Did Counties Deliver?

Evaluating County Budgets 2013-2014

A Short Guide

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Introduction

The Constitution of 2010 provides for a devolved system of governance in which Kenya now has two distinct but interdependent levels of government - the national and county governments - which should cooperate and consult in the conduct of their mutual relations. Kenya is now divided into 47 counties. This is known as a devolved form of government, which is different from the former structure where everything was run by a central government.

One of the objects of this system of governance is to promote social and economic development and the provision of easily accessible services throughout the country. To realise this object, the Constitution provides that county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively.

While the Constitution provided the principles of devolution, a number of Acts of Parliament were passed before the 2013 elections, to allow for devolution to legally take place. These created the regulations and procedures through which the counties would govern themselves, and relate to national government, including how they would use the funds that have been allocated to them by Parliament and through the national government.

To assess whether the newly created counties used the funds as provided for by the Constitution and relevant laws during their first year of operation, AfriCOG reviewed the performance of county governments during their first six months of existence to evaluate the way they have managed public finances on behalf of citizens. This is a summarised version of that review.[1]

1 See AfriCOG, "Delivering on Devolution? Evaluating County Budgets 2013 – 2014, August 2014

Why Devolution?

The national government of Kenya is divided into three separate powers:

- The Executive, meaning the Office of the President, deputy president, and cabinet
- The Legislature, meaning the law making bodies of the National Assembly and the Senate
- The Judiciary, meaning those who interpret and administer justice, i.e. judges of the superior courts, magistrates, other judicial officers and staff.

Each power is meant to act as a check and balance on the other two so that no arm of government becomes stronger than the others. Prior to the Constitution 2010, power was vested in the central government, which also controlled and allocated resources, resulting in the marginalisation of many parts of the country.

However, the Constitution emphasises that power ultimately belongs to the people of Kenya, who in turn delegate it to the government to rule on their behalf and according to their wishes. By devolving government to county level it becomes easier for citizens, or *wananchi*, to get involved and to ensure that the governing process is taking the views of *wananchi*, including those who were previously marginalised, into account. To facilitate this, the constitution says there must be public participation and civic education of *wananchi*.

County government is set up to promote democracy and accountability, recognise diversity and the rights of communities (especially marginalised ones), encourage efficient delivery of services, support equal sharing of resources, act as a check on the central arms of government and ultimately take government closer to the people.

The Constitution, the County Government Act and public participation

As mentioned above, the Constitution requires that county governments should promote public participation, interpreted by the County Government Act 2012 as: "non-state actors shall be incorporated in the planning processes by all authorities" (Section 104.4). The Act says that before *wananchi* participate in public affairs they should be educated on the workings of government and the state. This is known as civic education. This, the Act states (Part X, 99.2b.), is necessary for "improved understanding, appreciation and engagement in the operationalization of the County system of government".

Thus, county governments are required to organise civic education and promote public participation. They can do this in various ways, such as town hall meetings, public forums, notice boards, TV and radio programmes, social media. Furthermore, the Act states (Section 96.1) that, "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 in accordance with Article 35 of the Constitution".

How Do Counties Decide How to Spend Their Money?

Every County Treasury must decide how to spend the money that is allocated to it. They do this by establishing a County Budget and Economic Forum (CBEF), which is composed of the Governor, the County Executive Committee (CEC) and members of the public. The CBEF creates a development plan for the county, which forms the basis of a work plan and proposals for expenditure, all of which must be approved by the CEC. Once approved, the proposals are forwarded to the County Assembly in the form of the County Allocation of Revenue Bill, which must be approved within 90 days. Counties are also required to propose ways of generating revenue, contained in the County Finance Bill. Adherence to these procedures, among other necessary financial measures, is ensured through the Office of the Controller of Budget (OCOB).

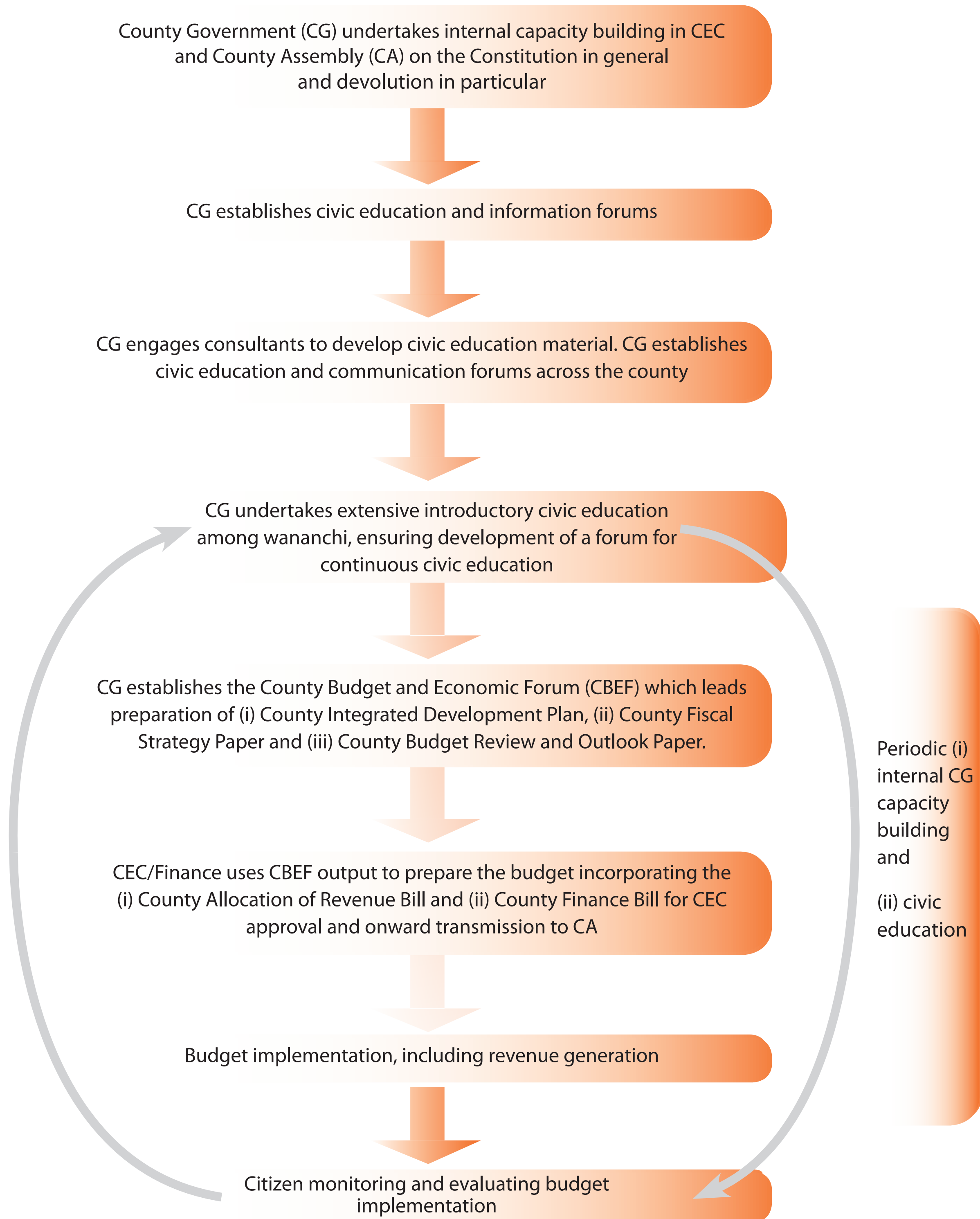
The procedure for county budgeting for the first year of devolved government is shown in Figure 1.

The Transition Authority

The Transition Authority was established to steer the way to successful devolved government. It was supposed to decide resources needed, develop initial county budgets, calculate assets and liabilities to be managed during the transition, assess actual human resources against need, and oversee the use of personnel during the transition. It was also to advise the Commission on Revenue Allocation (CRA) how to fairly share revenue between the national and county governments.

Unfortunately, delays in establishing the Transition Authority meant that it could not properly fulfil its mandate, resulting in the launch of county governments without adequate information and planning. Thus, the decision on which functions of government, initially, to keep at the national level and which to transfer to counties, was made without proper consultations due to time constraints. Governors disagreed with the decision and requested the new President to transfer all functions and finance immediately, (whether the counties were prepared or not). The President bowed to political pressure and issued a decree directing this.

Figure 1: Interpreting the Constitution's Budget Cycle



Source: AfriCOG, 2014, Delivering on Devolution? Evaluating County Budgets 2013-2014

County Spending March to June 2013

The first budgets given to counties were for the four months up to June 2013 (the end of the Financial Year 2012-13). The highest costs at the end of the period, were for operations and maintenance (41%), followed closely by salaries and allowances (40%). Thus, already over 80% of the budgets were allocated to on-going activities. Development spending amounted to only 8%. Counties also spent 11% on the unauthorised payment of inherited debts, interest and pending bills, contrary to the TA's advice. A further analysis (Table 1) shows that only 6 counties used more than 90% of their budgets, while 7 used less than 50%.

- The OCOB identified weak human capacity and weak financial management structures as major constraints. One major problem was internet connectivity due to erratic power supplies, which prevented proper use of the Integrated Financial Management System (IFMIS) and the Government Pay System (G-PAY). This problem might have been resolved if counties had used some of their development budget to invest in developing the electricity supply. Following procurement regulations was also a challenge for the new counties which slowed down development spending.

A seven-county study by the Institute of Economic Affairs[2] 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 study of Kilifi, Kwale and Mombasa counties finding that 96%, 87% and 84% of respective respondents reported not being aware of the County Integrated Development Plan.

Source: Delivering on Devolution? Evaluating County Budgets 2013-2014 (AfriCOG)

2 Kenya, Article 19, and I Choose Life – Africa (2012), Learning By Doing: Toward Better County Budgets in 2014/15: A brief

Table 1: County Resources and Absorption Rates, March to June 2013

Counties	Allocation (KES '000)	Usage (%)	Counties	Allocation (KES '000)	Usage (%)
Baringo	267.9	87.7	Mandera	408.9	52.4
Bomet	270	74.1	Marsabit	262.2	74.4
Bungoma	434	82.1	Meru	443.1	81.8
Busia	338.3	90	Migori	332.3	84.6
Elgeyo Marakwet	203.5	64	Mombasa	1132	79
Embu	287	62.8	Nairobi	4360	89
Garissa	294.1	60.1	Nandi	278.1	99.2
Homa Bay	303.4	62.1	Narok	473	83.6
Isiolo	212.3	63.2	Nyamira	240	65.2
Kajiado	352.5	78	Nyeri	562.6	60.8
Kakamega	487.1	72.8	Samburu	230.1	59
Kericho	260.5	84.1	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	Trans Nzoia	541.2	43
Kitui	493.4	63	Turkana	359.9	62.2
Kwale	303	64.6	Uasin Gishu	615.3	91.9
Laikipia	289.9	97.8	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

After examining the results in Table 1, OCOB, the supervising body for county budget expenditure, concluded that county governments had not been sufficiently prepared for public finance management responsibilities. The first resources allocated to counties were based purely on assessments because the Transition Authority and the CRA could not consult with counties that did not yet exist. OCOB made recommendations, including improving the planning capacity of counties, ensuring they stick to the correct procedures, and encouraging the growth of revenue through a legal framework. OCOB also stressed that counties should examine their labour needs and audit the previous Local Authority's accounts.

County Spending July to September 2013

At the same time that counties were spending their allocated budgets they were also expected to be planning their budgets for the next financial year beginning July 2013. A key step in doing this in the participatory manner required by the Constitution and related laws would have been the investment in capacity building of County Executive Committees and civic education for the public. This was not done by the majority of counties, resulting in low awareness of the status of county planning. OCOB noted most counties had no fiscal strategy papers nor a County Integrated Development Plan (CIDP). Staffing was also a problem: while the new counties had inherited the previous Local Authority and some national government staff, they were also actively hiring new staff for the new institutions that formed the county government, without exact knowledge of their staffing status. This meant that they were poorly prepared for this process.

How then did counties work out their budgets?

The truth is that the new counties could not make accurate assessments of their needs and thus produced unrealistic budgets with large deficits, not knowing how to resolve any shortfalls. Most budget proposals did not match their priorities to available resources, and think about how to continue funding them in future. While some were lump sums with no distinction between the recurring and development spending that they were proposing, others lacked unit costs to show how total costs were calculated. Thirteen counties proposed unrealistic levels of development spending without showing how they would hire the extra staff needed to implement the increased activities. Some counties seemed to be ignorant of the share of monies which they could expect to receive from national government.

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…

Source: Delivering on Devolution? Evaluating County Budgets 2013-2014 (AfriCOG)

Budgets also took on functions that were actually the role of the national government, such as education and did not show that counties had thought about how they would gradually take on greater responsibilities for service delivery as their capacities grew.

The problem was partly caused by the presidential decree that caused all services to be transferred to the counties in disregard of the functions set out in the constitution.

After the budgets were reviewed by OCOB it is interesting to note that only 19 counties did not change their budgets. Fifteen counties decreased the amount budgeted, including Mombasa which revised its own budget downwards by 46%, suggesting that the original must have been vastly inflated. Thirteen counties increased their budgets after review.

Despite the possible lessons that could have been learned from the analysis of March to June 2013 budgets, county spending was still concentrated on personnel and operations and maintenance costs. In fact personnel costs increased to 55% (from 40%). Total development budgets meanwhile, decreased from 8% in the previous quarter, to 7%. Perhaps worse, the average spend on development costs for the three months from July to September 2013, was actually only 6.5%, due, says OCOB, to the absence of work plans and development plans, together with the difficulties around the public procurement procedures, which are lengthy and complicated.

One issue which reduced the perceived level of county development spending was that the OCOB recorded the purchase of vehicles under recurrent spending instead of under development spending, which is 'the creation or renewal of assets'.

Did Counties Generate Revenue in the Same Period?

Although there is great potential for revenue generation within counties it would appear that there is less enthusiasm for this task. Revenue collection was well below the total target of Ksh 67 billion. Different counties also had different revenue targets ranging from Ksh 38 million to Ksh 3.5 billion. While taxation was used as a source of revenue it was sometimes unfair and unrealistic, with some counties showing massive increases compared to Local Authority days. For instance Samburu and Siaya counties increased the number of taxes from around 15 to 400 and 750 respectively. Whether these tax hikes were created in consultation with the public (as required by the County Government Act) is unknown, but unlikely.

In addition, those who pay high taxes expect good services. Yet some counties displayed a deterioration in services as perceived by the public. For example, in Mombasa, the public thought that improvements in service delivery ranged between 2% and 13%, while they saw a deterioration of between 51% and 68%, suggesting that people are unwilling to pay taxes unless they are happy with service delivery and are involved in the decision-making process.

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".[3]

Source: Delivering on Devolution? Evaluating County Budgets 2013-2014 (AfriCOG)

3 See The decision of Justice G.V. Odunga in Petition No. 532 of 2013 Peter N. Gakuru & Others v. Governor of Kiambu County & others

How Can Counties Do It Better?

Take note of the shift in power Counties should be more aware of the Constitution 2010, which basically democratises power, taking it solely from a central body and giving it to the people of Kenya (Articles 1, 10,100,118, and 196). They should also familiarise themselves with the County Government Act which defines the devolution concept, including citizen participation, public communication and access to information, civic education, planning and service delivery. Each county is obliged to publish its financial strategy and its budget review, yet most *wananchi* are unaware of the tools used for county budgeting, including the County Budget and Economic Forum, which is supposed to include representatives of the public.

Develop civic education It is acknowledged that counties had little time to develop civic education when devolved government was introduced. However, that civic education, which would allow public participation in the process of government, including monitoring and evaluating county performance, now needs to be fully developed. Should a Ksh 140 million governor's mansion in Kilifi have been constructed while residents perceived health, water and sanitation services to be deteriorating? Civic education and public participation in county government might have prevented this.

Build planning capacity More work is necessary to make the planning and budgeting calendar easier to manage by the people with the level of skills at the disposal of county governments. This includes clearer frameworks for civic education and people participation, which respond to local needs and reflect regional variations. Developing IT capacity through extending a consistent electricity supply to rural areas will also help.

Use official data to prepare budgets Counties should be using reliable, proven data when preparing budgets, based on the actual costs of service delivery. If counties do not have the required data then the Transition Authority, or other official body, should speed up the process of developing standard costs to be used when creating budgets.

Be disciplined in spending This includes realistic strategies that recognise the implications of heavy investments in personnel and operations and maintenance. Counties should review their staffing levels and eliminate unnecessary jobs in a fair and objective manner.

Consult on revenue generation People are reluctant to pay high taxes for poor services. Thus the figures for fees and taxes should be reached after consultation with public representatives. New taxes should be introduced gradually in a participatory manner as services improve. If the citizens of a county are part of the process then they will be more likely to accept the introduction of new taxes.

Conclusion

Positive experiences

- The Constitution provides a framework for devolution and for managing national and sub-national finances.
- The task force appointed by the Ministry of Local Government reviewed the devolution experiences of other countries and came up with a suitable framework for Kenya - critical to which was that tasks and roles should be drawn up before money is allocated.
- The Commission on Revenue Allocation created an 'Equitable Share' formula for the distribution of finances to counties.
- The Commission on Revenue Allocation and the Transition Authority produced initial county budgets that should have been a model for the counties to create their own budgets the following year.
- The devolution debate, and how to do it better, is ongoing and lessons are being learned.

Shortcomings

- The Constitution 2010 is still misunderstood or ignored by people and institutions from the top down.
- While the Transition Authority had a critical role to play in smoothing the way for devolution, it received little support from the Executive arm of government.
- Evidence provided by OCOB shows that governors and the county governments were poorly prepared for devolution. The fact that governors ignored the Transition Authority and went straight to the President, demanding responsibilities and money that ignored decisions already made, and which the President granted, created difficulties from the start.
- County governments were little prepared for budgeting tasks, especially under a tight schedule. The failure to involve *wananchi* in the process did not help.
- Inaugural county budgets were unrealistic, hugely over or underestimated and some did not show the difference between recurrent spending and development spending, while others were presented as a lump sum.
- County revenue generation has been poor and done without public input. In some counties high fees and taxes were imposed, often without logic, causing *wananchi* to protest.
- The expenditure of available funds, or absorption, was low due to weak implementation, the politicisation of processes, overambitious programmes and procurement bottlenecks.

Recommendations

- Civic education is essential to public participation in government, as envisaged by the Constitution, including the planning, budgeting, implementation, monitoring and evaluation stages.
- The Transition Authority's role is important to establishing the capacity of county counties and assessing service delivery costs so that counties can use official data to create future budgets. This will also assist in the sharing of national revenues.
- Counties should also assess service delivery costs to help them prioritise activities and guide revenue sharing.
- The planning and budgeting exercises must be widely discussed to strengthen a sense of ownership, especially among *wananchi*, who may be contributing to the resources for implementation.
- County governments must condition themselves to think medium to long term. This will assist them to distinguish between recurring and development spending.
- Fees and taxes must be realistically identified in consultation with the people who are going to use the services the revenues provide, and pay the taxes, fees or rates.
- County governments should invest in sustainable IT infrastructure to improve the collection and management of revenues.
- County governments must deliver the priority services *wananchi* need - a good reason for the planning and budgeting process being widely consulted.

AfriCOG thanks team members, Wycliffe Adongo, Stephanie Wairimu, Noreen Wahome, Wilfred Muliro, Susan Karegi, James Gondi, Beryl Anyango, Jennifer Kamau, Maryconcepter Nzakuva, Eric Mwendwa and Raynor Polo for their commitment to our work.

The production of this publication has been made possible by the support of the Drivers of Accountability Programme, a programme of the Government of the United Kingdom's Department for International Development (DFID), the Danish International Development Agency (DANIDA) and the Canadian International Development Agency (CIDA).

We are also grateful to the Open Society initiative for East Africa (OSIEA) for their institutional support to our work.

The views expressed in this study are those of AfriCOG alone.

May 2015

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