



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: June 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

Cooperation, consultation and coordination are the hallmarks seamless intergovernmental relations. However, often there are challenges of intergovernmental nature between the counties and the national government, and between counties themselves. During the month under review, we highlight three issues: security lapses, delays in disbursement of funds to the counties, prevailing drought situation, and delay by the National Assembly in ratifying a new defense cooperation agreement.

The rising security lapses across the country points to weaknesses not only of the country's security apparatus but also gaps in cooperation, consultation and coordination with county governments over security. Like in the preceding month (May, 2022), during the month under review (June, 2022) there were security lapses in parts of the country e.g. West Pokot, Kenya-Tanzania border over the eviction of Maasai's, Marsabit, Isiolo, Elgeyo Marakwet, West Pokot, Wajir, Lamu and Samburu. In Isiolo county for instance, there numerous cases of bandit attacks and loss of lives and livestock.¹

In counties where curfew has been declared by the national government, there are questions over the effectiveness of this measure in arresting the insecurity. This is the case in both West Pokot and Marsabit counties regarding the effectiveness of the night curfew imposed in the two counties following community conflict and cattle rustling.² As a consequence of the 21 days disarmament operation in the Kerio Valley had so far netted 21 illegal guns and 13 rounds of ammunition.³ To the national government, the curfew was helping restore peace in those areas, while the affected counties hold that banditry attacks have continued unabated.

The eviction of indigenous Maasai residing along the Ngorongoro conservancy along the Kenya-Tanzania border has created tension and additional security concerns in Narok county. As a result of the evictions, Kenya beefed up security along the border as the Tanzanian Maasai evictees crossed the border to the Kenyan side. The Tanzanian evictions was on account of the need to protect the conservancy from further degradation owing to , a UNESCO World Heritage Site. As a result of the evictions, Narok County now hosts over 400 Tanzanian refugees at Olposimoru. The presence of Tanzanian refugees in Narok county poses considerable security risks with the security agencies in the area being vigilant to ensure those crossing do not bring with them their arms.⁴

Delays in the disbursement of funds to the counties continues to stifle service delivery. During the month under review, the national treasury was yet to release KSh. 70bn to counties as the financial year 2021-22 comes to a close. Turkana, Kwale, Uasin Gichu and Lamu are among the top Counties with huge balances yet to be allocated. Furthermore, counties were yet to receive Ksh. 39.9bn additional allocations from Ministries, Departments and Agencies (MDA's).⁵ The delays in disbursement of funds are likely to stall ongoing projects, halt crucial service delivery and cause hitches during the transition period to the new county government after the August 9th general election. Release of the funds also around the end of the financial year limits the ability of the counties to absorb funds, further worsening the issue of pending bills in the counties. One of the leading presidential contenders for the August 9, 2022 general elections proposes to set up a neutral mechanism for disbursement of funds to both national and county governments.⁶

The delay by the National Assembly in ratifying the new Defense Cooperation Agreement with the United Kingdom over the British Army Training Unit in Nanyuki, brings uncertainty over the operations of BATUK in Laikipia county. Currently, the British Army is operating on a temporary agreement. Attempts to hold public participation forums by the National Assembly Defense and Foreign Relations Committee have not been successful. It's not yet clear whether the delays in ratifying the Agreement may impact on diplomatic relationship between Kenya and the United Kingdom.

The case filed by the Lolldiaga community in Laikipia county seeking compensation from the British Army over a fire that raged over 10,000 acres in the conservancy may further strain the diplomatic relation between Kenya and the United Kingdom. The matter was referred to an intergovernmental liaison committee that is yet to be formed. The delays to hear and resolve the petition. A ruling by the Nanyuki Lands Court declared that Kenyan courts have the jurisdiction to hear and determine criminal and civil matters involving the British soldiers. The British army

¹ The Standard, June 19, 2022

² People Daily, June 22, 2022

³ The Standard, June 17, 2022

⁴ The Standard, June 16, 2022

⁵ The Star, June 16, 2022

⁶ Daily Nation, June 7, 2022. This proposal has been made by Azimio One Kenya Coalition. The Coalition also promises to raise the shareable revenue due to county governments to 35 percent.

has however appealed the decision to place them under the jurisdiction of Kenyan courts.⁷ Delay in resolving such legal battles could strain relations with the local community in Laikipia. Another case that could aggravate the situation is the unresolved murder of 21-year-old Agnes Wanjuki by a British soldier.

The prevailing drought situation in Kenya is unprecedented in Kenya's recent history and continues to threaten the livelihoods of thousands of people in various parts of the country. The failure of the March-April May, 2022⁸ in parts of the country have worsened an already dire situation in parts of the country. There are also indications of below-average rainy season in October –November –December 2022⁹ that if now well addressed could pose consider threat to livelihoods of millions of people in parts of the country. The number of people in need of assistance has increased from 3.5 million in May to 4.1 million in June 2022. Six (6) counties namely Laikipia, Mandera, Marsabit, Wajir, Isiolo and Samburu are in Alarm drought phase while thirteen (13) counties including Kilifi, Turkana, West-Pokot, Kwale, Meru (North), Embu (Mbeere), Garissa, Kajiado, Kitui, Nyeri (Kieni), Taita-Taveta, Tharaka-Nithi and Tana-River are in Alert drought phase. The remaining four (4) counties including Baringo, Lamu, Narok and Makueni are in Normal drought phase. Acute malnutrition has also been noted across the counties with 942,000 cases of children aged 6-59 months acutely malnourished and 134,000 cases of pregnant or lactating women acutely malnourished in need of treatment¹⁰ Greater consultation and coordination with county governments is needed for sustainable measures to combat drought and secure livelihoods now and in the future.

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

For effective planning, the use of data is critical, yet counties capacity to generate this data is weak given the inherent challenges in the National Statistical System (NSS). The county governments are part of the NSS, an organ that includes all producers of official statistics in the country. Section 4 (2)(g) of the Statistics Act, 2006 (revised in 2019) mandates the Kenya National Bureau of Statistics (KNBS) to collaborate with and assist county governments or any other institutions in the production of official statistics. However, the KNBS working relationship with the counties has been at best weak. The KNBS is required to provide technical support to support various county governments in establishing strong statistics units and training. According to the Director General of KNBS, the county governments have been incorporated in the technical working groups established by KNBS to validate the quality of statistics.¹¹

The use of data and research evidence in informing county operations and decision making is hampered by the willingness by the politicians to make data count. Key informants' data show that there is a clash between political interest and use of research evidence and data to inform planning processes. If available data and research evidence has adverse implications on political interests, then it's likely to be disregarded as aptly captured by one of the key informants.

Q. What is your view on the use of data and research evidence in county operations and decision-making processes? Are the operations data driven?

"I don't know whether Africans use data. Even when they are extremely sophisticated. I think there is something about Africans that doesn't speak to scientific methodology. It doesn't matter whether they are at university or in the village. Not that we don't know. We know the place of data and research in decision making but we don't use it. We have the data on population of Nairobi, but do we use it to plan for transport, do we use it for allocation of medical facilities. Am just using that illustration so that you can see the folly of emphasizing data when data doesn't count. Data does not count in decision making, it is political interest, it is political impact. We are not in the scientific world. We have not reached that level of sophistication where we look at data as a way of managing things. We don't manage things from the point of view of data. We manage things from the point of view of political impact. If it does not make political sense, we don't do it. Forget about the data. Nairobi has a population of about 4 million people. According to the Urban Areas and Cities Act, Nairobi can be decentralized into something like 10 cities. Who is looking at the data? Who is looking at the population statistics for doing things in Nairobi. So data has no place. Does a politician use data? They only use it if they think it will help them in the number of votes. If they were to use data for the same reasons that they use for their political interests, then this country would be highly developed." (Key Informant Interview, Nairobi).

For services that are shared across counties (e.g. road infrastructure, markets, health facilities) there is need for inter-county harmonization of planning so as to enhance efficiency. For instance, if a county is improving a link road that connects with another county, deliberate effort should be made to ensure seamless linkage with the neighboring county so as to generate more value from that road investment. However, the current situation is where a county may rehabilitate a road facility, but then this only ends at the boundary with the neighboring county¹² hence denying the public optimal benefits if there harmonization in the planning of the road infrastructure with the other county.

Public Finance Management

Calls for integrity considerations when clearing candidates for the August 2022 general elections have been undermined by weak linkages between critical institutions and political considerations. The Ethics and Anti-Corruption Commission and religious organizations have voiced their concerns over the clearance of persons of questionable integrity to vie for public office. For instance, in June the EACC blacklisted

⁷ Daily Nation, June 19, 2022

⁸ https://joint-research-centre.ec.europa.eu/jrc-news/unprecedented-drought-brings-threat-starvation-millions-ethiopia-kenya-and-somalia-2022-06-09_en

⁹ https://joint-research-centre.ec.europa.eu/jrc-news/unprecedented-drought-brings-threat-starvation-millions-ethiopia-kenya-and-somalia-2022-06-09_en

¹⁰ <http://ndma.go.ke/index.php/resource-center/national-drought-bulletin/send/39-drought-updates/6517-national-monthly-drought-updates-june-2022>

¹¹ Sunday Nation, June 12, 2022.

¹² Key Informant Interview, 2022

around 241 aspirants seeking elective posts in the August 9 elections due to alleged corruption and other economic crimes.¹³ A number of current county governors featured in the list.

Successful and timely prosecution of corruption cases remains elusive in the country, yet its critical for enhanced integrity in public finance management. Although a number of corruption and other economic crimes have been filed at the various courts across the country, their successful adjudication remains wanting. Part of the challenge is the limited number of judicial officers against the number of cases that are filed each day. In one successful case, five officials of the Homa Bay County Assembly were found guilty of embezzling Ksh. 27.8 million while in office.¹⁴ These were fined Ksh. 57.04 million- or six-years imprisonment in default, and were barred from being elected or appointed to any public office for a period of ten years. Successful prosecution of such cases can be a deterrent in the abuse of public trust through misuse of public resources.

Challenges in public procurement in the counties arise in part not due to technical capacity, but interference in the procurement processes. Given the vested interests in public procurement, in some instances, procurement entities do not receive the procured goods or services. In one such instance, the EACC is investigating Baringo County Government over the procurement of a CT scan machine and a laundry machine on allegations of failure to follow due process, as well as medical equipment valued at Ksh. 883 million that were never delivered.¹⁵

Addressing some of the challenges in public finance management at the county level requires strengthening of internal audit units within the counties. There are concerns as to whether counties institute internal audit units for purposes of oversight or as a compliance measure to the PFM Act.¹⁶ As a way of straightening public finance management in the counties, the internal audit units should be synchronized with other county departments and be professionalized.¹⁷ Functional and independent internal audit units would help counties flag out and remedy early possible procurement anomalies before they are identified by the Auditor General. An example of such anomalies is the payment of Ksh. 238 million manually to employees away from the integrated payroll and personnel data base, and the payment of Ksh. 81.6 million for road construction without any evidence of a tender document in Homa Bay County.¹⁸

In spite of the provisions of the PFM Act 2015, the public wage bill continues to take a larger share of the total revenue. This stifles service delivery and realization of critical development goals at both the national and county level. Even though public servants make up less than 10 percent of Kenyans, they are paid over half of taxes, with salaries taking up around 48.1 percent of the total revenue.¹⁹ The number of government employees has also shot from 653,500 in 2010 to 884,000 as of 2020, increasing the total wage bill by around 184 percent.²⁰ A similar concern was highlighted by the Controller of Budget who cited 22 counties as having surpassed the limit on wage bill.²¹ This concern comes at a time when county governors are hiring more staff, a move seen as aimed to enhancing their re-election bids. For instance in Vihiga County, the Governor assented to the County Community Health Services Bill 2022, in effect regularizing the hiring of 1,445 community health workers to permanent and pensionable terms.²²

Staff Performance

Some counties have adopted a reward scheme as a mechanism for motivating their staff to achieve more. A case in point is in Garissa County where in a bid to boost maternal health the health department in Garissa County awarded 19 mentors working to improve the quality of care in maternal and newborn health.²³ The county recorded a drop in maternal mortality and this has been attributed to the remarkable work done by mentors to promote the Emergency Obstetric and Newborn Care sector.²⁴ The county's maternal mortality target is to have fewer than 50 deaths per 100,000 live births.²⁵

Frequent labour disputes undermine service delivery in the counties. The disputes are more regular in the health department and early childhood units in the counties. Labour disputes were reported in Garissa county among health workers over non payment of May salaries²⁶, while in Uasin Gishu ECDE teachers had petitioned the Senate Labour and Social Welfare Committee over implementation of schemes of service, poor remuneration, stoppage of stipends without following the due process and pay delays.²⁷

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

¹³ Daily Nation, June 2020.

¹⁴ The Standard, June 18.

¹⁵ The Standard, June 22, 2022

¹⁶ Key Informant Interview, 2022

¹⁷ Key Informant Interview, 2022

¹⁸ The Star, June 23, 2022

¹⁹ Daily Nation, June 1, 2022

²⁰ Daily Nation, June 1, 2022

²¹ Daily Nation, June 18, 2022. These counties are Machakos, Nandi, Meru, Kisii, Embu, Nyamira, Kisumu, Nyeri, Taita Taveta, Homa Bay, Bungoma, Tharaka Nithi, Bomet, Elgeyo Marakwet, Wajir, Kiambu, Kitui, Vihiga, Mandera, Garissa, Kirinyaga and Nairobi Counties

²² Daily Nation, June 1, 2022

²³ The Standard June 22, 2022

²⁴ The Standard June 22, 2022

²⁵ The Standard June 22, 2022

²⁶ The Standard June 22, 2022

²⁷ Daily Nation June 7, 2022

The Constitution of Kenya 2010 puts citizens participation at the center of the country's governance's processes. However, in spite of this provision, the practice of public participation in the counties is not without challenges. In Kwale county for instance, members of a local community organization on widows' affairs (Tujali Wajane) called for their inclusion in the political and development agenda of their county. **Embracing inclusion and public participation furthers cohesion and promotes good governance practices.** During the month under review, the Nairobi Metropolitan Services issued a notice to assure the public of a participatory, transparent and open allocation of houses under the Affordable Housing Programme phase two. At least 60,000 units are to be put up in 10 estates marked for upgrade. The estates include Woodley, Bahati, Maringo, Jericho, Lumumba, Ziwani, Embakasi, California, Kariobangi and Bondeni. Existing tenants will be given priority to own the houses under the tenant purchase scheme. Phase one of the programme in Pangani is taking shape. Media reports indicate that 48 original tenants have already made a selection of their preferred houses.⁵ The Affordable Housing Programme is one of the 4 pillars of the national government's big four agenda. The programme was planned to facilitate the development of 500,000 low-cost housing is also being implemented in Mombasa and Nakuru counties. Citizen's engagement in the affordable housing programme would help limit the occurrence of conflicts in the implementation of the Affordable Housing Programme including allocation of the houses.

Inadequate public participation also accounts for the conflict between the Ministry of Agriculture and the Governor of Meru County over the new regulations on miraa production and trade. The new regulations were published three years after they were formulated.³ The regulations gazetted by the Cabinet Secretary for agriculture have faced opposition from Meru Governor Kitaitu Murungi on the grounds that agriculture being a devolved function, there was no adequate public participation before the rules were published. The regulations are intended to cover the entire value chain from production to consumption. The governor threatened to seek legal redress if the regulations were not revoked. The rules include the imposition of KSh. 30 levy per kilo of miraa exported and KSh. 60 per kilo of imports, permit requirement for transporters and vendors, that miraa shall not be stored or transported with other goods that may contaminate or adversely affect their quality among others.²⁸

2. Conclusion

This brief has identified a number of occurrences within the month of June, 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:

- Implications of the security lapses in parts of the country on the programme work. Counties with reported active conflicts include West Pokot, Wajir, Isiolo, Samburu, Marsabit, Lamu, Elgeyo Marakwet, Baringo and along the Kenya-Tanzania border (bordering Ngorongoro conservancy).
- Delays in the disbursement of funds to the counties: what can be done to cultivate goodwill and develop a more predictable time lines for the release of funds to the devolved units.
- Implementing programme work in communities heavily ravaged by server drought calls for partners to be conscious of the lived realities of these people and embrace workable safeguarding mechanisms.
- Generating an understanding and the goodwill among county political elite on the need for evidence and data to inform decision making as well as county planning.
- Further conversations between the Kenya National Bureau of Statistics and the county statistics units so as to enhance the capacity of the latter.
- Engage counties on harmonized planning for services that spill over to other counties (e.g. roads) so as to generate more efficiency. Regional economic blocs can help further this conversation.
- Advocate for strengthening of internal audit units and their synchronization with other county units as a way of enhancing integrity in public finance management.
- Engage counties on the need to adhere to the provisions on wage bill.
- Engage counties to operationalize public participation processes. This will in part require the county political leadership willingness to embrace public participation as envisioned in the Constitution.

²⁸ Daily Nation, June 22, 2022