PUBLIC FINANCE MANAGEMENT

An Analysis of the Constitutional and Legal Framework of Public Finance Management and Citizen Participation in Devolved Governance

By: Caroline Othim

Overview

The East Africa Tax and Governance Network (EATGN) was formed out of a process that began in late 2009 and has since expanded to include 26 member organizations. Its members are individuals and non-state actors institutions involved with the different aspects of governance, capacity development and policy making process as well as applied social research in East Africa.

MISSION

To establish a vibrant tax justice movement across the Eastern Africa region that mobilizes citizen participation in influencing policy and practice for a just and equitable society.

OBJECTIVES

To contribute to a just, transparent and citizen-driven tax system that promotes equality, participation and accountability in East Africa.

We operate under the following specific thematic areas:

1. Research- we conduct research in order to generate knowledge and inform tax policy and legislation while promoting a just and transparent tax system
2. Advocacy – We advocate for a just, transparent and accountable tax system in East Africa
3. Communication – We seek to enhance internal and external EATGN communication to strengthen the network and bring about a more just tax system
4. Networking – We are always seeking to be all inclusive through strengthening and expanding the network reach
5. Capacity building – We seek to always build our own capacity and that of the citizens, media, policy makers and other Stakeholders to better participate in tax and governance issues.

OUR VALUES

- Diversity - Our differences strengthen us,
- Passion and Commitment – Our members are committed to the work that we do and we seek to positively impact East Africa,
- Professionalism - We value excellence, work systematically, set and keep high performance standards. Accountability: we are guided by accountability in our work and in achieving results within our spheres of control ,
- Transparency and openness – we expand our knowledge base by being open and allowing decisions and the status quo to be challenged.
- Sensitivity - we believe that there is more than one way to look at the world and that the diversity of views, experiences, skills, capabilities and beliefs enrich work,
- Participation and Inclusiveness – we seek to improve the quality of decisions by actively involving people in the decision-making process,
- Resourcefulness - we always strive to do more with less.

PARTNERS

- Africa Community Development Media (ACDM)
- Africa Bureau of Tax Policy and Law
- Panos Eastern Africa
- Christian Aid
- Centre for Governance and Development/ National Taxpayers Association
- Citizen's Assembly / Ufadhili
- Beacon
- CGIT Center for Governance and Integrated Trade
- Society for International Development (SID)
- Kenya Debt Relief Network (KENDREN),
- International Institute for Legislative Affairs Kenya
- Institute for Economic Affairs Kenya (IEA)
- Transparency International Kenya (TI)
- Tax Justice Network–Africa (TJN-A)
- Action Aid International Kenya
- SEATINI Kenya
- Neema Charity Foundation (NEMCHA)
- Taita Resource Center
- Burundi Forum Societe Civile
- ADIR Burundi
- Rwanda Civil Society Platform
- SEATINI Uganda
- Tanzania Tax Justice Coalition
- Extractives Sector Observatory Kenya
- Ujamaa Center
- Civil Society Buudget Advocacy Group Uganda

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@eatgn.org I tel: +254 728279368, +254 202473373 I all rights reserved

Acknowledgements

About Author: Caroline Othim

Caroline Othim is the current Project Officer, Participatory Budgeting at the National Taxpayers Association (NTA) based in Nairobi, Kenya. Caroline works to promote good governance through citizen empowerment, enhancing public service delivery and partnership building. Her research interest areas include among others; public finance and management, procurement, social accountability, governance and anti-corruption, coalition building, advocacy for reform, capacity development. Caroline can be reached via Email to: cothim@nta.or.ke for further information on this brief.

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Acronyms

CARB County Allocation of Revenue Bill

CBEF County Budget and Economic Forum

CEC County Executive Committee

CIDP County Integrated Development Plan

CoB Controller of Budget

CoK Constitution of Kenya 2010

CRA Commission of Revenue Allocation

DORB Division of Revenue Bill

EATGN East Africa Tax Governance Network

ERS Economic Recovery Strategy for Wealth and Employment Creation

IBP International Budget Partnership

IFMIS Integrated Financial Management System

IRCBP Institutional Reforms and Capacity Building Project

KLRC Kenya Law Reforms Commission

NTA National Taxpayers Association

PEFA Expenditure and Financial Accountability Assessment

PFM Act Public Finance Management Act No 18 of 2012

PFMR Public Finance Management Reforms

PRSP Poverty Reduction Strategy Paper

TFDG Task Force on Devolved Governments

Executive summary

The promulgation of the Constitution of Kenya 2010 introduced a devolved system of governance and placed public finance management at the center of policy reforms aimed at ensuring fiscal efficiency and discipline in the utilization of public funds to improve livelihoods and to achieve sustainable development. The gains in public finance reforms were heralded by the enactment of the Public Finance Management Act No 18 of 2012.

As Kenya implements the tenets of devolution, debate on effective Public Financial Management (PFM) at the county level is a necessary condition for successful management of the public sector and the economy. Kenyans need to engage the key players in PFM in order to ensure the country lays down a sound foundation for sustainable devolution. Appreciating the importance of PFM and informed by past abuses, the Constitution and the PFM Act provides principles and criteria that apply to all public entities and to all aspects of PFM; the principles include openness, accountability and citizen participation in financial matters. These principles are critical to ensuring continued links between citizen needs, budgeting or resource allocation and budget execution in addition to utilization of public funds prudently and responsibly, and managing public finances responsibly including clear fiscal reporting.

This paper reviews the constitutional and legal framework of public finance management and the status of implementation of the PFM Act in ensuring prudent management of resources by both levels of government to improve service delivery and to foster sustainable human development. Further to this is a review of citizen participation in the planning and budgeting processes at the sub national level, highlighting the different avenues for citizen participation. The rest of the paper highlights the key policy concerns/challenges and recommendations.

Background to Public Finance Management Reforms (PFMR)

Historically, the Government of Kenya has undertaken several initiatives to improve Public Finance Management, For instance, the five year Strategy for the Revitalization of Public Financial Management System in Kenya covered the period between 2006-2011 and was implemented using a Sector Wide Approach. The Strategy was developed to guide reforms in the PFM sector and to build on the institutional transformation the Government was undertaking. Some of the areas targeted for reforms included the: transformation of political priorities into the annual budget allocations; credibility of the budget; quality, timeliness and accuracy of financial reports; procurement; roll-out of the Integrated Financial Management System (IFMIS) and integration with the payroll system; automating the pensions system; tax evasion, poor collection and accounting of non-tax revenue; institutional reform; debt management; revamping of the external audit; lack of a PFM legal framework and low capacity of PFM staff among others.

The Government, with the assistance of its Development Partners mobilized resources to implement the strategy through the Institutional Reforms and Capacity Building Project (IRCBP). In September 2010, however, the Government constituted a taskforce to review the Strategy, and to address the lessons learnt and the challenges identified. Some of the challenges relate to inadequate strategic orientation, limited ownership of the previous strategy, organizational and management arrangement for the programme and the realities of the new Constitutional order, especially with regard to the devolved system of government as ushered in, by the Constitution of Kenya 2010.

The process of implementing the CoK 2010 is complex and involves the development and review of policies, legislation and administrative procedures, establishing new institutions and the application of the same. In recognition of this, the Constitution provides a timeframe (up to 2015) for application of various provisions. At present, a number of bills have been drafted and enacted, and relevant regulations are being formulated. Several institutions have already been established and operationalized.

Under the current constitutional dispensation, the Public Finance Management environment will significantly be distinct essentially due to devolved Government and the central role of fiscal decentralization within it. The Public Finance Management (PFM) Act of 2012 also established county treasurers to manage funds at the county level. The PFM Act also created new institutions with clear roles and functions. At the national level, these are the Public Debt Management Office, the Accounting Standards Board (ASB), the Controller of Budget and Auditor-General, and the Commission on Revenue Allocation. New institutions at the county level are the Boards of Cities and Municipalities and the County Budget and Economic Forum. The PFM Act established two institutions to coordinate finances at the national and county levels of government. These are the Intergovernmental Budget and Economic Council and the Joint Intergovernmental Technical Committee, which has power to stop funds to county governments in serious breach of the law. The PFM framework also clearly describes the roles and functions of the two levels of government in fiscal management:

The PFM Act was enacted after the harmonization of the County Government Financial Management Bill, the Intergovernmental Fiscal Relations bill and the Public Finance Management Bill. The first two bills were developed and fronted by the Task Force on Devolved Governments (TFDG) in recognition that the success of the implementation of devolved system of governance depends on financial resources and how the national government is able

and willing to share these with the county governments in a transparent and accountable manner whereas the PFM bill was developed and led by the Treasury. The current PFM Act combined the two bills developed by TFDG and integrated them into the Act. The PFM Act provides the legislative framework for public finance management and operationalizes the constitutional provision on public finance. The adoption of the draft PFM regulations will further provide a regulatory framework to ensure prudent fiscal management and guide or both levels of government.

The PFM Strategy (2013 – 2018)

The 2006 – 2011 strategy has been replaced by the 2013 – 2018 strategy and besides taking forward the reform agenda started under the 2006-2011 strategy, the new strategy provides a framework for implementing reforms envisaged in the Constitution, the Public Finance Management Act and other public finance legislation enacted pursuant to the provisions of Chapter 12 of the Constitution on public finance. The strategy also incorporates areas of concern highlighted by the Public Expenditure and Financial Accountability (PEFA) Assessment (2012) aimed at Improving Country Public Financial Management (PFM) System Performance for Strengthened Economic Growth and Government Services Delivery. A thematic approach has been adopted for the implementation of the 2013-2018 Strategy. There are seven proposed themes deemed to be the overriding priorities for public financial management reforms over the next five years. These are:

1. Resource mobilization;
2. Resource allocation;
3. Budget execution,
4. Accounting and reporting;
5. Audit and oversight
6. Fiscal decentralization;
7. The PFM legal framework and automation and integration

However, for these reforms to be realized, the PFMR Secretariat at the Ministry of Finance needs to champion the centrality of ownership for public finance sector reform processes. The processes must be inclusive, ensuring the participation of all stakeholders; to recognizing the need for institutions and persons charged with the responsibility of institutionalizing the reforms having the requisite capacity to perform their duties and systems in place.

Devolution

What is Devolution?

To better understand the new PFM framework in the context of devolution, it is important to define the meaning of the concept of devolution and why devolution for Kenya as introduced by the Constitution of Kenya 2010 establishing a two tier system of governance: the National government and the County governments.

Devolution is a form of decentralization of power, services, functions and resources to sub-national units of government with clear jurisdictions that are outside the direct control of the central government. Devolution is generally defined as a process of transfer of political, administrative, and fiscal management powers between the central government and lower levels of government primarily operating at city and region levels (Potter, 2001). The political and economic rationale for decentralization are expounded by Musgrave (1959) and Oates (1972), they argue that it enhances democracy, improves governance in public service provision, improves the efficiency of resource allocation and utilization among others.

We need to put devolution in the context of the new constitution. The constitution is about democratization, with the people at the centre of the political system. Devolution can be very empowering, as the example of India and several other countries has shown. But it will not happen automatically, and we need to remind ourselves how wrong directions county governments can take, Public officials should recognize that the new constitution is about service to the people, the integrity of leadership, the criminalization of incitement to ethnic hatreds, the promotion of fair administration, and ultimately inclusion of all. The constitution also calls upon the people to see to it that the leaders they choose respect these values.

Why Devolution?

Since 1963, Kenya has pursued development that has focused on eradicating hunger, illiteracy and diseases. Sessional paper No. 1 of 1965 marked the stepping-stone for Kenya's attempts at sustainable development. Other relevant strategies that have been put in place include the Poverty Reduction Strategy Paper (PRSP) in 1999; the Economic Recovery Strategy for Wealth and Employment Creation (ERS); and Kenya's development blueprint Vision 2030 and the Constitution of Kenya 2010 which reinforces the policy and legal basis of sustainable development in Kenya.

In addition, over the years it has been noted that Kenya has been developing unevenly and the disparities in resource allocation and provision of services continue to increase. This was due in part to concentration of political and economic power in the hands of a few, resulting in an uneven and unfair distribution of resources and corresponding access to social services. The new CoK seeks to address these inequalities and marginalization challenges through devolution and presages far-reaching changes. Its vision encompasses a dramatic transformation of the Kenyan state through new accountable and transparent institutions, inclusive and participatory approaches to government and a firm focus on equitable service delivery for all Kenyans through the newly established county governments while upholding the principles of subsidiarity and consensus and ultimately the realization of sustainable human development.

What is the relationship between county and national governments?

Article 1 of the Constitution states that all sovereign power belongs to the people of Kenya and the people may exercise their sovereign power either directly or through their democratically elected representatives. This sovereign power is exercised at two levels (Art.1 (4)), namely the national level and the county level. The governments at the national and county levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation (Art. 6(2)).

County governments have two arms – the Executive and Legislature. All judicial functions reside in the national government. The executive authority of a county is vested in the County Executive Committee whereas the legislative authority of a county is vested in its county assembly constituted in accordance with Article 177.

What structures link the national and county governments?

Each county has two representatives to the national parliament: A woman representative to the National Assembly elected in accordance with Article 97 (1) (b) and a member of the Senate elected in accordance with Article 98(1) (a). In addition, all the 16 women senators, two youth senators and two senators representing persons with disabilities since one of the key roles of the Senate is to represent the counties, and serve to protect the interests of the counties and their governments (Art. 96(1)).

The Senate also participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties as provided in Articles 109 to 113; and allocation of national revenue among counties (Art. 96(3) and 217).

What are the functions of the National and County Governments (Fourth Schedule of the CoK)

National Functions

1. Foreign affairs, foreign policy and international trade.
2. The use of international waters and water resources.
3. Immigration and citizenship.
4. The relationship between religion and state.
5. Language policy and the promotion of official and local languages.
6. National defence and the use of the national defence services.
7. Police services
8. Courts.
9. National economic policy and planning.
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations.
11. National statistics and data on population, the economy and society generally.
12. Intellectual property rights.
13. Labour standards.
14. Consumer protection, including standards for social security and professional pension plans.
15. Education policy, standards, curricula, examinations and the granting of university charters.
16. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools , special education, secondary schools and special education institutions.
17. Promotion of sports and sports education.
18. Transport and communications, including,

19. National public works.
20. Housing policy.
21. General principles of land planning and the co-ordination of planning by the counties.
22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development,
23. National referral health facilities.
24. Disaster management.
25. Ancient and historical monuments of national importance.
26. National elections.
28. Health policy.
29. Agricultural policy.
30. Veterinary policy.
31. Energy policy including electricity and gas reticulation and energy regulation.
32. Capacity building and technical assistance to the counties.
33. Public investment.
34. National betting, casinos and other forms of gambling.
35. Tourism policy and development.

County Government Functions

1. Agriculture, livestock and fisheries (but excluding Agricultural policy);
2. County health services, excluding health policy
3. Pollution control;
4. Cultural activities, entertainment and public amenities, including betting, casino and other forms of gambling; racing; liquor licensing; cinema and video shows; libraries; museums; sports; county parks, beaches and recreational facilities;
5. Animal control and welfare;
6. Trade development and regulation;
7. County planning and development;
8. County transport (county roads, street lighting, traffic and parking, public transport and ferries and harbors);
9. Pre-primary education, village polytechnics, home craft centers and childcare facilities;
10. County public works;
11. Fire fighting services and disaster management
12. Control of drugs and pornography;
13. Implementation of specific national government policies on natural resources and environmental conservation – including soil and water conservation; and forestry
14. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level

In addition, the county governments and national government may negotiate the transfer of functions from/to either; (CoK Article 187).

Legislations on Devolution

1. County Governments Act
2. Intergovernmental Relations Act
3. Transition to devolved Government Act
4. Devolved Government Act, 2011
5. Urban Areas and Cities Act
6. Transition County Allocation Revenue Act
7. Public Finance and Management Act

So, what are the financial implications of all the new positions created by the CoK 2010 and the enabling legislations?

Before, addressing the above question, it would be important to highlight the provisions of the Constitution which address human

resources management in the devolved system: Article 235 allows counties to establish offices for public service and appoint people to those offices and Article 236 protects public officers whereas Section 138 of the County Governments Act stipulates that officers employed by government agencies that the devolution process abolishes will be seconded to new county agencies on the same terms of service they had before and that this cannot be altered.

There are a lot of anxieties about the financial implications of devolution, but most importantly to note is that the costs attributed to devolution are not new costs: we already had budgets for districts, including for county councils, and some funds which were regularly earmarked for districts and in the new dispensation, some items of the central government budget have been transferred to counties as the functions are transferred.

Statistics show that Kenya's current wage bill stands at 53 percent of the national budget and uses up 55 percent of the country's revenue collection. This is way beyond the accepted international standard for sub-Saharan Africa, which is 34 percent. The workforce now stands at a staggering 700,000 employees, with a wage bill that has shot up from $2.3bn in 2008/2009 to $5.3bn in 2012/2013. The current government has 6,444 positions – from governors and their deputies, members of parliament, members of county assemblies, and female representatives. Then, there are the administrative officials who existed before devolution. The list is exhaustive and the public sector has too many officials duplicating roles. The taxpayer could also be paying 300,000 "ghost workers" – people listed as workers who do not work. The unsustainably high wages also place Kenya at a high risk of becoming the most uncompetitive country in sub-Saharan Africa.

The Salaries and Remuneration Commission should establish realistic salaries for public officers, but it does not end with downsizing and reducing salaries. The government needs to check corruption and wastage of public resources. Annually, a third of the government's total expenditure goes to waste in addition to a review of salaries to match productivity and tame corruption.

Public Finance Management (PFM)

A Review of the Constitutional and Legal Framework of PFM

Constitutional Provisions

Chapter 12 of the constitution of Kenya has express provisions on Public finance principles and framework. Art 201. States the following principles shall guide all aspects of public finance in the Republic—

(a) There shall be openness and accountability, including public participation in financial matters;
(b) The public finance system shall promote an equitable society, and in particular—
  (i) The burden of taxation shall be shared fairly;
  (ii) Revenue raised nationally shall be shared equitably among national and county governments; and
  (iii) Expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;
(c) The burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
(d) Public money shall be used in a prudent and responsible way; and
(e) Financial management shall be responsible, and fiscal reporting shall be clear.

The Public Finance Management Act, 2012 Provisions

The Public Finance Management Act, 2012; is an Act of Parliament to provide for the effective management of public finances by the national and county governments; the oversight responsibility of Parliament and county assemblies; the different responsibilities of government entities and other bodies. The objective of the PFM Act is to ensure that—

a) Public finances are managed at both the national and the county levels of government in accordance with the principles set out in the Constitution; and
b) Public officers who are given responsibility for managing the finances are accountable to the public for the management of those finances through Parliament and County Assemblies.

Further Art 102 of the PFM Act provides that (1) each county government shall ensure adherence to—

a) The principles of public finance set out in Chapter Twelve of the Constitution;
b) The fiscal responsibility principles provided in section 107 under the PFM Act;

The PFM Act was enacted to ensure prudent management of public funds at both levels of government in line with the constitutional provisions on principles of PFM and to promote transparency and accountability by incorporating best practices internationally.

Furthermore, in addition to outlining new reforms, the Act also introduces a new budget calendar with clear deadlines (see annex 1) and clarifies the roles and responsibilities of the various stakeholders which presages far reaching implications on PFM in Kenya.

Five Core Areas of a good PFM System

Key Highlights of the PFM Act

1. Sources of county funds

Chapter 12 of the Constitution provides details on equitable sharing of revenue between the two levels of government. Counties have access to not less than 15% of total revenue collected by the national government. This amount is calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly. They also can receive equalization fund at 0.5% of all revenue as well as additional allocations from the national government's share of the revenue, either conditionally or unconditionally. Counties have two main sources of own revenue: taxes and service charge for the services they provide.

1.1 Transfer of equitable share from the national exchequer (CoK Art 219)

A county's share of revenue raised by the national government shall be transferred to the county without undue delay and without deduction, except when transfer has been stopped under CoK Art. 225. The Country's resources are to be shared equitably among national and county governments. In addition, county governments may be given additional allocations from the national government's share of revenue, either conditionally or unconditionally. The Constitution provides for mandatory transfer of at least 15% of nationally collected revenues, for counties. The financial resources available to counties will determine to a considerable extent whether they can effectively fulfill their responsibilities. Although they can raise some money locally through taxes and fees, in most counties, the bulk of the money is that which is transferred from the national exchequer but large urban counties, like Nairobi, generate more from own revenues, best practice dictates that the sub national levels of government to generate more revenues than the equitable share. As functions are devolved, the amount allocated to counties must be commensurate to the actual cost of financing the functions, which may be higher than 15% of nationally collected revenues: this is based on the principle of sustainable devolution which requires that resources should follow functions. Before deciding on the level of transfers, it is necessary to first compute the cost of devolved functions, agree on total cost which should be the transferable amount. Experience shows that this has not been done over the last two financial years.

1.2 Locally generated resources

Resources for running the counties and their programmes and services will primarily be mobilized from within the counties. There has been a misconception from many people that monies will come from "the Centre" and that the counties will be merely distribution points for such monies. Any county with this central focus will unmistakably fail. Counties will have to generate revenue from the exploitation of their natural resources like agriculture, fisheries, cultural and tourism attractions, professional services and industries among others. Transfers from the national revenue have to be over and above these locally-generated resources, not the primary sources of county revenue. Best practice, as well as international experiences advocate for increased efforts to raise a reasonable portion of revenues from within the devolved units.

Experience shows that the higher the portion of revenue raised by sub-national or devolved units, the more accountable they tend to be,

because the more tax citizens pay to any unit of government, the more they hold those who manage it accountable. Unfortunately, most counties, as currently constructed, will not be able to raise more revenue from own revenues than from transfers, unless they are given more taxing powers. There is therefore need to enhance tax administration at the county level, this is an essential component of enhancing revenue collection, for instance, aggressive collection of property taxes, which yield relatively little in Kenya compared to other countries. With regard to fiscal capacity, county executives must mobilize the county's own sources of revenues, developing the capacity to utilize effectively all revenues they get to provide services efficiently to the people. If any county does not optimize its own sources of revenue, it will not carry a fair tax burden as required by Article 201.

1.3 Borrowing by counties and public debt (CoK Art 211,212,213,214)

A county government may borrow only if the national government guarantees the loan and with the approval of the county assembly. An act of Parliament shall prescribe terms and conditions under which the national government may guarantee loans.

The Constitution requires county debt to be guaranteed by the National Government, and all the other requirements of the Constitution and the PFM Act must be complied with. Therefore, before a county can borrow, it needs to consult the National Treasury and the Intergovernmental Budget and Economic Council, agree on the amount and purpose of the loan, and get the guarantee. There is need for equitable sharing between current and future generations of the burdens and benefits of the use of resources and of public debt (government borrowing). It means the two governments should use borrowing to ensure a reasonable balance between the benefits created by the borrowed resources and the burden of servicing the debt.

In the past, national government have often borrowed to fund immediate government consumption and rolled the loans over for several years, thus transferring the burden of repayment to future taxpayers who received no benefit. Today, this would be unconstitutional. For this reason, county governments that have budget deficits need to ensure three conditions: first, they get the guarantees from national government; second, get approval of county assembly; third, ensure borrowed funds are used for purposes that comply with debt equity principle. Each county must maintain its debt within a percentage set each year by county assembly, which must be at a "sustainable level". County governments must manage fiscal risks responsibly, and maintain a reasonable degree of predictability in terms of who is to pay taxes and how much they are to pay.

1.4 Equalization Fund (CoK Art. 204)

Half of one per cent (0.5%) of all the revenues collected by the national government shall be used only to provide basic services to marginalised areas to the extent necessary to bring the quality of those services to the level generally enjoyed by the rest of the nation. The services include: water, roads, health facilities and electricity. The Commission on Revenue Allocation is to be consulted and its recommendations considered before Parliament passes any Bill appropriating money out of the Equalisation Fund and the Controller of Budget has to approve the withdrawal. This fund lapses 20 years after the effective date, subject unless Parliament enacts legislation suspending the effect of this provision for a further fixed period of years.

In summary, counties shall have the following sources of revenue:

- County Investment programmes.
- Fees for services and licenses.
- Taxes (property taxes, entertainment taxes, and any other taxes authorized by an Act of Parliament)

- Equitable share of national revenue in accordance with Article 203 (2)
- Conditional and Unconditional grants
- Borrowing (but must be guaranteed by the national government and the Intergovernmental Budget and Economic Council)
- Equalization Fund

2. Revenue Collection

In the new constitution, it is unclear how revenue generated will be collected. Administration of revenue involves the collection of taxes once they have been determined. Under the old constitutional system, local authorities were supposed to collect their own taxes. Experience indicates that many of them had no capacity to discharge this function. With the new constitution, it is still a subject of debate whether the KRA will collect revenue on behalf of the counties or whether it shall assist the counties in building their own capacities to collect their own revenue.

3. Division of revenue (Art. 217)

Once every five years, the Senate shall determine the basis of allocating among counties the share of national revenue that is annually allocated to the county level of government (Art. 217). At least two months before the end of each financial year, there shall be introduced in Parliament a Division of Revenue Bill, which shall divide revenue raised by the national government among the national and county levels of government in accordance with this Constitution; and a County Allocation of Revenue Bill, which shall divide among the counties the revenue allocated to the county level of government on the basis determined in accordance with the resolution in force under Article 217. The DORB establishes the vertical share; the CARB establishes the equitable share amount for each county, plus any other grants/ funds not distributed according to the formula. The framework for financial allocations and accountability is complex, requiring independent advice as well as tough negotiations, from all stakeholders when discussing the Division of Revenue Bill. Article 203 sets out objective criteria to promote compliance with the principles on sharing of nationally collected revenues and allocations to counties. The criterion protects the principle of equity between the two levels of governments without compromising national interests. For this reason, the revenue sharing process must take into consideration, first of all, the national interests generally, and national needs and obligations, including the repayment of public debt.

Then the sharing must ensure that county governments can deliver on their functions, and take into account the fiscal capacity and efficiency of each county, consider each county's needs, the economic disparities within and among counties and the need for affirmative action for disadvantaged areas and groups. And the criteria includes the need to ensure all counties perform as well as they can, by providing incentives to optimize their capacity to raise revenue, the fact that revenue should be stable and predictable, and the need for flexibility to respond to emergencies and temporary needs.

The Commission of Revenue Allocation (CRA) has the responsibility to make recommendations on the allocation formulae, every five years. The Senate must propose a formula, using the CRA's recommendations and other factors (Article 216); and then, the National Assembly may change the formulae only by a two-thirds majority vote. And annually, when the National Treasury proposes the Division of Revenue Bill (DoRB) and County Allocation of Revenue Bill (CARB), if this deviates from the CRA recommendations (Article 218 (2) (c)), it must prepare a memorandum on each significant deviation. There may be good reasons for such deviations. For instance, if a county has a crisis, like floods

or drought, it may need extra financial support – from where else except the national revenue? In addition, the CRA/Senate recommendations are of necessity prepared well in advance of budget preparation, and if new commitments emerge as a new fiscal year approaches, these can only be funded from the same pool of revenue. It would be important to note that this implies that the main reason for "deviations" would be emergencies, but the CRA recommendations have as yet not been accepted for vertical share, and the reasons have nothing to do with emergencies, but basic disagreements over costing, and equity, as well as over the role of conditional grants in a devolved system.

4. County appropriation Bills (CoK Art. 224, 218)

Each county government shall prepare and adopt its own annual budget and appropriation Bill in the form, and according to the procedure, prescribed in an Act of Parliament on the basis of the Division of Revenue Bill passed by Parliament.

5. Stoppage of Funds Transfer (Art. 225(3)

The Cabinet Secretary responsible for finance may be authorized by An Act of Parliament to stop transfer of funds to a State organ or any other public body: Only for serious material breach or persistent material breaches of measures established under that legislation, or Subject to requirements of Art. 225 clauses 4-7.

If a county has the funds but does not use them effectively to deliver services to the public, it will have failed on one key factor of the sharing and allocation criteria, and more fundamentally, a county that consistently fails to fulfill its public finance obligations runs the risk of having transfers from national exchequer stopped for a while under Article 225 of the Constitution, or even other national government intervention under Article 190. This section guards against misuse of resources, however, there are concerns that this can be abused to "deny" counties that do not support the government in power. Therefore the County Executive, particularly the Governor, must be concerned with putting in place effective public financial management systems to ensure full compliance with both sides of public finance: revenue mobilization and resource allocation, utilization, reporting and accounting.

6. Transparency and Accountability

On reporting and accounting, county governments need to understand the role of the Controller of Budget (CoB). Besides approving the release of money from all public funds, the CoB is also required to report, every four months, to both County Assemblies and Parliament, on budget execution. These reports will provide information on the release of money to county governments, as well as to national government. County Executives need to ensure there is adequate capacity, both human and systems, to ensure proper receipt and accounting of all money received, proper budget execution, recording and accounting, proper collection, banking and accounting of all revenues collected on behalf of the county government, and effective delivery of target outputs and results.

The Constitution requires every public entity, at county or national level, to have an accounting officer. Each of these is accountable to the relevant legislature, so county accounting officers answer to the County Assembly, not the Governor. In practice, there appears to be parallel accountability to the executive and to the legislature. The Legislature does not appoint accounting officers and for most day to day matters, accounting officers' report to their CEC Member for Finance, who in turn is accountable to the governor.

Article 226 (5) requires any person who uses, or directs the use of, public money contrary to the law or instructions to reimburse the loss to government, even if they have left office.

Section 162 of the PFM Act, requires all public officers to comply with the Constitution and the Act to ensure that "resources are used in such a way that" is, lawful, authorized "effective, efficient, economical and transparent"; they must "ensure adequate arrangements are made for proper use, custody, safeguard, and maintenance of such property" and use their "best efforts to prevent damage to county government financial interest". These provisions bind the top management of county governments

Report of the Auditor General on the Appropriation Accounts, Other Public Accounts and the Accounts of Funds of the Republic of Kenya (Audit Report): this is an annual report produced by the Controller and Auditor-General that attests to the government's year-end accounts and whether public resources were used effectively. The audit report should be published within six months to one year of the end of the reporting period, according to international best practice. Art 229 (4) of the CoK provides that within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, though this has not been met as of yet.

The audit report comments on the accuracy and fairness of government financial statements, as well as on the adequacy of the government's control systems for managing public finances. It also identifies cases in which the government has breached the budget law (and related PFM laws), provides the auditor-general's opinion on the accounts audited, lists recommendations for rectifying problems identified, and tracks the status of previous audit recommendations.

7. Debt Management Strategy

Art 33. Of the PFM Act provides that on or before the 15th February of each year, the Cabinet Secretary shall submit to Parliament a statement setting out the debt management strategy of the national government over the medium term with respect to its actual liability and potential liability in respect of loans and guarantees and its plans for dealing with those liabilities. The Cabinet Secretary shall ensure that the medium term debt management strategy is aligned to the broad strategic priorities and policy goals set out in the Budget Policy Statement. The statement shall include the following information –

- The total stock of debt as at the date of the statement;
- The sources of loans made to the national government and the nature of guarantees given by the national government;
- The principal risks associated with those loans and guarantees;
- The assumptions underlying the debt management strategy; and
- An analysis of the sustainability of the amount of debt, both actual and potential.

Within 14 days after the debt strategy paper is submitted to Parliament, the Cabinet Secretary shall submit the statement to the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council and publish and publicize the statement. Art 62. (1) establishes an office to be known as the Public Debt Management Office within the National Treasury. The objectives of the Public Debt Management Office shall be to:

1) Minimize the cost of public debt management and borrowing over the long-term taking account of risk;
2) Promote the development of the market institutions for Government debt securities;
3) Ensure the sharing of the benefits and costs of public debt between the current and future generations.

8. The National and County Budget Process (Art 35 and 125)

The Cabinet Secretary at the national level and County Executive Committee member for finance at the county level shall ensure that

there is public participation in the budget process provided for under sub-section (1). The budget process for the national and county governments in any financial year shall consist of the following stages in the table below:

The National Budget Process Art 35	The County Budget Process Art 125
(a) integrated development planning process which shall include both long term and medium term planning;	(a) integrated development planning process which shall include both long term and medium term planning;
(b) planning and determining financial and economic policies and priorities at the national level over the medium term;	(b) planning and establishing financial and economic priorities for the county over the medium term;
(c) preparing overall estimates in the form of the Budget Policy Statement of national government revenues and expenditures;	(c) making an overall estimation of the county government's revenues and expenditures;
(d) adoption of Budget Policy Statement by Parliament (BPS)	(d) adoption of County Fiscal Strategy Paper (CFSP);
(e) preparing budget estimates for the national government;	(e preparing budget estimates for the county government
(f) submitting those estimates to the National Assembly for approval;	(f) submitting estimates to the county Assembly for approval
(g) enacting the appropriation Bill and any other Bills required to implement the National government's budget proposals;	(g) enacting an appropriation law and any other laws required to implement the county government's budget;
(h) implementing the approved national budget;	(h) implementing the county government's budget;
(i) evaluating and accounting for, the national government's budgeted revenues and expenditures;	(i) accounting for, and evaluating, the county government's budgeted revenues and expenditures.
(j) Reviewing and reporting on those budgeted revenues and expenditures every three months.	

9. Intergovernmental Fiscal Relations

Art 187 of the PFM Act establishes a council to be known as the Intergovernmental Budget and Economic Council comprising:

- The Deputy President who shall be the Chairperson;
- The Cabinet Secretary;
- A representative of the Parliamentary Service Commission;
- A representative of the Judicial Service Commission;
- The Chairperson of the Commission on Revenue Allocation or a person designated by the Chairperson;
- The Chairperson of the Council of County Governors;
- Every County Executive Committee member for finance; and
- The Cabinet Secretary responsible for intergovernmental relations

The purpose of the Council is to provide a forum for consultation and cooperation between the national government and county governments on the contents of the Budget Policy Statement, the Budget Review Outlook Paper and the Medium-Term Debt Management Strategy; matters relating to budgeting, the economy, financial management and integrated development at the national and county level; matters relating to borrowing and the framework for national government loan guarantees, criteria for guarantees and

eligibility for guarantees; agree on the schedule for the disbursement of available cash from the Consolidated Fund on the basis of cash flow projections; any proposed legislation or policy which has a financial implication for the counties, or for any specific county or counties; any proposed regulations to this Act; and recommendations on the equitable distribution of revenue between the national and county governments and amongst the county governments as provided in section 190; and any other matter which the Deputy President in consultation with other Council members may decide.

Public participation

Public Participation in Planning and Budgeting Processes at the Sub National Level

What is Public Participation?

The public/citizens/community, when used in relation to public participation may mean the residents of the county; the rate payers of a particular city or municipality; any resident civic organization or non-governmental, private sector or labor organization with an interest in the governance of the county, city or municipality; non-resident persons who because of their temporary presence in the county, city or municipality make use of services or facilities provided by the county, city or municipality. Participation on the other hand, refers to the act of sharing with others. It involves a deliberate inclusion of all persons in decision making on activities that guide common interests of their group.

Citizens are united by a common cause to achieve their aims; as such, public participation is an innovative approach to budget decision making that is taking root in many countries involving the general public directly in making policy decisions and allows for open forums during budget process. It's an opportunity for the public to allocate resources, prioritize broad social policies and monitor public spending.

It also builds legitimacy of government as the public sees efforts to align policy with needs; increases credibility and enhance revenue from tax and grant sources; increases public capacity to engage and evaluate government in a meaningful way; the county becomes a model county and secures more resources, resulting in better outcomes and even re-election for the public officers involved, etc.

Why Public Participation?

Governments are increasingly involving the public in decision making for many reasons not least in order to allow ownership of the process, it promotes a sense of empowerment, promotes good will as informed consent is usually given and it promotes the idea that there is freedom of choice. In a democracy, citizens have a right to know how their money is being spent and on what. In addition, they also need to know the decisions their elected representatives make on their behalf and to hold accountable their elected officials and public officers through budget tracking and monitoring which leads to improved decision-making by government. Participation provides a forum for purposeful and concrete engagement between the executive, the legislatures and civil society around critical priorities, choices and outcomes. Furthermore, public participations allow for public priority setting and ensures resources are used on priority areas, fairness is achieved.

The Constitutional and Legislative Provisions on Public Participation

The provisions related to public participation in decision making in the new Constitution are outlined below:

- Art 118. (1) Parliament shall — (b) Facilitate public participation and involvement in the legislative and other business of Parliament and its committees.
- Art 174. The objects of the devolution of government are — (c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- Art 184. (1) National legislation shall provide for the governance and management of urban areas and cities and shall, in particular — (c) provide for participation by residents in the governance of urban areas and cities.

- Art 196. (1) A county assembly shall — (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees.
- Art 201. The following principles shall guide all aspects of public finance in the Republic — (a) there shall be openness and accountability, including public participation in financial matters

The Public Finance Management Act 2012 is important in laying out detailed and specific requirements for public participation in financial matters, since the Constitution of Kenya 2010 barely addresses the issue. Public Finance and Management Act (PFM) law expressly demands for public participation in;

- In the County Governments Budget process (Section 35);
- In the preparation of County Fiscal and Strategy Paper;
- Sector working group hearings;
- During the review of budget estimates by the County Assembly;
- Parliamentary Budget Office is required to observe public participation;
- State budget actors are required to publish and publicize budget information

The County Governments Act has express provision on the principles of Public Participation (Art 87); ranging from timely access to information; reasonable access to the process of policy making; protection and promotion of interest and rights of minorities, marginalized groups and communities and their access to information legal standing; Promotion of Public Private Partnership for instance joint committee, technical team and citizen commissions; Recognition and promotion of reciprocal role of non-state actors participation and governmental facilitation and oversight. The functions and powers of the county are — ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level. CGA, 106(4) states "county planning shall provide for citizen participation" and shall be done in a process that "involves meaningful engagement of citizens" (CGA, 105(1-d).

The County Governments Act, 2012 (CGA), 104 obligates a county to develop an integrated plan, designate planning units' at all county administrative levels and promote public participation and engagement by non state actors in the planning process. The county plans shall consist of the following;

- The County Integrated Development Plan (CIDP) is a 5 year plan that shall inform the; County's annual budget;
- County Sectoral Plan (10 year plan);
- County Spatial Plan is a 10 year plan using the Geographic Information System (GIS) based system and will be reviewed every 5 years;
- City and municipal plans.

The Urban Areas and Cities Act gives effect to Article 184 of the Constitution to provide for the classification, governance and management of urban areas and cities; to provide for the criteria of establishing urban areas, to provide for the principle of governance and participation of residents. This is by far the best opportunity that can be used to advance the case for urban populace particularly living in informal settlements that lack access to services as well lack opportunity to hold the service providers accountable.

Avenues/Platforms for Public Participation/Consultation

1. County Plans

The County Governments Act, 2012 (CGA), 104 obligates a county to develop an integrated

plan, designate planning units' at all county administrative levels and promote public participation and engagement by non state actors in the planning process. The county plans consist of the following;

- The County Integrated Development Plan (CIDP) is a 5 year plan that shall inform the county's annual budget;
- County Sectoral Plan (10 year plan);
- County Spatial Plan is a 10 year plan using the Geographic Information System (GIS) based system and will be reviewed every 5 years;
- City and municipal plans.

The formulation of the County Integrated Development Plan (CIDP) is one of the important avenues for citizen participation as it reflects the strategic mid-term priorities of the county governments and contains specific goals, a coasted implementation plan, provisions for monitoring and evaluation and clear reporting mechanisms. It also contains information on projects, development initiatives, statistics, and a resource mobilization framework and it should be prepared in consultation with the public.

Art 126 of the PFM Act provides that every county shall prepare a development plan in accordance with Article 220(2) of the Constitution of Kenya for approval by the county assembly. The county executive committee member responsible for planning shall submit the development plan before the county assembly by 1st of September. The development plan will inform the budget priorities for the coming year.

The key concern should be ensuring effective links between county planning and budgeting. This is important not just because it is mandatory but because a good county development plan is an important tool for identifying and prioritizing citizen needs for funding. In South Africa, for instance, with introduced devolution; shows lack of effective development planning together with links between national and sub-national planning as major causes of weak devolved governments. Failure to coordinate planning between the county and national government and agencies of national budget entities can undermine effectiveness of service delivery and generate public discontent.

2. County Budget and Economic Forum (CBEF)

The PFM Act expressly provides for the establishment of a County Budget and Economic Forum for county budget consultation process. Art 137. (1) a county government shall establish a forum to be known as the County Budget and Economic Forum. (2) The County Budget and Economic Forum shall consist of the Governor of the county who shall be the chairperson; Other members of the county executive committee and a number of representatives, not being county public officers, equal to the number of executive committee members appointed by the Governor from persons nominated by organisations representing professionals, business, labour issues, women, persons with disabilities, the elderly and faith based groups at the county level. (3) The purpose of the Forum is to provide a means for consultation by the county government on (a) Preparation of county plans, the County Fiscal Strategy Paper and the Budget Review and Outlook Paper for the county; and (b) Matters relating to budgeting, the economy and financial management at the county level. This is a starting point for public accountability and engagement in each county.

While the CBEF has a very central role in encouraging participation, it is a new mechanism that has never been utilized before and for which there are no guidelines. If not structured well, it may fail to realize its potential. Citizens should participate in the establishment of the CBEF. Getting public participation to work in the county means; setting up CBEF;

helping it to function properly; informing and mobilizing citizens to participate; and structuring participation around questions that are meaningful to citizens. Participation must be built on a framework of access to timely, relevant, and easy to understand information about plans and budgets in the county.

Other Avenues/Platforms Include:

3. County Citizen Engagement Framework

For instance, citizen fora or village fora at county and decentralized units.

(CGA Part VIII) obligates the county government to establish structures for citizen participation. These are guided by principles set out in CGA Section 87.

4. County Communication Platform and Strategy

For instance, information communication technology based platforms – community radio, websites etc.

(CGA Part IX) obligates the county government to integrate communication in all its development activities, observe Article 35 through access to information. The county government is required to establish an effective communication and sensitization framework using various media forms, targeted at widest selection of stakeholders in the county.

5. County Civic Education Strategy

(CGA Part X) requires the county government to develop an effective civic education framework through which it shall empower and enlighten citizens and promote the principles of devolution in the constitution on a continual basis.

(e) (CGA 92(2) The Governor shall submit an annual report to the county assembly on the status of citizen participation in the affairs of the county government.

6. **Town hall meetings;**
7. **Notice boards: announcing jobs, appointments, procurement, awards and other important announcements of public interest;**
8. **Development project sites;**
9. **Citizen petition/challenge and duty to respond by County Government agencies**
10. **Local referenda/Petitions**
11. **Submission by Governors on Public Participation to the county assembly**

Status of Public Participation in County Governments

- Model legislation on public participation has been developed by Kenya Law Reforms Commission (KLRC) and the Institute on Social Accountability has also developed a public participation bill. Some counties have introduced the public participation bills in County Assembly.
- A few counties have institutionalized public participation in the public communication office, ad hoc citizen fora, town hall meetings organized to discuss budget, policies, and legislations.
- Research shows that most Counties have been able to develop the CIDP albeit with limited public participation
- Some counties have formed the County Budget and Economic Forum (CBEF) for county planning and budget consultation process.
- Establishment of technology based platform in the entire counties including; website, social media

- Most counties enforce public participation to be in compliance with laws making it to be tokenistic for instance putting adverts in newspapers for people to give views in one day, yet a very few Kenyan's manage to buy and even read the newspapers.

[1]Principles of Public Participation

1. Public consultations should be open to all citizens and taxpayers, without discrimination.
2. Safeguards should be established to prevent consultative forums from being dominated by any one political group, organized interest, or politician.
3. Public consultations must have clear and specific purposes.
4. The timeline and venues for public consultations should be made known at least two weeks in advance of the consultation.
5. Public consultations must set aside dedicated time for public feedback and questions.
6. Public participation in the planning and budget process should occur at all stages in this process.
7. The public must have access to all relevant plan and budget documents in a timely fashion.
8. All plan and budget documents should contain an executive summary and a narrative.
9. Citizens should be able to provide input into public consultations through direct participation, through representatives, and through written comments.
10. There should be a feedback mechanism so that citizens know their inputs were considered.

Status of implementation of the PFM act at the Sub National level

Planning and Budgeting Process

The budget process is outlined in Art 35 and 125 of the PFM Act and county governments, like the national government, are required to observe high standards of public finance. Section 107 of PFM Act provides, for each county's government expenditure, that recurrent expenditure must not exceed total revenue, that in the medium term, 30% of the budget must be allocated to development, while expenditure on wages and employee benefits must not exceed a percentage set by the executive with approval of the county assembly. In the medium term county borrowing must be used only to finance development, while short-term borrowing must not exceed 5% of latest audited revenue receipts and its use is restricted to management of cash flow. County Executives should recognize the heavy responsibilities placed on them by both the Constitution and other laws with regard to public finance.

The principles of public finance require each county government to engage public participation and ensure the budget timelines are adhered to by implementers of the PFM Act and other policy provisions. In terms of implementing the PFM Act for the financial year 2014/2015, research shows that most counties have been able to develop the CIDP albeit with limited public participation. Many counties have also not been able to set up the CBEF. In addition, the County Fiscal and Strategy Paper (CFSP) has been developed in a number of counties but they have not been made publicly available in line with the law. Currently, there is debate on the wage bill and the Division of Revenue Bill.

[2]Case Study: Homa Bay, Nyamira and Busia Counties

HOMA BAY COUNTY

Progress to date

- The County has developed its 'County Integrated Development Plan (CIDP)' with support from USAID and its 2013/14 budget was based on the CIDP. The county's sectorial plans have been developed and published. The CIDP and the budget documents were subjected to Public Participation through radio broadcasts and the county's website. The county's BROP, CFSP and Budget Estimates were developed on time in line with the new county budget timelines.. The County Budget and Economic Forum and the Sector Working Groups are yet to be established.
- The Internal Audit Unit has been established. The Unit's services have been extended to Homa Bay Sub-Counties. Preparation of a Risk Based Assessment Plan is in progress.
- Regarding revenue collection, LAIFOMS (Local Authorities Integrated Financial Operations Management System) is the main platform in use. In the recent past however, revenues have been declining.
- On matters of IFMIS & IT, the County Treasury has adopted the use of IFMIS, IPPD and Gpay. Work is ongoing to integrate IFMIS with Gpay. Similarly, LAIFOMS is being integrated with IFMIS. The ICT policy and strategic plan are being developed.

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2 Source; Strategy for Public Finance Management (PFM) Reforms; the Sector Working Group conducted a joint fact finding Mission to selected counties involving Development Partners and relevant Government officials to assess the PFM situation on ground.

- With regard to Human Resource Management, the county has established the County Public Service Board. IPPD is fully operational and 595 employees have so far been issued with personal numbers. Ninety (comprising of ward representatives and recently employed members of staff) are yet to receive these numbers. Payroll cleansing is underway.

NYAMIRA COUNTY

Progress to date

- The County Integrated Development Plan (CIDP) is still in draft form. The County Budget Economic Forum is yet to be established. The Planning and Treasury Units are in place albeit facing capacity challenges.
- Regarding IFMIS and IT, IFMIS has partially been rolled out and staff trained on various modules including Plan to Budget, E-business record to report, procure to pay Revenue. An IFMIS committee has been formed. Officers in the county have been issued with IFMIS numbers. IFMIS connectivity remains to be a big challenge.
- Skeleton staffs from the former Local Authorities serve in the Internal Audit Unit. The Audit Committee is yet to be constituted.
- On matters of revenue, the County relies on systems developed by the former Local Authorities. Revenue collection and administration appeared to be a risky area for misuse of funds. Revenues were collected in cash without strict control. There was no information on how much revenues should in theory be collected in order to find out the gap between the actual revenues collected and what ought to be collected. Revenue earnings in the County are very low – an average of Ksh.4 million per month – and requires support to enhance.

BUSIA COUNTY

Progress to date

- With regard to revenue mobilization, each sub-county has a fully-fledged revenue collection Unit. The county revenue projections are met – the County collects an average of 6.5 million shillings in revenue per week – although room for revenue expansion is evident.
- The county has established a Planning Unit which has recently finalized the County's Integrated Development Plan. The County Budget and Economic Forum has been established. The County adheres to statutory budget deadlines. Although faced with a number of challenges, the County Treasury Unit is in place. Procurement committees have been established.
- On matters of Human Resource, the County has established a Public Service Board. The county's payroll is in place and the IPPD has been in use since June 2013. Officers have been trained on the use of the IPPD system. Recruitment of staff to fill vacant posts is underway.
- Staffs from the former Local Authorities serve in the Internal Audit Unit.

Challenges to effective PFM at the Sub National level

1. The new institutions and mechanisms established by the PFM Act do not have the capacity to ensure efficiency and discipline in the utilization of public funds. For instance full participation by key stakeholders in the budget making process is yet to be fully achieved as most counties are yet to establish the County Budget and Economic Forum and for it to be fully institutionalized.

2. There is a lack of a national framework of public participation as envisaged by the Constitution and the enabling legislations for effective participation in the planning and budgeting process. In addition, most counties have not budgeted for public participation in the county planning and budgeting process as it is perceived to be an expensive venture.

3. IFMIS has not been adopted in all counties; some still prefer to use the manual financial system.

4. There is inadequate infrastructure. Very few counties have equipped offices for staff. For instance, for counties which have rolled out IFMIS, there is lack of onsite technical and operational support to the IFMIS, poor IFMIS connectivity impacting negatively on service delivery and inadequate capacity on the use of IFMIS. This results in inefficiency in resource mobilization occasioned by the manual methods of revenue collection. Inadequate skills in revenue collection have led to low levels of revenues in the County.

5. Human Resource challenges: Lack of a national guideline on how to deal with the task of staff rationalization by carrying out a Capacity Needs Assessment. Most counties also suffer from acute shortage of skilled manpower and technical staff in key PFM areas such as finance, accounting, procurement, audit, budget preparation, Government audit procedures, revenue collection and administration. For instance, there seems a lack of knowledge and information about timing of financial transfers. Some key actors demand that the amounts due be transferred in one tranche and not monthly. Wage bill;12 Billion wage bill inherited from the bloated former Local Authorities in addition to the estimated 30-40 billion for new staff, or 40-50 billion for devolved staff and disparities in salaries and allowances between seconded/recently employed county staff and those inherited from former Local Authorities. Low staff morale occasioned by lack of clear terms of service and this has adversely affected revenue collection. No schemes of service for the positions created by the County Government Act e.g. Sub County Administrators, Ward Administrators and Village Administrators

6. There is no strict adherence to Treasury and relevant National Government circulars and regulations on employee remuneration and payment of allowances.

7. Most county audit departments are not adequately funded to effectively carry out its functions.

Policy Recommendations

1. Continued PFM reforms implementation to ensure that reforms are mainstreamed within the county government planning and work processes with political championship and a strategic coordination role to oversee the implementation of reforms. There is need to develop PFM guidelines, manuals or tools that will guide county officers to have a Monitoring and Evaluation Framework to track progress of implementation of the PFM Act to be prepared in consultation with the implementing agencies.

2. Establishment of financial management systems and accountability frameworks in county governments.

3. Proper sensitization and capacity building on the procedures to be followed in effective implementation of the PFM Act. For instance, on county budgeting and budget execution, county executives, and county assemblies, must be well informed and capacity built not only on the constitutional requirements, but on other legislative provisions, on sources of county revenues, the budget process, reporting and accounting procedures, and

relevant responsibilities of public officers. Capacity strengthening of staff on key areas, for instance; on revenue collection and administration, in planning and budget process, Government Audit procedures; procurement management; in order to operationalize the structures.

4. All counties to adopt IFMIS and for quality connectivity to be established.
5. County executives must clearly programme their annual public finance activities to allow time for meaningful engagement with the public, and ensure they have the institutional and human capacity and procedures.
6. All counties to adopt the 10 principles of public participation as proposed by key Civil Society Organizations.
7. Need to develop an approach or guidelines on how to form and establish the CBEFs across the country based on a set of principles. The CBEF must be a voice of the people that facilitates the flow of information, convenes meetings at different points during the budget cycle to both explain plans and budgets and get feedback on budget implementation from the public.
8. Generation of county specific data to assist in the budgeting process.
9. Harmonizing and managing the three categories of staff in the county (i.e. seconded staff from national government, former local authority staff and county recruited staff) was a challenge.
10. Development of framework for public participation at national and county level.

Conclusion

The objective of the PFM Act is to promote prudent financial management at the national and county government levels. This would in turn facilitate effective and efficient use of the available limited resources for quality service delivery.

The public finance management system aims to facilitate the provision of essential public services to the people of Kenya. For this, it needs to channel public resources to the most needed and politically prioritized areas of service such as education, health, security and justice, infrastructure such as roads and water provision and so on.

The system should also adhere to the principles outlined in the Constitution such as equity and transparency in the use of public funds and put in place measures of control, reporting and for efficient finance management both at service delivery and oversight levels. A well-functioning public finance system is a cornerstone of achieving national development.

Annexes 1

DATE	ACTIVITY
August 30.	Revision of ministerial plans. National Treasury releases a circular to all government agencies starting the process, and setting out guidelines for public participation. The County Executive Committee Member for Finance must also release a circular by this date doing the same at county level.
September 1.	Counties must prepare and table a county development plan in the County Assembly by this date. The plan must be made public within 7 days.
September 30.	County Executive Committee Member for Finance must submit the Budget Review and Outlook Paper to the Executive Committee.
September 1 to February 15.	During this time, the National Treasury and the various ministries and agencies should undertake some type of consultation with the public and other stakeholders. This can include sector hearings as in the past, or visits by Treasury to counties to solicit views. Views from the public should feed into the formulation of the Budget Policy Statement. A similar process should occur at county level under the direction of the County Treasury.
January 1.	By January of every year, the Commission on Revenue Allocation should submit its recommendations for the division of revenue between national and county governments, and among the counties, to the rest of government.
February 15.	Cabinet Secretary for Finance to submit the national Budget Policy Statement to Parliament. Also the deadline for the debt management strategy paper, and the Division of Revenue and County Allocation of Revenue Bills to go to Parliament.
February 28.	Deadline for Budget Policy Statement to be approved by Parliament. This is also the deadline for the County Fiscal Strategy Paper to be tabled in each County Assembly.
March 1.	Deadline for Budget Policy Statement to be made available to the public.
March 16.	This is the deadline for passing the Division of Revenue and County Allocation of Revenue Bills.
April 30.	This is the deadline for the Cabinet Secretary to submit the budget proposal, or Budget Estimates to Parliament. It is also the deadline for the Judiciary and the Parliamentary Services Commission to submit their budgets to Parliament. This is also the date for the county budget proposal to be submitted to the County Assembly.
May.	This is likely when the national and county Budget Committees will begin to hold public hearings on the budget.
May-June.	This is when the national and county Budget Committees will table their recommendations on the budget in Parliament.

May 15.	This is the deadline for the national Cabinet Secretary to comment on the Judiciary and Parliamentary budget requests.
June	The national Finance Bill to authorize tax and revenue collection is tabled in Parliament. A County Finance Bill is to be tabled at this time in the County Assembly
June 30.	This is the end of the financial year, and the deadline for the national Appropriation Bill to be passed by Parliament to authorize spending for the new budget year. The deadline is the same for the county Appropriation Bill.
July	Sometime in the latter half of July, the final approved budget estimates should be available to the public.
October 31.	County government to publish an implementation report on the first quarter of budget implementation (July-September) not later than one month after the end of the quarter.
November	Government must publish the Budget Review and Outlook Paper, reviewing last year's budget performance and this budget year's initial forecasts from the Budget Policy Statement in February. There is no deadline for the County Budget Review and Outlook Paper, but it should be available around this time as well.
November 15.	National government must publish an implementation report on the first quarter of budget implementation (July-September) not later than 45 days after the end of the quarter.

Annexes 2

National and County PFM Institutions

NATIONAL	COUNTY
Parliament: National Assembly/ Senate/Parliamentary Budget Office (PBO)	County Assemblies
Cabinet	County Executive Committee
National Treasury	County Treasuries
Cabinet Secretary for finance	County Executive Member for finance
Accounting Officers for National Government	Accounting Officers for County Governments
Receivers and Collectors of Revenue for national government	Receivers and Collectors of Revenue for CG
Public Debt Management Office (PDMO)	Boards of Cities and Municipalities
Accounting Standards Board (ASB)	County Budget and Economic Forum
Controller of Budget	
Auditor General;	
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East African Tax and Governance Network (EATGN)
No 1. Waridi Court, Rose Avenue, off Lenana Road,
opp. Nairobi Spinal Injury Hospital

P.O.Box 25112-00100 Nairobi-Kenya
Tel: +254 20 2473373. Mob: +254 719 876 766
Website: http://www.eatgn.org/