TIMIZA UGATUZI

Kenya Devolution Programme

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: July 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

Devolution is here to stay. To ensure a smooth and successful implementation of the devolved functions, the Constitution envisions a mutual working relationship between National and County Governments based on consultation and cooperation. During the month under review, we highlight the prolonged drought situation in several counties, the new Mental Health law that obligates counties to provide mental health services, counties' protracted disputes with the National Government over land, counties highlighted as elections violence hotspots, and lastly, Kenya's fight against terrorism.

The drought situation in the country is worsening in 20 of the 23 arid and semi-arid countries pushing millions to the brinks of starvation. Close to a million under-five children are at risk of death from acute malnutrition. The National Drought Management Authority released sh. 1.1 billion under the Hunger Safety Net Programme to vulnerable households in Wajir, Marsabit, Mandera and Turkana Counties. The four counties are among the hardest hit following four consecutive failed rain seasons. An additional sh. 638.6 million was disbursed to 58,000 households under the drought shock responsive cash transfer portfolio. The number of people in need of food assistance throughout the country increased from 3.5 million in May to 4.1 million in June.[1] The Kenya Meat Commission and the Red Cross society have embarked on purchasing livestock to save herders from losses due to the death of animals.[2]

President Uhuru Kenyatta recently assented the Mental Health Bill 2020 into law.[3] The Mental Health law obligates Counties to provide mental health care, treatment, and rehabilitation services within the county health facilities, allocate funds necessary for the provision of mental health care in the county budgets, formulate and implement county-specific programs to deal with the stigma associated with mental illness and to establish a county mental health council among other.[4] This comes at the backdrop of a high-level consultative forum where county governments and the national government agreed to jointly undertake a coordinated and comprehensive review of the existing health policies and legislation. During the forum, all state actors in the health sector present reaffirmed their commitment to the achievement of Universal Health Coverage.[5]

A report by the Intergovernmental Relations Technical Committee indicates that at least 14 counties are locked in bitter protracted disputes with the National Government over land, office space, estates, and revenue. These disputes are likely to cause a stifle between the two governments. Among the counties in dispute with the national Government are Tharaka Nithi, Nairobi, Bomet, Kajiado, Kisumu, Taita Taveta, Uasin Gishu, Bungoma, Kakamega, Vihiga, Garissa, Laikipia, and Kericho. Since 2015, the IGRTC has resolved 11 disputes between the national and County governments and has signed 9 memoranda of understanding.[6]

National Cohesion and Integration Commission planned peace caravans in counties mapped as conflict hotspots at the peak of election campaigns. The peace caravans aim to educate the youth on the importance of harmony in society during the election period.[7] The commission categorized Nairobi, Nakuru, Kericho, Kisumu, Uasin Gishu, and Mombasa counties as high risk and most vulnerable to election violence.

The Kenya Rural Roads Authority has been blamed for poor workmanship in operationalizing its mandate. Meru Governor, Kiraitu Murungi, alludes that the Authority whose mandate is to construct, upgrade, rehabilitate and maintain rural roads was receiving huge funds allocation with unnoticeable accomplishments. The governor wants funds for the construction and maintenance of rural roads channeled to counties.[8]

Terrorism continues to be an ever-present global threat. Kenya has continued to receive immense support in the fight against terrorism from the UK government. During the month under review, an Anti-terrorism police unit complex built with the support of the UK was commissioned

[1] The Standard,1 July 2022
[2] The Standard, 21 July 2022
[3] The Standard, 3 July 2022
[4] Kenya Gazette Supplement No. 211 (Senate Bills No. 28)
[5] https://cog.go.ke/media-multimedia/reportss/
[6] The Star, 5 July 2022
[7] The Star, 4 July 2022
[8] Daily Nation, 9 July, 2022

at the Coast regional police headquarters in Mombasa county.[9] This support stems from the UK-Kenya strategic partnership from 2020 to 2025. The strategic partnership has 5 main pillars among them security and stability which focuses on counter-terrorism.[10] The UK has also supported Kenya in training on terrorist financing, witness interviews, and improvised explosive devices. Two more Anti-terrorism police units are set to be constructed in the Western and Northern Eastern regions.[11]

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

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County Planning

The National Lands Commission has called out counties over lack of spatial plans and poor use of land resources. The County Government Act provides that Counties should have spatial plans in place. Over the last 10 years, the commission has only approved 6 spatial plans for Lamu, Kericho, Makueni, Bomet, Baringo and Kilifi counties. Kwale and Narok counties' plans are awaiting approval. The commission reports that conflict may arise between national and devolved units should the rest of the counties fail to have operational spatial plans.[6] In order to build capacity, Turkana, Wajir and Vihiga counties are operating geospatial information systems laboratories to facilitate evidence-based decision-making in the counties.[12]

Accurate and complete healthcare data is essential in precise decision-making. Kisumu county established an Electronic Community Health Information system to be used by community health volunteers for data collection during outreach visits. Nearly half of the county's community health volunteers have been trained on household registration, patient screening, treatment of common ailments and minor injuries, and referrals.[13] The availability of real-time data will augment the county's strategies for enhancing patient care.

Addressing gaps in the healthcare system has always been met by a lack of priority setting. Before 2020 four of Nairobi's biggest slums residents had access to only four public health facilities. Currently, slum dwellers are benefiting from new hospitals constructed by Nairobi Metropolitan Services. The construction of twenty-eight (28) new level 2 and 3 health facilities and rehabilitation of 5 hospitals began in 2020 in a bid to decongest the Referral Hospitals in Nairobi. By July 2020, twenty (20) facilities have so far been commissioned and are operational. However, these facilities are facing a shortage of some essential drugs.[14] It is therefore important for county governments to focus on equipping hospital with drugs besides infrastructures.

Public Finance Management

Management of public finances requires transparency and accountability. Transparency gives citizens the assurance that public resources are effectively utilized. The constitution in Article 35 supports transparency by giving the public the right to access all public information. However, information on public finance provided by counties has not been sufficient. The quantity, validity, and timeliness of this information remain a challenge. On the other hand, accountability compels public officers to make an account of how they have utilized resources.[15] Our highlights for Public Finance Management for the month under review, focus on development and recurrent expenditures, pending bills, and misuse of funds through irregular payments.

Between July 2021 and March 2022, counties spending on development was recorded at sh.44 billion a drop from Sh.48 billion recorded during the 2020/2021 financial year. Of the 47 counties in Kenya, 19 counties recorded an absorption rate of less than 20 percent of development expenditure. Taita Taveta county only spent 2.9 percent of the available money on development compared to Kitui, Mombasa, and Marsabit which indicated more than 50 percent of their budget on development.[16]

Counties have consistently shown underperformance in actual revenue collection. The Controller of Budget indicated that 21 counties achieved less than 50 percent on local revenue collection for the financial year 2021-2022. There is a need for counties to review their revenue targets to realistic amounts during the planning and budgeting process.[16] Weak capacity for revenue forecasting and analysis and inefficient revenue collection structures in the counties undermine the revenue collection process.

County assemblies through the County Assembly Forum, have protested the move by the Senate to reduce their budget in the current financial year. The County Allocation of Revenue Bill,2022 allocates to County Governments Ksh.370 billion in the financial year 2022/23 as an equitable share of revenue raised nationally. In the bill, the Senate reduced the ceiling for recurrent expenditure from Sh.35.65 billion to Sh.34.49 billion.[6] This reduction will affect the MCA's allowances for both local and foreign travels and mileages. County executives will however benefit as the Senate revised upwards the county executive recurrent budget ceiling from Sh.26.7 billion to Sh.28.5 billion in line with the recommendation by the Salaries and Remuneration Commission. The additional fund for the county executive will cater to the operational cost for the offices of county attorneys.[17]

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[9] The Star, 21 July 2022

[10] https://www.gov.uk/government/news/uk-kenya-strategic-partnership-2020-2025
(Other areas of partnership are mutual prosperity, sustainable development, climate change, and people-to-people – reflecting the key challenges and opportunities.)

[11] The Standard, 22 July 2022

[12] The Star, 5 July 2022

[13] Daily Nation, 12 July, 2022

[14] The Star, 15 July, 2022

[15] Ten Years On Assessing the Achievements of the Constitution of Kenya 2010, Katiba Institute.

[16] The Standard, 6 July 2022

[17] Daily Nation, 3 July 2022

Mount Elgon sub-county in Bungoma will benefit from an initial Ksh. 80 million from the Equalization Fund. The fund is meant for the provision of basic services including water, roads, electricity, and health facilities in counties considered marginalized. The Commission of Revenue Allocation notes that Mt. Elgon had for a long time been neglected being a marginalized region and lacking basic social amenities.[7]

The challenge of pending bills remains a threat to the implementation of the devolved unit's functions. The next county administration will inherit Kshs.139 million in debt. Nairobi, Mombasa, Kwale, and Kiambu are reported to have the highest pending bills. Regulations under Public Finance Management stipulate that debt service payment shall be a first charge on the County Revenue Fund, counties have however not fully complied.[18]

Misuse of public funds by counties has been unraveled by the Auditor General's report for the period 2019/20. Irregular payments to staff and contractors outside the authorized Integrated Financial Management Information System and payments in contravention of the Intergovernmental Relations Act were cited by the report. Stalled projects, improper procurement processes, and failure to bank revenues also featured prominently in the report. The Auditor General noted that Nairobi, Turkana, Machakos, Kilifi, Kwale, Narok, and Migori counties recorded the most audit queries.[19]

A case in point is the Kiambu county administration for disregarding the law and adopting a manual payment method. A report by the Controller of Budget indicates sh. 141.77 million was paid out through manual payroll contrary to the Public Finance Management Act. Manual payrolls are prone to errors as the expenditure trail cannot be authenticated. The report also points out that the country maintained a high wage bill of 45.8 per cent higher than the legal threshold of 35 per cent.[20]

MCAs in Homa Bay and Migori counties have been in wrangles with clerks of the county assemblies. The clerks from the two counties as accounting officers to the assemblies have alleged a plot by the MCAs to loot a total of sh. 200 million. the MCAs orchestrated bids to remove the clerks with the plan to steal from the county coffers.[21] Wrangles spilling over to court cases makes it hard for county assemblies to leverage time for development agendas.

Staff Performance

Instances of breaching the duty of care weaken critical service delivery in the counties. A family in Baringo county is accusing the Baringo County Hospital of negligence that led to the death of their daughter, Dorcas Jepkemoi. The family claims the medical personnel in the hospital failed to urgently respond to their daughter's critical condition. The hospital has been on the spot and is under probe by the Ethics and Anti-Corruption Commission over the death of seven infants.[16]

A below-par performance was recorded by many county assemblies as they adjourned business. Leadership wrangles within the county assemblies undermined the passage of bills and substantive motions. Numerous standoffs were witnessed leading to speakers being shown the door through impeachment. The impeachments were mostly characterized by irreconcilable differences among the members of the assemblies. The assemblies were also marred with corruption allegations with some officials facing court cases.[17] Undoubtedly, if the next county assemblies are mired with endless infighting and wrangles their constitutional mandate will be hampered.

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

The Murang'a County Assembly passed a Bill that compels the next county government to provide a service charter. The County Standardization bill seeks to make the executive have a strategic plan for all county government entities. The bill also demands that there be a platform to allow the county government to get feedback from the citizens.[22] This will enhance productivity and will keep the county in check for all commitments it sets out to the public.

Conclusion

As the country is headed for the general elections on 9th August 2022, we expect transitions in many counties with new governments taking over from the incumbent ones. Key areas of services delivery are likely to be adversely affected by elections and political tensions currently witnessed in many parts of the country.

County governments have been cautious of taking key decisions at county levels due to anxiety surrounding election outcomes. There is need to strengthen institutions of devolution to enable smooth transition of county governments. The incoming governments should do their best not to disrupt.

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[18] The Star, 8 July 2022
[19] Daily Nation, 3 July 2022
[20] Daily Nation, 6 July 2022
[21] Daily Nation, 8 July 2022
[22] The Standard, 7 July, 2022