



## Effective, Open and Accountable County Governance

### Focus Areas:

1. Intergovernmental relations that supports devolution
2. Effective county planning, public finance management and staff performance
3. County government and citizens' engagement to improve service delivery and livelihoods

## Introduction

The Act Change Transform led Consortium is currently implementing the Kenya Devolution Programme (KDP), a four year (2021 – 2025) national programme funded by the Foreign, Commonwealth and Development Office (FCDO). The programme aims to address some of the specific challenges facing devolution in selected counties in Kenya. The KDP has seeks to make a contribution in five Output Areas. These areas:

1. *Intergovernmental relations that supports devolution*
2. *Effective county planning, public finance management and staff performance*
3. *County government and citizens' engagement to improve service delivery and livelihoods*
4. *Evidence generation, digital technology and learning as enablers of public service delivery and reform*
5. *UK Government Portfolio in Kenya is better aligned with county government priorities*

Successful delivery of the KDP requires a deep understanding of the intervention context including the power dynamics. To enhance understanding of the implementation context, the Consortium committed to generate political economy analysis briefs on a monthly basis. The monthly briefs are to provide clear and succinct synthesis of key issues in the KDP implementation context with a focus on the five Output Areas. The bulk of the data that informs the brief report emanates from a close monitoring of the media in Kenya. Each *Monthly Briefing Note* should be no more than two pages. This *Monthly Briefing Note* provides a snapshot of main issues during the month of January 2022 in Kenya's political economy that may impact on the implementation of the Kenya Devolution Programme.

## Political Economy Analysis: April 2022

### Highlight of Key Issues

This section provides an overview of key happenings in the country and their implications for the implementation of the KDP and in particular the five Output Areas.



### 1.1. Intergovernmental relations that supports devolution

Effective intergovernmental relations is a critical cog to optimal functioning of the devolved system of governance in the country. The Constitution envisions a situation where both the national and county governments; county governments amongst themselves cooperate, consult and have seamless coordination between and among themselves. There are also several intergovernmental organizations that play in that space and their cooperation, consultation and coordination with the two levels of government is equally critical.

However, in practice intergovernmental relations have continued to be constrained by conflicting roles, supremacy struggles among the two levels of government and within county governments. Slightly over ten years since the advent of the devolved system of governance, the relationship between the national government and county government can at best be described as lukewarm.<sup>1</sup> Tensions between the two levels of government continue to be experienced through delays in release of funds to the county governments; and poor coordination for the concurrent functions. Data from interviews conducted in the month of April 2022 depict the relationship between the national and county governments as poor.

Q. How would you describe the relations between the national government and the county governments today? Are the relations very good, poor or what is your view?

*"I would describe the relations as lukewarm. It is about a contest over resources and many vested interests between the two levels of government. This situation is likely to hold until such a time when there is a better framework on resources allocation and sharing". (Key Informant Interview, Kiambu County).*

*"The relationship is poor. Resources have become an issue leading to rising pending bills by the county governments. The national government continues to mishandle the issue of the revenue sharing formula and this continues to disadvantage previously neglected and marginalized counties". (Key Informant Interview, Mandera County).*

*"I would describe the relationship as lukewarm. There is misunderstanding on several issues especially on shared functions, resources and a patronage system where the national government does not treat counties with equal respect. You can also see that in how sometimes the IFMIS system is manipulated during certain times which greatly inconveniences the counties". (Key Informant Interview, Kakamega County).*

A consequence of poor coordination between the national and county governments is the deteriorating security situation across a number of counties in the country during the month under review. In this category, one would include ethnic-based clashes in parts of Marsabit and Isiolo; rising cases of banditry and cattle rustling in Elgeyo Marakwet and Baringo counties; building tensions between pastoralists from the neighboring Tana River and Garissa counties with communities in Kitui and Makueni counties; as well as between Isiolo and Meru counties. Some of these cases of insecurity are linked to pasture and water as these become scarce under the ravaging drought situation across a number of counties in the country. There are fears that, with the prevailing drought condition in parts of the country and communities migrating in search of pasture and water, this may exacerbate the insecurities in some of the counties e.g. Tana River, Makueni, Kitui and Wajir to mention a few. The counties capacity to address these large-scale challenges is also limited.

*"Drought is a catalyst for conflict in this area. That we are having drought and an election at the same time is a toxic combination which could be a powder keg for violence especially among many of the communities in the Tana River belt". (Key Informant Interview, Tana River County).*

*"In Makueni county, we have no elections related tensions. Our greatest problem is about the drought and how to mitigate the impacts. We are also seeing an influx of pastoralist communities which may bring conflicts with the locals over pasture". (Key Informant Interview, Makueni County).*

*"Loss of lives from drought seems of less importance as election campaigns take center stage. There is need to refocus on the most pressing issues at the moment and addressing the unfolding drought-instigated humanitarian crisis". (Key Informant Interview, Wajir County).*

*"Already we are seeing scaling down of operations by some operators in the hospitality industry. The increasing drought is also creating tensions between communities who practice agriculture and the pastoralists including those coming from as far as Ijara in Garissa and further counties upwards". (Key Informant Interview, Kilifi County).*

<sup>1</sup> This assertion is on account of views generated through key informant interviews in the month of April 2022 targeting various stakeholders including those working with the national and county governments.

The establishment of a military training camp within Turkana County is seen as one way of easing security challenges especially along the international border with Uganda, South Sudan and Ethiopia. Besides enhancing security along the international border, the presence of the military in the area will be beneficial to the local communities through development initiatives such as enhancing access to water.<sup>2</sup> Still on security, the month of April saw an exchange between the Governor of Laikipia county and the Ministry of Interior and Coordination of National Government over delays in the construction of three police stations in insecurity prone regions of the county. The three are Ol Moran, Luniyek and Survey police post. While the two levels of government had committed to jointly funding the project, delays became apparent as the project had not been factored in the 2021/2022 fiscal year.

To address some of the challenges in intergovernmental relations, the Budget Statement for the financial year 2022/2023, identified a number of proposed legal and policy instrument whose passage would strengthen both vertical and horizontal cooperation, consultation and coordination of government. These instruments include National Rataing Bill 2021; sharing framework for revenue from mineral royalties among the national government, county governments and communities; operationalization of Articles 187 and 189 of the Constitution on transfer of functions between the national and county governments. In the case of the latter, the proposed framework will provide transparency in administration of intergovernmental transfers in respect to transferred functions and cooperation between and among the levels of government.

The proposed National Rating Bill if passed into law would provide direction on the imposition of rates on ratable property. At present, local level politics impact heavily on revenue raising in the counties as the local politicians fear political backlash from the electorate if the rates are deemed high. The proposed framework on sharing of revenue from mineral royalties would seek to enhance equity.

## 1.2. Effective county planning, public finance management and staff performance

During the month under review, the most outstanding issue impacting on county planning and public finance management are the proposals contained in the Budget Statement for the financial year 2022/2023. Some of these touch on reforms in public procurement; amendment of the Public Procurement and Asset Disposal (Amendment) Bill 2021; and measures to enhance own source revenue by the county governments. Public procurement and internal audit units remain a weak link in the public financial management chain. In some instances, some departments within the counties perceive internal audit as performing the role of policing thus creating poor working relationships with the internal audit. This is aptly captured in some of the key informant interviews data:

*"There is always bad blood between the internal audit and other departments because of the perception of them being the police within government. However, the internal audit unit is critical in ensuring that public finances are utilized within the established framework. The only problem is that they often come at the tail end of the transactions chain and often their reports are after the event which is rather reactive and not proactive which would help prevent mistakes from happening".* (Key Informant Interview, Kiambu County).

*"A proper functioning internal audit would go a long way in securing public finances. These units should also be well resourced. This way the level of wastage of public funds would be greatly reduced.".* (Key Informant Interview, Machakos County).

Data from key informant interviews point at the potential of e-procurement system as a remedy to the challenges in public procurement systems. However, even though the on-going digitization of procurement has enabled some level of transparency, there are concerns on the ability of the special groups, majority of whom lack access to the internet or not even literate enough to fully embrace e-procurement. If not well thought out e-procurement while seeking to promote transparency may worsen exclusion of already marginalized groups who may possess low skills in digital technology to tap into the opportunities.

The proposal in the Budget Statement for the financial year 2022/2023 is to embark on e-procurement system with a pilot phase beginning July 2022, and a target for a full rollout to all Ministries, Departments and Agencies in January 2023. The proposed amendment of the Public Procurement and Asset Disposal Act, would hasten service delivery through a provision where several bidders can be awarded same contract. On own source revenue, the proposed County Governments (Revenue Raising Process) Bill would help create harmony among county governments by regulating the manner in which counties introduce or vary fees and other levies. The proposed Bill would also help address the issue of multiplicity of fees and charges within and across counties.

The rising debt costs, drought, reduced expenditure on infrastructural projects and price pressures occasioned in part from Ukraine – Russia<sup>3</sup> war have the potential of inflating the economic outlook of the country as project during the reading of the Budget Statement. The elections are also going to have an adverse effect on the economic trajectory of the country and consequently the ability to raise revenue. Even as counties got allocated KES 407 billion<sup>4</sup> (KES 370 billion as equitable share, and KES 37.1 billion as conditional allocations), the impact of these funds on service delivery will come to naught in the absence of enhanced oversight from the County Assemblies. Yet, County Assemblies have not been effective in discharging this mandate hence contributing to wastage of public funds.

Q. How effective are the county assemblies in providing oversight in public expenditure management?

*"The County Assembly is not effective. They use their oversight role to blackmail County Executives. They rarely approve anything if there is no direct political or personal benefit. Again, Constitutional tools like the power to recall should be used more vigorously by citizens so as to reign on some of these leaders.".* (Key Informant Interview, Mandera County).

<sup>2</sup> Daily Nation, April 28, 2022

<sup>3</sup> Daily Nation, April 7, 2022

<sup>4</sup> The Standard, April 8, 2022

"The County Assemblies have acted as both defenders and executors depending on the interest at hand. One tragedy of the political meddling by the legislative arm is that they have become deeply involved in project implementation, either as drivers or as contractors, which has greatly compromised their oversight function. Unless there are better protections offered to the County Executives against legislative blackmail and interference, the role of the County Assemblies in protecting and overseeing devolution will remain deeply compromised and not public-interest driven." (Key Informant Interview, Kiambu County).

"The County Executive lives on the shadows of threats and intimidation from the Members of County Assembly. There must be a better way to manage this relationship especially on the question of impeachment of Governors who refuse blackmail." (Key Informant Interview, Turkana County).

On staff performance, counties continue to grapple with the question of building the capacity of their personnel for enhanced service delivery. The culture of performance contracting has gained traction among the devolved units. Performance is appraised on the basis of targets set for individual staff as well as departments. However, despite these interventions, the budget ceilings and other resource limitations have hampered the capacity of counties to provide additional incentives for their staff members (e.g. additional pay for health personnel). Most discontent has been reported from health personnel working for county governments, with the main grievance being delays in the payment of salaries and other benefits.<sup>5</sup> Counties capacity to pay has in part been undermined by delays by the national treasury in releasing funds to the devolved units.

In some counties, there are concerns on the failure by the County Public Service Boards (CPSB) to adhere to the Constitutional provisions and the Public Finance Management Regulations in the recruitment of new staff. For instance, in Baringo, the CPSB has been taken to court over a recruitment of an additional 600 staff, an issue if allowed would contravene the regulations on expenditure on wages and hence worsen the county's wage bill beyond the ceiling fixed by the law. Many county governments violate the fiscal responsibility placed on them by the Constitution on staff hiring.<sup>6</sup>

### 1.3. County government and citizens' engagement to improve service delivery and livelihoods

Engaging citizens in the governance process has gained traction across the country. The participation of the people is provided for as one of the national values and principles of governance<sup>7</sup> in the country. Further, people's participation features prominently as a cardinal feature of Kenya's devolved system of governance. As a consequence, a number of counties have put in place structures to facilitate the participation of the people in their decision-making processes. However, the extent to which these structures are operationalized vary from one county to another, yet their full operationalization holds the key to meaningful citizens engagement in their county's governance processes. As key informants data shows, Makueni county presents an example of how counties can tap on the resourcefulness of their citizens to inform public decision-making processes.

Q. How are citizens involved in matters devolution in Kenya? Do they contribute to planning of projects?

"Yes, the citizens are an integral part of public finance management in this county. In Makueni, we have a village-based development model where the local people identify their projects, which are in turn subjected to public participation. The whole implementation cycle is driven from the village through the wards and the sub-counties. This model not only ensures that we have value for money, but also that communities and citizens get projects which are beneficial and address their needs. There is no better involvement than that where the citizen is the driver of their own resources. What we have done to facilitate citizen participation is by ensuring that all projects are approved and designed at the local level with people's input. We have decided to take government to the communities and this enhances their involvement. When citizens propose something, see it done and are involved in its implementation, that improves their confidence and they are likely to get involved next time. One way of strengthening citizen's participation is by ensuring that their views and decisions are implemented. Citizens do not want to feel like they are coming to validate a decision that has already been made elsewhere". (Key Informant Interview, Makueni County).

In spite of this potential to positively impact on service delivery, public participation in the counties is not without challenges. There are questions around the quality of participation; information asymmetry between the county bureaucrats and the public (e.g. people want information in a language and format that can understand); varied participation gaps (e.g. who participates in terms of age and gender); as well as potential elite capture of the participation process in some instances. Combined, these factors undermine people's agency to meaningfully engage. During the key informants' interviews conducted during the month of April, the issue of access to information and how that undermines effective public participation featured prominently.

Q. How can counties enhance access to information by the public on key county development priorities and programmes?

"While Article 35 of the Constitution guarantees access to information, this access is a challenge even within government itself. You find it difficult to obtain information from a fellow staff member in a department working for the same government. One way on how this can be resolved is through a strict legislative framework that compels publication of the information to the public. However, such a process requires a lot of political goodwill". (Key Informant Interview, Nyandarua County).

<sup>5</sup> For instance, health workers in Meru County issued a strike notice beginning April 25, 2022 over non-payment of March 2022 salaries. For more detail see: <https://www.the-star.co.ke/counties/eastern/2022-04-20-meru-health-workers-issue-strike-notice-over-pay/>

<sup>6</sup> The Standard April, 24, 2022

<sup>7</sup> Article 10 (2a) of Constitution of Kenya

*"We have billboards on projects which show the contractor, the project and the financing department. May be, the next issue that should be shown is the project cost. This would go a long way in ensuring value for money". (Key Informant Interview, Bungoma County).*

*"In an area where digital literacy is low, publishing information on websites and online platforms may not be as effective. An alternative is to disseminate such information directly to the communities through local committees". (Key Informant Interview, Turkana County).*

The fights over the proposed coffee law amendments also point to the challenges in the actual practice of public participation in the country. It is a space that has been subject to multiple interpretation. For instance, in the proposed coffee law amendments, a section of coffee farmers raised concerns accusing the Ministry of Agriculture of locking them out of a public participation forum called to discuss the proposed amendments. Specifically, the National Coffee Cooperative Union wrote to the Agriculture and Food Authority raised their concerns that they had been locked out of a forum to discuss the draft Crops (Coffee) Amendments Regulations 2022, yet the proposals could impact on the coffee farmers that they represent. The union representatives argued that they were kicked out of the meeting on the grounds that they were not part of the invited list of guests to the forum, yet it was labeled as a public participation forum. A similar concern was raised by the Council of Governors on the failure to consult on some of the proposals on coffee law amendments (e.g. removal of the milling license), yet this would impact adversely on county finances.<sup>8</sup>

The example on coffee law amendments demonstrate the current contestations on the practice of public participation in the country and in particular the issue of the format of such forums. There are questions around who is invited and who is not and why, in addition to the emerging issue on the cost of public participation. However, it is ironical that public participation forums convened by county governments are costly, but when the national government holds public forums (public baraza's) more people tend to attend those forums and at no cost.

## Conclusion

This brief has identified a number of occurrences within the month of April, 2022 that have implications for the practice of devolution in the country. As the Kenya Devolution Program works towards making a contribution in strengthening devolution, various partners would want to pay attention to the processes and key milestones in the realization of some of the proposals especially those contained in the Budget Statement for the financial year 2022/2023. Such proposed instruments that may be of interests to the Program include the proposed amendments to public procurement to provide for multiple awards for a contract; legislation on the process of raising county revenue; proposals on sharing of royalties from the extractives; the National Rating Bill as well as operationalization of Articles 187 and 189 on the transfer of functions. On public participation, the issue of access to information as well as the actual process of public participation stands out as a space that partners would want to strengthen.

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<sup>8</sup> Sunday Nation, April 24, 2022.