

**FISCAL DECENTRALISATION IN KENYA: A CASE STUDY OF
CONSTITUENCY ROADS TENDER COMMITTEES IN KAKAMEGA
COUNTY.**

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DEDICATION

This thesis is dedicated to my parents Mr. Peter Rapando Oluye and Mrs. Violet
Ambasa Rapando.

Thank you for your support and sacrifice in educating me and instilling in me an appetite
for knowledge.

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TABLE OF CONTENTS

1.0 CHAPTER ONE:INTRODUCTION	1
1.1 Background of the study	1
1.2 Statement of the problem.....	2
1.3 Justification of the study	3
1.4 Research questions.....	4
1.5 Research design and methodology	4
1.6 Hypothesis	6
1.7 Statement of objectives.....	7
1.8 Theoretical framework.....	7
1.9 Limitations of the study	11
1.10 Literature review.....	11
1.11 chapter breakdown	27
1.11.1 Chapter one - Introduction.....	27
1.11.2 Chapter two - Theoretical Framework.....	27
1.11.3 Chapter three - Constituency Roads Tender Committees and development	27
1.11.4 Chapter four - Recommendations.....	28
1.11.5 Chapter five - Conclusion.....	28
2.0 CHAPTER TWO :THEORETICAL FRAMEWORK	29
2.1 Introduction.....	29
2.2 First generation economic theory of fiscal decentralisation	31
2.3 Criticisms of the first generation economic theory.....	36
2.4 The second generation economic theory of fiscal decentralisation	37
2.4.1 Political economy	38
2.4.2 Behavioural economics.....	42
2.4.3 Agency problem and transaction cost economies.....	42
2.5 Historical development of decentralisation.....	43

2.6 Economic theory and fiscal decentralisation in africa	45
2.6.1 Waves of fiscal decentralisation in africa	46
2.6.2 Fiscal decentralisation in kenya	48
3.0 CHAPTER THREE: CONSTITUENCY ROADS TENDER COMMITTEES AND DEVELOPMENT	50
3.1 Introduction.....	50
3.2 The legal framework of constituency roads tender committees.	51
3.2.1 Establishment.....	51
3.2.2 Composition of Constituency Roads Tender Committees.....	51
3.2.3 Function of Constituency Roads Tender Committees	53
3.3 Advantages and disadvantages of Constituency Roads Tender Committees.	54
3.3.1 Advantages.....	54
3.3.2 Disadvantages	58
3.4 Reflection of the local community in the committees’ composition	60
3.5 Constituency Roads Tender Committees and reports to the local community	61
3.5.1 Reports to the Local Community	61
3.5.2 Nature of reporting pattern to stakeholders.	62
3.6 Observers and Constituency Roads Tender Commitees.....	63
3.6.1 Involvement of observers.....	63
3.6.2 Reasons for non involvement of observers	64
3.6. Enhancement of involvement of observers.....	64
3.7 Public awareness of the committes’ activities.	65
3.8 Participation of local community in the activities of the committees.....	66
3.8.1 Participation of local community	66
3.8.2 Mode of participation.....	67
3.8.3 Level of participation of the local community.....	67
3.8.4 Adequacy of participation of the local community.	68
3.8.5 Factors hindering the participation of the local community in the activities of the committees.	69

3.8.6 Enhancement of participation of the local population	69
3.9 Constituency Roads Tender Committees and Development.....	71
3.9.1 Development of rural road network.....	71
3.9.2. Annual budget for the committees.....	72
3.10 Distribution of road projects within respective constituencies	73
3.10.1: Equity in the distribution of road projects within constituencies	73
3.10.2 Reasons for inequitable distribution of road projects within the constituencies ...	74
3.10.3 Pursuit of self interests.....	76
3.11 Economic development of local community	77
3.11.1. Preference for local contractors	77
3.11.2. Reasons for not exercising preference for local contractors.....	78
3.11.3. Increase in number of local contractors.....	78
3.11.4 Factors considered by committees in exercise of their mandate.	79
3.11.5. Role of committees in creation of employment within the constituencies	80
3.11.6 Enhancement of the committees’ role in economic development of the respective Constituencies.....	81
3.12 Factors hindering constituency roads tender committees in the discharge of their work.	81
3.13 Enhancing the performance of constituency roads tender committees in the discharge of their work.....	82
3.14 Conclusion	83
CHAPTER FOUR: RECOMMENDATIONS.....	84
4.1 Introduction.....	84
4.2 Recommendations.....	84
CHAPTER FIVE: CONCLUSION	88
.....	88
Bibliography	90
Appendices	98

Appendix 1: Questionnaire for chairmen and members of Constituency Roads Tender Committees.....98

Appendix 2: Interview schedule for secretaries of Constituency Roads Tender Committees.....105

ABBREVIATIONS

CDF - Constituency Development Fund.

LATF - Local Authority Transfer Fund.

RMLF - Road Maintenance Levy Fund.

SRDP- Special Rural Development Plan.

USA- United States of America.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Fiscal Decentralization is advocated in the reform of economic systems¹ to ensure development.² Prior to 1980, the debate on development emphasized on the role of the market and the environment within which it operated.³ After 1980, focus is on the role of the public sector, with fiscal decentralization being a key component of these reforms.⁴

Due to philosophical differences amongst nations occasioned by incoherence in legal philosophy, decentralization takes various forms based on the power and responsibility devolved.⁵ This thesis is concerned with the performance of Constituency Roads Tender Committees as units of decentralization in development.⁶ The thesis limited itself to two issues. First, that there is lack of coherence in the legal philosophy adopted by states in their policies on the form of a fiscal decentralization system and two, as a consequence of the philosophical differences, there is limited agreement on the ideal form of fiscal decentralization units as a result of which states are using fiscal decentralization systems with different forms and structures to ensure

¹ Paul Smoke(2001) Fiscal Decentralisation in Developing Countries.A Review of Current Concepts and Practice. United Nations Research Institute for Social Development, at 1.

² World Bank World Development Report-1999/2000 .(2000)Entering the 21st Century.World Bank Washington D.C at chapter 5.

³ Note I.

⁴ Paul Smoke (2003) Decentralisation In Africa:Goals,Dimensions,Myths and Challenges.Public Administration and Development.23,7-16 at 1.Retrieved from www.interscience.wiley.com on 4th july,2013.

⁵ Hoze Riruako,(2007)The Paradox of Decentralisation in Namibia.A dissertation.University of Western Cape, at 14.

⁶ See sections 17 and 17A of the Kenya Roads Board Act 1999.

development.⁷ In Kenya, Constituency Roads Tender Committees is amongst the forms of fiscal decentralization adopted. This is a system where the national government allocates funds annually to every constituency for specified road works to be procured by a committee at the constituency level, to ensure development.⁸ However, in spite of this, the Country's rural road network remains undeveloped.⁹ Prior to the formation of Constituency Roads Committees, decisions on the identification of roads to be maintained within constituencies and the procurement of the road works were centrally done by the Ministry responsible for roads.¹⁰ Due to the political patronage associated with the decision making at this level, Constituency Roads Tender Committees were formed to ensure equity in the development of the rural road network within the country.¹¹

1.2 STATEMENT OF THE PROBLEM

Fiscal decentralization through Constituency Roads Tender Committees has been cited as a panacea to the development of the country's rural road network.¹² However, this does not mean that these units have no challenges that affect their performance.¹³ These committees have challenges that have impeded their role in the development of the rural road network. Though the challenges are diverse, this study

⁷ Development here is defined in the wider sense of not only economic indicators but other indicators as the level of participation of the people in the development process. See UNDP (2013) Human Development Report 2013. The Rise of the South. Human Projects in Diverse World. New York..

⁸ Kenya Roads Board Act 2007 s 17 and 17 A. The Kenya Roads Act 2007 at s 6,34,35,36 and 47

⁹ Ministry of Roads, Kenya :Road Sector Investment Programme 2010-2024 at 7.

¹⁰ Robin Burgess, Remi Jedwab, Edward Miguel, Ameet Morjaria. Our Turn To Eat: The Political Economy of Roads in Kenya. London School of Economics. 2010 at 1-8.

¹¹ Note 10 above

¹² Mohamed Nura ,(2012) Service Delivery Through Stakeholder Engagement and Citizen Centric Approach: The Case of Gatanga Constituency Development Fund. CAPAM Network , Commonwealth Secretariat, at 11. Retrieved from www.capam.org on 6th March, 2013.

¹³ Kenya Rural Roads Authority: Strategic Plan 2013-2017 at 11.

limited itself to problems within the design of these units.¹⁴ This is in respect of the composition of the committees, qualifications of the members, amount and timing of the funding, the manner of discharge of their mandate and the involvement of the persons resident within these constituencies. The design of the committees refers to the factors provided for in Sections 17 and 17A of the Kenya Roads Board Act 1999¹⁵ on the functioning of Constituency Roads Tender Committees. This is in respect of the powers, functions and financing of these committees.¹⁶ Available writings on Constituency Roads Tender Committees emphasize on the achievements made.¹⁷ Limited writings are available on their challenges. This study therefore attempted to add to the existing literature by identifying the design problems that affect Constituency Roads Tender Committees and limit their effect in development. This study consequently investigated through a descriptive case study approach, the problems impeding the role of Constituency Roads Tender Committees as units of fiscal decentralisation in development.

1.3 JUSTIFICATION OF THE STUDY

Fiscal decentralization programmes may lead to development, though several factors affect this.¹⁸ The problems identified by this study are those inherent in the design of Constituency Roads Tender Committees as units of fiscal decentralization. The justification, therefore of this study was to address these problems by developing recommendations. Hence, Constituency Roads Tender Committees will not only

¹⁴ Note 13 above.

¹⁵ Note 6

¹⁶ Note 6

¹⁷ Note 12 .

¹⁸ Lidia Cabral (2011) Decentralisation in Africa:Scope,Motivation and Impact on Service Delivery and Poverty.Working paper no 020. Overseas Development Institute.Futures Agriculture Consortium, at 20. Retrieved on 20th August,2013 from www.future.agricultures.org.

ensure development of the rural road network but also create wealth, improve the economies of the areas of jurisdiction and alleviate poverty in these rural areas where majority of the population resides.

The other justification of this study is the provisions of the Constitution of Kenya¹⁹ on a devolved system of governance²⁰ with devolution²¹ as a national value for both national and county governments.²² There is hence a great need for an appropriate design of a fiscal decentralisation system. This is to ensure successful implementation of the decentralised system provided for in the Constitution.²³

1.4 RESEARCH QUESTIONS

This study examined two research questions. , Firstly, what is the effect of Constituency Roads Tender Committees on the development? and ,secondly what design problems have limited the role of Constituency Roads Tender Committees in development?

1.5 RESEARCH DESIGN AND METHODOLOGY

This was a qualitative and quantitative research..The library research method facilitated research on which the literature review was based.

The study was conducted in Kakamega County within the Republic of Kenya during the month of December; 2013.The study was carried out within Kakamega County because of the importance of the rural road network to the agricultural activities within the county. The economy of Kakamega County is mainly agricultural based relying so much on the rural road network. The researcher is also resident within this

¹⁹ Constitution of Kenya,2010

²⁰ Chapter 11 of the Constitution of Kenya,2010

²¹ As will be noted later,this is one of the forms of decentralization.

²² Article 10 of the Constitution of Kenya 2010

²³ See note 15

county and hence with limited finances for the research found it proper to carry out the research within this county. The study covered the nine Constituency Roads Tender Committees within the county at the time. These are committees within Mumias, Matungu, Ikolomani, Lugari, Malava, Butere, Khwisero, Shinyalu and Lurambi constituencies. The study population covered members of the committees within the county. The study was based on information from members of these committees because of the nature of the variables that were the subject of the study. Due to the nature of these variables, appropriate information could be obtained from these members. Further; there is a report by the Ministry of roads on surveys previously carried out among the residents of the areas served by these committees.²⁴ Random, stratified random and purposive sampling methods were used. The sample size was large and representative to enhance the reliability and validity. It covered the chairmen/chair persons, two members and the secretary hence 90% of the total population.

Questionnaires, interview schedules and document analysis were used to collect data. All these methods of data collection were used. Questionnaires were the main method and were used for ordinary members of the committee. Interview schedules were used for secretaries of the committees. This is because of the nature of information held by the secretaries that is relevant for purposes of this study. Documents analysis of relevant reports, publications, manuals and newsletters supplemented the data obtained from questionnaires and interviews. The questionnaires and interview schedules were administered by the researcher with representatives within the committees serving as collection centres for completed questionnaires.

²⁴ Note 9

To ensure reliability, the research instruments were well constructed as per the variables of the study.²⁵ The data was accurately coded. Bias was controlled through the use of random sampling technique.²⁶ The sample size covered all the categories of members.²⁷

Validity was enhanced by properly formulating the objectives of the study and the construction of the research instruments. The samples were picked at random.

To ensure practicality, the instruments of data collection were well designed.²⁸ A pilot study was carried out for the Constituency Roads Tender committees within Busia County. The questionnaires and interview schedules were pretested to improve on their reliability. The data collected was coded and analyzed. The analysis was by qualitative and quantitative methods. Percentages were used to represent the data.

Ethical issues considered during the study included avoidance of plagiarism and fraud, confidentiality and privacy of the information obtained from the respondents, avoidance of physical and psychological harm to the respondents and obtaining of prior informed consent from the respondents.²⁹

1.6 HYPOTHESIS

This study aimed to test the hypothesis that problems in the design of Constituency Roads Tender Committees in Kakamega County have affected the committees' role

²⁵ C.R. Kothari, (2004) Research Methodology.Methods and Techniques.Second Edition.New Delhi:New Age International Publishers Limited at 74-75.See also Mugenda and Mugenda ,(2003):Research Methods;Quantitative and Qualitative ApproachesActs Press at 45.

²⁶ Note 25 above.

²⁷ Note 25 above.

²⁸ Note 25.

²⁹ Prashant V Kamat(2006), Research Ethics.A paper presented at the Symposium on Scientific Publishing,ACS National Meeting,Atlanta,GA . at 10.Retrieved from www.nd.edu/pkamat/pdf/ethics.pdf.

in development and as such, there is a direct relationship between the design of a fiscal decentralization system and the realization of development.

1.7 STATEMENT OF OBJECTIVES

The existence of problems in the design of a fiscal decentralization unit affects and limits the development realized and as such, these problems defeat the application of fiscal decentralization to achieve development. Hence, the general objective of the study was to assess the effectiveness of Constituency Roads Tender Committees as units of decentralization and identify the problems that limit their role in development. This involved understanding how those who are mandated to make decisions on procurement of the rural roads within this county make the decisions that affect the inhabitants of this county. The subsidiary objectives of the study were to introduce the concept of fiscal decentralization, discuss the jurisprudence surrounding it and introduce scholars who have written about fiscal decentralization, and its role in development. This discussion helped in identifying the gap in literature relating to the role of Constituency Roads Tender Committees in development. A further objective of the study was to make recommendations to address problems identified in the design of Constituency Roads Tender Committees to ensure their effectiveness in development.

1.8 THEORETICAL FRAMEWORK

This study is based on the economic theory of law.³⁰ The study is based on this theory because the theory explains the motivations and outcomes of a decentralized

³⁰ The economic theory of law deals with various elements of the relationship between law and economics. However, in this context, we focus on the elements of the theory relating to the functioning of the various layers of Government.

economy.³¹ The theory suggests that the decision to decentralize, results from a trade-off between its advantages (as capacity to cater for local interests) and costs (as inter- regional spillovers)³²

The debate on the merits of decentralization dates back to the writings of Charles Tiebout³³. Tiebout advocated for optimality of local public goods provision, based on an analogy between competitive markets and competing jurisdictions.³⁴ In contrast, Wallace Oates³⁵ argued that decentralization results from a trade-off between its advantages and costs. According to him, the advantage of decentralization lies in the capacity to cater for local tastes, due to better information or simply because the central government cannot differentiate public goods provision.³⁶

The argument by Wallace Oates³⁷ that a central government is unable to differentiate the provision of local public goods in terms of local preferences has been subject of various challenges, but his intuition that the choice on whether or not to decentralize rests on a fundamental trade off between costs and advantages remains.³⁸

The inter-regional spillovers that are at the heart of Wallace Oates's argument are of a horizontal type between sub-central governments units of the same level.³⁹ They are also between local and central governments and occur if one government level's policy decisions have an impact in the policy outcome of the other level.⁴⁰ For

³¹ Joana Alves, Susana Peralta and Julian Perelman. (2013) Efficiency and equity consequences of decentralisation in health: an economic perspective at 74. In REV PORT SAUDE PUBLICA. 2013; 3174-83. Retrieved from www.elsevier.pt/rpsp.on 3rd february, 2013.

³² Note 31 above.

³³ Charles M. Tiebout (1956) A pure theory of local expenditures. Journal of political economy at 64.

³⁴ Note 33 above.

³⁵ Wallace Oates (2008). Fiscal Federalism. New York: Harcourt Brace Jonanovich, at 377 to 392.

³⁶ Note 35 above.

³⁷ Note 31 at 76.

³⁸ Note 31 at 76.

³⁹ Note 31 at 76.

⁴⁰ Note 31 at 76.

instance, if sub central government delivers on infrastructure local policies that affect services use and costs at the central level. Consequently, rewards to sub-central governments will give them incentives to optimize and the benefits are fully enjoyed by the central government.⁴¹

A recent development in this school of the economic theory is in respect of political economy arguments in favour of decentralization.⁴² First, it is argued that voters who are imperfectly informed about the economy use the policies put in place by neighbouring politicians to discipline their own local political representatives.⁴³ Consequently, in the world of opportunistic policy makers, decentralization may be a strong mechanism to prevent corruption and promote provision of public goods and services.⁴⁴ Allied to this is the argument that decentralization forces local jurisdictions to compete for mobile resources – labour or capital hence put a downward pressure on taxation leading to efficient use of scarce resources.⁴⁵ However, it has been argued that this may not necessarily be the case as a higher discipline of local politicians comes at a cost of worse selection and that it is only when an opportunistic politician misbehaves that voters are given the chance to oust him from power and replace him with a potential benevolent politician.⁴⁶ Political accountability therefore results from a trade- off between the two mechanisms of discipline and as such decentralisation may have opposite effects on both.⁴⁷

⁴¹ Note 31 at 76.

⁴² Frits Bos, (2010) Fiscal Decentralisation in the Netherlands; History, Current Practice and Economic Theory: CPB document number 214 of 2010, at 15.

⁴³ Note 31.

⁴⁴ Belleamme Paul, Hindricks Jean. (2005) Yardstick Competition and Political Agency Problems. Social Choice welfare.; 24 at 155-169.

⁴⁵ John Douglas Wilson. (1999) Theories of Tax Competition. Nat Tax Journal., 52 at 269.

⁴⁶ Note 31 at 77.

⁴⁷ Note 31 at 77.

Economic theory makes specific provisions on the provision of public goods by lower levels of government.⁴⁸ The theory tells of two important issues. First, the decentralization theorem by Wallace Oates⁴⁹ that for an important class of publicly provided goods, provision by lower levels of government is superior to provision by a single government or higher regional authorities.⁵⁰ The theoretical reasoning for this is that all households in a given area must consume the same level of the good necessitating some compromise. With any diversity of needs amongst the population, a division into smaller groups of the population will likely result in less compromise among the citizenry.⁵¹

The second theorem is called the club theorem.⁵² It is about the design of regions for the production and allocation of public goods.⁵³ According to the theorem, the gains to an increased size of the region (club) arise from the larger number of people over which the average cost of service provision can spread.⁵⁴

This study is in general agreement with the position taken by these theorists on the attainment of development in a decentralized system as opposed to a centralized one. However, one issue that the theorists did not address is that of the potential challenges inherent in the form of a decentralised system and which have the potential to defeat the foundation upon which the theory rests. This study investigated into this issue.

⁴⁸ John M.Quigley(1997).Fiscal Federalism and Economic Development. A theoretical Overview.in Government for the Future(Contributions to Economic Annalysis vol 238,Emerald Group Publishing Limited at 85.

⁴⁹ Note 35 .

⁵⁰ Note 48 .

⁵¹ Note 48 above.

⁵² Note 48 above at 88.

⁵³ Note 48 above at 88.

⁵⁴ Note 48 above at 88.

1.9 LIMITATIONS OF THE STUDY

There are three key limitations to this study. First, the study depended on the information from members of Constituency Roads Tender Committees as respondents which could be subjective. The reason why the other stakeholders were left out is the nature of the variables to be considered during the study. Secondly, the author is ordinarily resident within the county hence possibility of bias. Thirdly, given the wide diversity within the Kenyan socio-political-economic system, the findings of the study may not be replicable to all other Counties.

1.10 LITERATURE REVIEW

The subject of decentralization gained prominence in the literature of most European and developing countries from the 1980s.⁵⁵ Jeane Litrack and Jessica Seddo⁵⁶ in a paper titled; “Decentralization Briefing Notes”, posit that the term decentralization embraces a variety of concepts. They note that decentralization denotes a process or situation of transfer of authority and responsibility for public functions from the central government to immediate local government.⁵⁷ Seddar Yilmaz and Robert Ebel⁵⁸ in a paper titled “Concept of Fiscal Decentralisation and Worldwide view” note that the shift towards decentralisation has occurred due to the need to respond to political pressures for local autonomy and ensure development through efficient service delivery. The paper notes that in Africa, decentralization has served as a path to national unity. This is due to the perception of equity associated with it. Hoze

⁵⁵ The World Bank Prem notes. (2001) Decentralisation and Governance. Does Decentralization Improve Public Service Delivery, Number 55 at 27.

⁵⁶ Jeane Litrack, Jessica Seddo, Eds. (1998) Decentralisation Briefing Notes. World Bank Institute. WBI working papers. at 9.

⁵⁷ Note 56 above.

⁵⁸ Seddar Yilmaz, Robert Ebel, (2002) Concept of Fiscal Decentralisation and Worldwide Overview. World Bank Institute. at 2.

Riruako⁵⁹ in a dissertation titled; “The Paradox of Decentralization in Namibia” notes that the political and legal power transferred differentiates the various forms of decentralization and further that the form of decentralization adopted is a function of the motivation for decentralization.

Danyang Xie,Heng-fu Zou and Hamid Davood⁶⁰ in an article titled; “Fiscal Decentralisation and Economic Growth in the United States” define fiscal decentralisation as the devolution of fiscal responsibilities of the federal government to state and local governments.

The World Bank in its 2003 report titled; “Decentralization and local government support programme for Africa”⁶¹ defines fiscal decentralization as the devolution of authority for public finances, and delivery of government services from national to sub- national levels. The devolution relates to four main interrelationships among levels of government in regard to fiscal issues. These are responsibilities for expenditure decisions, taxing and revenue raising powers, sub-national borrowings and intergovernmental fiscal transfer.⁶²

Voc Duc Hong⁶³ in a thesis titled; “The Economics of Measuring Fiscal Decentralisation” notes that Fiscal decentralization is a subject of practical importance facing many developing economies that has been advocated by

⁵⁹Note 5 at 13

⁶⁰ Danyang Xie,Heng-fu Zou and Hamid Davood. (1999) Fiscal Decentralisation and Economic Growth in the United States.In Journal of Urban Economics 45,228-239 at 228.Retrieved on 4th June 2013 from <http://www.idealibrary.com>

⁶¹ World Bank,(2003) ,Decentralisation and Local Government Support Programme for Africa.Washington,D.C:World Bank at 4.

⁶² Note 61 above at 3.

⁶³ Vo Duc Hong (2008) The Economics of Measuring Fiscal Decentralisation.Thesis.University of Western Australia at 1.

international economic bodies as the World Bank and the Organization for Economic Cooperation and Development.

Bahl,Roy⁶⁴ in an article titled “Fiscal Decentralisation as Development Policy Public Budgeting and Finance”, notes that fiscal decentralisation has become an integral part of economic development and governance in developing and transitional economies.

Kamo,Toshio⁶⁵ in an article titled “Political Economy and Decentralisation: Japan ,Asia and Europe” notes that decentralization of government is an important cross political trend in the late 20th century alongside other significant social changes as welfare state reform, globalization, rise of market economy, resurgence of civil society. He adds that the regional unification process in Europe has been characterized by the institutionalization of decentralization with the principle of subsidiarity becoming a common organizational governance principle at trans-national, national, regional and local levels.⁶⁶

Winnie Wing-Yee Li⁶⁷:in a thesis titled” Fiscal decentralisation and Economic Development in China” notes that the revival of the debate on fiscal decentralization in developed countries as the United States of America, the United Kingdom and Canada has been a critical step in the development of devolution.

⁶⁴ Bahl,Roy (1999) Fiscal Decentralisation as Development Policy.Public Budgeting and Finance.Vol 59-75 .

⁶⁵ Kamo,Toshio.(2000) Political Economy and Decentralisation:Japan,Asia and Europe at pg109

⁶⁶ Note 65 above.

⁶⁷ Winnie Wing Yee,Li(2003)Fiscal Decentralisation and Economic Development in China.Thesis.University of HongKong at 2.

Ine Neven⁶⁸ in a paper titled “Background Paper on Decentralisation” notes that other than fiscal decentralisation, there are other forms of decentralisation. These include decentralisation by deconcentration,⁶⁹ decentralisation by devolution⁷⁰, decentralisation by delegation⁷¹ and political decentralisation. It is noted in the article that the distinction between these various forms of decentralisation is important as they have different characteristics, different policy implications, different conditions for success and different design frameworks on their design.⁷² Muhataba Gelase⁷³ in a book titled “Reforming Public Administration for Development: Experiences from Eastern Africa” notes that decentralisation by deconcentration involves minimum transfer of power. It mainly takes the form of mere shifting of workload on temporary basis without shifting of authority to decide how delegated functions are to be performed.⁷⁴ The local and regional levels pay allegiance to the top hierarchy of government as they are appointed, paid and disciplined by the headquarters of the line ministry, their role being of an advisory nature.⁷⁵ Decentralisation by deconcentration is viewed as administrative and may take place either in isolation or simultaneously with other forms of decentralisation.⁷⁶ The World Bank in its report titled “Decentralisation and Local Government Support Programme for Africa” notes that

⁶⁸ Ine Neven, .Background paper on Decentralisation Contribution to Cost-Action-E19.National Forest Programmes in European Context.Institute Altera-Green World Research.Wageningen,Netherlands at 1.

⁶⁹ Note 68 .

⁷⁰ Note 68 .

⁷¹ Note 68 .

⁷² Note 68 .

⁷³ Muhataba,Gelase (1991),Reforming Public Administration for Development:Experiences from Eastern Africa.West Hartford,Connecticut,USA:Kumarian Press Inc at 69.

⁷⁴ Note 73 above.

⁷⁵ Note 73.

⁷⁶ Dennis.A Rondinelli, (1981) Government Decentralisation in Comparative Perspective;International Review of Administrative Sciences 2.at 7.

decentralisation is mainly common in unitary states where the government passes some of the responsibilities to the regions.⁷⁷

In the above report by the World Bank, decentralisation by devolution is defined as the legal conferment of power upon formally constituted local authorities to discharge specified residual functions.⁷⁸ It involves inter organisational transfer of power to geographical units of local government outside the common structure of government.⁷⁹ The transfer of power and authority is more extreme to the lower levels of government unlike that in deconcentration.⁸⁰ The report further notes that in devolution, the central government takes hands off approach, except when it has to ensure compliance with national policy guidelines.⁸¹ The characteristic features of devolution are first, the local units are given corporate status and power to raise revenue to perform certain functions. Second, the local government structures are developed as autonomous institutions for local communities for delivery of goods and services to local communities controlled, directed and influenced by them. Thirdly, devolution is not same as federation as the local government structures remain closely linked to central government through mutual support and reciprocity arrangements. Fourth, the local government structures ought to have clear and legally recognized geographical boundaries within which they can exercise authority and perform public functions.⁸² However, it is to be noted these characteristics are only present in an

⁷⁷ World Bank (2003) Decentralisation and Local Government Support Programme for Africa. Washington ,D.C: World Bank at page 4

⁷⁸ Note 77above.

⁷⁹ Note 77.

⁸⁰ Note 77 above.

⁸¹ Note 5at 13.

⁸² Note 81 at 20.

ideal devolution situations as the Constitutions of South Africa⁸³ and that of Kenya⁸⁴ in which specific functions and responsibilities are devolved to sub national government structures that are not claimed by the central government.⁸⁵

As a form of decentralization, the central government in devolution retains supervisory powers over sub national government structures.⁸⁶ This is the basis upon which the central government plays a major role in financing of sub national government and further ensures that the sub national government structures comply with national development policies and plans in execution of their functions.⁸⁷

Hoze Riruako⁸⁸ in a dissertation titled; “The Paradox of Decentralisation in Namibia” notes that decentralisation by delegation involves the giving of authority by central government to semi-autonomous institutions whose activities are not wholly controlled by the government but the institutions remain accountable to the central government.⁸⁹ It is viewed as a more extensive form than the deconcentration of power as the central government creates public enterprises to provide services to the public that it considers appropriate to be provided by these institutions.⁹⁰ In Kenya, public enterprises receive their funding from the central government, are accountable to the central government and their activities are subject to the scrutiny of central government. The central government may intervene when public enterprises are not functioning well.⁹¹

⁸³ Part B of schedule 4 and 5 of the Constitution of South Africa 1996

⁸⁴ Schedule 4 of the Constitution of Kenya 2010.

⁸⁵ Note 781at 20.

⁸⁶ Note 81 at 20-21.

⁸⁷ Note 81 at 20-21.

⁸⁸ Note 81 at 21.

⁸⁹ Note 81 at 21.

⁹⁰ Note 81 at 22.

⁹¹ Note 81 at 22.

Yilmaz Sedan and Robert Ebel⁹² in an article titled “Concept of Fiscal Decentralisation Worldwide view” note that in spite of the various forms of decentralisation, there is a link between the various forms of decentralisation that determines the realisation of the gains associated with each of the forms of decentralisation. Chih-hung Liu⁹³ in an article titled “ What type of Fiscal Decentralisation System has better Performance?” notes that the theoretical arguments surrounding fiscal decentralization have been discussed by economists and policy analysts. It is noted that the examination was undertaken in the early works of Tiebout,⁹⁴ Musgrave⁹⁵ and Oates⁹⁶ with the distrust for central governments fuelling the thinking that small, democratic governments were the principal hope to preserve the liberties of free men.⁹⁷ Diana Conyers⁹⁸ in an article titled “Decentralisation; A conceptual analysis” notes that most decentralisation programmes have both explicit and implicit objectives and that the objectives likely to appeal to the general public as local empowerment and administrative efficiency are generally expressly stated while less popular ones as central control and passing the back are unlikely to be voiced. In the above article, titled “Fiscal Decentralisation and Economic Growth in the United States”, Danyang Xie and others note that fiscal decentralisation is a means to enhance efficiency in Government and promote economic growth and development.⁹⁹

⁹² Serdan Yilmaz . Robert Ebel (2002) Concept of Fiscal decentralization and Worldwide overview.World Bank Institute at 10.

⁹³Chih-hung Liu C (2007) What type of Fiscal Decentralisation System has better Performance?Dissertation.University of Maryland,College Park. at 10.

⁹⁴ Note 33.

⁹⁵ Richard Musgrave, (1959) The Theory of Public Finance. McGraw Hill.New York.pg 56?

⁹⁶ See note 35.

⁹⁷ See note 92.

⁹⁸ Dianna Conyers, (2000) Decentralisation:A conceptual Annalysis,part 1,Local Government Perspectives:News and Views on Local Government in Sub-Saharan Africa Vol 7 No 3, May 2000 at 9.

⁹⁹ Note 60

Kee,¹⁰⁰ and Linn¹⁰¹ in their analysis have found a positive correlation between fiscal decentralisation and development. Studies by Lin and Liu (2000)¹⁰² Jun Ma (2000)¹⁰³ and Nobukoi Akai and Masayo Sakata (2002)¹⁰⁴ also found a positive relationship between fiscal decentralisation and development.

The World Bank, many developed countries and the Organization for Economic Cooperation and Development countries have strongly advocated for fiscal decentralisation due to its potential to spur socio – political economic development.¹⁰⁵

Wallace Oates¹⁰⁶ in his book titled “Towards a Second Generation Theory of Fiscal Federation” posits that the provision of local public goods by sub national government units promises significant welfare gains than the central government.

Toshio Kamo¹⁰⁷ in an article titled; “Political Economy of Decentralization: Japan, Asia and Europe”, while reviewing the historical development of fiscal decentralization in the East and West notes that it was a key reform agenda for economic growth and political democratization.

In Kenya, decentralisation with the potential benefits of socio politico economic development has its origins in the independent Constitution that created a federal

¹⁰⁰ Kee, W (1977) Fiscal Decentralisation and Economic Development. *Public Finance Quarterly* 5(1) at 20.

¹⁰¹ Roy Bahl and Linn Johanes. (1994) Fiscal decentralisation and intergovernmental transfer in less developed countries. *Publius. Journal of federalism* 24: at 1-19

¹⁰² Lin, . Y.F and Liu, Z.Q: (2000) Fiscal decentralisation and economic growth in China. *Economic Development and Cultural Change* 49(1/2): at 1-21

¹⁰³ Jun Ma, (2000) *The Chinese Economy in the 1990s*. Basingstoke, Hampshire: Macmillan; New York: St. Martin's Press. at 197.

¹⁰⁴ Nobukoi Akai, and Masayo Sakata, (2000). Fiscal decentralisation contributes to economic growth: evidence from state-level cross section data for United States. *Journal of Urban Economics* 52. at 93-108.

¹⁰⁵ Vo Duc Hong (2008). *The Economics of Measuring Fiscal Decentralisation*. Thesis. University of Western Australia. at 17.

¹⁰⁶ Wallace Oates. (2005) *Towards a Second Theory of Fiscal Federalism*. In *International Tax and Public Finance*, 12, 349-373. University of Maryland, College Park, at 349.

¹⁰⁷ Toshio Kamo. (2000) *Political Economy of Decentralisation: Japan, Asia and Europe* at 109

state which acknowledged significant autonomy for the regions.¹⁰⁸ Though, the 1968 Constitution abolished the federal system and created a centralized government, there were still initiatives at fiscal decentralization.¹⁰⁹ This included the Special Rural Road Development Plan (1967 – 1974),¹¹⁰ District Focus for Rural Development (1983 – 1988),¹¹¹ and the Kenya Local Government Reforms programme of 1995.¹¹² LATF, RMLF¹¹³ and CDF¹¹⁴ are examples in post independent Kenya. The Constitution of Kenya 2010 has extensive provisions for fiscal decentralization.¹¹⁵ Wolfman¹¹⁶ in his writings divided the arguments for fiscal decentralisation into two; efficiency and governance values. In terms of efficiency, Wolfman notes that efficiency is an economic value for maximization of social welfare. Consequently by ensuring efficiency in the delivery of public services closer to the people, social welfare is maximized. The Governance values of fiscal decentralization identified by Wolfman include responsiveness, accountability, diversity and political participation.¹¹⁷

James Edward Kee¹¹⁸ in an article titled “Fiscal Decentralisation: Theorem as Reform” notes that the responsive attribute of fiscal decentralization is due to placing

¹⁰⁸ Institute of International Cooperation. Japan International Cooperation Agency JICA (2008). Decentralised Service Systems in East Africa. A comparative study of Uganda, Tanzania, Uganda and Kenya Tokyo Japan at 15.

¹⁰⁹ Note 108 at xxiii.

¹¹⁰ Michael Chege, Joel, D, Barkan (1989) Decentralizing the State: District Focus and the Politics of Reallocation in Kenya. In *The Journal of Modern African Studies*, 27, 3 at 440-446.

¹¹¹ Note 110 above.

¹¹² Note 110.

¹¹³ This was through the Road Maintenance Fund Act no 9 of 1993.

¹¹⁴ This was through the Constituency Development Fund Act of 2003.

¹¹⁵ See chapter 11 of the Constitution of Kenya, 2010.

¹¹⁶ James Edward Kee. Fiscal Decentralisation: Theory as Reform. at 6-8. Retrieved from <http://www.gwu.edu/clai/working-papers/james%20%Kee/20fiscal%20>

¹¹⁷ Note 116 above.

¹¹⁸ See note 116.

of allocation decision making closer to the people hence encouraging responsiveness of local officers and greater accountability to citizens. The diversity attribute of fiscal decentralization offers citizens greater choice in public services when decisions are made where they reside. For political participation, fiscal decentralization provides a forum for local debate about local priorities and can be a breeding ground for future political leaders.¹¹⁹ The World Bank in its World Development report for 1999/2000 notes that fiscal decentralization also serves the purpose of national cohesion and central control leading to political stability when nations are under pressure for power by local groups and elite.¹²⁰

The early works of Charles Tiebout,¹²¹ Richard Musgrave¹²² and Wallace Oates¹²³ explain the economic justification for fiscal decentralization. This includes economic efficiency, improved economic performance through enhanced governance, improved economic performance through enhanced microeconomic stability and constraints on Leviathan.

However, in spite of the several attributes of fiscal decentralisation noted above, certain arguments have been made against decentralisation in general and specifically fiscal decentralisation.¹²⁴ Prud'homme Remmy¹²⁵ in an article titled, "The dangers of Decentralisation" notes that fiscal decentralisation may hamper economic

¹¹⁹ Samuel S. Ankamah. (2012) The Politics of Fiscal Decentralisation in Ghana: An overview of the Fundamentals. In Public Administration Research; Vol. 1 No 1; Hohai University, China. at 35

¹²⁰ World Bank. Entering the 21st Century: World Development Report 1999/2000. Oxford University Press. at 108-109.

¹²¹ See note 33.

¹²² Note 94 above.

¹²³ Note 35 above.

¹²⁴ Ling Wing Yee Winnie (2003) Fiscal Decentralisation and Economic Development in China. Thesis. University of Hong Kong. 2000 at 12-13..

¹²⁵ Prud'homme Remmy (1995) The Dangers of Decentralisation. World Bank Research Observer, 10 at 201-220.

performance as elected officials do not always satisfy the preferences of local needs. Further, if they seek to satisfy the needs of the local population, the local bureaucracy does not always go along with the expectations of the elected officials.¹²⁶ Providing a given local public service also entails economies of scale and the welfare losses attributable to economies of scale that would result from decentralization make it difficult for benefits associated with economies of scale to be realized.¹²⁷

Diana Conyers¹²⁸ in an article titled “Centralisation and Development Planning: A comparative Perspective” has criticised the argument that fiscal decentralisation promotes economic performance by increasing political participation and improving governance. It is argued that though decentralization may increase the participation of people at local level, but it is only a small privileged elite group that actually often gets to participate. Further, such elites often pursue their own narrowly focused self-interests that quite often are divergent from those of the local populace.¹²⁹ In this light, fiscal decentralization may indeed promote participation in the democratic process but would not necessarily improve economic performance. Further, it is recognized that there exists a relationship between decentralisation and corruption of sub-national levels because sub-national institutions are usually less developed as sub-national government provides lower salaries, aspects for advancement and a weaker mechanism for surveillance and therefore accountability. In view of these

¹²⁶ Note 124.

¹²⁷ Note 124 .

¹²⁸ Note 124 .

¹²⁹ Note 124 .

circumstances, the problem of corruption may be more severe and widespread in local governments than in central ones.¹³⁰

Richard Musgrave¹³¹ in the book titled “The Theory of Public Finance” notes that there appears to be a potential conflict between fiscal decentralization and macro-economic policy. It is argued that it is more difficult to co-ordinate fiscal policy in a counter-cyclical sense under a decentralized fiscal structure.¹³² Further, the fiscal behaviour of sub national governments has the potential to run counter to fiscal policies of central governments as sub-national government may tend to increase expenditure while the central government is trying to reduce expenditures hence jeopardizing the overall macro-economic stability.¹³³ A case has been cited of the former Yugoslavia, one of the most decentralized countries in the world on how a federal government can be unable to implement its fiscal policy, simultaneously engendering both high inflation and poor macro-economic development.¹³⁴

Vito Tanzi¹³⁵ in an article titled “Pitfalls on the Road to Fiscal Decentralisation” notes that fiscal decentralization provides a strong incentive for sub-national governments to borrow leading to a national debt crisis. This is because sub-national governments tend to incur large number of debts when they are convinced that the

¹³⁰ Note 124 .

¹³¹ See note 94.

¹³² Note 94 .

¹³³ Note 94 .

¹³⁴ Bogoev Ksente(1991) Dangers of decentralization:The Experience of Yugoslavia.”In Remy Prudhomme ed.Public Finance with Several Levels of Government:Proceedings during the 46th Congress of International Institute of Public Finance,Brussels:Foundation of Journal of Public Finance at 45.

¹³⁵ Vito Tanzi (2001) Pitfalls on the Road to Fiscal Decentralisation.Global Policy Programme No19 of 2001.Retrieved o 20th june,2013from www.palgrave.com

national government will bail them out in a crisis. Consequently, financial crisis have been experienced in developing countries as Argentina and Brazil.¹³⁶

Robin Burgess et al¹³⁷ in an article titled; “Our Turn To Eat: The Political Economy of Roads in Kenya and Kenya’s vision 2030”¹³⁸ note the importance of roads in the socio-political- economic development of the Kenya. In the above article, Robin et al note the contribution of centralized decision making in the under development and skewed development of the country’s rural road network.¹³⁹ The article advocates for decentralization in the decision making and implementation of road works relating to the country’s rural road network.¹⁴⁰

Pranab Bardhan and Dilip Mookherjee¹⁴¹ in a paper titled; “Decentralization and Accountability in Infrastructure Delivery in Developing Countries” while in agreement with the positive contribution of fiscal decentralization to infrastructure development point out that caution should be exercised to avoid capture by local elites and corruption.

Klugman, James¹⁴² in an article titled “Decentralisation: A survey of Literature from a Human Development Perspective” notes that Fiscal decentralisation has for the last two decades been a popular item in human development. Human development defined in terms of expansion of peoples’ capabilities has several aspects that have a

¹³⁶ Note 131 above.

¹³⁷ Note 10

¹³⁸ Government of Republic of Kenya: Kenya Vision, 2030. 2007 at 12-13.

¹³⁹ Note 135.

¹⁴⁰ Note 135

¹⁴¹ Pranab Bardhan, Dilip Mookherjee. Decentralisation and accountability in infrastructure delivery in developing countries. *The Economic Journal*, 116 (January) 2006 at 101-107. See also Conyers, D (1990) Centralization and Development Planning: a Comparative Perspective,” in P. De Valk and K. Wekwete eds. *Decentralising for Participatory Planning?* Aldershot: Avebury at 34

¹⁴² Klugman, James (1994) *Decentralisation: A survey of Literature from A Human Development Perspective*. Occasional Paper 13 at 5.

direct linkage with fiscal decentralisation.¹⁴³ This includes a long and healthy life, acquisition of knowledge and the enjoyment of decent standards of life. Dimensions as access to basic social services, expansion and participation in political and economic spheres are hence enhanced.¹⁴⁴

Ribot, Jesse¹⁴⁵ in an article titled “Local Actors, Powers and Accountability in African Decentralisations: A review of Issues” notes that Poverty alleviation is the other positive human development outcome of decentralised governance. This is achieved by empowering and serving the poor.¹⁴⁶ Previous studies over this aspect however, indicate that the success of poverty alleviation programmes is dependent on the politics of the local – central relations. It is noted that positive outcomes are mainly associated with strong commitment by national governments to promote the interests of the poor at the local level. The strong commitment by the national government is critical given the likely emergence of elite capture at the sub national level and the negative effect of such on the welfare of the local poor.¹⁴⁷

Economic infrastructure including roads facilitates growth of the local economy and creation of employment.¹⁴⁸

In most developing countries including Kenya, road infrastructure investments and decision making have been characterized by patronage and vote buying leading to ethno-favouritism where the dominant ethnic group in government redistributes state

¹⁴³ Note 142 above.

¹⁴⁴ Note 142

¹⁴⁵ Ribot, Jesse (2001) Local Actors, Powers and Accountability in African Decentralisations: A review of Issues. United Nations Research Institute for Social Development. Washington D.C at 4.

¹⁴⁶ Note 145.

¹⁴⁷ Note 145.

¹⁴⁸ Note 108 at iii.

resources towards regions politically associated with it.¹⁴⁹ In Kenya, road management during the colonial period was under the Public Works Department in the ministry responsible for roads in which decisions on road investment and management were centrally made. The department evolved in its structure and names.¹⁵⁰ In 1993, the Road Maintenance Levy Fund Act¹⁵¹ was passed to provide a legal framework for a levy on petroleum products to be utilized for road maintenance. This was following deterioration of the network in the absence of a fund dedicated to this purpose.¹⁵²

In 1999, the Kenya Roads Board Act¹⁵³ was passed. It created the Kenya Roads Board to manage the Road Maintenance levy. By late 2009, the Public Works Department had changed its name to the Roads Department but its functions remained centralized in terms of the development, management and rehabilitation of all classes of roads.¹⁵⁴

The Kenya Roads Act 2007¹⁵⁵ was passed in 2007. It created three autonomous agencies to manage road classes allocated to them.¹⁵⁶ The Kenya Roads Board Act 1999¹⁵⁷ was amended in 2009 to provide for creation of Constituency Roads Committees and Constituency Roads Tender committees.¹⁵⁸ The committees are to work closely with the Kenya Rural Roads Authority, one of the agencies created by

¹⁴⁹ Note 137 above at 4.

¹⁵⁰ Note 137 above. at 8.

¹⁵¹ Act No 9 of 1993.

¹⁵² The toll system that had previously been applied was found to be unsuitable.

¹⁵³ Act No 7 of 1999.

¹⁵⁴ The classification of roads is provided for under the first schedule to the Roads Act 2007.

¹⁵⁵ Act No 2 of 2007.

¹⁵⁶ The three are Kenya National Highways Authority, Kenya Urban Roads Authority and Kenya Rural Roads Authority

¹⁵⁷ This was through the Finance Act 2009.

¹⁵⁸ See section 17 and 17A of the Kenya Roads Board Act.

the provisions of the Roads Act 2007 to provide technical support to these committees.¹⁵⁹ Constituency Roads Tender committees are to preside over procurement of roads in every constituency. This is in respect of funds allocated to every constituency.¹⁶⁰ This was a deliberate act to decentralize the management of financial resources for roads classes D and below.¹⁶¹ The funds are allocated equally to the Constituencies.¹⁶²

Members of the Constituency Roads Tender Committee are three representatives from the Constituency Fund Committee, a representative of Kenya Rural Roads Authority and the Procurement Officer of Kenya Rural Roads Authority who shall be the Secretary.¹⁶³

This thesis in reviewing the relevant literature on fiscal decentralization design systems and development noted that despite the literature supporting fiscal decentralization due to its link to development, there is no discussion on the Kenyan unique decentralization system in the infrastructure sector through Constituency Roads Tender Committees. Further, there is no discussion on the problems in the design of a decentralized system that may hamper the attainment of the development objective. This thesis intends to make a contribution in knowledge in respect of this area. Therefore, this thesis investigated whether Constituency Roads Tender Committees in Kakamega County have realized the development objective given

¹⁵⁹ Note .156

¹⁶⁰ Section 6(2) d (i) provides that 22% of the total Roads Maintenance Levy Fund is to be shared equally to all constituencies in the Country and is to be deposited in a special bank account known as Constituency Roads Fund Account.

¹⁶¹ These are roads classified as rural roads under the fourth schedule to the Roads Act 2007

¹⁶² Note .160

¹⁶³ See note 158

their design and whether there are any obstacles to the attainment of the development objective

1.11 CHAPTER BREAKDOWN

The study has five chapters.

1.11.1 CHAPTER ONE - INTRODUCTION

This chapter provides an overview of the study. It introduces the theme of the study in terms of background information, area of study, statement of the problem, justification, research questions, research design and methodology used in carrying out the study. The chapter also gives the statement of objectives of the study and the theoretical framework on which the study is founded. Further, it sets out the limitations of the study and reviews the literature relating to fiscal decentralization and development.

1.11.2 CHAPTER TWO - THEORETICAL FRAMEWORK

This chapter discusses the theory on which fiscal decentralization is based. It identifies the theory, traces its historical development and provides for the development of fiscal decentralization at the various stages of development of the theory.

1.11.3 CHAPTER THREE - CONSTITUENCY ROADS TENDER COMMITTEES AND DEVELOPMENT

This chapter gives the data collected during the research using the agreed methodology. The data on the role of Constituency Road Tender Committees on development and the problems in the design of the units was analysed and presented. The chapter also discusses the data based on the objectives of the study, relevant

literature and the theoretical framework underpinning the relationship between fiscal decentralisation and development.

1.11.4 CHAPTER FOUR - RECOMMENDATIONS

This chapter makes recommendations aimed at enhancing the design of Constituency Roads Tender Committees. This is based on the problems identified in chapter three.

1.11.5 CHAPTER FIVE - CONCLUSION

This chapter concludes the study and gives a summary of the research question investigated into, and the nature of findings made. On the basis of this, the chapter draws a conclusion on whether the research question was proved or disapproved. The chapter also provides for the extent to which the objectives of the study were met.

CHAPTER TWO

THEORETICAL FRAMEWORK

This chapter provides for the theoretical framework on which the study is based. A provision is made for the nature of the framework, its historical evolution and the application of the framework to fiscal decentralisation.

2.1 INTRODUCTION

This study is based on economic theory. The word “economics” meaning skilled in household management though an old word, the discipline of economics as understood today is a recent development.¹⁶⁴ The modern economic thought emerged in the 17th and 18th centuries as the Western world experienced transformation from an agrarian to industrial economy.¹⁶⁵ Economic theory attempts to address the economic problems that society faces due to limited resources and the need to improve the living standards of people.¹⁶⁶ Due to the diversity of economic challenges that society has faced over time, economic theory has evolved with time to address various elements one of which focuses on fiscal decentralisation.¹⁶⁷ Several early Greek and Roman thinkers as Aristotle¹⁶⁸ and Xenophon¹⁶⁹ and early Muslim thinkers as Al-Ghazali (1058-1111)¹⁷⁰ and Abu Yusuf (731-798)¹⁷¹ made several

¹⁶⁴ Cassey Mulligan(2011).Major schools of Economic Theory. at 1.Retrieved on 5th January,2014 from tamut.edu.../walter%20casey/Documents.../Economics%20 Theory.p...

¹⁶⁵ Note 16 above.

¹⁶⁶ Note 164.

¹⁶⁷ Nick Vriend(1991) On Walrasian models and decentralized economics.In Tinbergen Institute Research Bulletin,Vol.3 (1991),No 1,pp 25-37.European University Institute Florence-Italy at 25.

¹⁶⁸ For details of this see books I and VII of Aristotles politics.

¹⁶⁹ See his biography of Cyrus the Great,Cyclopaedia,Hiero and ways and means.

¹⁷⁰ Abdul Azim Islahi. (1991)Market and pricing mechanism in pre-classical literature.Aligarh Muslim University,Aligarh,India. at1-2.Retrieved on 4th January,2014 at <http://mpr.ub.uni-muenchen.de/22793/>.

¹⁷¹ Note 169.

economic observations.¹⁷² During the middle ages, thinkers as Thomas Aquinas (1225-1274)¹⁷³, Thomas Mun (1574-1641)¹⁷⁴, John Locke (1632-1704)¹⁷⁵ and David Hume (1711-1776)¹⁷⁶ equally made various economic observations.

Economic theory is therefore the foundation on which fiscal decentralization is based as it explains the motivation and outcomes of a decentralized economy.¹⁷⁷ From a historical and economic theory perspective, it is noted that a proper division of tasks between the various layers of government is critical for efficiency in governance and stimulation of economic growth and welfare.¹⁷⁸

Economic theory addresses amongst others, issues on optimal allocation of economic responsibilities between the various layers of government.¹⁷⁹ Initially, the theory addressed the division of tasks in a federal system of governance framework as for example the United States of America.¹⁸⁰ The theory is now applied to all forms of inter-governmental relations as for the case in China where the greater economic autonomy of regions and communities has been cited as the reason for the country's economic success.¹⁸¹

¹⁷² Note 164 .

¹⁷³ For a detailed analysis see his treatise titled Summa Theologica.

¹⁷⁴ His ideas were contained in his posthumously published *Treasur by Foreign Trade* 1664.

¹⁷⁵ See his words from *Second Treatise on Civil Government* 1689.

¹⁷⁶ His ideas were set down in *Political Discourses* (1752) later consolidated in his *Essays, Moral, Political, Literary* (1777).

¹⁷⁷ Note 164.

¹⁷⁸ Note 42

¹⁷⁹ Note 42 at 15.

¹⁸⁰ Note 169

¹⁸¹ Note 169.

2.2 FIRST GENERATION ECONOMIC THEORY OF FISCAL DECENTRALISATION

This is the mainline theory of fiscal decentralization and dominated the thinking of public finance in the 1950s and 1960s.¹⁸² The major contributors to it included Charles Tiebout¹⁸³, Wallace Oates¹⁸⁴, Richard Musgrave¹⁸⁵ and Mancur Olson.¹⁸⁶

The theory provided for an active and positive role for the government sector in correcting various forms of market failure, establishing an equitable market distribution of income and stabilizing the macro-economy at high levels of employment with stable prices.¹⁸⁷ In ensuring this, maximization of social welfare was a key consideration.¹⁸⁸ This is due to pressures in democratic system hence public intervention was seen as desirable in cases of market failures.¹⁸⁹

This economic theory of fiscal decentralization that has come from the Public Finance School and the Public Choice Schools provides that efficiency in the provision of public goods can neither be attained by a large scale centralized government nor a fully decentralized government consisting of many small units.¹⁹⁰

The theory provides for an active and positive role for the government sector in correcting various forms of market failure, establishing an equitable market distribution of income and stabilizing the macro-economy at high levels of

¹⁸² Wallace Oates. Towards a Second-Generation Theory of Fiscal Federalism. In *International Tax and Public Finance*, 12, 349-373. University of Maryland. College Park. 2005 at 349.

¹⁸³ Note 33 at 416-424

¹⁸⁴ Wallace Oates. *Fiscal Federalism*. New York, Harcourt Brace. Jovanovich. 1972.

¹⁸⁵ Richard Musgrave. *The Theory of Public Finance*, New York, McGraw-Hill. 1959. Retrieved on 10th November, 2013 from <http://www.jstor.org/discover/10.2307/2976491>.

¹⁸⁶ Mancur Olson. The Principle of fiscal equivalence: The division of responsibilities amongst different levels of government, in *American Economic Review*, 1969, 59 (2) at 479-487.

¹⁸⁷ Alfonso Sandra Leon (2007) *The Political Economy of Fiscal Decentralisation. Bringing Politics to the Study of Intergovernmental Transfers*. Generalitat de Catalunya. Institut d'Estudis Autònomic. Pg 46

¹⁸⁸ Note 182 at 350

¹⁸⁹ Note 182

¹⁹⁰ Note 182

employment with stable prices.¹⁹¹ In ensuring this, maximization of social welfare is a key consideration.¹⁹² This is due to pressures in democratic system making public intervention desirable in cases of market failures.¹⁹³

According to this theory, the central government is to focus on the provision of national public services, being services whose benefits extend throughout the nation or whose provision results in substantial economies of scale as national defence, foreign affairs, national infrastructure, monetary policy, macro – economic stabilization and policies in respect of income redistribution and poverty.¹⁹⁴ On the other hand, the provision of public services that are local in nature in terms of beneficiaries is to be done by sub national government units.¹⁹⁵ Through provision of these services locally, their quality and quantity can be adjusted to suit the local circumstances and preferences and is more efficient as compared to the centralized provision of the services and also enhances democracy.¹⁹⁶ Local finances are to be applied to the financing of provision of these services in addition to the financing from the central government.¹⁹⁷

The Public Finance School advocated by Charles Tiebout¹⁹⁸ Wallace Oates¹⁹⁹ and Richard Musgrave²⁰⁰ makes a strong case for decentralizing finance on economic grounds. According to this school, the most important issue for federalism is that decisions on the structure of taxes and expenditures in a jurisdiction are tailored to

¹⁹¹ Note 187

¹⁹² Note 182 at 350.

¹⁹³ Note 182 above.

¹⁹⁴ Note 42

¹⁹⁵ Note 42

¹⁹⁶ Note 42

¹⁹⁷ Note 42

¹⁹⁸ Note 182.

¹⁹⁹ Note 185.

²⁰⁰ Note 184.

citizens' preferences.²⁰¹ This is regardless of whether the decision-making power is guaranteed constitutionally for autonomous local governments or is a result of central government delegation.²⁰²

Charles Tiebout²⁰³ advocated for decentralisation based on need for optimality of local goods provision based on an analogy between competitive markets and competing jurisdictions. Charles Tiebout²⁰⁴ provides a model of local public expenditure in which individual households reveal their preferences for local public goods through choosing a place to reside that provides their desired level of consumption of these goods. This approach by Charles Tiebout has been criticized for the unrealistic assumption that people will always be “willing to vote with their feet” if public goods provision is not efficient, people have prompt information on manner of public goods provision in their area visa vi others, there must be various jurisdictions to choose from and also enough individuals to occupy those areas.²⁰⁵ However, notwithstanding the criticism, Charles Tiebout's approach that sub national government units should focus on providing public goods with few spill over effects and low economies of scale has stood ground.²⁰⁶ They should have limited involvement in redistributive public goods (cash welfare), goods with large spill over effects (education) or large economies of scale (national defence)²⁰⁷

²⁰¹ Note 187.

²⁰² Note 187 at 47.

²⁰³ Note 33.

²⁰⁴ Note 33

²⁰⁵ Jonathan Gruber. Public Finance and Policy. New York, Worth Publishers. 2007, chapter 10 at 1. Retrieved on 7th September, 2013 from <http://www.scribd.com/doc/138233769/Public-Finance-and-Public-Policy>. 3rd edition - Jonathan Gruber.

²⁰⁶ Note 145 at 5.

²⁰⁷ Note 205

Wallace Oates²⁰⁸ developed a fiscal federalism theory based on trade-off between advantages and costs of decentralisation by drawing from the scant tripartite division of the public sector that Richard Musgrave²⁰⁹ sketched out in his seminal work on public finance. According to Wallace Oates' theory, the provision of local public goods by local governments promises significant welfare gains, as they are more capable than central government of meeting citizens' demands and needs hence allocational efficiency.²¹⁰ As the level of the output of the service is tailored to the preferences of the citizens that consume the service, the allocation of resources is more efficient than if it is provided homogeneously by central government.²¹¹ Productive efficiency increases, as expenditure decisions are better tailored to the real costs of providing public goods and output is enhanced by consumer mobility and the so-called "voting with their feet" mechanism of Charles Tiebout.²¹² In addition, decentralization can promote innovation and experimentation in the provision of public goods.²¹³

The Public Choice School, theory (leviathan hypothesis") by Geoffrey Brennan²¹⁴ and James Buchanan²¹⁵, "characterizes the government as revenue – maximizer that systematically seeks to exploit its citizens through the maximization of tax revenue.

²¹⁶ It is argued that the greater the extent to which taxes and expenditures are

²⁰⁸ Wallace Oates . (1972)An Essay on Fiscal Federalism.Journal of Economic Literature, Vol 37 No 3 september 1999. Pgs 1120-1149 at 1121.

²⁰⁹ See generally R.A Musgrave (1959).The Theory of Public Finance.New York,McGraw Hill.

²¹⁰ Note 198208

²¹¹ Note 187

²¹² Note 187 at 47.

²¹³ Note 187 at 47.

²¹⁴ Geoffrey Brennan and James M.Buchanan. The Power to Tax.Analytical Foundations of a Fiscal Constitution.The Collected Works of James.M.Buchanan.Vol 9.Indianapolis.Liberty Fund. 1980 at 11.Retrieved 5th April 2013 from http://filesliberty.org/files/2114/0102-09_lfes.pdf.

²¹⁵ Note 214 above.

²¹⁶ Note 214

decentralized, the smaller the public sector's size.²¹⁷ The causal mechanisms that associate fiscal decentralization with a smaller public sector is tax competition across sub national jurisdictions as they compete among each other, to avoid the "exit" of "mobile" assets (capital) by lowering taxes.²¹⁸ The same argument about tax competition is used to link decentralization to market – friendly politics as fiscal decentralization makes sub national units compete for mobile capital, which prompts sub national politicians to implement market-friendly policies in order to prevent the outward flow of mobile capital.²¹⁹ However, this version of competitive federalism has been criticized on the same grounds as the Charles Tiebout's model.²²⁰

This approach further posits that each level of government seeks to maximize social welfare of its respective constituency and consequently, a local government is to promote the interests of those within its jurisdiction.²²¹ This aspect of the theory envisioned a setting in which governments at different levels provided efficient levels of outputs of public goods for the goods whose benefits were encompassed by the geographical scope of their jurisdictions.²²² Decentralized levels of government found their primary role in the provision of efficient levels of local public goods – public goods whose consumption was limited primarily to their own constituencies.²²³ Emphasis was placed on proper assignment of functions to different levels of

²¹⁷ Note 214 .

²¹⁸ Jonathan Rodden. Reviving Leviathan.Fiscal Federalism and Growth of Government.Retrieved from [www//web.mit.edu/rodden](http://web.mit.edu/rodden),May 2001 on 1st September,2013

²¹⁹ Note 218 above.

²²⁰ Note 182 at 351.

²²¹ Note 182 at 351.

²²² Note 182 at 351.

²²³ Note 182 at 351.

government to ensure that public agents would pursue welfare maximizing policies.

224

2.3 CRITICISMS OF THE FIRST GENERATION ECONOMIC THEORY

Explanations to account for decentralization in the literature of welfare economics within the first generation economic theory were found wanting in understanding the driving forces of fiscal decentralization.²²⁵ This theory's main economic justification for decentralization rests largely on allocative and productive efficiency gains with an assumption made that public economic intervention actually pursues efficiency.²²⁶ Decentralization is regarded as a means to an economic end, ignoring the importance of the structure of political incentives stemming from institutions that may lead politicians to make decisions that are not efficient.²²⁷

The effects of the theory on fiscal decentralization have been subjected to studies aimed at testing the efficiency gains ascribed to them.²²⁸ Theoretical and empirical agreements in respect to the relationship between decentralization and the size of the public sector have been scarce to come by.²²⁹ The same is true for the association between fiscal decentralisation and economic growth.²³⁰ Notably, some of the positive outputs ascribed to decentralization have not occurred in developing countries which have recently experienced a wave of decentralizing practices.²³¹ Consequently, arguments have been made against decentralization, clarifying the

²²⁴ Note 182 at 351

²²⁵ Note 187.

²²⁶ Note 187.

²²⁷ Note 30.

²²⁸ Note 187 at 46.

²²⁹ Note 187 at 46.

²³⁰ Richard Bird, Francois Vailancourt . Fiscal Decentralisation in Developing Countries. 1998 .Cambridge University.at 5.Retrieved on 6th April 2012from <http://www.catdir.locgov/catdr/samples/cam032/98020491.pdf>

²³¹ Note 187 at 49.

conditions under which it can work in developing countries and casting doubt upon its benefits, stressing its dangers and emphasizing the importance of appropriate design of a decentralization programme.²³²

It is contended that the first generation theory represents a misleading path in the search for the causes of fiscal decentralization as its normative role attempts to define what the government should do to maximize economic welfare but this proves to be only remotely related to the positive role of government, in terms of what governments actually do.²³³

2.4 THE SECOND GENERATION ECONOMIC THEORY OF FISCAL DECENTRALISATION

The first generation theory on fiscal decentralization was premised on several assumptions amongst them a benevolent central and local government and political competition between the two levels of jurisdiction due to the high mobility of citizens and corporations.²³⁴ Consequently, the political factors that form part of the mechanisms that account for fiscal decentralisation were ignored.²³⁵ This is in respect of the motivations of politicians in undertaking decentralization and how they are constrained by the institutional framework within which they make decisions.²³⁶ The second generation economic theory on fiscal decentralization emphasized on political economy, behavioural economics and the agency relationship and transaction cost

²³² Note 230.

²³³ Note 187 at 50.

²³⁴ Note 33 at 19.

²³⁵ Note 187 at 51.

²³⁶ Note 187 at 51.

economics as three perspectives critical in the organization of fiscal decentralization.²³⁷

The literature on the second generation economic theory of fiscal federalism is wide ranging and provides for not only fields in economics but other disciplines with important contributions as political science.²³⁸ The theory draws from political processes and the behaviour of political agents, unlike the first generation theory that assumed that public officials always seek common good.²³⁹ The point of departure in this theory being that, participants in political processes (both voters and officials), have their own objectives and do not always seek to act on behalf of their constituents.²⁴⁰ The second one is in respect of the problems of information.²⁴¹ It is posited that the outcomes from collective choice institutions depend in fundamental ways on the information that the various agents possess based on the work in industrial organization and micro-economic theory that has explored these issues.²⁴² These two approaches have resulted in new literature on the theoretical framework that examines the working of different political and fiscal institutions in a setting of imperfect information and control.²⁴³

2.4.1 POLITICAL ECONOMY

The assumption of a benevolent central and local government in the first generation economic theory was questioned by political economists as James Buchanan²⁴⁴,

²³⁷ Note 42 at 19.

²³⁸ Note 182 at 356.

²³⁹ Note 182 at 356.

²⁴⁰ Note 182 at 356.

²⁴¹ Note 182 at 356.

²⁴² Note 182 at 356.

²⁴³ Note 182 at 356.

²⁴⁴ Note 42 at 20.

Mancur Olson²⁴⁵ and William Niskanen.²⁴⁶ They investigated the political decision – making process given the incentives for participants as voters, politicians and civil servants and revealed a different perspective of the merits of centralization and decentralization.²⁴⁷

A benevolent local government will hence adjust to local preferences and increase welfare while to the contrary; a local government influenced by local lobbies, personal interests and corruption is unlikely to adjust to local interests hence unlikely to increase welfare.²⁴⁸ In addition, such a local government may regard its budget as a soft budget constraint so that the central government is always expected to provide additional funding when local deficits become unsustainable.²⁴⁹

Mancur Olson²⁵⁰ emphasized the importance of interest groups and ‘insiders’ in the political process. According to him, small groups as committees and advisory bodies are more effective in their influence to the political process as they are homogeneous hence individual members can easily influence group behaviour.²⁵¹ Their economic and social incentives for participating in the group are stronger and long lasting hence the lobbies and personal interests are more effective at the local level.²⁵²

Therefore, from a political economy point of view, efficiency and fairness of government in a decentralized system requires sufficient checks and balances in the political process which can be ensured through incorporation of sufficient checks, democratic elections, transparency in the budget cycle and decision making process

²⁴⁵ Note 42 at 20.

²⁴⁶ Note 42 at 20.

²⁴⁷ Note 42 at 20.

²⁴⁸ Note 42 at 20.

²⁴⁹ Note 42 at 20.

²⁵⁰ Note 185.

²⁵¹ Note 42 at 21.

²⁵² Note 42 at 21.

and a vibrant local press.²⁵³ This new approach is exemplified in articles written by Christopher Garman²⁵⁴, Stephen Haggard²⁵⁵ and Eliza Willis²⁵⁶ who seek to explain cross-country differences in the level of fiscal decentralization. They argue that the degree of fiscal decentralization depends on the distribution of power within political parties, as per their internal structure.²⁵⁷ It is argued that changes in the level of decentralization are a result of the bargaining process between politicians at different levels of government (the president – in presidential systems – legislators and governors in decentralized systems) with the outcome of the bargaining process being determined by the institutional setting.²⁵⁸ In particular, it depends upon the degree of decentralization of party control with respect to several institutional characteristics such as electoral laws (control over nominations for national legislative office, the employment of a closed – or open–list system) or the control over campaign finances.²⁵⁹ The degree of decentralization will determine if legislators are more beholden to the president’s or to governors’ ideal points.²⁶⁰ Accordingly, the more centralized the parties, the higher the likelihood that that the fiscal structure will be more centralized based on intergovernmental fiscal relation that favours the state.²⁶¹ Likewise, if party control is less centralized, the state’s fiscal structure will be more decentralized other factors being equal.²⁶²

²⁵³ Note 42 at 21.

²⁵⁴ Christopher Garman, Stephen Haggard and Eliza Willis. Fiscal Decentralisation: A political Theory with Latin American Cases. *World Politics* 53(January 2001) 205-236 at 205-207. Retrieved on 7TH March, 2013 from <http://catedras.fsoc.uba.ar/deluca/garman.pdf>

²⁵⁵ Note 245 above.

²⁵⁶ Note 245 above.

²⁵⁷ Note 245 above.

²⁵⁸ Note 245 above.

²⁵⁹ Note 245 above.

²⁶⁰ Note 245 above.

²⁶¹ Note 245 above.

²⁶² Note 187 at 52.

There are however, shortcomings in this thinking. First, is the inconsistency in the presentation of the president's ideal points.²⁶³ In setting the president's preferences regarding fiscal decentralization, this approach presents two conflicting interests: first, the president may benefit from claiming efficiency gains from tailoring policies to citizens' demands (allocative efficiency). Secondly, these gains may be offset by the costs in terms of loss of resources.²⁶⁴ The contradiction in this thinking is that, according to the rest of the theory, neither expected efficiency gains nor potential principal – agents costs play any role in determining changes in the level of fiscal decentralization and that centralized (decentralized) outcomes are associated with national-level (sub national-level) control of authority within political parties.²⁶⁵

Second, this approach is based on intraparty competition variables, hence fails for situations of inter-party competition.²⁶⁶ For instance, when there is a divided government (when legislators belong to a different party than that of the president) they predict that legislators will try to transfer resources to their co-partisans at the sub national level (in order to check the powers of the president).²⁶⁷ However, the question as to why a legislator will sacrifice resources in favour of sub national governments they might not control in the future is not answered.²⁶⁸

Another flaw in this theory is that it assumes that a system with high levels of decentralization is always a result of sub national pressures for greater decentralization.²⁶⁹ They do not envisage that presidents may decentralize because

²⁶³ Note 187 at 52.

²⁶⁴ Note 187 at 52.

²⁶⁵ Note 187 at 52.

²⁶⁶ Note 177 187at 52.

²⁶⁷ Note 187 at 52.

²⁶⁸ Note 187 at 52.

²⁶⁹ Note 187 at 52.

they have an interest in doing so.²⁷⁰ This theory is also weak in explaining subsequent reforms, as it focuses on institutional variables (party rules) that change little over time.²⁷¹

2.4.2 BEHAVIOURAL ECONOMICS

Behavioural economists as Daniel Kahneman,²⁷² Jack Knetsch²⁷³ and Richard Thaler²⁷⁴ questioned the assumption of rational behaviour and economic motives in the behaviour of central and decentralized governments.²⁷⁵ They noted that irrational behaviour and non- economic factors can play a major role in the solidarity between different groups at the levels of government and explain the provision of public services.²⁷⁶ This existence of non- rational behaviour and non - economic motives increases the scope of political economy of persons and lobby groups to influence the political decision making process to pursue their own benefit.²⁷⁷

2.4.3 AGENCY PROBLEM AND TRANSACTION COST ECONOMIES

The application of the Agency relationship to the economic theory of fiscal decentralization is due to the nature of the political process that can be regarded as a principal – agent problem with the politician being the agent.²⁷⁸ The politician as the agent does not do what the voter wants done due to information problems and

²⁷⁰ Note 187 at 52

²⁷¹ Note 187 at 53

²⁷² Daniel Kahneman, Jack L. Knetsch and Richard H. Thaler. Fairness and the Assumption of Economics. Journal of Business, 1986 vol. 59, no 4 pt. 2 at 285-297. Retrieved on 9th June 2013 from www.chicagofacultybooth.edu/pdf/fairness.

[http://faculty.chicagobooth.edu/richardthaler/research/pdf/fairness%20 and 20 the assumptions economics.pdf](http://faculty.chicagobooth.edu/richardthaler/research/pdf/fairness%20and%20the%20assumptions%20of%20economics.pdf)

²⁷³ Note 272

²⁷⁴ Note 272

²⁷⁵ Note 42 at 21

²⁷⁶ Note 262

²⁷⁷ Note 42 at 21

²⁷⁸ Note 42 at 23

transaction costs.²⁷⁹ The agency problem is also applicable to the division of tasks between central and local government with the central government being regarded by the local government as a lender of last resort hence creates a moral haphazard problem to spend more than is wise.²⁸⁰ This may also be attributed to the design of fiscal transfers by central government.²⁸¹

The aspect of agency problem and transaction costs therefore considers the variety, complexity and dynamics of relationships between local and national governments to determine the success of a fiscal decentralisation system in the provision of public goods and services.²⁸² Consequently, it is argued that complex and uncertain projects should be organized at a high level of governance, and for decentralized units to be efficient and effective; they should be large in terms of population activities and income.²⁸³

2.5 HISTORICAL DEVELOPMENT OF DECENTRALISATION

Decentralization of government is an important cross political trend in the late 20th century alongside other significant social changes as welfare state reform, globalization, rise of market economy, resurgence of civil society.²⁸⁴ The regional unification process in Europe has been characterized by the institutionalization of decentralization with the principle of subsidiarity becoming a common organizational governance principle on at trans-national, national, regional and local levels.²⁸⁵ From late 1980s, most democratic societies have embraced local self-government as a

²⁷⁹ Note 42 at 23.

²⁸⁰ Note 42 at 23.

²⁸¹ Note 42

²⁸² Note 42

²⁸³ Note 42

²⁸⁴ Note 65.

²⁸⁵ Note 65

governance principle.²⁸⁶ The revival of the debate on fiscal decentralization in developed countries as the United States of America, the United Kingdom and Canada has been a critical step in the development of devolution.²⁸⁷

The national reform agenda for economic growth and political democratization in Asia as in Europe has been characterized by decentralisation.²⁸⁸ New quasi city states as Singapore and Hong Kong have emerged as independent economic and political actor as decentralization becomes a tide in the present age.²⁸⁹

Many developing countries are also turning to fiscal decentralization so as to facilitate development through economic growth, enhance governance, and ensure macroeconomic stability.²⁹⁰ Fiscal decentralisation in these countries is at times viewed as either a panacea to cure the ills of these countries or a plague to add to their already existing problems.²⁹¹

Italy experienced the first wave of decentralisation in the 1970s whose major feature was the norm on decentralization of municipal administration and civil participation.²⁹² This was designed to decentralize governing functions from bureaucratic city hall to district councils.²⁹³ At the same time, French, American and Nordic localities set up similar systems by establishing neighbourhood councils and

²⁸⁶ Note 65.

²⁸⁷ Note 67.

²⁸⁸ Note 65.

²⁸⁹ Note 65.

²⁹⁰ Note 220 at 1.

²⁹¹ Note 280.

²⁹² Note 65.

²⁹³ Note 65.

community boards.²⁹⁴ These reforms were a result of revolutionary incidents in 1968 in France and in 1969 in Italy hence decentralization has a revolutionary history.²⁹⁵ The second dimension of decentralization occurred in the 1980s and was driven by the crisis of the welfare state. It involved decentralization in the context of inter-governmental relations or devolution of administrative authority from central to localities.²⁹⁶ This trend was spread all over the globe.²⁹⁷ During this time, many countries underwent transitions to elected democratic governments. Decentralisation was the preferred approach with many political leaders facing economic crises of the 1990s hoping that decentralisation would make the state more efficient.²⁹⁸

2.6 ECONOMIC THEORY AND FISCAL DECENTRALISATION IN AFRICA

Economic theory has practical relevance to fiscal decentralisation in Africa in the form of revenue collection and expenditure.²⁹⁹ Most African states are fiscal states that use taxation and associated forms of revenue for survival of the state and for the socio-political-economic development of the states.³⁰⁰ Due to fiscal pressures, most African states have taken to fiscal decentralisation to ensure efficiency in the provision of public goods.³⁰¹ The fiscal system of most African states has for long been characterized by low tax revenues, mismanagement of resources, inadequate allocations to welfare and development, inadequate accountability, transparency and

²⁹⁴ Note 65.

²⁹⁵ Note 65.

²⁹⁶ Clemente A, Falletti, Tet al. (2004) Decentralisation and Democratic Governance in Latin America. Woodrow Wilson International Centre Scholars. Washington D,C. Pg 3

²⁹⁷ Note 296 above.

²⁹⁸ Note 296.

²⁹⁹ Corellation mine given the provisions of the economic theory and the practice of fiscal decentralisation in Africa.

³⁰⁰ Attiya Waris, Matti Kohonen and Jack Ranguma. Taxation and State Building in Kenya: Enhancing Revenue Capacity to Advance Human Welfare. Kenya Report. Tax Justice Network International Secretariat Africa, Tax Justice Network Africa, August 2009 at 28-30. Retrieved from http://www.academia.edu/...Taxation_and_State_Building_in_Kenya_Enhancing...

³⁰¹ Note 300 above.

responsibility and low societal participation.³⁰² These are the ills that these states aspire to cure through fiscal decentralisation.³⁰³

A common fiscal feature of these fiscal states is the ring-fencing of revenue and expenditure to ensure attainment of their fiscal decentralisation programmes.³⁰⁴ This is done to legitimize new levies and taxes at both income and expenditure levels.³⁰⁵ In Kenya, ring-fencing is evident in the collection and utilization of the Road Maintenance Levy Fund and the Constituency Development Fund.³⁰⁶ Opponents of the ring-fencing of funds in a fiscal decentralisation system however, note that it favours highly visible aspects of expenditure as for roads while ignoring less visible areas as maternal care.³⁰⁷

2.6.1 WAVES OF FISCAL DECENTRALISATION IN AFRICA

Decentralisation is not new in Africa, the continent having experienced at least three waves of decentralization between the period around 1950 to post-colonial independence, the period shortly after independence between 1960 and 1970, and the period after 1990.³⁰⁸

a) First wave – 1950s – Post Colonial Independence

At independence, African governments inherited a system in which local governments were tools of administrative management with customary authorities

³⁰² Attiya Waris. Placing the Fiscal Developing State: At what Stage of Development does the Kenyan State belong? Rethinking Development in an Age of Scarcity and Uncertainty. New Values, Voices and Alliances for increased Resilience. University of New York, 2011. Retrieved from <http://www/eadi.org/gc2011/waris.pdf>

³⁰³ Note 302.

³⁰⁴ Note 300 at 28.

³⁰⁵ Note 300 at 28.

³⁰⁶ See generally the provisions of the Road Maintenance Fund Act 1993 and the Constituency Development Fund Act 2013.

³⁰⁷ Note 300 at 28.

³⁰⁸ Note 145.

privileged as representatives of the rural world and the prefects in which the coercive abuses of the colonial state de-legitimized local governments and customary authorities.³⁰⁹ The rule of this new government functioned for several years following independence.³¹⁰ Gradually, the government lost the support of traditional regional leaders as clamour for autonomy of the traditional regional leaders heightened.³¹¹ However, until 1960s, the decentralized administrative system had a limited role of discussing development plans and the implementation of those plans had become weaker than during the colonial period hence a shift to management of public resources through a stronger centralization of administrative power.³¹²

b) Second wave 1960s – 1970s. New belief in value participation and rural development

Dissatisfaction with implementation of plans using a centralized system grew as the philosophy of community development and participation that had begun in Tanzania and Ghana in 1967 – 1968 spread to other African countries that advocated for decentralization of power.³¹³ Further, during the 1970s, reconstruction following civil wars triggered resurgence in local community autonomy.³¹⁴ At this time, the local administration took responsibility of implementation of plans without participation in their formulation as it was feared that more decentralization would have disruptive political consequences for national leadership.³¹⁵ Decentralisation proceeded in the

³⁰⁹ Note 145

³¹⁰ Note 108.

³¹¹ Note 108.

³¹² Note 108.

³¹³ Note 108 at 16 .

³¹⁴ Note 108 at 16.

³¹⁵ Note 108 at 16.

form of de-concentration with countries as Southern Africa, Zambia and Kenya experiencing this wave in the 1960s.³¹⁶

c) Thirdwave.1990s. Turnaround from misgovernment of structural adjustment policies in the 1980s

Strong political and economic intervention by the donor community and the cutting down of central governments due to structural adjustment programmes were the main features of this wave.³¹⁷ Democratic norms as pluralist discourse with greater citizen participation characterized these reforms as precipitated by the fall of the Berlin wall, the democratization movement in Africa and the elections in South Africa.³¹⁸ Policies for decentralization were pursued for both political and development reasons with democratic fiscal decentralization as the preferred norm.³¹⁹

2.6.2 FISCAL DECENTRALISATION IN KENYA

The economic theory of law has application to fiscal decentralisation in Kenya generally and specifically the roads subsector. Kenya became independent in 1963 as a federal state that acknowledged significant autonomy for its regions.³²⁰ In 1968, a constitution for centralized Government was established and the federal system abolished.³²¹ However, even at this time, there were various initiatives at decentralization that included the S.R.D.P-(1967 – 1974) and funded by six donors including U.S.A, Norway and Sweden and the District Focus for Rural Development (1983-1988).³²²As a consequence of the Kenya Local Government Reform

³¹⁶ Note 145 at 6.

³¹⁷ Note 145 at 6.

³¹⁸ Note 145 at 6.

³¹⁹ Note 145at 6.

³²⁰ Note 145 at xxiii.

³²¹ Note 145.

³²² Note 110.

Programme of 1995, two grant schemes were formed for management by the Sub national Governments hence the LATF and R.M.L.F.³²³ Constituency Roads Tender Committees are financed from the funds obtained from the RMLF. The decentralisation was aimed at tackling the inefficiency in public spending.³²⁴ In 2003, CDF came in place for funds provided to Constituencies.³²⁵ The Constitution of Kenya 2010, has provisions for fiscal decentralization.³²⁶

³²³ Note 108 at xiv .

³²⁴ Note 108 at 24.

³²⁵ Note 108.

³²⁶ Chapter 11 of the Constitution.

CHAPTER THREE

CONSTITUENCY ROADS TENDER COMMITTEES AND DEVELOPMENT

3.1 INTRODUCTION

In the previous chapter of this study, the economic theory was discussed in the context of the general objective of the study being assessment of effectiveness of Constituency Roads Tender Committees as units of fiscal decentralisation and to identify problems that limit their role in development. It was noted that the most appropriate theory to address the question of effectiveness of Constituency Roads Tender Committees as units of fiscal decentralisation and identification of the problems that limit their role in development is the economic theory. This is because the theory explains not only the motivation for fiscal decentralisation but also design issues applicable to effective functioning of fiscal decentralisation units as allocation of economic responsibilities and resources between various layers of government.

This chapter applies the economic theory by focusing on and analyzing the functioning of Constituency Roads Tender Committees in Kakamega County within the Republic of Kenya. The analysis is made on the basis of a study carried out involving members of the Constituency Roads Tender Committees within Kakamega County. This is in the context of the hypothesis identified in chapter one that; there is a direct relationship between the design of a fiscal decentralisation system and the realisation of the development objective. The analysis gives the findings of the testing of the hypothesis. The hypothesis was tested by seeking the views of the respondents on variables within the research instruments.

The purpose of this chapter is threefold; first, analyze the application of economic theory to the functioning of Constituency Roads Tender Committees in Kakamega county .Secondly, assess the effectiveness of these committees in development noting the problems they experience from the perspective of the economic theory. Third is to report on the findings of the testing of the hypothesis of the study.

3.2 THE LEGAL FRAMEWORK OF CONSTITUENCY ROADS TENDER COMMITTEES.

3.2.1 Establishment.

The law establishing Constituency Roads Tender Committees was enacted in 2009 by amendments to the Kenya Roads Board Act 1999³²⁷ through the Finance Act 2009³²⁸. Constituency Roads Tender Committees were established to preside over procurement of select roads assigned to them³²⁹. Prior to this, there existed District Road Committees ³³⁰whose purpose was to maintain roads assigned to them³³¹. Constituency Roads Tender Committees as lower units of fiscal decentralisation became agencies of the Kenya Roads Board entitled to receive funds from the Kenya Roads Board to maintain select rural roads.³³²

3.2.2 Composition of Constituency Roads Tender Committees

Constituency Roads Tender Committees comprise of three representatives of the Constituency Development Fund Committee, a representative of Kenya Rural Roads Authority and the Procurement Officer of the Kenya Rural Roads Authority in the

³²⁷ See note 6.

³²⁸ Act no 8 Of 2009.

³²⁹ These are part of the roads assigned to the Kenya Rural Roads Authority pursuant to section 7 of the Kenya Roads Act 2007.

³³⁰ Section 17 of the Kenya Roads Board Act 1999 prior to the 2009 amendments by the finance act 2009. These units existed at the District level.

³³¹ Section 18 of the Kenya Roads Board Act 1999 prior to the 2009 amendments.

³³² See the third schedule to the act.

Region who is to be the secretary to the committee³³³.The chairman and the vice chairman are to be appointed from the three members of the Constituency Fund Development Committee who are members of the Constituency Roads Committee.³³⁴ The act is silent on issues of age, gender, academic qualifications and professional qualifications required of the members. This is notwithstanding the provisions of the Constitution of Kenya, 2010³³⁵ relating to equity in representation in public decision making processes.

In this study carried out for Constituency Roads Tender Committees within Kakamega County, 32 respondents being 88.88 % of the respondents were male while 4 respondents representing 11.11% were female. In terms of age, 41.6% of the respondents were in the age bracket of 30-40 years and 40-50 years respectively. Those older than 50 years were 16.8%. None of the respondents was below 30 years old. For academic qualifications, 14 respondents being 38.88% of the respondents had certificates,4 respondents being11.11% of the respondents were diploma holders, while 18 respondents being 50 % of the respondents were graduates. It was however, noted that the 18 members who had degrees are those who are employees of the Kenya Rural Roads Authority. These are the members and secretaries to the Committees employed by the Kenya Rural Roads Authority as procurement officers and Regional Managers respectively. In respect of possession of professional qualifications in procurement, it was found that, 9 members being 25% of the members had professional qualifications in procurement while 27 members being 75% did not. The 25% consists of the 9 procurement officers employed by the Kenya

³³³ See note 6.

³³⁴ Section 17A(3) of the Act.

³³⁵ Article 232 of the Constitution of Kenya,2010.

Rural Roads Authority. The study further found out that all the members of the committees were either appointed by the Kenya Rural Roads Authority or the respective Constituency Development Fund in line with the provisions of the Kenya Roads Board Act 1999 as amended by the finance act 2009.³³⁶

The composition of the committees complies with the provisions of the Kenya Roads Board Act 1999³³⁷ but lacks provision for issues as gender representation, age, community segmentation, which is an essential factor in matters of human development.³³⁸The Constitution of Kenya, 2010 provides for inclusiveness in the management of state affairs.³³⁹

From this information, it is notable that Constituency Roads Tender Committees within Kakamega County have been constituted in accordance with the provisions of the Kenya Roads Board Act 1999.However, the composition falls short of the principles of participation of the people and inclusiveness provided for in the Constitution of Kenya, 2010.³⁴⁰

3.2.3 Function of Constituency Roads Tender Committees

The function of Constituency Roads Tender Committees is to procure road works for the constituency with funds allocated to the constituency under the Act³⁴¹.The roads in respect of which the procurement is to be done are those that shall have been determined by the respective Constituency Roads Committee.³⁴²The study found out that the committees presided over procurement of road works for specified roads

³³⁶ See note 6.

³³⁷ Section 17 A(3) of the Act.

³³⁸ World Bank World Development Report-1999/2000.Entering the 21st Century.World Bank. 2000 Washington D.C at chapter 5.

³³⁹ Article 10 of the Constitution of Kenya,2010.

³⁴⁰ Note 339 above.

³⁴¹ Section 17(4) of the Kenya Roads Board Act 1999.

³⁴² Section 17 of the Kenya Roads Board Act 1999.

within respective constituencies. This is in line with the provisions of the Kenya Roads Board Act 1999.³⁴³

3.3 ADVANTAGES AND DISADVANTAGES OF CONSTITUENCY ROADS TENDER COMMITTEES.

There are several advantages and disadvantages associated within Constituency Roads Tender Committees as per the theoretical framework of fiscal decentralisation. This section is however, limited to the merits and demerits inherent in the findings of this study. This is based on the theoretical framework of the study and the literature reviewed.

3.3.1 Advantages

Constituency Roads Tender Committees were established to ensure further decentralisation of the decision making process in procurement of maintenance works for select rural roads³⁴⁴. Prior to their establishment; there existed District Roads Committees³⁴⁵ that made decisions on the procurement of select rural roads. The establishment of these committees was therefore to further decentralize the financial resources and the procurement process from the district level to constituency level. Diana Conyers³⁴⁶ observes that most decentralization efforts have both explicit and implicit objectives. Objectives that appeal to public, such as local empowerment and administrative efficiency are generally expressly stated, while less popular ones, such

³⁴³ Section 17 A of the Kenya Roads Board Act 1999.

³⁴⁴ Note 343 above.

³⁴⁵ Repealed section 17 of the Kenya Roads Board Act 1999.

³⁴⁶ Note 98.

as central control and passing the back are not.³⁴⁷ This is true of Constituency Roads Tender Committees as units of fiscal decentralisation.

The structural arrangement of government is a key consideration in the debate on the benefits of fiscal decentralisation.³⁴⁸ In a centralist structure, decision making power concentrates in the hands of central government bureaucrats while in a decentralized system; sub national governments have decision making power on issues within their mandate.³⁴⁹ In spite of the various forms of decentralization there is a link between political and economic dimensions of decentralisation. The realization of the economic gains associated with decentralization, requires the decentralization of the political decision making authority.³⁵⁰ This is equally true of these committees. The connection between economic and political dimensions of fiscal decentralisation is also evident in the functioning of Constituency Roads Tender Committees. The improvement in the general condition of the rural road network has to some extent been accompanied by enhanced human development through participation in the tendering process by persons who previously did not participate in the process.

The Theoretical arguments surrounding fiscal decentralization have been discussed in chapter two of this study. This is as posited by economists and policy analysts through the early works of Charles Tiebout,³⁵¹ Richard Musgrave³⁵² and Wallace Oates,³⁵³ with the distrust for central governments fuelling the thinking that small,

³⁴⁷ Note 98.

³⁴⁸ Note 58.

³⁴⁹ Note 58.

³⁵⁰ Note 58.

³⁵¹ Note 33.

³⁵² Note 95.

³⁵³ Note 35.

democratic governments were the principal hope to preserve the liberties of free men.³⁵⁴

First, fiscal decentralization is advocated because it improves the economic performance by increasing economic efficiency in the provision of public sector services.³⁵⁵ Constituency Roads Tender Committees are to ensure economic efficiency in the procurement of select rural roads at the constituency level.³⁵⁶

Secondly, it is argued that fiscal decentralization can improve economic performance through strengthening a country's governance. It strengthens social capital and encourages political participation that leads to a higher level of accountability for government behaviour.³⁵⁷ By strengthening democratic institutions, fiscal decentralization reduces opportunities for misallocation of public resources. Resources that would otherwise have been diverted are available for investment and provision of public goods leading to economic growth.³⁵⁸ The composition of these committees includes members from the Constituency Fund Committee to who are reserved positions of the chair and vice chair.³⁵⁹ This is to improve on the governance in the tendering system unlike the previous centralized system where only central government officers participated.³⁶⁰

Studies undertaken to test this argument of democratic governance have focused on corruption as a governance indicator in terms of citizen participation, transparency in

³⁵⁴ Note 93.

³⁵⁵ Note 93.

³⁵⁶ Emphasis mine.

³⁵⁷ Imman R, and Daniel R (1997) Rethinking Federalism", *Journal of Economic Perspective*, 11 43-64.

³⁵⁸ McNab, R (2001) *An Empirical Examination of the Outcomes of Fiscal Decentralisation*. Dissertation. Georgia, State University.

³⁵⁹ See section 17(3) of the act.

³⁶⁰ Under District Roads Committees, the power to procure was not with the committees.

government and rule of law. There is consensus among the studies that fiscal decentralization promotes improved governance.³⁶¹

Fiscal decentralization also increases political participation at the local level through enhanced democratic values and political stability.³⁶² This is because it provides a forum for local debate about local priorities and can be a breeding ground for future political leaders as in the United States of America, where four of the last five presidents were state governors.³⁶³ During the study, it was noted that several former members of these committees were now elected members of the county assembly within the county.

The need for participation and democratization is another argument for fiscal decentralization.³⁶⁴ Walter Oyugi³⁶⁵ notes that democratic governance cannot be realized at the centre if it does not obtain at the local level and that governance is democratic at the local level to the extent by which people are able to influence the process and substance of decisions made by government that are likely to affect them’’³⁶⁶ This is on the basis of differentiation by class, caste, livelihood, gender, age, race, origins and ethnicity. This diversity calls for community participation in devolving the decision making process.³⁶⁷ This quotation is applicable to the operations of these committees.

³⁶¹ Note 93 at 12.

³⁶² Note 116 at 8.

³⁶³ Lee, Y Fiscal Decentralisation, Institutional Arrangement, Economic Performance In Korea. .2003. Dissertation. New York University

³⁶⁴ Walter Oyugi, Decentralisation for Good Governance and Development. Regional Development Dialogue 21(1): 3-22, Spring 2000 at 4

³⁶⁵ Note 364 above

³⁶⁶ Note 364.

³⁶⁷ World Bank. (2000) Entering the 21st Century: World Development Report 1999/2000. Oxford University Press. at 108-109

Fiscal crisis can also justify decentralization.³⁶⁸ Decentralisation is then used as a means of reducing public expenditure.³⁶⁹ This was part of the motive of the Structural Adjustment Programmes of the 1990s in Africa supported by donor countries.³⁷⁰ It is also notable that in most countries undergoing decentralization, there is usually some form of donor support present.³⁷¹ This is true for these committees since there has been donor support to their programmes.³⁷²

3.3.2 Disadvantages

Certain disadvantages are associated with fiscal decentralisation.³⁷³ Constituency Roads Tender Committees as units of fiscal decentralisation are no exception. As per the economic theory, these disadvantages are mainly due to design deficiencies within the units. They include hampering of economic performance by undermining economic efficiency due to failure by appointed officials to satisfy the preferences of local needs.³⁷⁴ Further, if they seek to satisfy the needs of the local population, the local bureaucracy does not always go along with the expectations of the elected officials.³⁷⁵

In addition, providing a given local public service entails economies of scale and the welfare losses attributable to economies of scale that would result from decentralisation make it difficult for the benefits associated with economies of scale

³⁶⁸ Chris Rogers . The Political Economy of Decentralisation and Localism as a Crisis Response. 2012 University of York, Heslington York. at 1-3.

³⁶⁹ Note 368.

³⁷⁰ Note 368 .

³⁷¹ Note 368.

³⁷² World Bank.(2000) Entering the 21st Century: World Development Report 1999/2000. Oxford University Press. at 108-109

³⁷³ Note 110.

³⁷⁴ Note 125.

³⁷⁵ Note 125.

to be realized.³⁷⁶ The argument that fiscal decentralization promotes economic performance by increasing political participation and improving governance has also been criticized.³⁷⁷ It is argued that though decentralization may increase the participation of people at local level, it is only a small privileged elite group that actually often gets to participate. Further, such elites often pursue their own narrowly focused self-interests that quite often are divergent from those of the local populace.³⁷⁸ In this light, fiscal decentralization may indeed promote participation in the democratic process but would not necessarily improve economic performance. Further, it is recognized that there exists a relationship between decentralisation and corruption of sub-national levels because sub-national institutions are usually less developed as sub-national government provides lower salaries, aspects for advancement and a weaker mechanism for surveillance and therefore accountability leading to corruption.³⁷⁹ The performance of these committees in relation to political participation and elite capture was considered during the study. The study revealed elements of elite capture in line with this argument.

Fiscal decentralization has also been blamed for increasing regional disparities. For instance, China's development pattern has been fragmented with an increasing inequality analogous to that of the unbalanced growth theory.³⁸⁰ Under the decentralized system, the central government's ability to facilitate convergence between core regions and their hinterlands is undermined.³⁸¹ During the study,

³⁷⁶ Note 125.

³⁷⁷ Note 98.

³⁷⁸ Note 98.

³⁷⁹ Note 98.

³⁸⁰ Note 67.

³⁸¹ Note 380 at 3.

disparities were noted in the development of the rural road network within the various constituencies within the county.

3.4 REFLECTION OF THE LOCAL COMMUNITY IN THE COMMITTEES' COMPOSITION

The information obtained during the study shows that 11.11% of the respondents observed that the composition of the committees was a reflection of the structure of the local community while 32 respondents representing 88.88% were of the view that the composition of the committees was not a reflection of the structure of the local community. This therefore means that a segment of the society in this County presides over the procurement of rural roads to the exclusion of others. The prevailing composition of the committee vis -avi the composition of the local population may be attributed to various factors. These include the wide discretion to the appointing authority, presence of a dominant section of the society and lack of guidelines on the composition of the committee as against the structure of society as per the local community. Remotely though, could also be attributed to the absence of the relevant skills in the population of the society not adequately represented in the committees. Section 17(A) of the Kenya Roads Board Act³⁸² does not provide that the composition of the committee is to be a reflection of the society in which the committee operates. The Constitution of Kenya, 2010³⁸³ however, provides for public participation in matters of public finance.

³⁸² Act no 7 of 1999.

³⁸³ Article 201(a) of the Constitution of Kenya, 2010.

Wallace Oates³⁸⁴ posited that sub national government units are to differentiate the provision of public goods and services as per the local preferences to cater for the various local tastes. This differentiation is to involve the various constitutive elements of the population in terms of the participation.³⁸⁵ These committees are therefore unlikely to ensure this differentiation given their setup.

3.5 CONSTITUENCY ROADS TENDER COMMITTEES AND REPORTS TO THE LOCAL COMMUNITY

3.5.1 Reports to the Local Community

From the study, it was found that 10 respondents being 27.77% of the Committee members stated that reports are not given to members of the local community while 26 respondents being 72.22% of the respondents noted that reports are given to members of the local community. This data therefore means that these committees are not accountable to the local community that they serve. The Act³⁸⁶ is silent on the reporting relationship between the local community and the committees. An assumption appears to have been made that by constituting the committees from members of the local community, and then it follows that they will report to the community. The Constitution of Kenya, 2010 however, has several provisions requiring accountability on matters relating to devolved funds and associated power.³⁸⁷ Further, section 2 of the Public Procurement and Disposal Act³⁸⁸ cites transparency, accountability and enhancement of public confidence as amongst the

³⁸⁴ Note 35.

³⁸⁵ Note 35.

³⁸⁶ Kenya Roads Board Act 1999.

³⁸⁷ Article 174 of the Constitution.

³⁸⁸ Act No 3 of 2005.

objectives of the Act³⁸⁹. Reports to the local community on the activities of the committees would have enhanced these objectives. Arising from this, it is also possible that the services they provide may not meet the requirements of the local community. This state of affairs on the reporting pattern may be attributed to several factors. These include the absence of a legal framework on the reporting, failure to comply by the committees and a population that is not keen on the activities by the committees.

3.5.2 Nature of reporting pattern to stakeholders.

The study sought to establish the nature of the reporting relationship from the 10 members who stated that the committees made reports to the local population served. From the results obtained during the, it was noted from the 10 respondents who were positive on the reporting to the local community that the reporting is done informally to the local population. This therefore means that there are no records on the interaction between the committee members and the members of public. This kind of reporting may be attributable to lack of a policy not only on the need to report but also the manner of reporting. This inadequacy in the reporting relationship between the committees as decentralized units and the local population has the potential to defeat governance which is one of the justifications for fiscal decentralisation as noted by Charles Tiebout³⁹⁰, Richard Musgrave³⁹¹ and Wallace Oates³⁹².

³⁸⁹ Note 378 388 above.

³⁹⁰ See note 33.

³⁹¹ See note 95.

³⁹² See note 35.

3.6 OBSERVERS AND CONSTITUENCY ROADS TENDER COMMITTEES.

3.6.1 Involvement of observers

The study sought to determine the involvement of observers in the functioning of Constituency Roads Tender Committees. The respondents were required to state whether or not observers were involved in the activities of the committees. All the respondents noted that observers were not involved in the activities of the committees. Section 17A of the Kenya Roads Board act³⁹³ is silent on the involvement of observers in the activities of the committees .However, article 10(1)a of the Constitution of Kenya,2010³⁹⁴ provides for participation of the people as a national value. Further, amongst the objectives of the Public Procurement and Disposal Act,2005³⁹⁵ is ensuring public confidence in public procurement. Regulation 12 of the Public Procurement Regulations 2006 provides for the involvement of observers in procurements with a value above Ksh 100 million.³⁹⁶This therefore excludes the procurement for road works presided over by these committees since the monetary value for all of individual procurements is below ksh 50million.³⁹⁷The participation of observers drawn from the local community would have ensured not only compliance with the Constitutional provisions on public participation but also ensured the realisation of the objective of public confidence as per the requirements of the Public Procurement Act 2005.

³⁹³ Note 153.

³⁹⁴ See article 10 (1) of the Constitution of Kenya..

³⁹⁵ See section 2 of the act.

³⁹⁶ Regulation 12 of the Public Procurement and Disposal Act 2006 as amended by section 4 of Legal Notice no 106 of 2013.

³⁹⁷ The annual budget for the committees is about ksh 25 million hence not possible for an individual transaction to exceed 100 million.

3.6.2 Reasons for non involvement of observers

The study sought to determine the reasons for the non involvement of observers in the activities of the committees .The respondents were required to state the reasons. From the responses, there are various reasons why observers are not involved in the activities of the activities of the committees. These are the absence of a specific statutory legal framework on the involvement of observers. This reason was cited by all the respondents who were interviewed.26 respondents being 72% of the respondents noted that the non involvement of observers in the activities of the committees was attributable to the challenges likely to be identified in the selection of the observers.10 respondents being 27% of the respondents noted that the non involvement of observers was attributable to the little value addition expected from the observers.

3.6. Enhancement of Involvement of observers.

The study sought to determine from the respondents what could be done to ensure the involvement of observers in the activities of the committees. Various ways were identified by the respondents. All the respondents identified a specific legal regime obligating the committees to involve observers as a key way of ensuring the involvement of observers in the activities of the committees. Amongst the other the ways identified by the members were identification of a pool of people from whom observers are to be chosen from. This was cited by 10 respondents being 27.77% of the respondents.18 respondents being 50% of the respondents noted that there was need to identify the specific ways through which the observers could add value to the procurement process as a way of ensuring the involvement of the observers in the procurement process.

3.7 PUBLIC AWARENESS OF THE COMMITTEES' ACTIVITIES.

The study sought to establish the whether or not members of the public in the areas where the committees operated were aware of the committees' activities. From the results, it was noted that 18 respondents being 50% of the respondents were of the view that the local population was aware of the activities of the committees while 18 respondents being 50% of the sample population were of the view that the local population was not aware of the activities of the committees. The activities in respect of which information was sought are those in respect of the mandate of the committees. There is hence a clear division in opinion amongst the members on whether or not the local community is aware of the activities of the committees. This state of affairs on public awareness may be attributed to various factors. Amongst these are absence of a statutory legal framework on the dissemination of information on the activities of the committees, lack of interest from the members of the public and use of ineffective means by the committees to disseminate information to members of the public. In general, this state on public awareness on the activities of the committees does not reflect well on these committees. The Constitutional right of access to information obligates the state through its various entities to publish and publicize important information affecting the nation.³⁹⁸ The fulfilment of this obligation by these committees would bridge the gap of information between them and the people that they serve.

³⁹⁸ See article 35(3) of the Constitution of Kenya,2010.

3.8 PARTICIPATION OF LOCAL COMMUNITY IN THE ACTIVITIES OF THE COMMITTEES.

3.8.1 Participation of local community

The study also sought to determine the participation of the local community in the activities of the committees. From the results obtained, it was determined that 18 respondents representing 50% of the respondents replied that the local population was involved in the committee's activities, 12 respondents being 33.33% were not certain if the local community was involved while 6 respondents being 16.67% noted that the committees did not involve the local community in their activities. These results show that only half of the respondents were positive on the participation of the local community in the activities of the committees. It may therefore be deduced that these committees do not consider the participation of public in their activities as critical to the success of their activities. Further, this points to low level participation of the public. This is strange given that amongst the objectives to be achieved by these committees is enhanced public participation³⁹⁹ as the committees operate at constituency level. This diversity in responses on the involvement of the local population in the committees' activities may be attributable to the absence of a policy framework on the involvement of the local population in the activities of the committee. The Constitution of Kenya, 2010⁴⁰⁰ provides for involvement of people in decision making. Further, section 2(f) of the Public Procurement and Disposal Act⁴⁰¹ provides for promotion of the local industry and economic development as amongst

³⁹⁹ See article 10 (1).

⁴⁰⁰ See Article 232 of the Constitution of Kenya, 2010.

⁴⁰¹ Act no 8 of 2005.

the objectives of the Act. This objective can only be realized through the participation of the local community in the activities of the committees.

3.8.2 Mode of participation

Upon determination of the aspect of participation by the local community in the activities of the committees, the study sought to determine the mode of participation of the local community in the activities of the committees. This was for the 18 respondents who had responded to the effect that the local community was involved in the activities of the committees. From the responses, all the respondents considered purchase of tenders by members of the local population as bidders as the only activity in which members of the local community participated. The local community was however, not involved in activities as identification of projects, tender evaluation and inspection of completed projects prior to handover. From this information, it is noted that there are various ways through which members of the public can participate in the activities of the committees. However, for Kakamega county, the only way through which they participate is through purchase of tender documents to participate in the tendering process as bidders. The Constitution of Kenya, 2010⁴⁰² provides for public participation as a national value in affairs of the government.

3.8.3 Level of participation of the local community.

On the question of the level of participation of the local community, the study determined that 5 respondents being 13.8% of the respondents considered the level of participation of the local community in the activities of the committee by the local population as high while 31 respondents being 86.11% considered the level of participation as low. Consequently, it is noted that the level of participation of the

⁴⁰² Note 399.

local community in the activities of the Constituency Roads Tender Committees in Kakamega County is low. This low level of participation may be attributed to several factors amongst them lack of policy and or legal framework on the involvement of the local population in the activities of the committees, lack of interest from the local community, inadequate capacity amongst members of the local community and lack of opportunities for participation of the local population. This low level participation in the activities of the committees may also be a sign of elite capture leading to low level of human development.⁴⁰³

3.8.4 Adequacy of participation of the local community.

The study also sought to determine from the respondents who were positive on the participation of the local community, their views on the adequacy of participation of the local community in the activities of the committees. From the results, 6 respondents being 33.33% of the respondents who were of the view that the level of participation of the local community in the activities of the committees was adequate while 12 respondents representing 66.67% were of the view that the participation was inadequate. This information shows that the level of participation of the local population in the committees is not only low but also inadequate in the few instances where it is ensured. This low participation of the local community in the activities of the committees may be due to various factors. These include lack of a policy and legal framework on the involvement of the local population in activities of the committees once they are constituted, lack of interest from members of the local community, inadequate capacity amongst members of the local community and limited opportunities for participation of the local community.

⁴⁰³ Note 141.

This low participation of the local community in the activities of these committees reflects the fears expressed by Pranab Bardhan and Dilip Mookherjee⁴⁰⁴ on the possibility of local capture by elites and exclusion of the local people in activities of decentralized units.

3.8.5 Factors hindering the participation of the local community in the activities of the committees.

The respondents were asked to identify factors limiting the participation of the local community in the activities of the committees. From the study, all the respondents were of the view that the major impediments to the participation of the local community in the committees' activities are lack of a legal and or policy framework on the participation of the local community , 83.3% of the respondents cited inadequate knowledge by the members on the activities of the committee, 75% of the respondents attributed this to lack of funds amongst the members of the local community, inadequate knowledge on how to participate in the activities of the committees was cited by 41.6% of the respondents, limited involvement in the appointment of committee members was cited by 50% of the respondents, 41.6% of the respondents attributed this to limited outreach by the committees and limited scope of work to the community by the committees due to inadequate funds was cited by 75% of the respondents.

3.8.6 Enhancement of participation of the local population

The respondents were required to identify ways of enhancing the participation of the local population in the activities of the committees. From the results, the respondents

⁴⁰⁴ Note 141.

cited various ways of enhancing the participation of the local population. These are enactment of a legal and policy framework on the participation of members of the local community -100% of the respondents, creation of awareness amongst the local community on the committees' activities by the committees to the local population- 83.3% of the respondents, involvement of the local population in the appointment of the members- 69.4% of the respondents, enhancement of the local population's financial capacity -75% of the respondents and further decentralisation of the service -50% of the respondents.

This data therefore means that there are various ways of enhancing the participation of the local population in the activities of Constituency Roads Tender Committees in Kakamega County. However, the preferred ways of doing so as per the respondents are enactment of a legal and policy framework on the participation of members of the local community, creation of awareness amongst the local community on the committees activities, and enhancement of the local population's financial capacity.

These factors hindering the participation of the local population in the activities of these committees and the ways of enhancing the local population participation is a pointer to the critical role played by the design of a fiscal decentralization system to its success as noted by Paul Smoke.⁴⁰⁵ Dr Attiya Waris⁴⁰⁶ also alludes to this by noting that fiscal decentralisation units in Africa are characterized by amongst others low societal participation.

⁴⁰⁵ Note 1.

⁴⁰⁶ Note 302.

3.9 CONSTITUENCY ROADS TENDER COMMITTEES AND DEVELOPMENT

3.9.1 Development of rural road network

The respondents were required to state their views on the role of the Constituency Roads Tender Committees on the development of the rural road network. All respondents noted that the quantity of the rural road network within the Constituencies had increased since the formation of these Committees. Further, the respondents' responses were all affirmative to the question on whether the quality of the road works done on the rural road network had improved since the formation of the Committees. These response means that Constituency Roads Tender Committees as units of fiscal decentralisation have contributed to the development of the rural road network in Kakamega County. This is both in terms of the quantum of the network improved and the quality of the work done. Therefore, within Kakamega County, there is a direct relationship between fiscal decentralisation and the development of the rural road network. These findings are in agreement with writings by LinY.F and Liu Z,Q⁴⁰⁷ and Nobukoi Akai and Masayo Sakata⁴⁰⁸ that found positive relationship between decentralisation and development. Promotion of socio-economic development is amongst the objects of devolution in the Constitution of Kenya,2010. The Public Procurement and Disposal Act 2005⁴⁰⁹ also provides for socio economic development as one of the objectives of the act.

⁴⁰⁷ Note 102.

⁴⁰⁸ Note 104.

⁴⁰⁹ See section 2 of the Act.

3.9.2. Annual budget for the Committees.

The study sought to determine from the secretaries of the committees the size of the annual budget for the road works by the committees. All the nine respondents noted that the budget varies between ksh 25 million and Ksh 27 million. They noted that the committees played no role in determination of the budget which was determined by the Kenya Roads Board based on the collections of the RMLF. They also noted that this budget is inadequate and only takes care of 25% of the road network to be worked on by the committee. The 9 secretaries also noted that the funds are intermittently disbursed hence negatively affecting the activities of the committees. The Kenya Roads Board Act⁴¹⁰ provides that 22% of the total Road Maintenance Levy is to be distributed to all constituencies and be administered by the Kenya Rural Roads Authority. The act⁴¹¹ makes provision for the power for the committees to receive money from the Kenya Roads Board but is silent on the timing for the disbursement of funds to the constituency accounts.

From this data, it may be inferred that road works is a capital intensive activity as the annual budget of ksh 25 million maintains only 25% of the available network. Further; this may point to a large rural road network within this county given the percentage of the portion catered for by the available funds. It may also be deduced that generally, the network is in a poor condition requiring a lot of money to improve it. This also shows that inadequate funds are one of the problems affecting these committees and slowing down the development of the rural road network in this county.

⁴¹⁰ Section 6 (2) d (i).

⁴¹¹ Section 29 of the Kenya Roads Board Act 1999.

Paul Smoke⁴¹² notes that an appropriate fiscal transfer system is critical for the success of a fiscal decentralisation system. This requires availability of adequate funds and transfer system that ensures that the funds are availed when required. For these committees, the funds are not only inadequate but the transmission of the funds to the committees is uncertain as to negatively affect the operations of the committees.

3.10 DISTRIBUTION OF ROAD PROJECTS WITHIN RESPECTIVE CONSTITUENCIES

3.10.1: Equity in the distribution of road projects within Constituencies

The study further sought to determine whether the distribution of road projects within the respective constituencies was equitable. Information was sought from the respondents on whether or not the distribution of road projects whose procurement was presided over by the committees within the constituencies was equitable.³⁰ respondents being 83.3% of the respondents stated that the road projects whose procurement was presided over by the committee were inequitably distributed within the constituencies while 6 respondents being 16.7% stated that the road projects were equitably distributed. Most of the respondents are therefore of the view that the distribution of the road projects is not equitable. Therefore, the development of the rural road network within Kakamega County is inequitable. This data also means that equity is not a consideration in the activities of these committees leading to skewed development. This is interesting given that the decentralisation of the funds and management of the function of development of the rural road network to the

⁴¹²Note 1.

Constituency level was done to ensure equity in the development of the rural road network within this county.⁴¹³

Amongst the objects of devolution provided for in the Constitution of Kenya, 2010 is equitable sharing of resources⁴¹⁴.The establishment of Constituency Roads Tender Committees in every constituency is a deliberate attempt at fostering equity in the development of not only the constituency but also the entire nation.⁴¹⁵The principles of public finance in the Constitution⁴¹⁶ do also provide for equity in the expenditure of public resources to ensure equitable development. Constituency Roads Tender Committees are to be created in every Constituency hence an implication of equity in their functioning.⁴¹⁷

3.10.2 Reasons for inequitable distribution of road projects within the Constituencies

The study sought to determine from the respondents the reasons for the inequitable distribution of road projects whose procurement was presided over by the committees. 32 respondents being 88.88 % of the respondents stated that the inequity in the distribution of road works is mainly attributable to favouritism by the members of the Constituency Roads Committee for the areas they come from.66% attributed the inequitable distribution to the lack of a policy and legal requirement on the equitable distribution of the roadworks.55.55% attributed the inequitable distribution to the little funds available against the huge network hence making it difficult to ensure equity.

⁴¹³ See section 2(e) and 2(f) of the Public Procurement Act 2005

⁴¹⁴ Article 174(g).

⁴¹⁵ Section 17(A) of the Kenya Roads Board Act 1999.

⁴¹⁶ Article 201 (b) of the Constitution of Kenya,2010.

⁴¹⁷ Section 17 (A) of the Kenya Roads Board Act 1999.

This data means that there are various factors that account for the inequity in the distribution of road projects for the road works presided over by Constituency Road Tender Committees. These are favouritism by the members of the Constituency Roads Committee⁴¹⁸ for the areas they come from, lack of a policy and legal requirement on the equitable distribution of the road works and little funds available against the huge network hence making it difficult to ensure equity. However, favouritism by the members of the Constituency Roads Committee for the areas they come from is the main factor for the inequitable distribution of rural road projects within this County. Constituency Roads Committees are created under section 17 of the Kenya Roads Board Act 1999.⁴¹⁹ Their function is to advise on the formulation of the annual roads programme and the roads to be included therein.⁴²⁰ It is in the execution of this role of formulation of the annual roads programme that inequity manifests itself as the Constituency Roads Tender Committee only presides on the procurement of roads determined by the Constituency Roads Committee as included in the annual roads programme.⁴²¹

Seddar Yilmaz and Robert Ebel⁴²² note that equity in the distribution of resources is a key benefit associated with fiscal decentralisation. However, in this study, there are doubts as to whether; equity has been enhanced at the constituency level through the devolution of funds for the development and maintenance of rural roads.

⁴¹⁸ These are the committees mandated under section 17 of the Kenya Roads Board Act to advise the Kenya Rural Roads Authority on the roads to be included in the annual roads programme for the Constituency.

⁴¹⁹ Note 153

⁴²⁰ Note 158

⁴²¹ Note 418.

⁴²² Note 58.

3.10.3 Pursuit of self interests

The study sought to determine from the respondent secretaries whether or not the activities of the committees are influenced by pursuit of self interest of the members. From the study 3 respondent secretaries representing 33.33% of them noted that the activities of the committees were characterized by pursuit of self interest while 6 of them representing 66.66% noted that the activities of the committees were not characterized by pursuit of self interest.

From the results, the activities of the Constituency Roads Tender Committees are to a limited extent influenced by the pursuit of self interest of the members. This means that members of the committees discharge their mandate freely without being held hostage of self interests. This low level prevalence of pursuit of self interest may be attributable to the existence of a legal framework that discourages such a practice. These results on the pursuit of self interest are in line with the writing by Diana Conyers⁴²³ who alludes to the possibility of local elite capture pursuing self interests in the utilization of resources if a proper design is not put in place during implementation of a fiscal decentralisation programme. Accountability is amongst the principles of public finance in the Constitution of Kenya 2010.⁴²⁴ Specific measures of accountability are required in the discharge of the mandate of these committees to militate against the pursuit of self interest. The Kenya Roads Board Act⁴²⁵ provides for technical and financial audits to ensure proper utilisation of the funds. However, this is inadequate in mitigation of inequity due to elite capture. This is because, the funds could be well spend on the relevant projects from a financial perspective, the

⁴²³ Note 98.

⁴²⁴ See article 201 (a) of the Constitution.

⁴²⁵ Note 153.

quality of work is good enough to satisfy the requirements of a technical audit yet the distribution of the projects is not equitable.

3.11 ECONOMIC DEVELOPMENT OF LOCAL COMMUNITY

3.11.1. Preference for local contractors

The study sought to establish whether the committees exercise preference for the local contractors in the discharge of their mandate. Local contractors here are taken to be contractors ordinarily resident within the respective constituency and not those that are resident within the republic of Kenya. All respondents replied that the committees did not exercise preference for the local contractors. This means that bidders for road works resident within Kakamega County do compete on equal footing for tenders with those who are not resident within the County. The absence of a legal framework for preference for the contractors who are ordinarily resident within the constituency has implication on the realisation of the developmental objective of fiscal decentralisation in the context of the roads subsector in Kenya.⁴²⁶

Klugman James, notes that the realisation of the developmental objective of fiscal decentralisation requires deliberate efforts to address the development needs of a particular Geographical unit targeted by the fiscal decentralisation programme. Though the Constitution of Kenya, 2010⁴²⁷ and the Public Procurement and Disposal Act⁴²⁸ have provisions on preferences in procurement, no provision has been made in respect of the procurement undertaken by these committees.

⁴²⁶ Note 132.

⁴²⁷ See article 227(1) a of the Constitution.

⁴²⁸ See section 39 of the Act and Preferences and reservation regulations 2013.

3.11.2. Reasons for not exercising preference for local contractors

The study sought to determine the reasons for the non exercise of preference for local contractors. From the responses, it was noted that there are several reasons as to why preferential treatment is not accorded to local contractors during the tendering process for road works. These are negative effect on competition during the tendering process as noted by 50% of the respondents, inadvertence in consideration by the committee as noted by 41.66 of the respondents and lack of a legal basis for the preference as noted by 91.66 % of the respondents. In terms of the objectives of decentralisation as noted by Wallace Oates⁴²⁹, there is need for a design mechanism in the structure of the fiscal decentralisation programme that ensures pursuit of the interests of the local community and a legal framework of preference for the local contractors would have gone a long way in promoting this objective.

3.11.3. Increase in number of local contractors

The study sought to determine whether or not there had been an increase in the number of the local contractors since the formation of the committees. To this question all respondents noted that there had been an increase in the number of contractors. The aspect of the increase in the number of the local contractors is important in addressing the benefits of fiscal decentralisation from a human development perspective. This is because the increase in the number of the local contractors has occurred in the absence of a preference mechanism for the local contractors. This therefore means that the fiscal decentralisation of the funds and management of the procurement function of rural roads has created a good environment for local contractors, hence spurred their interest in the procurement.

⁴²⁹ Note 35.

This is encouraging given that enhanced public confidence in procurement and promotion of the local industry and economic development are some of the objectives of the Public procurement law in Kenya.⁴³⁰ This data also means that for an appropriate decentralized function, there is a direct relationship between the decentralisation of the function and the participation by the local population.

3.11.4 Factors Considered by committees in exercise of their mandate.

The study sought to determine the factors considered by the committees in the discharge of their mandate. To obtain this information, the respondents were required to indicate the factors considered by committees in the discharge of committees' mandate in their respective constituencies. From the study 27 respondents representing 75 % noted that economic factors were the main considerations. 6 respondents representing 16.66 % noted that political factors were the main considerations while 3 respondents representing 8.33 % were of the view that social factors were the main factors considered by the committee in the discharge of their mandate.

This means that there are several factors considered by the committees in the discharge of their mandate. These are social, political and economic. The frequency of consideration of the factors however varies. From the results, economic factors are the main consideration followed by political factors and then social factors. These findings on the consideration of economic considerations by the committees in the discharge of their mandate are in line with the writings on the first generation economic theory of fiscal decentralisation.⁴³¹ Charles Tiebout,⁴³² Wallace

⁴³⁰ See section (2 e) and 2(f) of the Public Procurement Act 2005.

⁴³¹ Note 182.

Oates,⁴³³ Richard Musgrave⁴³⁴ and Mancur Olson⁴³⁵ who were the major contributors to this stage of development of economic theory, posited that economic issues are to be the main considerations in decision making in a fiscal decentralized unit. Further, political factors being second in terms of the frequency for consideration is also in line with the writings of James Bachunan and Mancur Olson⁴³⁶ who were the proponents of the second generation economic theory of fiscal decentralisation that brought out the role of political factors in the decision making process of a fiscal decentralisation programme.

3.11.5. Role of committees in creation of employment within the constituencies

The study sought to determine the role of the committees in creation of employment within the respective constituencies. To determine this, the respondents were required to identify the various ways in which the committees had contributed to the creation of employment. The data obtained shows that there are various ways through which Constituency Roads Tender Committees have generated employment. For the committees within Kakamega County, these are by awarding contracts for road works to the local population as noted by 75% of the respondents, employment created by the contractors awarded jobs as noted by 83.3% of the respondents and self employment due to improved infrastructure as noted by 88% of the respondents. From this data, the objective of economic development of the public procurement law⁴³⁷ in Kenya has been achieved through the procurement of Constituency Roads

⁴³² Note 33.

⁴³³ Note 35.

⁴³⁴ Note 95.

⁴³⁵ Note 186.

⁴³⁶ See notes 186 and note 214.

⁴³⁷ See section 2(f) of the Public Procurement and Disposal Act 2005.

Tender Committees within Kakamega County. This aspect of human development is amongst the objectives of fiscal decentralisation as noted by Klugman,James⁴³⁸

3.11.6 Enhancement of the committees' role in Economic Development of the respective Constituencies.

The study sought to determine the various ways through which the committees' role in promotion of the economic development of the Constituencies could be enhanced. The respondents were required to identify the various ways through which the committees' role in economic development could be enhanced. From the responses, these were found to be developing a mechanism for according preferential treatment to local contractors as noted by all the respondents, increase in the funds allocated per Constituency, also cited by all the respondents, provision of security of office tenure for the members as noted by 83.33% of the respondents and improvement on the mode of disbursement of funds through enhanced certainty as cited by 69.44% of the respondents. These factors are aimed at improving the design of these committees as units of fiscal decentralisation. This is in line with the position by Paul Smoke⁴³⁹ to the effect that the design of a fiscal decentralisation system is critical for the success of the system.

3.12 FACTORS HINDERING CONSTITUENCY ROADS TENDER COMMITTEES IN THE DISCHARGE OF THEIR WORK.

The study also sought to determine the factors hindering Constituency Roads Tender Committees in the discharge of their work. From the study, it was found that Constituency Roads Tender Committees in Kakamega County are affected negatively

⁴³⁸ Note 142.

⁴³⁹ Note 1.

by various factors. These include inadequate funds as cited by 91.6 % of the respondents, a large road network as cited by 91.6% of the respondents; capacity challenges amongst members as cited by 80.55% of the respondents, Poor remuneration for members as cited by 83.3% of the respondents, uncertainty in the disbursement of funds cited by 83.33% of the respondents, bad weather cited by 50% of the respondents and uncertainty of office tenure for committee members cited by 66.66%.of the members. However, the main factors affecting the committees operations are inadequate funds, a large road network; capacity challenges amongst members, Poor remuneration for members and uncertainty in the disbursement of funds. The Kenya Roads Board Act⁴⁴⁰ is silent on most of these issues that have an effect on the performance of these committees. These include capacity building, remuneration and office tenure for the committee members.

These problems facing Constituency Roads Tender Committees in Kakamega County are a reflection of the writing by Dr Attiya Waris⁴⁴¹ who notes that fiscal decentralisation units in Africa are characterized by amongst others low tax revenues, mismanagement of resources, inadequate allocations, and inadequate responsibility.

3.13 ENHANCING THE PERFORMANCE OF CONSTITUENCY ROADS TENDER COMMITTEES IN THE DISCHARGE OF THEIR WORK.

To address the factors hindering Constituency Roads Tender Committees in the discharge of their work, the study sought to determine the ways through which the performance of these committees could be enhanced. From the data collected during the study, it was noted that there are various ways of enhancing the general

⁴⁴⁰ See section 17A of the Act.

⁴⁴¹ Note 302.

performance of Constituency Roads Tender Committees within Kakamega County. This include ensuring security of tenure for members as noted by all the respondents, increase in funds allocated to them as noted by all the respondents, appointing qualified members only as noted by 50% of the respondents, creation of capacity in members through training as noted by 88.88% of the respondents, enhancing members remuneration as noted by 83.3 % of the respondents, and improvement in the certainty of disbursement of funds as noted by 69.44% of the respondents.

3.14 CONCLUSION

This data represents the data collected during a research on the functioning of Constituency Roads Tender Committees in development as units of fiscal decentralisation in Kakamega County. The respondents who were members of Constituency Roads Tender Committees within Kakamega County were easy to access and were cooperative during the data collection. The sample size was representative and the findings are quite applicable to Constituency Roads Tender Committees within neighbouring counties of Vihiga, Busia and Bungoma.

CHAPTER FOUR

RECOMMENDATIONS

4.1 INTRODUCTION

In chapter three of this study, an analysis was made of Constituency Roads Tender Committees as units of fiscal decentralisation in Kakamega County. An assessment was made of the effectiveness of these committees in development as units of fiscal decentralisation. The successes of the committees were identified alongside the challenges they face. This was from the perspective of the economic theory discussed in chapter two and the hypothesis tested during the study. It was noted that these committees have design deficiencies that impede their role in development.

4.2 RECOMMENDATIONS

The study noted that these committees challenges of a design nature. These relate to their composition, accountability to local population, participation of local community, inadequate funds, inappropriate funding model and a procurement regime that is not sensitive to the specific needs of the local population. The recommendations set out below address these challenges with a view of enhancing the role of these committees in development as units of fiscal decentralisation.

Section 17A of the Kenya Roads Board Act 1999 on the composition of Constituency Roads Tender Committees should be amended to make the process of appointment of the members more inclusive through the participation of members of the local population. This should be done by not only providing for the involvement of the local population, but also through provision of the mode of participation of the local population. An election process of persons with the requisite qualifications by the local population is recommended.

Further, section 17A of the Kenya Roads Board Act 1999 on the composition of the committees should be reviewed to provide for office tenure of the committee members. A specific time frame to be served by the committee members should be incorporated in the law. Given the political set up of a constituency as a political unit, it is recommended that the members serve a fixed term of five years with the option of re-election once.

A new section should be introduced to the Kenya Roads Board Act 1999 immediately after the current section 17A to provide for the manner of determination of adequate remuneration to be paid to the committee members. This could take the form of guidelines on how to determine and pay an adequate remuneration to these members.

Section 17A of the Kenya Roads Board Act 1999 should also be reviewed so that Constituency Roads Tender Committees are constituted in a manner that respects issues of age, gender, society segmentation and academic qualifications to ensure inclusiveness in their activities and effectiveness in the committees operations.

A new section should be introduced immediately after section 17A (4) of the Kenya Roads Board Act 1999 obligating members of the Constituency Roads Tender Committees to periodically avail information on the tenders presided upon, the location of the roads, the tender sum for the road projects, the scope of work, and duration of the contract their operations to the local population within their areas of operation. The regulations could take the form of reservations being the work that is to be exclusively reserved for contractors resident within the county and preferences in terms of the discounts to be given to the local contractors.

Pursuant to the provisions of section 39 of the Public Procurement Act 2005, regulations should be issued by the Minister responsible for finance on the

preferences and reservations for persons resident within particular Constituencies, to enhance the participation of the local community in the activities of committees.

Section 6(2)d of the Kenya Roads Board Act 1999 should amended to enhance the allocation of the total Road Maintenance Levy Fund to be allocated to Constituency Roads Fund works from the current 22% to 45 % of the total Roads Maintenance levy collection. In addition, this section of the Kenya Roads Board Act 1999 should be amended to provide for the specific timeframes within which the Road Maintenance Levy Funds are to be disbursed to the committees.

Section17 of the Kenya Roads Board Act 1999 on the design of allocation of road works within constituencies should be amended to specifically obligate the members to ensure equity in the distribution of the road projects within Constituencies. Pursuant to the new section, guidelines could be issued to the committees on equitable distribution of road works within Constituencies.

Section 39 of the Public Procurement Act 2005 and regulations 2013 on preferences and reservations should also be reviewed to provide for preferences and reservations for local contractors in respect of road works funded by the Road Maintenance Levy. This is in line with section 2 of the Public Procurement act 2005 on the objectives of the act on promotion of the local economy.

A new section should be introduced after section 17(A) 4 obligating the Kenya Rural Roads Authority to continuously develop capacity in the members of these committees through training development programmes. Further, to ensure the implementation of this, section 6(2) of the Kenya Roads Board Act 1999 should be amended by the provision of a section that allocate a portion of the Road

Maintenance Levy Fund for purposes of capacity building within members of these committees.

Section 4 of the Kenya Roads Board Act 1999 should be amended by the addition of an obligation to members of the committees to educate members of the local community on how to participate in the tendering processes presided over by the committees.

Regulation 12 of the Public Procurement and Disposal Act regulations 2006 should be amended to lower the threshold of the value of procurements in which observers are to participate. The threshold should be lowered from the current Ksh 100 million to Ksh 5 million for the procurement by Constituency Roads Tender Committees. More specifically, the involvement of observers should be made mandatory for procurements presided over by Constituency Roads Tender Committees. The law should also specifically provide for the mode of identification of the potential sources of the observers. This could be done by identification of specific stakeholder groups from whom the observers could be got from.

CHAPTER FIVE

CONCLUSION

Chapter one of the study provided for the background information on fiscal decentralization in general and the functioning of Constituency Roads Tender Committees. This part also made provision for the statement of the problem being the effectiveness of Constituency Roads Tenders Committees in development and the challenges they experience. This part of the study also made provision for the justification of the study, the research methodology followed during the study, the objectives of the study, objectives of the study, the theoretical framework on which the study was based, and the literature review relevant to the study.

Chapter two of the study made provision for the theoretical framework on which the functioning of Constituency Roads Tenders Committees is based. The economic theory was provided for in terms of its development and application to the functioning of Constituency Roads Tender Committees.

Chapter three of the study provided for the role of Constituency Roads Tenders Committees in development. This was in the context of the economic theory. Amongst the issues considered was the composition of the committees, advantages and disadvantages of the committees, development issues in respect of the functioning of the committees as participation of the local community, reporting to the local community, enhancement of participation of the local community, equity in the distribution of the projects, role of the committees in enhancing economic development of the local community, factors hindering the committees in the discharge of their work and ways to enhance the performance of the committees.

Chapter of four of the study made specific recommendations on a legal framework to improve the design of Constituency Roads Tenders Committees in development as units of fiscal decentralization. This is on the basis of the information obtained during the study.

The findings of the study have proved the hypothesis that problems in the design of Constituency Roads Tenders Committees have affected the role of the committees in development and as such there is a direct relationship between the design of a fiscal decentralisation system and the realization of development. This study is therefore useful in improving the functioning of Constituency Roads Tenders Committees as units of fiscal decentralization. The study is important because the lessons learnt out of it are relevant not only for these committees, but provide useful information on the design of fiscal decentralization units. This is to ensure that these units contribute to the development of the areas in which they operate.

Overall, research in this area is useful and has provided an insight into the functioning of Constituency Roads Tender Committees and the challenges they face that impede their role in development. The recommendations made from the findings of the study are useful in improving the design of these committees and enhancing their role in development.

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APPENDICES

**APPENDIX 1: QUESTIONNAIRE FOR CHAIRMEN AND MEMBERS OF
CONSTITUENCY ROADS TENDER COMMITTEES.**

SECTION A

DEMOGRAPHIC CHARACTERISTICS

1. Name (optional)-----

2. What is your gender?

a. Male

b. Female

3. How old are you?

a. Below 20 years

b. Between 20 – 30 years

c. Between 30 and 40 years

d. Between 40 and 50 years

e. Above 50 years

4. What are your highest academic qualifications?

a. Certificate

b. Diploma

c. First degree

d. Post graduate

e. Others (specify).....

5. Do you possess any professional qualifications in procurement?

(a) Yes

(b) No

6. What is your level within the committee?

(a) Member

(b) chairperson

7. For how long have you been a member of the committee?

a. Below 1 year

b. Between 1 – 2

c. Between 2- 3 years

d. Above 3 years

SECTION B

INFORMATION ON THE COMMITTEES INVOLVEMENT OF THE LOCAL POPULATION IN ITS ACTIVITIES

KINDLY INDICATE AS APPROPRIATE

1. I am an elected member of the committee Yes No
2. I am an appointed member of the committee Yes No
3. My appointment to the committee involved direct consultations with the local community. Yes No
4. In the discharge of our mandate we formally consult the stakeholders. Yes No
5. We periodically report to the stakeholders on our activities Yes No
- 6 Kindly explain your answer _____
7. We have observers from the local community during our tender proceedings. Yes No
8. The composition of the committee is a reflection of the structure of the local community. Yes No
9. There exist structures and systems to enable us report our activities to the members of the public. Yes No
- 10 Most people within the constituency are aware of our role in the committee. Yes No

11. In the discharge of our mandate we consider interests of the local population Yes No

12. We publish the outcome of our Tender Committee proceedings within the constituency. Yes No

13. The level of participation of the local community in the activities of the committee is high? Yes No

14. If No, what in your view hinders the participation of local the community?

15. In your view, what should be done to enhance the level of participation of the local community?

SECTION C

INFORMATION ON THE ROLE OF THE COMMITTEE ON THE DEVELOPMENT OF THE RURAL ROAD NETWORK

KINDLY INDICATE AS APPROPRIATE

1. The kilometres of the rural Road network within the constituency has

increased since the formation of the committee.

Yes

No

2. The quality of the road works done on the rural road network has

increased since the formation of the committee.

Yes

No

3. The general condition of the rural road network has improved since the

creation of the committee

Yes

No

4 The road projects within the constituency are equitably

distributed.

Yes

No

5. If not, explain _____

6. What factors in your view hinder the committee in the discharge of its mandate?

7. What in your view could be done to enhance the performance of the committee in

6 above?

SECTION D

INFORMATION ON THE COMMITTEE'S ROLE ON ECONOMIC DEVELOPMENT OF THE LOCAL COMMUNITY

KINDLY INDICATE AS APPROPRIATE

1. The committee exercises preference for contractors based in the Constituency in the discharge of its mandate? Yes No

2. If not, kindly explain _____

3 Has the number of local contractors based within the constituency increased during your tenure as a committee member. Yes No

4. Activities of the committee have contributed to the economic development of the constituency. Yes No

4. Contractors awarded tenders employ people from within the constituency. Yes No

5. Tender provisions of the tenders presided over by the committee specifically require contractors to employ people from within the constituency. Yes No

6. What factors constitute the major criterion for award of tenders during adjudication?

Social factors

Political factors

Economic factors

7. The Committee's activities have helped create employment for the local population Yes No

8 Kindly explain your answer in 7 above.

9. What factors have negatively affected the committees role in improving the economic development of the constituency?

10. In your view, what could be done to mitigate on this?

**APPENDIX 2: INTERVIEW SCHEDULE FOR SECRETARIES OF
CONSTITUENCY ROADS TENDER COMMITTEES**

SECTION A

DEMOGRAPHIC CHARACTERISTICS

1. Name (optional)-----
 2. What is your gender?
 - a. Male
 - b. Female
 3. How old are you?
 - a. Below 20 years
 - b. Between 20 – 30 years
 - c. Between 30 and 40 years
 - d. Between 40 and 50 years
 - e. Above 50 years
 4. What are your highest academic qualifications?
 - (a) Certificate
 - (b) Diploma
 - (c) First degree
 - (d) Post graduate
 - (e) Others (specify)
 5. Do you possess any professional qualifications in procurement?
 - (a) Yes
 - (b) No
 6. If so state the qualifications.
-

7. For how long have you been the secretary of the committee?

- | | | | | | |
|----|-------------------|----------------------|----|---------------------|----------------------|
| a. | Below 1 year | <input type="text"/> | b. | Between 1 – 2 years | <input type="text"/> |
| c. | Between 2-3 years | <input type="text"/> | d. | Above 3 years | <input type="text"/> |

SECTION B

INFORMATION ON THE COMMITTEES INVOLVEMENT OF THE LOCAL POPULATION IN ITS ACTIVITIES.

KINDLY INDICATE AS APPROPRIATE

1. I am an elected member of the committee Yes No
2. I am an appointed member of the committee Yes No
3. My appointment to the committee involved consultations with the stakeholders. Yes No
4. In the discharge of our mandate we formally consult the stakeholders. Yes No
5. We periodically report to the stakeholders on our activities Yes No
6. We have observers from the local community during our tender proceedings. Yes No
7. The composition of the committee is a reflection of the structure of the local community. Yes No
8. Most people within the constituency are aware of the activities of the committee. Yes No
9. In the discharge of our mandate we consider interests of the local population Yes No
10. We publish the outcome of our Tender Committee proceedings within the constituency. Yes No

11. The level of participation of the local community in the activities of the committee is appropriate?

Yes No

12. If No, what in your view hinders the participation of local the community?

13. In your view, what should be done to enhance the level of participation of the local community?

SECTION C

INFORMATION ON THE ROLE OF THE COMMITTEE ON THE DEVELOPMENT OF THE RURAL ROAD NETWORK

KINDLY INDICATE AS APPROPRIATE

1. The kilometres of the rural Road network within the constituency has

increased since the formation of the committee.

Yes

No

2. The quality of the road works done on the rural road network has

increased since the formation of the committee.

Yes

No

3. The general condition of the rural road network has improved since the

creation of the committee

Yes

No

4. The road projects within the constituency are equitably

distributed.

Yes

No

5. If not, explain _____

6. What factors in your view hinder the committee in the discharge of its mandate?

7. What in your view could be done to enhance the performance of the committee in

6 above?

SECTION D

INFORMATION ON THE COMMITTEE'S ROLE ON ECONOMIC DEVELOPMENT OF THE LOCAL COMMUNITY

KINDLY INDICATE AS APPROPRIATE

1. The committee exercises preference for contractors based in the Constituency in the discharge of its mandate. Yes No

2. If not, kindly explain _____

3 Has the number of local contractors based within the constituency increased during your tenure as a committee member. Yes No

4. Activities of the committee have contributed to the economic development of the constituency. Yes No

4. Contractors awarded tenders employ people from within the constituency. Yes No

5. Tender provisions of the tenders presided over by the committee specifically require contractors to employ people from within the constituency. Yes No

6 What factors constitute the major criterion in award of tenders at adjudication?

Social factors Economic factors Political factors

7. The Committee's activities have helped create employment for the local population Yes No

 Yes No

8. Kindly explain your answer in 8 above.

9. What factors have negatively affected the committees role in improving the economic development of the constituency?

10. In your view what can be done to mitigate on this?

SECTION E

INFORMATION ON THE GENERAL FUNCTIONING OF THE COMMITTEE.

1. What is the size of your annual budget for road maintenance?

2. In your view, is the budget adequate?

3. If not, what portion of the Authority's network is taken care of by the available budget?

4. How are the funds disbursed?

5. Do you experience any challenges with the disbursement of funds?

YES NO

6. If yes, what is the effect of this?

7. Are the members of the committee properly qualified for their work?

YES NO

8. To what extent are the activities of the committee influenced by the pursuit of the individual interests of the members?

Low Average High

9. What in your view should be done to enhance the contribution of the committee to the development of the Constituency?

10. What in your view should be done to mitigate on this?