</sup> These FGDs were held in Kitui County

<sup>72</sup> Feedback for Nakuru County CSOs key informants

<sup>73</sup> Department for Public Service Management, Training and Devolution.

<sup>74</sup> A Nairobi City County Executive key informant identified TISA and Oxfam as some of the CSOs who have actively mobilized residents to participate in planning and budgeting processes.

<sup>75</sup> Ibid: this view was corroborated by the CSO key informant who was critical of the voter education drive that was conducted

allocated to PP under the governor’s office, an amount that does not meet the 1% legal threshold.<sup>76</sup>

**Nakuru County** first allocated funds towards PP in the 2016/7 budget. For each ward, a budget of Ksh. 200,000 was set aside for public participation activities.

**Nairobi City County** has not fulfilled the legal requirement of setting aside up to 2% of its budgetary resources to support public participation. For this reason, public participation activities are supported under various budget lines administered by respective departments.

**e. Organisational Culture**

The perception among key informants in Kitui County was that the government lacked a consultative culture which hinders effective facilitation of public participation. CIDP and ADP processes were viewed by key government officials as too technical for the ordinary people to understand.

In Turkana, Tharaka Nithi, Nairobi and Nakuru Counties, the county executives were reported to have had a strained relationship with the county assembly and elected leaders (MPs and Senator). This resulted in mistrust and suspicion, subsequently undermining effective facilitation of PP.

**Capacity and effectiveness (including responsiveness) of mechanisms for participation in budget processes**

**a. Budget Hearings**

Budget hearings are functional in all the target counties. However, most participants expressed dissatisfaction with how they are conducted. Below are some of the key concerns raised during FGDs:

- Budget hearings are organised merely to rubberstamp pre-determined outcomes. Such perceptions usually discourage citizens from participating.<sup>77</sup>
- Post-budget feedback to citizens on proposals made at the hearings does not happen. Citizens do not know if their views were adopted in the eventual county budget.<sup>78</sup>
- Budget documents are not shared in advance, and in most cases, the estimates are read out aloud by the facilitators.<sup>79</sup> Hence, the requirement for ensuring citizens are sufficiently informed is not often met.

In Nairobi, ward administrators should organise citizen forums every three months and a feedback forum once a year in April. From the FGDs and key informant interviews, it was clear that no such forums have been organised.

**b. County Budget and Economic Forum (CBEF)**

All counties have in place functional County Budget and Economic Forums, even though all the target counties delayed the appointment of members. This finding is corroborated by the observations contained in the annual county budget implementation reports which stated that these mechanisms were established in Kitui (FY2015/6),<sup>80</sup> Turkana (FY2015/6)<sup>81</sup> and Nakuru (FY2016/7).<sup>82</sup>

However, perceptions of effectiveness of the CBEF vary from county to county.

- In **Tharaka Nithi** County, the CBEF was perceived as inoperative and its members or activities virtually unknown to FGD respondents and some key informants (CSOs).
- In **Kitui**, the CBEF is perceived as effective and last met in February 2018 to consider the CFSP before the document was sent to the county assembly.<sup>83</sup> The

<sup>76</sup> According to the Controller of Budget, Turkana County received Ksh12.8B towards the 2016/7 budget and therefore 1% of the budget amounts to Ksh128M

<sup>77</sup> Feedback from Turkana County FGD

<sup>78</sup> Feedback from Nakuru County FGD

<sup>79</sup> Feedback from Nakuru County CSO key informant

<sup>80</sup> Office of Controller of Budget, "Annual County Governments budget implementation review report, FY2015/6," September 2016 at p132 available at <http://cob.go.ke/publications/> last accessed on 23rd April 2018

<sup>81</sup> Ibid p292

<sup>82</sup> Office of Controller of Budget, "Annual County Governments budget implementation review report, FY2016/7," August 2017 at p214 available at <http://cob.go.ke/publications/> last accessed on 23rd April 2018

<sup>83</sup> Kitui County CSO key informant

Forum’s non-state actors’ representatives are linked to specified sectors and provide feedback in an ad hoc manner.

- In **Nairobi**, despite a functional CBEF, non-state members developed an adversarial relationship with the County Executive which may exact a level of accountability from the executive or paralyse the forum. This underlines the tensions between HBRA and planning processes discussed in Chapter Two.
- In **Turkana** County, the CBEF holds regular meetings to consider budget proposals from the Executive and engages with the county assembly in budgeting issues. It however has no interface with the community and its activities are not publicised.

One concern raised by key informants and FGDs respondents was the opacity surrounding the appointment of its members.

The Nakuru CBEF meets to discharge its mandate but does not adhere to its quarterly schedule due to unavailability of the county governor (the Forum’s convener). The nature of representation of non-state actors in CBEF was raised. For instance, one representative of business interests in the forum is said to reside outside the county, and cast doubt on their linkage with the local constituency.<sup>84</sup> There is also no structured interface between the forum and constituencies represented by the non-state actors.

**c. Intergovernmental Structures**

The county government officials, MPs and Senators do not consult over the CIDP and other development issues. Similarly, there are no inter-governmental structures as per Section 59 of the CGA leaving implementation and oversight of the CIDP as a county authorities and residents’ affair.

**Challenges and Opportunities for Advancing PP in CIDP and Budgeting Processes**

**Barriers to Participation in CIDP 2013 Process**

The following were the key issues that were identified as barriers to participation in the development of first generation CIDPs:

- **Lack of Awareness:** In most FGDs, this was cited as the main reason why citizens did not participate effectively as they did not understand its importance and workings.



*“Why should I spend my money to log into the Nairobi County website and see how the County officials are stealing our money? Isn’t it better to place a bet with my fifty shillings on Sportpesa and hopefully win two hundred shillings after one hour and thirty minutes? Or which option would you prefer if it was you. Of course, betting with Sportpesa.”*

*Dagoretti North male FGD participant*

<sup>84</sup> CSO Key informant from Nakuru County

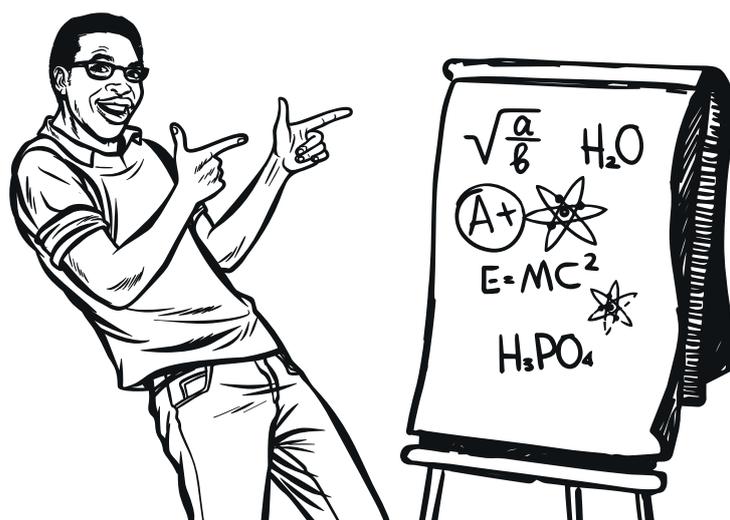
- **Political Interference and Manipulation of the Process:** Most key informants from CSOs noted that the CIDP was used by governors as a tool to implement their manifestos and hence citizen voices did not really count.



- **Lack of Coherent Frameworks for Participation in CIDP:** Most county officials attributed poor participation to limited standard guidance given to counties on PP. At the inception of the CIDP process, all target counties did not have public participation laws and used the guidelines issued by the ministry which were more focused on technical aspects of the process and less on mobilisation and facilitation of public participation.

*“The way they want it is (to manage public participation activities) contrary to our wishes. When they present the budget, they make sure people do not get an opportunity to ask questions. They make sure that they frustrate us with time, venue, and unnecessary complications. One time with my friend ... we protested, but the MCA told us that even if we shout the budget will be passed as it is...you know that kind of attitude, and it (the budget) was passed.”*

*Male FGD Participant, Chuka*



- **Communication Barriers:** Physical barriers such as expansive and difficult terrains coupled with poorly developed infrastructure and absence of decentralised structures at the onset of devolution imposed heavy administrative costs on the growing counties. This hampered facilitation of participation in development of first generation CIDPs. Language barriers arising from low level of literacy in marginal counties (Kitui, Tharaka Nithi and Turkana) locked out most citizens from participating through mass media unless materials were translated. This extra cost served as a further disincentive.
- **Poor Mobilisation for PP Processes:** There were delays in providing prior information and notices, poor choice of venues and poor facilitation skills. FGD participants accused county staff of deliberately causing these lapses.<sup>85</sup>

<sup>85</sup> CSO Key informant from Nakuru County

## Barriers to Participation in Budget Processes (2013-7)

Some of the unique challenges identified as barriers to effective public participation in the budget processes are:

- a. Limited Access to Budget Implementation Reports:**<sup>86</sup> Usually, CGs produce the reports late or not at all thereby denying the public the basis to demand accountability over the utilisation of budgetary resources. This view corroborates the findings from the controller of budget with respect to Nakuru County for the FY 2015/2016.<sup>87</sup>
- b. Failure to Address Financial Expectations from the Public:**<sup>88</sup> One of the most common expectations from the public is reimbursement of transport and provision of lunch/refreshments at public participation meetings. In the absence of guidance on how to address this expectation, counties have adopted different approaches. Counties that fail to meet this expectation face poor participation, while counties that met it faced queries over the sustainability of public participation due to a shift from inclusivity to reimbursement. Besides, integrity concerns were raised over the handling of reimbursements e.g. failure by county officers to document the actual entitlements for participants.
- c. Public Apathy Towards Participation:** Apathy towards participation in budgetary processes has increased over time due to factors such as: failure by county officials to manage meetings effectively, persistent reports on widespread corruption,<sup>89</sup> and the repetitive nature of public hearings on budget processes.
- d. Insecurity:** In large parts of Turkana County, rampant insecurity hampers holding of public participation meetings. This calls for conflict-sensitive approaches to public participation.

<sup>86</sup> Male participant at the FGD held in Chuka, Tharaka Nithi

<sup>87</sup> As discussed in Chapter Three, the PFMA requires County Treasury to issue circular detailing the budget process and procedures for public participation, including the information to be disclosed. Even though all counties issued circulars as per law, the disclosure of information contained in the same was not made in good time.

<sup>88</sup> Office of Controller of Budget, 2016 *supra* p214

<sup>89</sup> Feedback from FGDs in Kitui and Tharaka Nithi

<sup>90</sup> Feedback from a youth participate at a male FGD in Dagoretti, who felt it would be a better use of his money to place a bet with one of the local lotteries rather than use the same to download budget information from the City County Government's website.



### Citizen’s role in Implementation of CIDP and Budget Processes

Respondents put forth these proposals on new roles for citizens during implementation of CIDPs and budget process:

- a. Enhance Role of Community Elders<sup>90</sup> in PP processes:** In communities where elders still enjoy respect such as Turkana, CGs need to elicit their participation by tapping into their knowledge of the counties.
- b. Identification of Community Champions for PP:<sup>91</sup>** Reliance on formal structures (e.g. ward forums and development committees) may not sufficiently ensure effective participation. There is need to enlist community champions and support their activities in animating participation. Animation activities may include convening citizens “parliaments” at the village, discussion forums between authorities and citizens at village levels, community mobilisations, and facilitating social audits blogging etc. Nyeri and Embu Counties recruited, trained and deployed such animators commonly known as Drivers of Public Participation (DoPPs).<sup>92</sup> These were grassroots groups used to mobilise citizens for participation in the formative years of devolution.
- c. Establishment of Project Implementation Committees:<sup>93</sup>** These would foster participation in implementation, and in monitoring and evaluation of community level development projects. Most of the target counties were yet to establish such committees. In Makueni County, there is a move to establish functional project management committees (the equivalent of PICs) to guide any project implemented within their jurisdictions.<sup>94</sup> Approval of project completion is dependent on positive evaluation by the PIC acting as citizens’ watchdog.

*“When we go for the meetings, we are told to write our names and our signatures but we are not supposed to write the amount (for reimbursement) that we have been given, to me that is totally wrong, I would rather not take that money.”*

### Level of Citizen Participation in CIDP 2017/8 Process

The study established that preparation of second generation CIDPs in the target counties was at varied stages. A marginal improvement in citizen awareness on the preparations was evident from feedback from the FGDs. In 20 out of 34 FGDs held, at least one participant knew of a CIDP forum or activity that had been held in their sub-county. This is against one participant in 15 out of 34 FGDs in the 2013 CIDP.

- In Nairobi, feedback from nine out of the 12 FGDs held indicated that no CIDP preparatory activity had taken place in the respective sub-counties.
- In Tharaka Nithi, feedback from three out of four FGDs confirmed that the CIDP process was underway in the county.
- In Nakuru, feedback from half of the FGDs conducted indicated that the process had not started and that no CIDP activities had been held in the localities.<sup>95</sup> Turkana County had similar feedback.
- In Kitui, all FGDs acknowledged that CIDP preparatory activities had commenced within the respective localities.<sup>96</sup>

In at least one FGD conducted for each county, participants noted that ward administrators had tried to mobilise citizens to take part in CIDP-related activities. There was also use of mainstream and social media. CSOs were also actively involved in sensitising citizens to take part in CIDP processes.

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<sup>91</sup> Feedback for Turkana County key informant

<sup>92</sup> Feedback from Kitui County CSO key informant

<sup>93</sup> Kenya School of Government & World Bank, “One year on: review of County Initiatives in Public Participation in the Rollout of Devolution” in Kenya Devolution, Working Paper No.5, (February 2015) at p5 accessed from <http://documents.worldbank.org/curated/en/187591468253782383/pdf/>

<sup>94</sup> Feedback from key informants in Tharaka Nithi and Turkana counties.

<sup>95</sup> IEA, 2015 supra p29

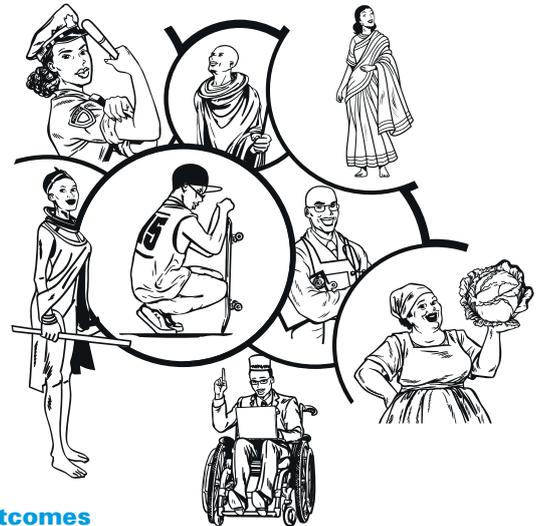
<sup>96</sup> Feedback from Nakuru Town (male and female) and Kuresoi (male) FGDs

<sup>97</sup> Feedback from Lokichar (male), and Turkana Central (Male and female) FGDs

## Preferred Mechanisms for Participation in the CIDP 2017/8 Process

Respondents noted the use of budget participation forums, media, civic education, and town hall meetings as mechanisms for promotion of participation. However, a few new suggestions came up:-

- Implement the Nyumba Kumi grassroots structure as a shared mechanism for engaging citizens at the sub-village level on development matters.<sup>98</sup> Nyumba Kumi is a community policing committee bringing together a cluster of households primarily to address security concerns and provides a vital link for households to national government administrators and vice-versa.<sup>99</sup> Counties therefore should negotiate with the national government to re-establish the Nyumba Kumi (or its equivalent).
- Counties to develop a long-term vision for their development<sup>100</sup> to address the problems of discontinuities in CIDP processes arising from changes in County Government regimes. CIDPs can then be formulated in line with the principles of the Vision.



## Popular Expectations on the CIDP 2017 Process and its Outcomes

In the processes and outcomes of the development and roll out of the second generation CIDPs, respondents considered the following as important:-

- a. Broad-based participation: process to be as inclusive as possible using a wide array of platforms to mobilise stakeholders.
- b. Popularise CIDPs: counties to develop popular versions of CIDPs and disseminate them widely.
- c. Participation in project implementation: establish project implementation committees.
- d. Transparency in budget processes: since the CIDP is operationalised through the annual budgeting process, counties to make budget processes more open and accessible to citizens for accountability.
- e. Public Participation Laws: counties with existing ready participation laws should create PP units/departments to coordinate participation across government departments and at sub-county levels. This should be supported by robust civic education programs and fulfilling thresholds for financing of public participation. Village administrative structures should be set up as per the CGA.
- f. Strengthen monitoring and evaluation: M&E frameworks should be deployed to measure progress of CIDP strategies. The progress status to be shared with stakeholders to facilitate learning and accountability.

All responses pointed to the process rather than the outcomes meaning if the process is good, then good outcomes will follow.

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<sup>98</sup> | Feedback from Nairobi County FGD

<sup>99</sup> | For more, see Government of Kenya, "Draft guidelines for implementation of community policing-nyumba kumi, usalama wa msingi" accessed from <http://www.communitypolicing.go.ke/docs/draft4.pdf> non 03/05/2018

<sup>100</sup> | Key informant, Nakuru CSO

# Conclusions and Recommendations

## CHAPTER FOUR

### Conclusions

- Since the CIDP and budgetary processes entail resource allocative decision-making, they attract elevated public interest. Therefore, the legal framework imposes heavy obligations on county authorities to facilitate participation, while also providing for rights and opportunities for citizens to participate.
- Kenya's integrated development planning promotes economic and physical aspects with planning theories supporting the need for public participation. HBRA and panel assess the extent of meaningful and effective participation in planning processes.
- The laws on planning and participation considerably adopt the panel principles. However, there are inconsistencies in some of the national and county laws particularly on allocation of institutional obligations to duty-bearers. The courts of law continue to provide guidance here.
- Ordinary citizens have little knowledge about the process and contents and implementation and appraisal of CIDPs due to inadequate information and involvement, low capacity for mobilisation, lack of transparency and the need to comply with set budgeting timelines over citizen involvement. Low awareness undermines participation and ability to exact accountability among citizens.
- The process of translating CIDPs into annual budgets suffered from discontinuities due to weak oversight by county assemblies, emergence of new priorities, lack of guidance in counties during electoral transitions and limited citizen pressure for compliance. The ADP and its process which essentially should provide the link between CIDPs and county budgets is virtually unknown to ordinary citizens.
- Despite citizen awareness of the budget process, they do not understand the steps it entails. Public budget forums and hearings are the best-known mechanisms for participation. The County Budget and Economic Forum (CBEF) is a not well understood by ordinary citizens but could be useful for constructive engagement between county officials and non-state actors.
- There is need to adhere to meeting schedules, proper representation of non-state actors in the Forum and interface with their respective constituencies.
- Lack of inter-governmental structures for consultations on CIDPs and budget processes further constrains participation.
- Poor citizen mobilisation by counties to participate in CIDP and budgeting processes narrows down to weak institutional capacities. That is, weak staff capacities (especially at the sub-county levels), inoperative legal frameworks on public participation, failure to establish and sustain sub-county forums and administrative structures (CoGs), inadequate budgetary resources for public participation, and an unsupportive organisational culture.
- Barriers to participation include political interference, limited awareness, lack of a coherent framework and an opaque process.
- Nakuru and Kitui perform better owing to the positive perceptions on most indicators from the respondents. Tharaka Nithi and Nairobi underperform, with Turkana County fairing in between.

## Recommendations

The study makes the following legislative and policy recommendations arising from the foregoing findings and conclusions:

### Legal Framework

- a. The CGA to recognise and provide for Nyumba Kumi structure or its equivalent as a possible sub-village level of self-organising by residents for county development and governance processes.
- b. County governments to implement the Urban Areas and Cities Act with supportive budgetary incentives from the national government to enable CGs to improve citizen participation in planning urban areas.
- c. The CGA should provide normative guidance on the institutional responsibilities of various county authorities over public participation.
- d. The Public Finance Management Act (PFMA) to provide for longer-term county planning frameworks beyond the five year CIDP period to mitigate the arising discontinuities.
- e. Kitui and Tharaka Nithi Counties should prioritize enactment of public participation laws. Nakuru, Tharaka Nithi and Nairobi should enact laws on village administrative structures.

### Promoting Citizen Awareness and Participation in CIDP and Budget Processes

- a. CIDP guidelines issued by the MoDP to provide for public participation and dissemination of CIDPs.
- b. Counties to produce popular versions of CIDPs and disseminate them using a variety of platforms. Forging partnerships with CSOs for dissemination of CIDPs is highly recommended.
- c. Counties to strengthen M&E structures for CIDPs by adopting and implementing the County Integrated Monitoring and Evaluation System (CIMES). The reports should be communicated to citizens adequately to promote accountability.
- d. Counties to disseminate ADPs sufficiently and provide more opportunities for CSO and citizen engagement on ADP e.g. through public hearings.
- e. MoDP should provide guidelines on ADP-CIDP linkage during periods of electoral/ leadership transitions in counties.
- f. The Controller of Budget (CoB) to report on the linkage between ADPs, CIDPs and other budget documents as part of developing annual reports on county budget implementation. This will enable right bearers to hold counties accountable.
- g. Counties should support inclusivity in CBEFs and enable the forum to publicise its work at county level.
- h. County governments to fast track establishment of project implementation committees to enhance citizens' oversight in implementation of CIDP and budget processes.
- i. Given the low development budget absorption rates, CGs should introduce

public-private partnerships, voluntary contracts and community grants as tools for enhancing citizen and CSO participation in delivery of projects.

### **Strengthening Role of County Governments in Facilitating Public Participation in CIDP and Budget Process**

- a. Delegate training on public participation to CoGs, who bear greatest responsibility for facilitating this process at the grassroots.
- b. Should all appoint CoGs and organize sub-county forums as per their respective PP participation laws.
- c. Should adhere to their legal obligations of budgetary thresholds for public participation financing. All county governments should provide for a predicable framework to ensure adequate budgetary allocations for public participation.
- d. Uphold deliberative and consensus-based decision-making culture which supports public participation.
- e. Operationalise the inter-governmental structures envisaged in section 54 of the CGA.

### **Barriers and Opportunities to CIDP and Budgeting Processes**

- a. County governments should operationalise civic education units and implement viable civic education programmes.
- b. Civil society organisations should also step-up their civic education campaigns, targeting the CIDP-ADP link.
- c. In the absence of effective M&E systems at the county level, CSOs should monitor the work of counties in fostering participation in planning processes and share the feedback with duty-bearers.
- d. CSOs should stimulate demand for county budget reports by ensuring their timely publication and dissemination. This could entail publishing indices on timelines of submission of such reports by the duty-bearers.
- e. County authorities should only meet reasonable and sustainable financial expectations of the public in relation to public participation (e.g. refreshments). They should refrain from making payments that appear to “bribe” citizens to participate (e.g. flat-rate allowances).
- f. Counties in collaboration with CSOs should formulate conflict-sensitive approaches to participation to enable duty-bearers address the insecurity barriers.
- g. CIDP and budgeting guidelines should provide for consultations with community elders where respect for this institution remains strong.
- h. County governments should adopt the community-champions model for animating public participation at the grassroots levels.
- i. Constitutional commissions such as the commission on administrative justice and the gender and equality commission should effectively monitor, report and provide advisories on integration of human rights principles in county planning and budget processes.

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