

Delivering on Devolution?

Evaluating County Budgets 2013-2014



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Table of contents

| | |
|---|-----|
| Foreword..... | iii |
| Abbreviations..... | iv |
| 1. Introduction..... | 1 |
| 2. County Planning and Budget Frameworks..... | 4 |
| Objects of Devolution..... | 4 |
| Planning and Budgeting..... | 4 |
| 3. The Conduct of County Budgeting: Quarter 1 FY 2013/14..... | 8 |
| The Role of the Transition Authority..... | 8 |
| A Review of FY 2012/13 Budgets..... | 10 |
| Preparing for FY 2013/14 Budgeting..... | 13 |
| The Quality of FY 2013/14 Budgets..... | 14 |
| Distribution of Spending..... | 18 |
| Revenue Generation..... | 19 |
| Service Delivery..... | 20 |
| 4. An Overview of County Budgeting..... | 21 |
| 5. Conclusion..... | 25 |
| 6. Bibliography..... | 28 |

Foreword

One of the key features of Kenya's constitution that was promulgated in August 2010 is the provision for a devolved government. This provision should be seen against the backdrop of inequalities, marginalization and poor service delivery that characterised decades of centralized governance in Kenya. While frameworks to implement devolution have largely been put in place, diverse challenges exist a year into devolution. One year into devolution represents a good point at which to review performance and determine bottlenecks that can be resolved at this early stage. Similarly, a review of the experiences of the first year of county governments provides a useful basis to evaluate the extent to which they have adhered to the legal and institutional frameworks for managing public finances. This is important because County governments' ability to deliver the promise of devolution depend on their efficient use of funds while preventing waste and pilferage.

The principles of the budget process are outlined in the Constitution and put into practice by the Public Financial Management Act (PFMA). Under Chapter 12 on public finances, the constitution emphasises openness, accountability, participation, prudence and equity in county governance.

This study has been enriched by published reports such as those of the Office of the Controller of Budget to assess the extent of adherence of county governments to the legal and institutional framework of public financial management. As such, the assessment comprises an audit of the financial years (FY) 2012/2013 and 2013/2014 county budgets, identifies and analyses any shortcomings to the county budgeting processes in these financial years, specifically with respect to the principles of transparency, accountability, openness and public participation; and finally examines the good practices employed in these county budgeting processes.

It emerges from this report that effective capacity building among county officers, successful civic education for more effective public participation and subsequent planning and budgeting are especially critical towards the successful delivery and fulfillment of county government responsibilities.

Accordingly, AfriCOG hopes that this report and the recommendations contained in it contribute to improving county budgeting in Kenya, and ultimately to the realization of the devolution promises. A simplified summary of this report is also being prepared for wider distribution to contribute to the goal of improved civic education.

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Abbreviations

| | |
|----------------|--|
| AfriCOG | Africa Centre for Open Governance |
| CA | County Assembly |
| CBEF | County Budget and Economic Forum |
| CEC | County Executive Committee |
| CGA | County Government Act |
| CIDP | County Integrated Development Plan |
| CPSB | County Public Service Board |
| CRA | Commission on Revenue Allocation |
| DFRD | District Focus for Rural Development |
| FY | Financial Year |
| G-PAY | Government Payment System |
| IBP | International Budget Partnership |
| IEA | Institute of Economic Affairs |
| IFMIS | Integrated Financial Management Information System |
| IT | Information Technology |
| KNBS | Kenyan National Bureau of Statistics |
| LA | Local Authority |
| NTA | National Taxpayers Association |
| O&M | Operations and Maintenance |
| OCOB | Office of the Controller of Budget |
| PE | Personnel Emoluments |
| PFMA | Public Finance Management Act |
| SID | Society for International Development |
| TA | Transition Authority |
| TDGA | Transition to Devolved Government Act |

1. Introduction

Kenya's devolution framework is not entirely new. In 1985, Kenya launched the District Focus for Rural Development (DFRD) as the basis for planning, budgeting, and implementing development.¹ Under the DFRD concept, the district was the basic development management unit, drawing priorities from sub-district units, including the division, location and sub-location. DFRD was guided by the national development plan and sector and ministry policies. Sub-national outputs were aggregated up the administrative chain with district plans and budgets being combined to create respective ministry budgets, and subsequently, the national budget. The undoing of DFRD however, was that it had no foundation in law, meaning that sub-national implementation depended on the goodwill of the ministry head. In practice, the sub-national units often received erratic, inadequate and inequitable resources, which undermined sustainable implementation, resulting in persisting poverty and inequality. For example, Central Kenya districts with less than 30% of households in poverty received the same budget allocation per person as Western Kenya districts with 80% of households in poverty.² A core rationale for devolution and its participatory planning and budgeting provisions was the resolution of such inequity.

Following the March 2013 elections, the first under the 2010 Constitution, Kenya embarked on an ambitious initiative to devolve service delivery to its 47 counties. Kenya has two distinct but interdependent governments: the national government and the county governments, which should cooperate and consult.³ The Constitution provides the principles of devolution⁴, elaborates on the management of finances in a devolved system,⁵ and states the specific roles of the national government and of the county governments.⁶ In recognition of the fact that devolution requires new legislative and institutional frameworks, the Constitution provides a timetable for their development,⁷ and a transitional road map to devolution, amongst other changes.⁸

Soon after the promulgation of the Constitution in August 2010, Parliament set about legislating for devolution. It eventually produced six pieces of legislation that provide the basic framework. They are:

- The County Government Act (17 of 2012)
- The Transition to Devolved Government Act (1 of 2012),

1 See Chitere, Orieko and Onesmus N. Ileri (2004), *District focus for rural development in Kenya: its limitations as a decentralisation and participatory planning strategy and prospects for the future*. Institute of Policy Analysis and Research, 2004; and Makokha, Joseph (1991), *The District Focus: Conceptual and Management Problems*. Nairobi: JM Brain Power

2 J. Kiringai (2006), *Public Spending in Kenya: An Inequality Perspective*, Society for International Development, pp. 11 - 55

3 The Constitution of Kenya, Article 6 (2)

4 *Ibid.*, Chapter 11

5 *Ibid.*, Chapter 12

6 *Ibid.*, Fourth Schedule

7 *Ibid.*, Fifth Schedule

8 *Ibid.*, Sixth Schedule

- The Intergovernmental Relations Act (2 of 2012)
- The Urban Areas and Cities Act (13 of 2011)
- The Public Finance Management Act (18 of 2012)
- The National Government Coordination Act (1 of 2013}
- The Commission on Revenue Allocation Act (16 of 2011)

There has also been legislation for periodic operationalisation of devolution, such as:

- The County Governments Public Finance Management Transition Act (8 of 2013)
- The Division of Revenue Act (31 of 2013)
- The Transition County Allocation of Revenue Act (6 of 2013)
- The Transition County Appropriation Act (7 of 2013)

County governments' responsibilities to deliver the promises of devolution depend on their efficient use of funds together with the prevention of waste and pilferage. Effective capacity building among county officers, successful civic education, and subsequent planning and budgeting are especially critical for the successful delivery of county government obligations. The experiences of the first year of county governments provide a useful basis to evaluate the extent to which county governments have adhered to the legal and institutional frameworks for managing public finances.

Aim of this report

This study seeks to evaluate the extent of adherence of county governments to the legal and institutional framework of public financial management. More specifically the evaluation comprises:

- An audit of the financial year (FY) 2013/2014 county budgets with reference to county governments' development, capital and recurrent expenditure allocations
- Identification and analysis of any shortcomings in the 2013/2014 county budgeting processes, specifically principles of transparency, accountability, openness and public participation
- Identification and analysis of good practices employed in the 2013/2014 county budgeting processes.

The study then makes feasible recommendations to improve county budgeting in Kenya based on the challenges identified in county budget audits. To carry out this study, the evaluation considers the Public Finance Management Act (PFMA), the 2013/2014 Budget Implementation Review, reports from the Office of the Controller of Budget (OCOB), the 'Learning by Doing' brief⁹, and all other relevant legislation, reports and material.

9 IEA, IBP, WALINET, World Vision Kenya, Article 19, and I Choose Life – Africa (2012), *Learning By Doing: Toward Better County Budgets in 2014/15: A brief*

Section 2 of this paper summarises the various legislative and institutional frameworks for managing county level public finances. The Constitution mandates OCOB to monitor county budget management and make quarterly reports on performance. OCOB's findings for the FY 2013/14 budgets are analysed in Section 3 against the backdrop of various other studies undertaken on devolution and public finance management. Section 4 undertakes a general discussion of the current status of devolved budgeting and management of public finances, while Section 5 draws conclusions.

2. County Planning and Budget Frameworks

Objects of Devolution

According to the constitution, the objects of devolution are to:¹⁰

- promote the democratic and accountable exercise of power
- foster national unity by recognising diversity
- give powers of self-governance to the people and enhance the participation of the people in the exercise of state powers and in decision-making that affects them
- recognise the right of communities to manage their own affairs and further their development
- protect and promote the interests and rights of minorities and marginalised communities
- promote social and economic development and the provision of proximate, easily accessible services throughout Kenya
- ensure equitable sharing of national and local resources throughout Kenya
- facilitate the decentralisation of state organs, their functions and services, from the capital of Kenya
- enhance checks and balances and the separation of powers.

It is important to note the extent to which devolution objectives are focused on *wananchi* (citizens) in line with the intent of the Constitution, which emphasises that sovereign power belongs to the people, and may be exercised directly by the people (such as through participation in planning and budgeting), or indirectly through delegation to state organs.¹¹ Thus, county governments to which *wananchi* delegate sovereignty, should only implement what *wananchi* have identified for implementation.¹² This illustrates the manner in which the planning and budgeting function has been taken beyond government into the community.

Planning and Budgeting

The principles of the budget process are outlined in the Constitution and put into practice by the Public Financial Management Act (PFMA). Among the principles of devolution espoused by the Constitution are democracy and the separation of government powers, reliable revenues for timely delivery of quality services, and gender-sensitivity.¹³ Openness, accountability, participation, prudence and equity are further emphasised under Chapter 12 on public finances. Indeed, the Commission on Revenue Allocation (CRA) is mandated to ensure equal sharing of national revenues between the national and county governments, as well as among the 47 county governments;¹⁴ and to ensure the counties' equitable share gets to them "without undue delay (or) deduction..."¹⁵

10 Ibid., Article 174

11 Ibid., Article 1

12 So, for example, it is very unlikely that *wananchi* from water stressed communities, such as are found in parts of Machakos County, can prioritise a leisure park over the supply of water for domestic and animal consumption!

13 Ibid., Article 175

14 Ibid., Articles 215 to 218

15 Ibid., Article 219

The County Executive Committee (CEC) must be sufficiently empowered to fulfill its statutory functions, including those of budget management.¹⁶ The CEC is mandated to implement county legislation from the County Assembly including the County Finance Act (which raises revenues) and the Appropriations Act (Budget). In recognition of potential teething problems in the transitional period, Parliament is required to legislate for adequate support for county governments, including intervention in instances of low capacity and poor performance.¹⁷ However, public participation is a critical prerequisite in County Assembly affairs unless the Speaker deems otherwise.¹⁸

The County Government Act

The County Government Act (CGA) mandates civic education among *wananchi* as a prerequisite for their effective participation in public affairs. Civic education is identified as necessary for “improved understanding, appreciation and engagement in the operationalization of the county system of government.”¹⁹ In turn, therefore, citizen participation is necessary to fulfill the CEC’s planning and budgeting obligations. The Constitution says that county governments are required “to promote public participation” that “non-state actors shall be incorporated in the planning processes by all authorities”;²⁰ and that “County plans shall be binding on all sub-county units for developmental activities within a County”.²¹ Further, a county government must plan for the county and cannot appropriate public funds outside a planning framework developed by the CEC and approved by the County Assembly.²²

The county government is mandated to establish structures for such participation, including ICT-based platforms, town hall meetings, budget preparation and validation forums, notice boards, citizen forums at county and sub-county levels and the use of television, community radio, ICT centres, websites, public meetings and traditional media for communications.²³ Indeed, in accordance with Article 35 of the Constitution every Kenyan citizen is entitled, on request, to have access to information held by any county government or any unit or department thereof or any other state organ.²⁴

The PFMA dedicates the whole of its Part IV to the management of county public finances. It establishes a County Treasury²⁵ and specifies its responsibilities²⁶ and powers²⁷ with which to enforce fiscal principles. Notably, it provides that recurrent expenditure should not exceed total revenues;²⁸ 30% of spending should in the medium term be ring-fenced for the development budget,²⁹ and the finance CEC must

16 Ibid., Article 183 (1)(a)

17 Ibid., Article 190

18 Ibid., Article 196

19 The County Governments Act, section 99 (2) (b)

20 Ibid., section 104 (4)

21 Ibid. section 104 (5)

22 Ibid., section 104 (1)

23 Ibid., section 95

24 Ibid., section 96 (1)

25 Public Financial Management Act, section. 103

26 Ibid., section 104

27 Ibid., section 105

28 Ibid., section 107 (2)

29 Ibid.,

ensure that wages do not exceed the budget.³⁰ It also establishes the County Revenue Fund (CRF)³¹ into which all county revenues from whatever source *must* be deposited³² and from which money may only be withdrawn with the approval of OCOB. The County Treasury is mandated to prepare a County Fiscal Strategy Paper³³ and a County Budget Review and Outlook Paper³⁴ by 30 September each year.

Every County Treasury is required to establish a consultation forum for the budget process, in the form of the County Budget and Economic Forum (CBEF) chaired by the Governor, with membership from the CEC and representatives of the public.³⁵ CBEF is active in the budget-making process,³⁶ which also includes a County Integrated Development Plan (CIDP),³⁷ from which an annual work plan is generated for budgeting purposes; this results in proposals that must be approved by the County Executive Committee.³⁸ The approved proposals – the County Allocation of Revenue Bill – are then forwarded to the County Assembly³⁹ alongside the county's annual revenue generation proposals, the County Finance Bill, to be approved within 90 days.⁴⁰

Managing County Finances

The PFMA also provides for supplementary budgeting,⁴¹ borrowing for capital spending,⁴² issuance of securities,⁴³ and the receipt and collection of revenues by the Kenya Revenue Authority.⁴⁴ Annual financial statements are required from the CEC member in charge of finance⁴⁵ alongside statements from accounting officers⁴⁶ and revenue receivers.⁴⁷

While this highlights the 'traditional' budgeting framework, as stated earlier, the planning and budgeting functions are no longer an exclusively office-based activity. Civic education, which improves *wananchi's* understanding, appreciation and participation in the county system of government, is mandatory and, in terms of monitoring county finances, adherence to the principles of public finance management is ensured by the Constitution through the Office of the Controller of Budget (OCOB).⁴⁸

The above processes are summarised in Figure 1. However, an evaluation of the county governments' budgeting performance must consider a much wider cycle that also incorporates interaction with *wananchi*.

30 Ibid.,
31 Ibid., section 109
32 Ibid., section 119
33 Ibid., section 117
34 Ibid., section 118
35 Ibid., section 137
36 Ibid., section 125
37 Ibid., section 126
38 Ibid., section 129
39 Ibid., sections 130-131

40 Ibid., section 132
41 Ibid., section 135
42 Ibid., section 58 and sections 140-142
43 Ibid., section 144
44 Ibid., section 157 and sections 159- 160
45 Ibid., section 138 and section 163
46 Ibid., section 164
47 Ibid., section 165
48 The Constitution, Article 228 read with Article 201

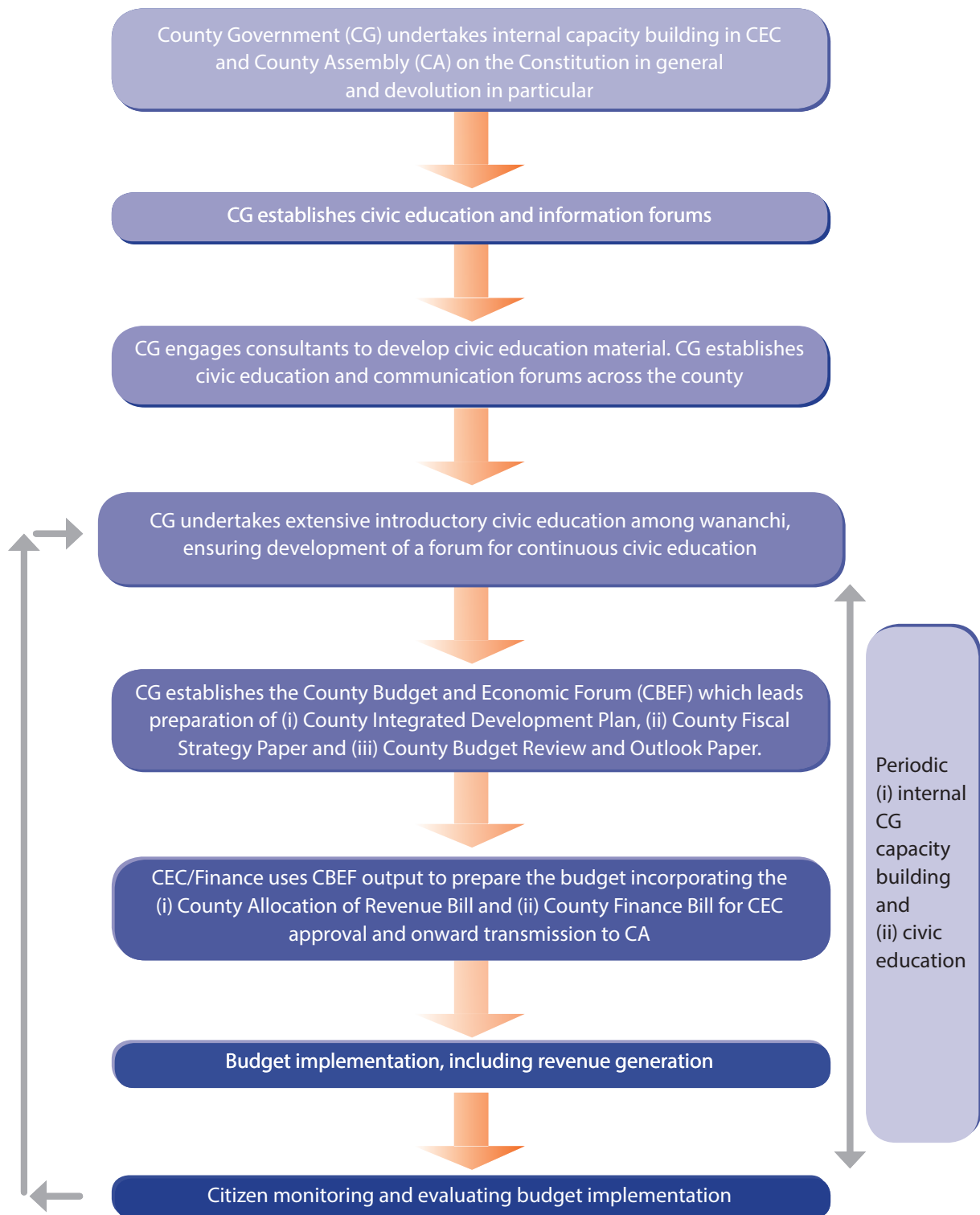


Figure 1. Interpreting the Constitution's Budget Cycle

3. The Conduct of County Budgeting

The Role of the Transition Authority

In October, immediately after the August 2010 promulgation of the Constitution saw the Ministry of Local Government – in charge of devolution – established a task force to design Kenya’s devolution process. Among the task force’s recommendations was the establishment of a Transition Authority (TA) to chaperone the transition to devolved government⁴⁹. When the TA was eventually legislated for, its mandate laid out in the Transition to Devolved Government Act (TDGA)⁵⁰ would be critical for successful devolution.

The TA functions relating directly to successful county government planning and budgeting included:

- Analyse the phased transfer of the constitutional functions in the Fourth Schedule of the TDGA
- Determine resource requirements for the performance of each function
- Develop inaugural county government budgets, taking the management of ongoing activities into consideration
- Establish an inventory of assets and liabilities and recommend their management during the transition period
- Undertake an audit of existing human resources, including Local Authority (LA) officers in the counties against assessed capacity needs of the national government and county governments
- Oversee capacity building and the rationalisation and deployment of human resources
- Report monthly on the above to the Commission on the Implementation of the Constitution (CIC) and the Commission on Revenue Allocation (CRA).

As can be seen from the above, (amplified in the TDGA⁵¹) the Transition Authority would generate the data that would allow the CRA to share national revenue equitably between the national government and county governments, and among county governments. As county governments came into existence in March 2013, each of them should have found that the Transition Authority had developed their inaugural budgets based on the phased transfer of the Fourth Schedule functions. It should also have rationalised their assets, liabilities, human resource needs and capacity development needs and developed a strategy for the phased transfer where necessary.

49 Republic of Kenya, Final Report of the Taskforce on Devolved Government, Volume I: A Report on the Implementation of Devolved Government in Kenya. Nairobi: Office of the Deputy Prime Minister and Ministry of Local Government, 2011, p. 137

50 Transition to Devolved Government Act (TDGA), section 7

51 TDGA, Fourth Schedule, section 1(g)

Functions of the Transition Authority

Section 7 of the Transition to Devolved Government Act provides that the Transition Authority shall:

- a) facilitate the analysis and the *phased* transfer of the functions provided under the Fourth Schedule to the Constitution to the national and county governments;
- b) determine the resource requirements for each of the functions;
- c) develop a framework for the comprehensive and effective transfer of functions as provided for under section 15 of the Sixth Schedule to the Constitution;
- d) co-ordinate with the relevant State organ or public entity in order to —
 - facilitate the development of the budget for county governments during Phase One of the transition period;
 - establish the status of ongoing reform processes, development programmes and projects and make recommendations on the management, reallocation or transfer to either level of government during the transition period; and
 - ensure the successful transition to the devolved system of government
- e) prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities;
- f) make recommendations for the effective management of assets of the national and county governments;
- g) provide mechanisms for the transfer of assets which may include vetting them transfer of assets during the transitional period;
- h) pursuant to section 15(2)(b) of the Sixth Schedule to the Constitution, develop the criteria as may be necessary to determine the transfer of functions from the national to county governments, including:
 - such criteria as may be necessary to guide the transfer of functions to county governments; and
 - the criteria to determine the transfer of previously shared assets, liabilities and staff of the government and local authorities;
- i) carry out an audit of the existing human resource of the Government and local authorities
- j) assess the capacity needs of national and county governments;
- k) recommend the necessary measures required to ensure that the national and county governments have adequate capacity during the transition period to enable them to undertake their assigned functions;
- l) co-ordinate and facilitate the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively;
- m) advise on the effective and efficient rationalization and deployment of the human resource to either level of government;
- n) submit monthly reports to the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation on the progress in the implementation of the transition to the devolved system of government;
- o) perform any other function as may be assigned by national legislation

Problems in Sequencing

While the TA was supposed to have undertaken comprehensive preparatory work for the launch of county governments ahead of the elections, the delays in establishing it, combined with inadequate resourcing undermined its mandate.⁵² There seemed to have been a rush to create public finance management institutions even before clarifying the functions of the finances, in contradiction of the principle that 'money and resources should follow function' (well reflected in the Constitution and devolution legislation). Thus, the CRA Act specifying the mode of public finance sharing was legislated by August 2011, exactly a year after the promulgation of the Constitution (2010). However, the TDGA, the legislation that creates the body mandated to specify inaugural budgetary needs, only commenced in March 2012. Consequently, the launch of county governments involved many ad hoc decisions. For example, the CRA asked the National Treasury to provide alternative estimates for the cost of delivering devolved services, which the CRA used for the vertical division of revenue between the national government and county governments, as well as the horizontal sharing of revenues among the 47 counties, based on its Equitable Share formula.⁵³

Notwithstanding its own constraints, the TA instructed government ministries and departments to interpret the TDGA's Fourth Schedule's distribution of roles between the national and county levels of government, and arrive at a functional assignment for their respective jurisdictions. Functional assignment is the process of determining what governance functions or services should remain with the national government and what functions and services should be devolved to each county. Ministry and departmental delays in completing this exercise meant that the TA was forced to unilaterally decide which functions to gazette for immediate transfer to the counties once launched. This ad hoc beginning undermined the TA's statutory role of determining the asymmetric transfer of functions to counties. The governors rejected the piecemeal disbursement of their respective equitable shares of national revenues and prevailed on a President looking for political mileage to decree the immediate total transfer of functions and money to the counties, regardless of the latter's poor preparedness for such new responsibilities.

Review of FY 2012/13 Budgets

Figure 2 summarises the distribution of spending of the first budget resources directed at the counties, covering the four months to the end of FY 2012/13 (30 June).⁵⁴ The figure shows personnel emoluments (PE), which consist of salaries and allowances, totaling KES 6.5 billion and operations and maintenance (O&M) totaling KES 6.7 billion. Both are elements of recurrent spending on ongoing activities taking up about 40% of the budget with 11% (KES 1.7 billion) going to the unauthorised payment of inherited debts, interest and pending bills, contrary to the TA's advice (including a requirement that Local Authority bank accounts be frozen by 28 February 2013). Development spending on new capital investments accounted for a modest 8% of total spending - KES 1.3 billion. Indeed, in only two counties did the development spending share reach 30%; but 12 counties surprisingly had no development spending at all.

52 See appendix Box A

53 For CRA's Equitable Share formula, go to <http://www.crakenya.org/> Accessed 2/3/2014.

54 Office of the Controller of Budget – OCOB (2013a), Budget Implementation Review Report – Fourth Quarter, 2012/2013 Nairobi; OCOB

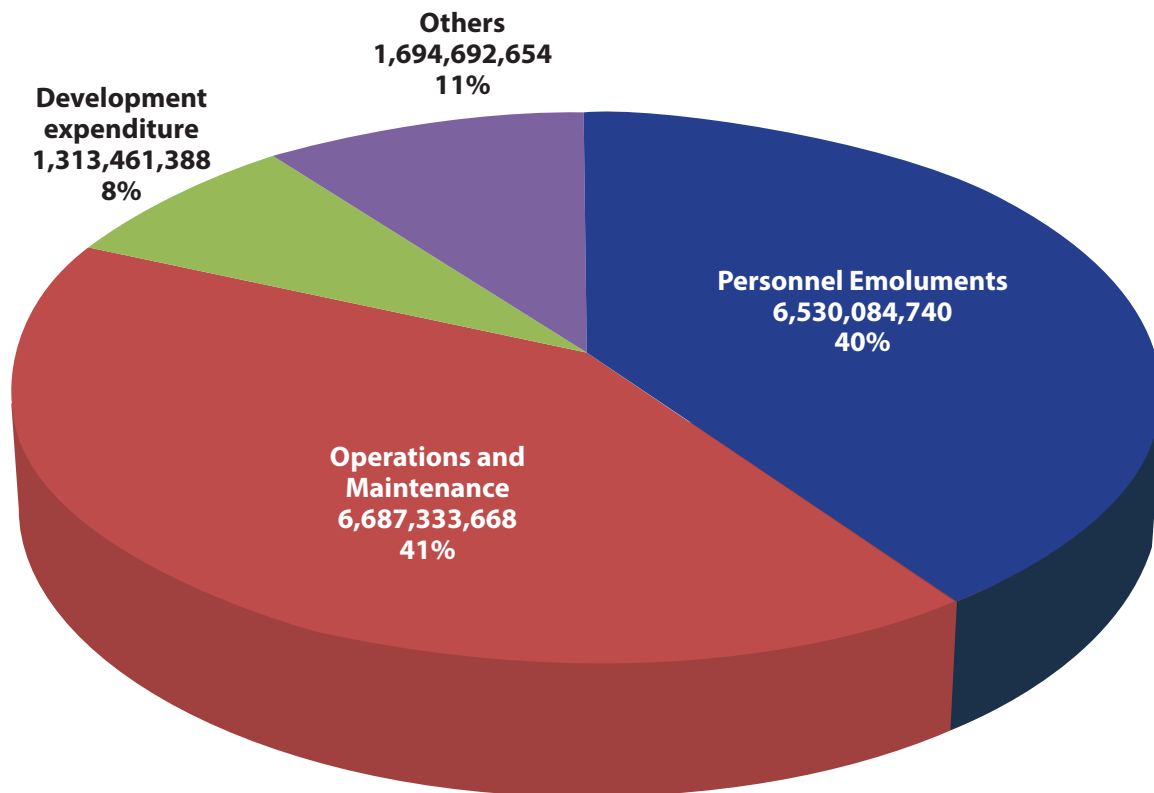


Figure 2. Economic Analysis of the Budget, FY 2012/13 (March to June) Source: OCOB (2013a)

OCOB reports⁵⁵ that counties on average absorbed, 70.6% of the resources allocated to them during the FY 2012/13; but the absorption rates varied widely across counties, reflecting no typical characteristics in relation to performance (Table 1). Only six counties consumed more than 90% of their budget resources, including Nandi (99.2%), Laikipia (97.8%), Wajir (97.3%), West Pokot (92.2%), Uasin Gishu (91.9%) and Busia (90.0%). Conversely, seven counties consumed less than 50% of their resources: Makueni (45.6%), Trans Nzoia (43.0%), Tana River (41.4%), Machakos (39.2%), Kilifi (38.2%), Nakuru (29.8%) and Lamu (17.2%). OCOB does not provide information on the relative preparedness of the counties to spend, such as whether they simply inherited pre-existing work plans or made new ones, or what personnel (numbers and quality) was available for use of the budget resources. While two of the high spenders were marginalised counties (Wajir and West Pokot), similarly marginalised counties were among the weak spenders (Tana River; Kilifi and Lamu). It is puzzling however, that the arguably well developed Nakuru County should have been among the low spending counties. Overall, efficiency of resource absorption only rises marginally with a rise in allocation ($r = 0.1119$): counties with higher allocations and arguably greater 'need' are not necessarily better at spending their greater allocations.⁵⁶

⁵⁵ Ibid.

⁵⁶ If the absorption and allocation rates across the county governments rose at par, then $r = 1.0000$.

Table 1. County Resources and Absorption Rates, FY 2012/13 (March to June)

| Counties | Allocation (KES: Million) | Absorption (%) | Counties | Allocation (KES: Million) | Absorption (%) |
|-----------------|---------------------------|----------------|---------------|---------------------------|----------------|
| Baringo | 267.9 | 87.7 | Marsabit | 262.2 | 74.4 |
| Bomet | 270 | 74.1 | Meru | 443.1 | 81.8 |
| Bungoma | 434 | 82.1 | Migori | 332.3 | 84.6 |
| Busia | 338.3 | 90 | Mombasa | 1132 | 79 |
| Elgeyo Marakwet | 203.5 | 64 | Muranga | 477.5 | 70.7 |
| Embu | 287 | 62.8 | Nairobi | 4360 | 89 |
| Garissa | 294.1 | 60.1 | Nakuru | 1004.2 | 29.8 |
| Homa Bay | 303.4 | 62.1 | Nandi | 278.1 | 99.2 |
| Isiolo | 212.3 | 63.2 | Narok | 473 | 83.6 |
| Kajiado | 352.5 | 78 | Nyamira | 240 | 65.2 |
| Kakamega | 487.1 | 72.8 | Nyandarua | 271.9 | 66.3 |
| Kericho | 260.5 | 84.1 | Nyeri | 562.6 | 60.8 |
| Kiambu | 950 | 69 | Samburu | 230.1 | 59 |
| Kilifi | 515.5 | 38.2 | Siaya | 287 | 52.2 |
| Kirinyaga | 300.3 | 73.2 | Taita Taveta | 206.4 | 59 |
| Kisii | 406.4 | 81.1 | Tana River | 244.6 | 41.4 |
| Kisumu | 664.6 | 64 | Tharaka Nithi | 209.5 | 67.5 |
| Kitui | 493.4 | 63 | Trans Nzoia | 541.2 | 43 |
| Kwale | 303 | 64.6 | Turkana | 359.9 | 62.2 |
| Laikipia | 289.9 | 97.8 | Uasin Gishu | 615.3 | 91.9 |
| Lamu | 157.9 | 17.2 | Vihiga | 242.3 | 63.2 |
| Machakos | 835.8 | 39.2 | Wajir | 417.2 | 97.3 |
| Makueni | 515.4 | 45.6 | West Pokot | 233.6 | 92.2 |
| Mandera | 408.9 | 52.4 | Total | 22976.3 | 70.6 |

Source: OCOB (2013a)

OCOB⁵⁷ identifies weak human capacity and weak financial systems as major constraints to efficient financial management during the period. Despite the government's roll out of the Integrated Financial Management Information System (IFMIS) and the Government Payment (G-PAY) System, their effectiveness has been undermined by weak internet connectivity, a problem that could arguably be resolved through investment spending on rural electrification.⁵⁸ Additionally, especially for development spending,

57 OCOB (2013a)

58 Rural electrification would enhance the scope for internet-based financial management systems. However, an additional problem is the unreliability of power supplies in rural areas.

procurement regulations presented a bottleneck. To improve public finance management, Office of the Controller of Budget (OCOB) recommends prompt attention to IFMIS/G-PAY. It also advocates enhanced capacity for planning and budgeting, adherence to procurement procedures, and the development of a legal framework for revenue growth. In addition, it emphasises the need for a labour needs audit, as well as of the accounts for the defunct Local Authorities.

Preparing for FY 2013/14 Budgeting

OCOB⁵⁹ continues the analysis of county budget performance carried over from its first report covering March to June of FY 2012/13. In its analysis, OCOB⁶⁰ pointed to the weak preparedness of county governments for assuming public finance management responsibilities, despite the existence of various frameworks. This was especially because the TA had not completed its statutory mandate of preparing counties for the transition to devolution.⁶¹ The very first resources allocated to the counties were based on assessments made by the TA and the CRA with no consultation with the counties since these did not actually exist. However, it has been possible for this report to review the first quarter of the new FY 2013/14 (July to September) on the county governments' own assessment of the resources required for their perceived needs, that is, their own budgets.

With the planning and budgeting framework reported in mind, the key investment to achieve the participatory planning and budgeting mandated by the Constitution and related legislation, is capacity building of the County Executive Committees (CEC). This will enable them, amongst other things, to conduct informed civic education.⁶² Yet the TA has repeatedly lamented the failure to fulfill its statutory transition to devolution mandates, such as civic education⁶³ and CEC capacity assessment. The TA's Samburu County representative mentioned a resource constraint that meant his work outside the office depended on the programmes and goodwill of other departmental heads.⁶⁴ A seven-county study by the Institute of Economic Affairs⁶⁵ found that the majority of counties did not set aside any budget resources for civic education. The consequence of this is low levels of awareness of the status of county planning, with a 2013 study⁶⁶ of Kilifi, Kwale and Mombasa counties finding that 96%, 87% and 84% of respective respondents reported not being aware of CIDP. The National Taxpayers Association (NTA) also reported poor levels of awareness of budgeting processes, a major problem being that information is primarily delivered by "friends" (95% in Mombasa County), instead of the county governments developing their own structured

59 Office of the Controller of Budget - OCOB (2013b), Budget Implementation Review Report –First Quarter, 2013/2014 Nairobi; OCOB

60 OCOB 2013a

61 See Appendix, Box A

62 See figure 1

63 TDGA, fourth schedule, section 1(g)

64 Nyanjom, O (2014), The Scope for County Own Revenues: a study of Samburu and Siaya Counties. A consultant's report for the Society for International Development, Nairobi

65 IEA, IBP, WALINET, World Vision Kenya, Article 19, and I Choose Life – Africa (2012), Learning By Doing: Toward Better County Budgets in 2014/15: A brief

66 National Taxpayers Association – NTA (2013) Score Card on Citizen Participation on County Integrated Development Plan: Kilifi, Kwale and Mombasa Counties. Nairobi: NTA

information flow processes, as envisaged by the CGA.⁶⁷ In Siaya County, attempts at substantive people participation in budgeting were interrupted by the successful petition against the governor in August 2013, thus disrupting programmes, as the Speaker of the County Assembly took charge until after the October by-election.⁶⁸

The Quality of FY 2013/14 Budgets

Thus, besides the weak information systems on planning and budgeting, OCOB⁶⁹ notes that a time constraint compounded the weak capacity of county governments to prepare plans as a basis for realistic budgets for FY 2013/14. OCOB also notes that ahead of that FY, counties in general had neither Fiscal Strategy Papers nor County Intergrated Development Plans (CIDPs), meaning that some of the budgets were based on material most probably generated from the outgoing District Development Plans, or arbitrarily by CEC members. Nor did the county governments have an accurate idea of their staffing status and the consequent PE burden: they inherited LA staff and some officers from various government departments, and were actively hiring new staff for the new institutions. Indeed, this is a further area that suffered from the TA's inability to fulfill its functions in good time⁷⁰. As a consequence, county governments produced budgets that were "unrealistic" with "big deficits" without a clear statement of how the latter would be resolved.⁷¹

County budgets in this period lacked sufficient detail to explain how the overall figures had been reached, let alone explain the choice of activities included (from the Fourth Schedule for instance) as opposed to those excluded.⁷² Additionally, some budget proposals lacked Kenya's forward-looking tradition reflected in the Medium Term Expenditure Framework approach.⁷³ Other budgets were presented as a lump sum figure with no distinction between proposed recurrent and development spending. In some instances where such distinctions were attempted, there were structural inconsistencies weighed against good budget practice, undermining the scope for fiscal responsibility mandated by the PFMA⁷⁴ on budget structures. A major problem with the proposed budgets was that they carried little or no evidence of unit costs that the TA should have developed with which to evaluate the aggregate figures.⁷⁵ The failure to disaggregate the wage bill by sector also undermined scrutiny of the figures.

Some budgets reflected ignorance of the respective counties' equitable shares from national revenues against which to project their own revenues and consequently arrive at a feasible set of interventions for a FY. Other budgets lacked a good grasp of the role distribution of the Fourth Schedule, assuming functions

67 CGA section 91

68 Nyanjom, 2014

69 OCOB 2013b

70 TDGA, section 7

71 For example, that Siaya County had an initial budget of KES 16.1 billion against a CRA Equitable Share of KES 3.6 billion. See Commission on Revenue Allocation (2013b), County Budgets: 2013–2014. Nairobi: CRA (August).

72 The IEA et al. 2013

73 Ibid

74 PFMA, section 107(2)

75 Ibid., section 7 (b)

that clearly belonged to the national government, such as primary and secondary education. Indeed some budgets did not reflect priorities consistent with the intention that service delivery transfers be gradual, reflecting the progressively improving capacities of county governments to replace national service delivery. Part of the problem here is that after the government hampered the TA work, a presidential decree also caused all services to be 'transferred' to the counties in total disregard of the Fourth Schedule.

Some of the above budgeting concerns are illustrated in Table 2, where column 2 presents the budget figures generated by respective counties, the magnitudes of which caused much apprehension.⁷⁶ While the PFMA requires county governments to move to a 30% share of the budget for development spending in the medium-term, performance with the inaugural budget provides a useful insight into county government perceptions of the comparative importance of consumption versus investment spending. Column 3 shows the recurrent share (percent) of proposed budgets with only four counties rising marginally above the 70% benchmark set by the TDGA.⁷⁷ Indeed, budgeting inexperience is illustrated by the 13 counties that allocated at least 50% of their budget to development spending, causing one to wonder how they would meet both the salary and operational maintenance needs to actually implement such an abrupt and comparatively large investment agenda.

⁷⁶ OCOB, 2013b
⁷⁷ Section 107 (2)

Table 2. County Resource Structure and Absorption, FY 2013/14 (July – September)

| [1] | [2] | [3] | [4] | [5] | [6] | [7] | [8] | [9] |
|-----------------|---------------------------|---------------------|--------------------------------|--|--------------------|-----------------------|---------------------|-------------------------|
| Counties | Own Budget (KES: Million) | Recurrent Share (%) | Personnel Emoluments Share (%) | County Revenue Funds (CRF)Actuals (KES: Million) | Revised Budget (%) | Development Share (%) | Absorption Rate (%) | Revenue Performance (%) |
| Baringo | 4366 | 61.6 | 55.9 | 3910 | 89.6 | 0 | 4.5 | 23.1 |
| Bomet | 3822 | 48.2 | 52.5 | 3915 | 102.4 | 13.5 | 12.3 | 12.1 |
| Bungoma | 8703 | 58.2 | 13.1 | 9269 | 106.5 | 5.1 | 3.2 | 1.3 |
| Busia | 4159 | 39.3 | 32.2 | 3909 | 94 | 0 | 5.3 | 27.5 |
| Elgeyo Marakwet | 3518 | 56.5 | 33.1 | 3237 | 92 | 2.9 | 2.1 | 10 |
| Embu | 3804 | 52.2 | 35.8 | 3804 | 100 | 4.9 | 3.8 | 8.1 |
| Garissa | 5073 | 64.6 | 37.2 | 4847 | 95.5 | 0 | 4.8 | 4.8 |
| Homa Bay | 5315 | 59.9 | 73.7 | 5867 | 110.4 | 0 | 4.8 | 22.2 |
| Isiolo | 3241 | 47.1 | 28.2 | 2783 | 85.9 | 0 | 3.7 | 13.2 |
| Kajiado | 4043 | 69.5 | 28.3 | 4029 | 99.7 | 0 | 2.6 | 12.6 |
| Kakamega | 13256 | 45 | 59.8 | 10856 | 81.9 | 2.7 | 2.4 | 1.1 |
| Kericho | 3532 | 57.4 | 40.1 | 3906 | 110.6 | 13.2 | 5.3 | 14.5 |
| Kiambu | 12631 | 56.7 | 55.5 | 12631 | 100 | 4.2 | 3.6 | 3.2 |
| Kilifi | 8029 | 66.8 | 21.4 | 7885 | 98.2 | 0 | 2.7 | 3.8 |
| Kirinyaga | 3268 | 69.7 | 30.5 | 3268 | 100 | 0 | 3.4 | 6.8 |
| Kisii | 7053 | 58.2 | 65 | 7053 | 100 | 0 | 3 | 3.6 |
| Kisumu | 8345 | 70.3 | 36.7 | 8345 | 100 | 0 | 4.1 | 3.2 |
| Kitui | 6548 | 56.8 | 58.4 | 6548 | 100 | 0.3 | 3.4 | 8.2 |
| Kwale | 4475 | 58.7 | 51.9 | 4456 | 99.6 | 4.1 | 3.8 | 7.2 |
| Laikipia | 4064 | 51.3 | 71 | 4064 | 100 | 0 | 5.8 | 4.1 |
| Lamu | 2211 | 38.2 | 36.7 | 1953 | 88.3 | 13.6 | 3 | 1.4 |
| Machakos | 8016 | 48.1 | 40.1 | 8016 | 100 | 6.3 | 4.6 | 6.6 |
| Makueni | 5071 | 60.2 | 46.7 | 5880 | 116 | 0 | 4.6 | 11.2 |
| Mandera | 6988 | 37.5 | 35.5 | 7218 | 103.3 | 0 | 1.2 | 2.5 |
| Marsabit | 3986 | 50.7 | 35.3 | 4112 | 103.2 | 0 | 3.1 | 19.9 |

| [1] | [2] | [3] | [4] | [5] | [6] | [7] | [8] | [9] |
|---------------|---------------------------|---------------------|--------------------------------|--|--------------------|-----------------------|---------------------|-------------------------|
| Counties | Own Budget (KES: Million) | Recurrent Share (%) | Personnel Emoluments Share (%) | County Revenue Fund (CRF) Actuals (KES: Million) | Revised Budget (%) | Development Share (%) | Absorption Rate (%) | Revenue Performance (%) |
| Meru | 5682 | 49.1 | 46.1 | 6166 | 108.5 | 1 | 4.8 | 8.6 |
| Migori | 5531 | 70.1 | 49.7 | 5555 | 100.4 | 0 | 6.1 | 6.8 |
| Mombasa | 21787 | 48.6 | 43.8 | 11693 | 53.7 | 0 | 6.6 | 2.8 |
| Muranga | 5622 | 66.4 | 19.4 | 5622 | 100 | 0 | 4.6 | 5.3 |
| Nairobi | 25740 | 68.5 | 59.2 | 25740 | 100 | 16.5 | 10.8 | 8.3 |
| Nakuru | 10039 | 69.8 | 47.9 | 10038 | 100 | 0.02 | 4 | 7.1 |
| Nandi | 3616 | 50.1 | 58.4 | 4026 | 111.3 | 0 | 4.3 | 21.2 |
| Narok | 8084 | 70.3 | 43 | 9470 | 117.1 | 7.3 | 6.1 | 14.2 |
| Nyamira | 3417 | 65.4 | 50.1 | 3417 | 100 | 0 | 3.1 | 13.3 |
| Nyandarua | 4309 | 39.2 | 55.9 | 4309 | 100 | 0 | 3.5 | 2.6 |
| Nyeri | 4550 | 58 | 39 | 4550 | 100 | 30.5 | 5.9 | 15.8 |
| Samburu | 3065 | 52.4 | 52.1 | 3015 | 98.4 | 0 | 3.7 | 21.3 |
| Siaya | 4125 | 68.1 | 22.9 | 4125 | 100 | 0 | 2.9 | 14.6 |
| Taita Taveta | 2859 | 58.9 | 81.5 | 2841 | 99.4 | 0 | 2.7 | 14.3 |
| Tana River | 3206 | 63.2 | 30.9 | 3206 | 100 | 26.2 | 4.5 | 9.4 |
| Tharaka Nithi | 2375 | 44.8 | 36.4 | 2519 | 106.1 | 25.6 | 5 | 22.8 |
| Trans Nzoia | 4425 | 69.2 | 22.6 | 4425 | 100 | 0 | 7.1 | 6.4 |
| Turkana | 8548 | 39.9 | 33.5 | 8246 | 96.5 | 3.8 | 3.8 | 7.6 |
| Uasin Gishu | 5821 | 61.7 | 56.3 | 5821 | 100 | 0 | 4.8 | 4.4 |
| Vihiga | 3264 | 70.6 | 40.3 | 3228 | 98.9 | 13.3 | 6.1 | 9.2 |
| Wajir | 5414 | 49.8 | 42.4 | 5767 | 106.5 | 0 | 1.3 | 8.8 |
| West Pokot | 3631 | 54.6 | 65.6 | 3631 | 100 | 0 | 1.3 | 32.5 |
| Total | 288625 | 57.2 | 45.2 | 279171 | 96.7 | 6.5 | 4.9 | 6.5 |

Source: OCOB (2013b)

The county governments were given up to 30 September to review their budgets, while only receiving their August 2013 budget tranches. The resulting allocations are reflected in column 5, with column 6 showing the direction of change resulting from the review. Interestingly, 19 county budgets remained unchanged, while 13 and 15 were revised upwards and downwards respectively. While the highest upward revision was Makueni County’s 16%, Mombasa led the downward revisions with a large 46.3%, suggesting its original budget proposal was quite large. In other words, county governments had over-budgeted by a greater extent than they had under-budgeted causing the national average to be 96.7%.

Distribution of Spending

Figure 3 presents the distribution of spending during the first quarter of FY 2013/14, that is, July to September 2013. The figure shows that compared to the last quarter of FY 2012/13, the development expenditure share of total spending dropped marginally to a 7% share; but the absolute amount rose sharply to KES 87 billion. Having originally set aside an average 42.8% of their proposed budgets for development spending, only 20 counties eventually spent the money as reflected in column 7 of Table 2, the average rate being a mere 6.5%. OCOB (2013b) attributes this to the absence of annual work plans and development plans, and to the bureaucracy surrounding public procurement. There is a further likely explanation for the depressed development spending: county governments – literally without exception – bought vehicles, which should be categorised under “the creation or renewal of assets”, hence are elements of development spending. However, OCOB curiously records this expenditure under recurrent spending.

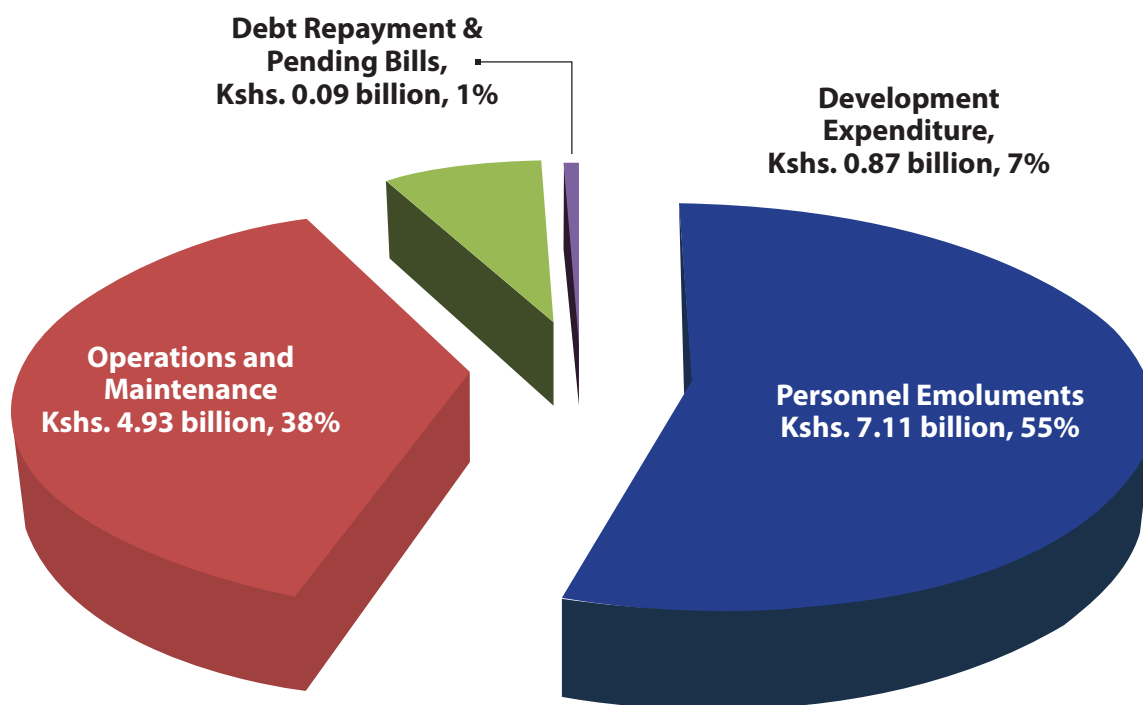


Figure 3. Economic Analysis of the Budget, FY 2013/14 (July to September)

Table 2, column 8 shows that the average budget absorption rate was a rather modest 4.9%, with Nairobi County having the highest individual rate of 10.8%, compared to Mandera County's 1.2%. OCOB's⁷⁸ explanations for this poor performance are much the same as those for the March to June period when the rate was 70.6%. Specifically on absorption, OCOB points to the go slow by Members of the County Assembly and the stand-off on the supremacy and relative powers of the Senate and National Assembly on the making of the Division of Revenue Bill as factors which delayed the passage of the County Appropriations Revenue Act 2013, with disbursements only occurring in the last month of the quarter. While the counties enjoyed the services of seconded TA and national government staff, their performance was hampered by a lack of appropriate equipment, infrastructure, IT and budgeting capacity. Further, the County Public Service Boards (CPSB) incorporating members of the public, were only just being launched or starting their functions. Additionally, OCOB highlights the need to review procurement regulations, and to audit county staffing needs – with a special focus on former LA staff – to enable rationalisation of the wage bill, which currently ranges between 37.0% and 64.7%. All these functions are in the TA's statutory remit.

Revenue Generation

Finally, OCOB⁷⁹ concludes that there is enormous potential for own revenue generation, hampered by a weak human capacity for the task. OCOB reports an average quarterly collection performance of 6.5% against the FY's revenue target of KES 67.4 billion. Collection performances ranged from less than 1.5% of their respective targets in Kakamega, Bungoma and Lamu counties to 32.5% of target in West Pokot County. The next best performer was Busia County, whose collection was 27.5% of its target. The emphasis on counties' own revenue targets is important. West Pokot County's target was KES 38 million compared to Busia and Kakamega counties' targets of KES 2.8 billion and KES 3.5 billion respectively. OCOB does not indicate which of the counties were collecting revenues using County Assembly legislation, that is the respective County Finance Acts, as opposed to those that continued to use the pre-existing LA revenue structures. That distinction is important for assessing both collection efficiency and capacity.

Unrealistic Taxation

The theory of taxation highlights the need for tax, fees, and similar to be realistic and proportionate to the benefits received, in order to encourage compliance by the population. A study of Samburu and Siaya counties' own revenue initiatives underscores this need.⁸⁰ At the time of that study Samburu County had a substantive revenue act – the Samburu County Finance Act – and Siaya County only had a bill – the Siaya County Finance Bill. Both documents reflected the apparently widespread practice of cutting and pasting the choice of taxes and fees, and the rates charged, from jurisdictions unrelated to that in which the taxes and fees are to be imposed. The two pieces of legislation suggest that the Samburu and Siaya counties had moved in the space of one year since the dissolution of LAs from about 15 taxes, to about

78 OCOB, 2013b

79 OCOB 2013 (b)

80 Nyanjom, 2014

400 and 750 respectively. A previous discussion above noted the counties' weak attention to civic education for people participation, meaning that the two counties' taxation proposals are unlikely to have been discussed with the public. Indeed, the unrealistic nature of some of the two counties' actual or proposed taxes point to a weak CEC capacity in the area of taxation, meaning their attempt at civic education would not bear much fruit. For example, both counties impose a tax on supermarkets with more than 100 employees, and separate fees for fire fighting vehicles and personnel. Siaya County imposes a tax on the sale of "exotic dogs", as if there is a market to which people daily go to buy and sell such creatures!

Good taxation must be based on people's ability to pay, which in turn will induce willingness to pay. But even more importantly, the two counties need to appreciate that the tax legislation covers a single FY, meaning that taxes for activities anticipated to be launched in the county in future must await that future for legislation. In filling the current tax legislation with prospective taxes, both counties have produced daunting documents that ordinary people will not read; yet it is important that they do. In that respect, a High Court recently found the Kiambu County Finance Act to be "null and void as it was enacted without the participation of Kiambu residents".⁸¹

Service Delivery

Perceptions and realities about service delivery are important determinants of the scope for revenue generation. As stated above, taxes should be proportionate to the benefits received by the people paying the taxes and should be seen to be so; otherwise motivation for paying or *willingness* to pay is lost even if the *ability* to pay exists. In that respect, January 2013 saw Kabarnet abattoir workers blockade the county headquarters, demonstrating against "high tax rates (amidst) unhygienic conditions, insecurity and lack of protective gear in the slaughter house."⁸² In Maralal, market vendors took the local council to court over the lack of services, (they lost the case). In coastal Kenya, while public perceptions of improvements to Kilifi's six departmental services ranged between 14% and 43%, perceived deterioration was between 23% and 75%.⁸³ In Kwale, respondents reported no improvements in four departments with 100% of the respondents perceiving sanitation services to have deteriorated. In Mombasa, the perceptions of improvements ranged between 2% and 13%, while deterioration was between 51% and 68%. These findings suggest a risk that people will be unwilling to pay taxes unless county governments involve them more in their decisions.

81 See Matata, Lydia, 'High Court declares Kiambu finance law illegal.' The Star, Thursday, April 17, 2014.

82 See Habel Shiloli, 'Butchery Attendants in Demo over High Taxes', at <http://kenyanewsagency.go.ke/?p=10352> Accessed 3/3/2014

83 NTA, 2014

4. An Overview of County Budgeting

A comprehensive review of the inaugural county budgeting processes has not been undertaken because identified primary information has not been collected from stakeholders. However, it has been possible to glean some insights into county experiences from existing literature. The fundamental problem does not seem to be county public financial management as such. Instead, it appears to be the extent to which people – national level and county leaders, CECs and wananchi – have read, understood and are willing to abide by the provisions of the Constitution and the transformational paradigm shift it brings on board. A fundamental departure of the 2010 Constitution is that it is a democratising framework, viewed against the backdrop of the 33 changes to its predecessor which were about creating an unquestionable, ‘imperial presidency’.⁸⁴ While the old constitution eventually centered power on an infallible president, the new one centers power on the people, as aptly declared by Article 1 (1)’s “All sovereign power belongs to the people of Kenya...” This is the context within which county leaders must understand Article 10’s National Values and Principles of Governance, Chapter 4’s Bill Of Rights, Article 100 on the inclusion of marginalised groups, Article 104 on recalling parliamentarians and Articles 118 and 196 on public access and participation in parliamentary and County Assembly debates, amongst many other such wananchi-liberating provisions.

These ideals are reflected in devolution legislation, such as the CGA’s Part VIII (Citizen Participation), IX (Public Communication and Access to Information), X (Civic Education), XI (Planning) and XII (Delivery of County Public Services). They are also reflected in the PFMA’s Section 137 (consultation forum), and its imperatives to publish and publicise various public financial management instruments, including the Fiscal Strategy Paper (Section 117) and County Budget Review and Outlook Paper (Section 118). That county governments may not be living up to these ideals is well illustrated in the NTA’s (2013) findings that an average 55% of the Kilifi, Kwale and Mombasa respondents were unaware of the core budgeting tools, while only an average 6% were aware of County Budget and Economic Forum (CBEF). Such levels of unawareness undermine the entire planning and budgeting process.

Capacity Building and Civic Education

OCOB⁸⁵ acknowledges that the circumstances were not right for county governments to produce County Integrated Development Plans (CIDPs) as the basis to develop their annual budgets. Besides the time constraint, various political happenings (including some election petitions, Senate-National Assembly conflicts and the go-slow by Members of the County Assembly over their remuneration) delayed the budgeting process. However, the government itself also hampered the TA to the extent that it has neither completed its audit of the status of counties, nor its civic education activities upon which county governments ought to have built their planning and budgeting activities. Indeed, as illustrated by the instances

84 Sihanya, Ben (2011) *The Presidency and Public Authority in Kenya’s new Constitutional Order*. Constitution Working Paper No. 2

85 OCOB 2013a and OCOB 2013b

of counties budgeting for primary and secondary education,⁸⁶ CECs need not only technical capacity building, but also civic education to understand the Constitution and its imperatives.⁸⁷ The irony here – underscoring the need to view county planning and budgeting in the context of the Constitution – is that county governments are required to conduct civic education and provide access to information which empowers wananchi to audit (monitor and evaluate) such governments.

Some of the budget failings reflect political impunity, such as the ostentatious investments county governments have incurred even as their electors suffer persisting poor access to basic needs. For example, the Kilifi governor reportedly purchased a KES 140 million beachside mansion,⁸⁸ yet residents perceive deteriorating services in health (35%), water (23%) and sanitation (44%).⁸⁹ However, there is a fundamental underlying misunderstanding of the Constitution and its provisions for devolution, some of which reflects a mismatch between what people expected to be devolved and what has been devolved. For example, communities have up to now built all the primary and secondary schools and cannot understand why their management is retained by the National Government. Consequently, there is a need for a deeper unpacking of the Constitution and its implications.

Devolution, Planning and Budgeting

With respect to devolution, planning and budgeting, much has been done in terms of developing templates to simplify the work of the county governments. A big constraint however, is the restricted timetable for the multiple activities, and the fact that the timetable is locked to the National Government's own planning and budgeting timetable. More work is necessary to make the planning and budgeting calendar, and its imperatives, easier to manage by the kind of people at the disposal of county governments. Additionally, non-government stakeholders also need to do more in the area of civic education and capacity building for planning, budgeting, and monitoring and evaluation. For example, there is a need to develop clearer frameworks for civic education and people participation, which respond to local needs and reflects regional variations, not just in enlightenment, but also in livelihoods.

At various points, weak access to IT has been cited as an impediment in the planning and budgeting process. While the government has launched and rolled out IFMIS countrywide, OCOB⁹⁰ pointed to weak and erratic power supplies hindering the full use of IFMIS, and the resulting resort to manual systems exposing financial management to risks. While the government's policy under the rural electrification scheme is to connect all public facilities to the national grid, and the Rural Electrification Authority claims 90% coverage of its master plan, the picture on the ground is quite different, with large parts of the country still relying on old generators. Additionally, poorly managed power outages undermine the exploitation of IT systems, such as IFMIS.

86 IEA et al, 2013

87 See Ondari, Dinah, '29 counties confess inability to fully handle devolved functions' *The People*, April 11, 2014

88 See Kazungu, Samuel, 'Governor's Sh140m mansion raises storm' *Daily Nation*, Saturday, January 25, 2014.

89 NTA, 2013. It is for example, inconceivable that Machakos County citizens prioritised a police patrol vehicle for every 5.5km², or indeed, an ambulance for every health facility in the county, over safe water.

90 OCOB 2013a and OCOB 2013b

Data Based Planning

County planning must be based on sound data, which is why the TA was assigned to audit the status of counties in the context of its role overseeing the asymmetric transfer of functions to the counties. In this context, a primary TA function was to determine respective county and sector costs of service delivery. The costing data would inform the CRA's own costing of service delivery and the national and county levels, and its consequent equitable sharing of national revenues between the two levels. It is therefore a big obstacle to good budgeting that such unit costs do not exist, meaning individual counties arrive at their own estimates of the costs of service delivery, leading to inflated and unrealistic county budgets.⁹¹ It is opportune that the Kenya National Bureau of Statistics (KNBS) has recently partnered with the Society for International Development (SID) to provide household welfare estimates at sub-county level, based on 2009 census data.⁹² Thus, TA's development of standard costs of service delivery should enable the development of realistic, well justified budgets.

Fiscal Discipline

In terms of fiscal discipline reflected in the structure of the budget, some of the county governments did well, such as with respect to the 30% development share of the budget, even if among these were commitment to debts that the TA had already declared as not part of their mandate. The existing development disparities across the counties are the result of years of unequal investments, especially in physical infrastructure. While the lagging counties must feel the need to urgently catch up in terms of infrastructure, their strategies must be realistic in recognising the recurrent (O&M and PE) budget implications of such investments. At the same time, county governments must, with TA help, rationalise their staffing needs to curb the PE burden. County staffing is one area that has been particularly mismanaged during the transition to devolution. The expectation was that devolution provided an opportunity to employ 'our own', especially for the many counties whose people have been overlooked by the national public service.⁹³ Meanwhile, devolved services had previously been delivered either by national civil servants in district ministry and departmental offices, or by LA officers, with both sets of officers continuing in employment during the on-going transition. Consequently, it was a misconception that county governments needed to employ extensively at inception, which could have been avoided had the TA audited pre-existing human resources. The effect has been to burden county governments with the wages of their new employees as well as former LA employees. Rightsizing is imperative.

91 IEA et al, 2013; OCOB, 2013a

92 KNBS and SID (2013), *Exploring Kenya's inequality: Pulling apart or pulling together?* Nairobi: KNBS/SID

93 The National Cohesion and Integration Commission showed that the largest ethnic group in Kenya account for 17.7% of the 2009 population, but 22.2% of the civil service employment. See National Cohesion and Integration Commission (2011), *Towards National Cohesion and Unity in Kenya: Ethnic Diversity and Audit of the Civil Service. Volume 1, Abridged Version.* Nairobi: NCIC

Revenue Generation

On revenue generation, CEC and County Assemblies need to be aware of how far people are willing and able to pay any taxes, rates or fees imposed. Consequently, the fee determination process must be a wide consultation process since socioeconomic conditions are not always standard across a single county.⁹⁴ County governments must appreciate that the duration of their finance acts is a single FY meaning everything contained therein must be pertinent to that FY alone. Additionally, because the county governments need their citizens to own the taxes, these should be few, equitable and unambiguous. A focus group discussion in Siaya County, for instance, highlighted the need to rationalise the size and frequency of market fee payments against the commodity for sale.⁹⁵ Tax compliance is an acquired value; county governments would do well to start with a few clearly understood and accepted taxes, so that targeted people can pay, before expanding their nets to more taxes and people. A Kenya National Chamber of Commerce and Industry official lamented the total exclusion of the business community from tax identification, lauding the consultative relations they had with the defunct LAs, while also pointing to the risk of many small businesses shutting down due to an inability to pay the new rates. A related issue for the efficiency of tax compliance and collection is the assurance of service delivery.

94 See Nyanjom, 2014. For example, Siaya County's fishing communities on the shores of Lake Victoria receive comparatively lucrative daily cash payments in contrast to the periodic earnings of the farming communities along the Kisumu/Busia road. In Kajiado County too, there is a great disparity to pay between the residents of Kiserian, Kitengela, Ngong and Ongata Rongai, and those of Bissel, Magadi and Namanga.

95 The discussion wondered whether a flat daily market fee is fair for a chicken seller who might require several visits before making the sale, compared for example to a goat seller.

5. Conclusion

Decades of centralised service delivery in Kenya led to inequalities of provision and outcomes of services, which in turn led to sustained demands for devolution – eventually included in the 2010 Constitution. The issue now is to implement the Constitution’s provisions, which for county governance were launched in March 2013. One year into devolution is a good opportunity to review performance and determine bottlenecks that can be resolved at this early stage. While frameworks to implement devolution have been largely put in place, there have been impediments at various stages, not the least the supremacy battles between the two houses of Parliament – the Senate and the National Assembly. This report has used secondary data to undertake an analysis of performance during FY 2013/14 first quarter budget through which it was required to distinguish good lessons for amplification, as well as shortcomings. However, the available secondary material did not allow for a sustained, step by step audit of county governments’ adherence to the constitutional and legislative planning and budgeting frameworks outlined in Section 2, even if much has been analysed in Section 4

Among the ‘positives’ in Kenya’s devolution journey are the following:

- The Constitution provides a good conceptual framework for devolution and for the management of national and sub-national public finances.
- The Ministry of Local Government did well in establishing a competent task force that reviewed international devolution experiences and came up with a good framework for Kenya, which, critically, provided that *money follows functions*.
- While the early appointment of the CRA diverted attention from the substantive devolution issues surrounding the Fourth Schedule eventually mandated to the TA, the CRA early on became involved in the debate on the sensitive issue of vertical and horizontal sharing of national revenues, eventually arriving at the Equitable Share formula.
- While the preparatory work that should have led to the inaugural county government budgets was delayed, the CRA and the TA were able to produce budgets with which to launch the county governments. These should have provided the county governments with a template for their own FY 2013/14 budgets, even if nearly half the county governments initially seemed to ignore the guidance.
- Varied non-state actors – multilateral and bilateral development partners, national and international non-government organisations, grassroots organisations and the media – and state agencies, including government departments and other public institutions, perpetuate the debate on effective devolution, identifying shortcomings while also highlighting lessons to carry forward.

However, the more readily available evidence of the first FY of devolution is of shortcomings at multiple levels of responsibility. We draw on Sections 2 to 4 and summarise them as follows:

- Three and a half years after its promulgation, the Constitution either remains little understood, or it is misunderstood, or is just ignored. While many resources were invested in educating citizens about the Constitution, this has not enabled the substantive implementation of its imperatives. Not even the presidency and the government at large – Parliament, Judiciary and the Executive – is exempt from blame on this score.
- The failure of the Executive to assist the TA to work effectively meant that on the eve of the March 2013 election (when county governments were established) there was little preparation for devolution. The TA's mandate had critical inputs – see appendices Box A – the absence of which extensively undermined the county government budgeting process.
- Either the governors misunderstood the constitutional and legal roadmap for devolution, or they were mischievous in demanding roles and budgetary resources beyond those intended by the phased, asymmetric transfer process. Evidence, such as provided by OCOB (2013a; 2013b) underscores the lack of preparedness by the governors and their county governments.⁹⁶The President's populist conduct in these respects has aggravated rather than helped matters.⁹⁷
- Weak capacity building, including creating pertinent data sets by the TA, meant that county governments were little prepared for budgeting the functions that they injudiciously took on board all at once. Matters have not been helped by the tight timetable for budgeting, and the failure to involve *wananchi* as demanded by legislation.
- Consequently, many inaugural county budgets have been unrealistic – hugely under- or over-estimated – and have lacked the specifications laid down by the PFMA – such as distinction between recurrent and development spending. Some have been presented as a lump-sum figure rather than being line-itemised.
- Weak county government capacity has also been reflected in their own revenue generating initiatives, many of which did not involve consultation with citizens over taxes, fees and rates, resulting in a lack of ownership among the *wananchi* who should be paying them.
- OCOB⁹⁸ reports weak budget implementation performance leading to low absorption rates. This is explained by the weak capacity of county governments in relation to the wide array of activities undertaken, the politicisation of processes, over-ambitious programmes, and procurement bottlenecks.

96 See Ondari, Dinah, '29 counties confess inability to fully handle devolved functions'. *The People*, April 11, 2014

97 See Mosoku, Geoffrey, 'Governors win battle over devolved funds in deal hammered by Deputy President William Ruto'. *The Standard*, Tuesday, August 6th 2013

98 OCOB 2013a; 2013b

The following are recommendations based on the shortcomings identified above:

- There is a need to stress the fact that county planning and budgeting are an integral part of the broader democratic governance reforms intended by the Constitution. Consequently, civic education for enlightened participation is an imperative for the TA, county governments and non-government stakeholders. This participation should be at the planning, budgeting, implementation, and monitoring and evaluation stages.
- The TA's role in establishing county capacities and service delivery costs is important to enable county governments to exploit the welfare data provided by the KNBS and SID (2013). This will inform the vertical sharing of national revenues.
- County governments must also invest in assessing service delivery costs, which must vary regionally, and this will inform the horizontal share of revenues. It will also help counties to prioritise activities, given their limited resources.
- The planning and budgeting exercises must be widely discussed to strengthen the sense of ownership, especially if some of the resources for implementation are expected from the beneficiary communities.
- County governments must also condition themselves to think medium to long term, which will enable them to rationalise interventions over time, as well as explain the division between recurrent and development spending.
- County governments must also work on their revenue generation strategies. Taxes, rates and fees should not be included in the finance bill for their own sake, they must be realistically identified in consultation with the people who are going to (i) consume the services the revenues provide, and (ii) pay the taxes, fees or rates. It is strongly suggested that counties start with a small set of well understood taxes, and move slowly to widen the bracket, if ownership and compliance is to be assured.
- Investments must be made to improve the collection and management of revenues from all sources, meaning county governments must move to acquire sustainable IT capacities.
- County governments must deliver the priority services *wananchi* need, which is a prime reason for the planning and budgeting process being widely consulted.

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