# POLITICAL ECONOMY ANALYSIS
# OF DEVOLUTION IN KENYA
# DECEMBER 2022

KENYA
DEVOLUTION
PROGRAMME
Timiza Ugatuzi
2021-2025

THE KENYA DEVOLUTION PROGRAMME (KDP)
TIMIZA UGATUZI

# POLITICAL ECONOMY ANALYSIS OF DEVOLUTION IN KENYA

Submitted to
KDP Secretariat

by

The Institute for Development Studies,
The University of Nairobi.

December, 2022

## WHO WE ARE

Act! is a leading Kenyan, non-profit, Non-Governmental Organization (NGO). The organization was established in September 2001 as Pact Kenya and rebranded in 2011 as a fully-fledged local organization. Act! focuses on building the capacity and resilience of individuals and communities, thus empowering them to get involved in the decisions and management of their own development.

### Vision

A prosperous, cohesive, and resilient society living in dignity

### Mission

To champion lasting positive community transformation.

**POLITICAL ECONOMY ANALYSIS OF DEVOLUTION IN KENYA, MARCH 2023**
Published by Act Change Transform (Act!)


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# Foreword

The Constitution of Kenya, 2010 established the devolved system of governance wherein two of the three arms of government, namely the Legislature and the Executive, are devolved to the 47 Counties. Article 174 of the Constitution identified several objects of devolution, including giving the people powers of self-governance and enhancing their participation in the exercise of power in making decisions affecting them. The Article also recognized the rights of communities to manage their affairs and to further their development. To deliver on their objectives, the Constitution provides reliable resources to county governments in Articles 175 and 202 and establishes mechanisms for dividing and managing revenue. There have been many reviews and assessment reports on the status of devolution in Kenya which have since identified key successes and gaps both at national and county levels.

The Kenya Devolution Programme (KDP) – Timiza Ugatuzi aims to address some of the specific challenges facing devolution in selected counties in Kenya. These challenges are ineffective intergovernmental relations; ineffective county planning, public finance management, and staff performance; inadequate engagement between county governments and citizens in service delivery, limited integration of evidence, and digital technology and learning as enablers of public service delivery and reform. The Act Change Transform (Act!) 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). Successful delivery of the KDP requires a deep understanding of the operating context including governance structure and the power dynamics. This entails thinking and working politically, thus this political economy analysis is a key support tool for the Programme.

The aim of the deep dive Political Economy Analysis (PEA) was to inform and enrich the implementation of the KDP, providing useful insights that enhance the understanding of how political interests and other power dynamics shape devolution development outcomes for Kenyans. In this regard, the analysis by the Institute for Development Studies focused on the four KDP output areas and documented key dynamics in political economy, and made an analysis of how those dynamics may impact the programme implementation. Broadly, the analysis sought to answer the following questions:

a. How do political and power dynamics shape opportunities and challenges for the Kenya Devolution Programme, 2021 – 2025? And what are the main opportunities arising from Kenya's changing socio-political and power arrangements during this period?

b. What is the role and influence of the KDP in the context of Kenya's power and political dynamics? How can the KDP partners best position themselves to respond to identified opportunities and constraints?

c. What contextual factors may pose risks to the Programme and its activities?

The questions are the basis for the monthly KDP PEA reports that informed programming and this Deep Dive PEA carried out in the first year of implementation. In addressing these questions, the process entailed paying attention to Kenya's political economy and the implications for each of the KDP's Outputs. The analysis therefore focused on: foundational factors; constitutional, policy, and legal frameworks; emerging and current matters that will have implications for the implementation of the KDP.

**Tom Were**
**Chief Executive Officer**

# Preface

This report presents a Political Economy Analysis (PEA) of devolution in Kenya. The report is prepared by a team of researchers based at the Institute for Development Studies (IDS), University of Nairobi. This is part of the Kenya Devolution Programme (KDP) - Timiza Ugatuzi, a four-year devolution Programme (2021 – 2025) funded by the Foreign, Commonwealth, and Development Office (UK FCDO). Overall, the Programme focuses on identifying the challenges facing devolution in Kenya and comes up with strategies to address them.

The analysis identifies key dynamics in Kenya's political economy and their implications for implementing devolution, using a problem-driven political economy analysis approach. The goal is to understand how political interests and power dynamics shape these issues in Kenya's devolved governance system, and how these dynamics will impact the implementation of the Programme for the period 2021-2025. The report's data was gathered through a variety of methods including, a thorough literature review, stakeholders' mini-workshops, and key informant interviews.

The analysis shows that a variety of factors influence the context in which KDP is implemented, which provides a variety of opportunities and challenges. The results of the August 2022 general elections, for example, significantly changed county leadership, with twenty-eight newly elected county governors, eight former governors returning, and eleven sitting governors re-elected. Over 70 percent of the Members of the County Assemblies also lost in the election – about 990 MCAs out of 1450 are new. Overall, the election provided new energy and ideas for advancing the devolution agenda.

This PEA report reveals that there is a lack of adherence to the constitutional, legal, and policy safeguards that govern intergovernmental relations, county planning, public expenditure management, staff performance, and public participation. Given the country's diverse elite interests, accountability in the use of public resources and service delivery by counties and the national government is generally lacking. In Kenya's political space, the absence of strong institutions to check the government - the opposition, civil society, and media - has exacerbated the situation of weak accountability between 2018 and 2022. According to the survey results for this Programme, many respondents hoped that the political context would change with the 2022 election. They hoped that the election would result in a new and strong opposition, ensuring that there are checks and balances in government operations. There is no guarantee that this will happen, given that elite interests have rapidly shifted to satisfying their own self-political needs. The findings suggest that the KDP should think and work politically by conducting regular analyses of the operational context.

This report, therefore, contributes to understanding the devolution space in Kenya and how socio-political interest may influence outcomes of devolution programming going forward. The report also provided insights into what has been accomplished since devolution implementation began in 2013 and the challenges that this process has faced. This report will be extremely useful in the programming of partners in the Act! led Consortium and other actors in Kenya's devolution space.

**Prof. Karuti Kanyinga**
**Director of the Institute for Development Studies (IDS), University of Nairobi**

# Acknowledgment

This Political and Economic Analysis (PEA) of Devolution in Kenya, is a product of concerted efforts of key actors in the governance space, particularly the devolution sector. Act Change Transform, through the Kenya Devolution Programme (KDP) – Timiza Ugatuzi wishes to thank all those who were involved in one way or another, in the development of this PEA.

Special thanks go to all the thirty-nine (39) individuals who served as Key Informants. While we engaged others in person, others were engaged virtually. Other informants also provided feedback during two half-day workshops held in Nairobi.

We wish to acknowledge the contribution of all the KDP partners including representatives from among others the following institutions: The Institute for Public Finance Kenya (IPFK), International Cooperation Agency of the Association of Netherlands Municipalities (VNG), Westminster Foundation for Democracy (WFD), Consilient Research, PricewaterhouseCoopers (PwC), Options Consultancy Services, UK, Danish Refugee Council, and 16 county-based civil society organisations (CSO) Networks. Intergovernmental Relations (IGR) Institutions included the Office of the Controller of Budgets (OCOB), Council of Governors (COG), County Assembly Forum (CAF), Commission on Revenue Allocation (CRA), and Intergovernmental Relations Technical Committee (IGRTC).

Our unreserved thanks go to all Kenyans for their tireless pursuit of working devolved governance. This PEA goes a long way in contributing towards the attainment of effective, open, and accountable County Governments that deliver quality public services.

We extend our appreciation to the Institute for Development Studies (IDS), at the University of Nairobi (UoN), for facilitating the development of this PEA of Devolution in Kenya. We recognise the effective and efficient leadership of IDS Director, Prof. Karuti Kanyinga and his colleagues Prof. Paul Kamau, Dr. George Michuki and Dr. Samuel Ngige, and Ms. Paschalin Basil.

The development of this Political and Economic Analysis of Devolution in Kenya, was made possible by the financial and technical support from the Foreign, Commonwealth and Development Office (FCDO).

**Dr. Michael Karanja**
**Technical Lead, Monitoring and Evaluation – KDP**


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2021-2025

# Table of **Contents**



# List of **Tables and Figures**

# Acronyms and Abbreviations

| | |
|---|---|
| **Act!** | Act Change Transform |
| **AHADI** | Agile and Harmonized Assistance for Devolved Institutions |
| **CBEF** | County Budget and Economic Forum |
| **CBK** | Central Bank of Kenya |
| **CCA** | County Capacity Assessment |
| **CIDP** | County Integrated Development Plan |
| **CoB** | Controller of Budget |
| **CoG** | Council of Governors |
| **CPI** | Consumer Price Index |
| **CRA** | Commission on Revenue Allocation |
| **FCDO** | UK Foreign, Commonwealth, and Development Office |
| **GDP** | Gross Domestic Product |
| **IBEC** | Intergovernmental Budget and Economic Council |
| **IFMIS** | Integrated Financial Management Information Systems |
| **IDS** | Institute for Development Studies |
| **IGR** | Intergovernmental Relations |
| **IGRTC** | Intergovernmental Relations Technical Committee |
| **KDP** | Kenya Devolution Programme |
| **KDSP** | Kenya Devolution Support Programme |
| **KES** | Kenya Shilling |
| **KRA** | Kenya Revenue Authority |
| **NMS** | Nairobi Metropolitan Services |
| **PEA** | Political Economy Analysis |
| **PPDA** | Public Procurement and Disposal Act |
| **PPOA** | Public Procurement Oversight Authority |
| **SRC** | Salaries and Remuneration Commission |
| **UK** | United Kingdom |

The Kenya Devolution Programme is a four-year (2021–2015) devolution programme that aims to contribute to five Output Areas. These are intergovernmental relations that support devolution; effective county planning, public finance management, and staff, performance; county government and citizens' engagement to improve service delivery and livelihoods; evidence generation, digital technology, and learning as enablers of public service delivery and reform; and UK Government portfolio in Kenya is better aligned with county government priorities.

Overall, the report identifies three broad contextual factors that influence the implementation of the Kenya Devolution Programme. The first factor is the outcome of the August 9, 2022, general elections, with the transition expected in thirty six (36) counties and eleven (11) governors re-elected. This may cause disruptions as some senior county employees leave during transitions and are replaced by new ones.

The second factor is the outcome of the contested presidential election results on August 9, 2022, which has an impact on the country's devolution agenda, with the two leading presidential candidates promising to support the devolution agenda. The third issue is the role of citizens in the devolution process. As previous devolution programmes have demonstrated, building the capacity of citizens is just as important as building the capacity of county governments if devolution is to work effectively.

This analysis has identified some issues that the Kenya Devolution Programme (KDP) – *Timiza Ugatuzi* may consider as the interventions are implemented.

a. **Inter-governmental relations:** While coordination, cooperation, and consultation between the national government and county governments as well as other inter-governmental relations institutions, have improved between 2013 and 2022, certain gaps still exist. Some of these gaps are incomplete unbundling of the devolved functions hence impacting the cost of those functions; conflicts over jurisdiction between various IGR institutions; regular delays in the transfer of funds to counties; delays by the national government in the finalisation of a policy framework to govern the establishment and operationalisation of the regional economic blocs, and the failure to accelerate the transfer of outstanding functions to counties with the attendant resources as stipulated in the Constitution of Kenya, 2010. The National Treasury, which is an intergovernmental institution, has continued to operate as if it were a national government institution, contributing significantly to funding delays for counties.

b. **County planning:** Counties have put in place systems and structures for county planning, although their functionality varies with the county. County Integrated Development Plans (CIDPs) for the years 2022-2027 are currently being developed. It is noted that there is little consideration given to previous CIDPs when developing new ones. Furthermore, structures such as the County Economic and Budget Forum (CBEF) are not as effective as envisioned in the county planning process, as is the overall system for involving citizens in the county planning process. Most counties do not prioritise spatial planning. Furthermore, county statistics offices are understaffed and have poor linkage with the Kenya National Bureau of Statistics (KNBS).

c. **Public expenditure management:** County efforts to implement public expenditure management systems have made progress. However, counties face difficulties in putting these systems into operation. Some notable concerns in this area are delays in the disbursement of funds by the National Treasury; poor performance in generating own source revenue (OSR); the dominance of recurrent expenditure over development expenditure; pending bills; and low citizen participation in county public expenditure management processes. At the county level, there have also been allegations of corruption and impunity.

d. **Staff performance:** Counties are increasingly turning to performance management to improve service delivery. Staff performance, however, is hampered in part by ineffective systems (e.g. lack of automation of the human resource function, high wage bill, delayed salaries, etc.). Furthermore, political pressure and interference in the operations of County Public Service Boards negatively impact the county's human resource function.

e. **Public participation:** Counties have made progress in establishing the necessary legal and administrative frameworks to guide public participation. Certain challenges remain, however, such as poor coordination among county departments; information asymmetry between the public and the county authorities; poor feedback mechanisms; failure to devolve to the village level; limited civic education, and lack of political goodwill among county leaders.

Investments made through the previous devolution support programmes have increased counties' capacity to carry out their mandates. This is despite the capacity fluctuations caused by general elections in 2017 and 2022. Previous devolution support programmes have assisted counties in a variety of areas including intergovernmental relations, county planning, public expenditure management, human resource function, public participation, monitoring, and evaluation, as well as the County Assemblies. These investments have resulted in the development of laws and policies in the devolved sectors of the counties. As a result, most counties have systems and structures in place to support the delivery of devolved functions. However, the functionality of these systems and structures is still limited, and their operationalisation varies by county.

# 1. INTRODUCTION

## 1.1. The Kenya Devolution Programme

The Kenya Devolution Programme (KDP)–*Timiza Ugatuzi* is a four-year devolution Programme (2021 – 2025) funded by the Foreign, Commonwealth, and Development Office (FCDO) and implemented by a Non-Profit Consortium led by Act Change Transform (Act!). The Programme aims to identify some of the challenges facing devolution in selected counties in Kenya and propose means to address them. These challenges are:

1) Ineffective intergovernmental relations.

2) Ineffective county planning, public finance management, and staff performance.

3) Ineffective engagement between county governments and citizens in service delivery.

4) Limited integration of evidence, digital technology, and learning as enablers of public service delivery and reform.

Given these challenges, the KDP–*Timiza Ugatuzi* aims to contribute in five Output Areas, specifically:

1) Support for devolution through intergovernmental relations.

2) Effective county planning, public finance management, and staff performance.

3) Increased citizen and county government engagement to improve service delivery and livelihoods.

4) Promote the integration of evidence, digital technology, and learning as enablers of public service delivery and reform.

5) The UK government's portfolio in Kenya is better aligned with the priorities of county governments.

The successful implementation of the KDP–*Timiza Ugatuzi* requires a thorough understanding of the intervention context. This is the added value of political economy analysis to the Programme. Such an approach not only ensures the Programme's effective implementation but also provides opportunities to continuously learn and adapt its strategic approach based on context monitoring and analysis.

## 1.2. The Analytical Approach

This analysis identifies key dynamics in Kenya's political economy and their implications for implementing the Programme. The five KDP Outputs are examined using a problem-driven political economy analysis approach. The goal is to understand how political interests and power dynamics shape these issues in the country's devolved governance system, and how these dynamics will impact the implementation of the Programme for the period 2021-2025.

The analysis, in general, seeks to answer the following questions:

1) How do political and power dynamics shape the Kenya Devolution Programme, 2021-2025? What are the main opportunities created by Kenya's changing socio-political and power structures during this time?

2) How does the Kenya Devolution Programme fit into the larger scheme of Kenya's political and power dynamics? How can the KDP partners best position themselves to capitalise on identified opportunities and constraints?

3) What contextual factors may endanger the implementation of the Programme and its activities?

To answer these questions, one must first understand Kenya's political economy and the implications for each of the KDP's five Outputs. As a result, the analysis focuses on the following:

1) Foundation factors – the deeply embedded structural factors that take time to change but shape the main socio-political and economic events and developments in the country as well as the implications for the five KDP Outputs.

2) The formal and informal game rules -the institutions that influence Kenya's governance and devolution process.

3) The here, now, and the future – the major current events and how they interact with (1) and (2) above to affect the country's future, particularly devolution. Efforts are being made to identify the country's main currents and how these are likely to shape other events soon. The focus is on how these are likely to impact KDP–*Timiza Ugatuzi* 2021-2025.

4) Implications for KDP 2021-2025 – this section investigates what these events mean for the KDP–*Timiza Ugatuzi* programme.

To improve the utility of the collected data, each of the Programme partners generated a set of questions for inclusion in the data collection tool. This section provides a brief overview of the data collection methods used in this exercise.

1) **Literature review:** Reviewing the literature on completed and ongoing governance and devolution programmes in Kenya such as the Agile and Harmonized Assistance for Devolved Institutions (AHADI), and the Kenya Devolution Support Programme (KDSP) with a particular focus on KDPs key result Outputs, serves as an initial entry point to the Political Economy Analysis (PEA). The literature was useful in unpacking the foundational or structural issues that explain the status of the key Output Areas under KDP, as well as how these deeply embedded issues limit change for the specific output. The literature review included an assessment of the formal and informal institutions that influence actors' behavior, as well as their incentives to act the way

they do for each of the KDP Outputs, using the PEA logic. The goal is to identify the rules that support or limit the reform agenda in each of the KDP Output Areas.

2) **Mini-workshops:** Data was also collected from two half-day workshops with representatives from targeted institutions in the devolution space in reference to the five KDP's Output Areas to inform this brief.

3) **Key informant interviews:** Additionally, data gathered from thirty-nine key informants spread across the KDP Output Areas was useful for this PEA. These participants were primarily selected from Kenyan institutions involved in devolution-related issues. Interviews were mostly conducted face-to-face, but there were a few instances where virtual interviews were conducted.

# 2. OVERALL COUNTRY CONTEXT

## 2.1. The Economy

Kenya's economy has shown resilience in the face of the COVID-19 pandemic, with output in 2021 expected to exceed pre-pandemic levels. According to the World Bank's Kenya Economic Update, after contracting by 0.3 percent in 2021, real Gross Domestic Product (GDP) increased by 5.3 percent in the first half of 2021. With the economy fully reopened and COVID-19 infections declining, the economy is likely to recover at a faster rate, barring any violence associated with the August 2022 general elections.

A snapshot of Kenya's economic growth trends between 2013 and 2019 shows that the economy grew at an average annual rate of 5.6 percent.[1] The violence surrounding the disputed 2017 general elections had a negative impact on growth. Growth dropped from a high of 5.9 percent in 2016 to 4.8 percent in 2017.[2] During this period, the highest growth rate recorded was in 2018 (6.3 percent).[3] The 'handshake' between President Uhuru Kenyatta and former Prime Minister Raila Odinga in March 2018 contributed to this increased growth as a result of improved political stability. It alleviated tensions and put an end to the violence that disrupted the organisation of economic activities in major cities.

Economic growth dropped from 6.3 percent in 2019 to 5.4 percent in 2020, then 1.4 percent in 2021. Slower growth in 2019 is largely due to weather conditions, particularly poor rains in agricultural areas. The COVID-19 pandemic and the containment measures implemented to halt its spread had a disruptive effect on the economy in 2020. As a result, the GDP growth declined to 1.4 percent in 2020.

Kenya's economy is largely agrarian, with agriculture playing a dominant role, and this is likely to continue in the medium term. Between 2015 and 2019, agriculture, forestry, and fishing accounted for around 32.9 percent of the country's GDP[4], followed by manufacturing (8.4 percent), transportation, and storage (8 percent), while wholesale, retail, and repairs accounted for 7.4 percent. However, the COVID-19 pandemic slowed growth across the board, and real GDP growth was expected to fall to 1.5 percent in 2020 as a result of the ravaging COVID-19 pandemic (Figure 1).

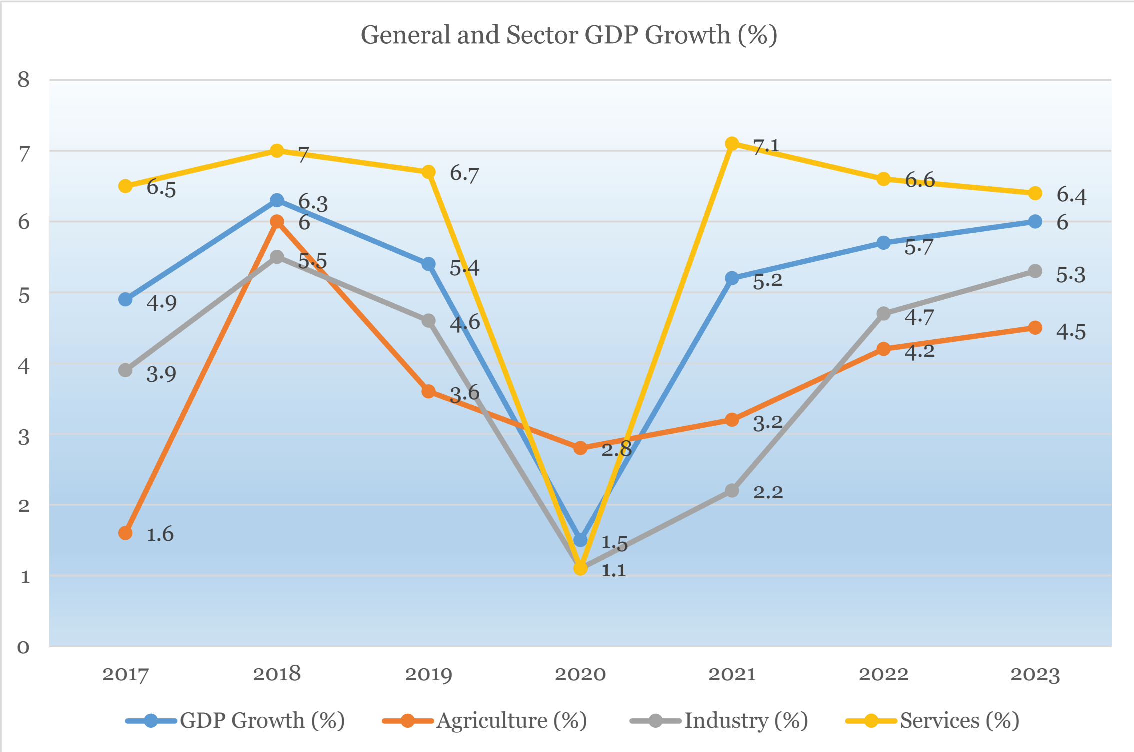
1 Republic of Kenya, the National Treasury and Planning, 2021 Budget Policy Statement, February 2021, p. 2 -3. https://www.treasury.go.ke/wp-content/uploads/2021/03/2021-Budget-Policy-Statement.pdf

2 The impact of electoral violence on Kenya's economy is well documented. See Kanyinga, K., (2019). Political Economy of Kenya and the 2017 Elections. Observatoire de l'Afrique de l'Est, Note n°9, mars 2019; Kanyinga, Karuti and James D. Long. 2012. The Political Economy of Reforms in Kenya: The Post-2007 Election Violence and a New Constitution. *African Studies Review*. Vol. 55. No.1 pp31-51; African Centre for Open Governance (AFriCog), 2008. Reaping the Whirlwind: Socio-economic and political implications of the post 2008 political violence. Nairobi: AfriCog and KPTJ.

3 Republic of Kenya, the National Treasury and Planning, 2021 Budget Policy Statement, February 2021, p. 2 -3. https://www.treasury.go.ke/wp-content/uploads/2021/03/2021-Budget-Policy-Statement.pdf

4 World Bank (2020)

**Figure 1: Realised and Estimated Economic Growth Projections for Kenya (2017 – 2023)**




Source: World Bank (2020). *Turbulent Times for Growth in Kenya Policy Options during the COVID-19 Pandemic*

The slow growth of the economy and the COVID-19 pandemic have increased the cost of living, contributed to rising unemployment, increase public debt, and limited opportunities to escape poverty. The reasons for the country's worsening economic situation are numerous, but the public perception survey data point to economic mismanagement as a major contributor.[5] When asked about 'who or what they think is most responsible for the economic difficulties that some Kenyans are facing', 35 percent of the respondents cited 'mismanagement by government', while 32 percent cited 'corruption'. These two factors account for 67 percent of the total and are related to the issue of poor economic decisions as well as general economic mismanagement. At the moment, Kenya's economy is not producing enough jobs to capitalise on its demographic dividend. The population is young and growing and is expected to grow by one million people per year between 2020 and 2029 (World Bank, 2021: 18).

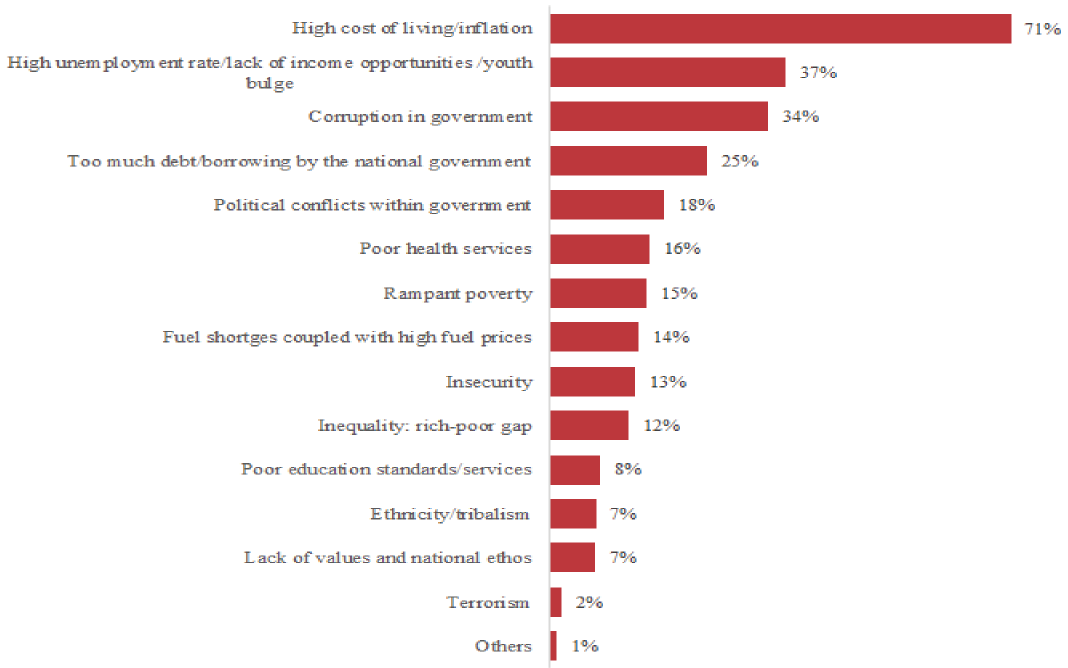
As previously stated, the economic meltdown caused by mismanagement, the COVID-19 pandemic, as well as several other factors have caused basic commodity prices to rise across the country. According to data from Kenya's National Bureau of Statistics (KNBS), food prices increased by 8.89 percent in January 2022, making it difficult for thousands of Kenyans to put food on the table.[6] The burden is higher for poorer households, where

5 For instance, public perception survey by Infotrak, November 2021
6 The Standard, https://www.standardmedia.co.ke/politics/article/2001438138/kenyans-take-to-social-media-protest-against-rising-food-prices

food accounts for about 36 percent of total spending.[7] Kenyans took to social media to express their concerns about the rising food prices, using the hashtag #lowerfoodprices.

The rising price of basic commodities is also occurring in the context of a worsening drought situation in a number of the country's arid and semi-arid counties. The high cost of living has persisted throughout 2022 and has been mentioned in several national opinion polls. For example, in a public perception survey conducted under KDP in June 2022, 71 percent of respondents cited high living costs as one of the reasons why the country was heading in the wrong direction (Figure 2).

**Figure 2: Why do you say that the country is heading in the wrong direction?**




Source: KDP public perception survey, June 2022

Despite its importance in Kenya's economy, the agricultural sector is characterised by limited value addition, limiting farmers' opportunities for increased earnings. This situation is worsened by the fact that Kenya's agriculture is heavily reliant on rainfall and thus extremely vulnerable to shocks during drought periods. This is evident given the changing climatic conditions. Future climatic shocks pose a high risk. Agriculture's low earnings have a negative impact on households' ability to adequately provide for their families and the country's ability to fund its development agenda. Limited value addition of agricultural produce also undermines opportunities for counties to increase their own source revenue.

7 The Standard, https://www.standardmedia.co.ke/politics/article/2001438138/kenyans-take-to-social-media-protest-against-rising-food-prices

Kenya's rising public debt burden continues to put a strain on the government's ability to deliver services. The rising public debt became a hot topic on the campaign trail for the country's two major coalitions. The national debt has risen from KES 1.9 trillion in 2013 to KES 8.21 trillion in December 2021.[8] The debt stock increased by 300 percent[9] between 2013 and 2020. While the exact size of Kenya's debt stock remains unknown, it is clear that unrestricted public debt is hurting people's livelihoods and the government's ability to deliver services. The debt trend also raises serious sustainability concerns, and if unchecked, the government's growing appetite for debt could have serious economic consequences.

The informal economy continues to dominate in terms of GDP contribution. For example, in 2019, the informal sector created approximately 83 percent of new jobs, compared to 16.1 percent in the formal sector. The informal sector is important for job creation, production, and income generation. The informal sector is primarily comprised of small-scale activities that are typically semi-organised, unregulated, and employ low and simple technologies. While efforts to formalise the informal sector have yielded few results, policies that strengthen this sector may produce better economic outcomes in the future.

Kenya's population is primarily young, and poverty remains widespread. According to the 2019 Kenya population census, 75 percent of the population is under the age of 35, with 39 percent being under the age of 15, and 20 percent being between the ages of 15 and 24. These figures have implications for the country's poverty level. In 2015/2016, 36.1 percent of Kenyans were considered poor, with 32 percent food insecure. The poverty situation in the country's arid and semi-arid regions is dire, indicating disparities in sharing the benefits of economic expansion. This means that a large portion of the population is living in extremely difficult conditions. This harsh reality disproportionately affects women and children. According to the Kenya National Bureau of Statistics 2020 report, children make up the majority of the multidimensionally poor (48 percent).

Although the COVID-19 pandemic has subsided in the country, resulting in a full reopening of the economy, the possibility of another wave exists. In Kenya, the pandemic has posed problems not only for the government and households but also for the private sector. The virus hurt people's livelihoods. This is due to job losses, lost income due to travel restrictions, and a generally poor business environment. The lockdowns also had a negative impact on tasks that required face-to-face interactions, such as development work.

8 Parliamentary Budget Committee

9 Kenya's Public Debt Distress: Issues and Scenarios, https://ieakenya.or.ke/blog/kenyas-public-debt-distress-issues-and-scenarios/#:~:text=In%202020%2C%20Kenya's%20debt%20problem,the%20COVID%2D19%20global%20shock.&text=Since%20the%202013%2F14%20financial,stock%20has%20increased%20by%20300%25.

## 2.2. Political Landscape

Kenya has been implementing devolution since 2013 following the promulgation of the new Constitution in 2010. The Constitution of Kenya, 2010 fundamentally restructured the state by devolving power and responsibilities from the national government to forty-seven (47) county governments (Kanyinga 2016, Wanyande and Kibara 2021, Kamau and Wanja 2022). Many people argue that devolution is a better form of governance for a variety of reasons, including democratisation, increased participation, service delivery, and accountability in the use of public resources (Rugo 2022, Kanyinga, 2016; Robinson, 2007). Evidence has shown that effective devolution results in better development outcomes and poverty reduction (Cheeseman, et al 2016, Rugo 2022).

Following a brief lull during the festivities surrounding the December 2021 holiday, the country experienced an increase in political activity throughout the year 2022. The campaign period officially began on May 29, 2022, and ended on August 6, 2022. The main campaign issues were economic revival, unemployment, national unity, corruption, and the cost of living.

In the run-up to the August 2022 general election, two major alliances emerged, each with its vision for devolution in the country. The two alliances were the "Azimio-One Kenya Alliance" and the "Kenya Kwanza Alliance". The former emphasised 'unity and cohesion' as well as good governance, improving livelihoods through social assistance programmes whereas the latter advocated a 'bottom-up economic model' citing the unemployed youth, those working in the informal sector, and unskilled workers among others. These themes reflected the public perceptions of the country's challenges. The parties that competed against each other in 2017 were fragmented, and their factions comprised either of the two alliances, as is typical of Kenyan politics. The active involvement of the President in succession politics, particularly in support of the opposition, was a notable issue in the August 9, 2022, general election. This triggered a wave of grievance politics from the former Deputy President's camp.

Although the general election on August 9, 2022, was completed, the presidential election results were contested at the Supreme Court following the declaration of the former Deputy President as President-elect. The declared results of the presidential election depicted a very close contest between the former Deputy President, Dr. William Ruto, and the former Prime Minister, Mr. Raila Odinga, with each garnering almost an equal number of votes. Public statements by either of the two leading presidential candidates further polarised the country, depending on the tone of the message. Aside from national leadership, the results of the August 2022 general election have significantly altered county leadership, with twenty-eight newly elected county governors, eight former governors making a comeback, and twelve sitting governors being removed.

**Summary of Election of County Governors**

1) Newly-elected: Kisii, Nairobi, Migori, Siaya, Homa Bay, Busia, Kericho, Narok, Nakuru, Elgeyo Marakwet, Uasin Gishu, Trans Nzoia, Samburu, Turkana, Kiambu, Murang'a, Nyandarua, Makueni, Machakos, Embu, Meru, Isiolo, Kwale, Kilifi, Taita Taveta and Madera, Kakamega and Mombasa counties
2) Incumbents re-elected: Kirinyaga, Tana River, Marsabit, Tharaka Nithi, Nyeri, Kajiado, Bomet, Vihiga, Kisumu, Nandi, and Nyamira
3) Former governors who were re-elected: Bungoma, Baringo, West Pokot, Kitui, Garissa, Wajir, Lamu, and Laikipia

Political patronage is an important factor in Kenyan politics. The political elite is at the center, mobilising support by promising development resources and jobs for their regions. Political patronage pervades Kenya's economy, including business. Political patronage has also spread to county governments, with counties increasingly becoming a microcosm of the national government's ills. Political patronage is frequently used to subvert public contracts, and contractors may inflate prices or use proxies or family members to award themselves contracts for large infrastructure projects.

Appointments to public institutions are made based on political considerations at both the national and county levels. Patronage undermines government transparency and accountability. It is also harmful to the rule of law. However, the very nature of Kenyan politics is based on patronage. Those appointed through political patronage owe allegiance to the appointing authority, whether at the national or county levels.[10]

Ethnicity is central to Kenyan political processes and decision-making, and ethnic interests heavily influence the development or lack thereof. Political mobilisation in Kenya has traditionally taken the form of negative ethnicity, producing the narrative 'us' vs. 'them'. There is ample evidence of ethnic groups represented in Kenya's various regimes appropriating state resources to develop their regions at the expense of equity and fairness principles since independence. Thus, how to balance ethnic and national interests were central to Kenya's constitutional reform, which culminated in the Constitution of Kenya, 2010.

10 see Carol Maina, "Ojamong, 9 others in court over corruption charges", *The Star*, 4 July 2018, available at https://www.the-star.co.ke/news/2018-07-04-ojaamong-nine-others-in-court-on-corruption-charges/; Felix Olicki and Susan Muhindi, 2018, "Obado's proxy's receive 2.5 billion in tender scams", *The Star*, 25 September 2018, available at https://www.the-star.co.ke/news/2018-09-25-obados-proxies-received-sh25bn-in-tender-scams/

While Kenya's Constitution and laws speak the language of equity, social justice, and fairness, changing the national ethos to reflect this norm has proven difficult. Clannism and cronyism have effectively replaced ethnicity in the devolved units, but the goal is to reward those close to power. These ethnic interests have hampered efforts to establish political parties in the country. Furthermore, ethnic political elites wield enormous power over the operations of key public institutions. This is despite constitutional pronouncements on accountability as a key pillar of governance. In general, impunity remains a difficult factor in Kenya's political economy. (UNICEF, 2017: 16)

Political patronage in business manifests itself as crony capitalism. The depth and breadth of one's patronage networks are critical when doing business with government entities. The dominance of crony capitalism epitomises Kenya's inextricable link between political and economic interests.[11] Some economists believe that the Jubilee administration's debt-fueled mega-infrastructure binge is being driven by crony capitalism. This is the situation that counties find themselves in as they try to replicate national administration practices at the local level, often at the expense of the provision of public goods and overall rule of law.

The persistence of deep-rooted regional disparities across Kenya, as well as in sub-national identities such as age and gender, is linked to the issue of patronage politics. Kenya's history is still marred by the lack of development in the country's arid and semi-arid regions (ASALs). The state of roads in the ASALs, as well as access to basic social services such as water and health, remain limited. In addition, there are areas that, while not necessarily arid or semi-arid, have been marginalised for years as a result of predatory politics (e.g. Coast and parts of the Nyanza region). In turn, these disparities have fueled grievance politics in the country, which has continued to shape the country's politics to this day.

11 Jaramogi and Jomo: **A brief history of crony capitalism in Kenya**, by David Ndii, Daily Nation, https://nation.africa/kenya/blogs-opinion/opinion/jaramogi-and-jomo-a-brief-history-of-crony-capitalism-425080?view=htmlamp . Also see "**Crony Capitalism and State Capture: The Kenyatta Family Story**" available online at https://www.theelephant.info/op-eds/2018/07/07/crony-capitalism-and-state-capture-the-kenyatta-family-story/ ; Also see **Crony Capitalism and State Capture 2,** available at https://www.theelephant.info/op-eds/2019/04/02/crony-capitalism-and-state-capture-2-documents-reveal-the-kenyatta-familys-plans-to-take-over-lending-to-smes/ ; Also see **Crony capitalism and state capture 3**, available at https://www.theelephant.info/op-eds/2019/07/20/crony-capitalism-and-state-capture-3-uhuru-kenyattas-manufacturing-agenda/

Efforts by all post-independence Kenyan governments, without exemption, have failed to address these disparities.[12] Again, this is linked to the colonial legacy, with subsequent post-independence regimes in the country continuing a trend of neglect for regions previously marginalised by the colonial administration. While the Kibaki regime, which ruled from 2003 to 2013, attempted to address some of these inequalities, the country's ruling elite's rent-seeking nature undermined those efforts. Furthermore, while devolution was intended to help address regional imbalances, the initiative is being undermined by central government forces eager to weaken devolution out of fear of losing resources and power. The Building Bridges Initiative (BBI) appears to have presented an opportunity to reduce disparities, but the public is skeptical.

**Table 1: Doctor/Nurse Population Ratio in Selected Counties, 2013 – 2018**

| | 2013 | | Follow-Up (2018) | |
|---|---|---|---|---|
| County | Doctor/ Population Ratio | Nurse/ Population Ratio | Doctor/ Population Ratio | Nurse/ Population Ratio |
| Kwale | 1:76,741 | 1:3,133 | 1:76,741 | 1:3,133 |
| Kilifi | 1:42,625 | 1:3,396 | 1:15,137 | 1:2,671 |
| Tana River | 1:44,309 | 1:2,110 | 1:32,405 | 1:1,679 |
| Lamu | 1:28,063 | 1:1,194 | 1:7,000 | 1:800 |
| Taita Taveta | 1:19,138 | 1:1,142 | 1:10,031 | 1:1,050 |
| Wajir | 1:132,000 | 1:4,163 | 1:29,413 | 1:2,608 |
| Mandera | 1:114,000 | 1:25,000 | 1:49,982 | 1:5,222 |
| Marsabit | 1:63,825 | 1:1,868 | 1:14,662 | 1:1,054 |
| Kiambu | 1:17,000 | 1:1,300 | 1:6,667 | 1:1,110 |
| Trans-Nzoia | 1:18,257 | 1:2,153 | 1:11,000 | 1:1:2,051 |
| Elgeyo Marakwet | 1:15,548 | 1:2,241 | 1:8,000 | 1:1,000 |
| Laikipia | 1:12,500 | 1:1,100 | 1:4,432 | 1:1,157 |
| Bomet | 1:55,895 | 1:2,727 | 1:30,763 | 1:2,930 |
| Vihiga | 1:85,000 | 1:24,000 | 1:11,840 | 1:1,947 |
| Kisumu | 1:44,634 | 1:2,383 | 1:1,395 | 1:1,394 |

Source: County Integrated Development Plans, Kenya Counties (2013 – 2017; 2018 – 2022)

Political patronage has been linked to the distribution of development resources by successive governments. Areas, where Presidents have come from, appear to benefit more from public goods distribution. Areas where the regimes have received political support benefit as well. There is concern about whether a similar model is being replicated within devolved units. Because different ethnic groups occupy different geographical areas, regional imbalances take on an ethnic dimension. As a result, ethno-regions that feel excluded from state-funded development interventions engage in grievance politics. Inequalities in development and resource distribution persisted, as did poverty levels in neglected regions.[13]

12 The Sessional Paper No. 10, 1965, on African Socialism and its application to planning in Kenya in particular focused on investment in high potential areas that would bring quick return on investment.

13 Society for International Development (SID): Pulling Apart or Pulling Together. 2012

Other features of Kenya's political landscape are transparency, accountability, corruption, and a culture of impunity. Corruption undermines government functioning, rule of law, and productivity, promotes social exclusion, and limits the effectiveness of oversight institutions. Corruption has been identified as a growing concern within the counties in reports submitted by the Ethics and Anti-Corruption Commission, the Controller of Budgets, and the Auditor General. Transparency International's Corruption Perception Index (CPI) consistently portrays Kenya as a corrupt country at the national level. For example, Kenya's average CPI score between 2012 and 2021 was 27.4 percent, with the country ranking 128 out of 180 in 2021 with an aggregate score of 30 percent, a 1 percentage point decrease from the previous year. [14]

Corruption encourages the waste of public resources, which is prevalent in devolved units. There is some debate about whether cases of waste of public funds reported in Auditor General reports are the result of a lack of technical capacity to manage public finances, a lack of political will to ensure transparency and accountability, or a combination of the two. In any case, this remains a key bottleneck in the performance of the devolved units. In January 2022, for example, the Auditor General raised concerns about irregular spending in several counties. Kitui, Nairobi, Kisumu, Nyandarua, and Vihiga were identified as the worst-performing counties in terms of public resource management. Several counties were identified as having unexplained expenditures, massive pending bills, and poorly completed projects. [15]

There is weak enforcement of rules that can help reduce corruption in the country. The rule of law is weakly applied, and the country's constitutional guarantees of due process are poorly enforced. Despite the clarity of the regulatory regime governing public finance management in the country, enforcement, and oversight are lacking, particularly by the legislative arms of government (parliament and county assemblies). Openness and transparency in planning and budgeting processes are lacking, with little non-technical stakeholder input. Providing timely and understandable budget information to the public remains a barrier to effective participation in budgeting processes to promote transparency and accountability.

Despite its relative stability, Kenya still faces low-level security threats in some areas (e.g. parts of Lamu, Marsabit, Baringo, Mandera, Wajir, and Laikipia counties). While Baringo, Marsabit, and Laikipia counties are primarily involved in resource-based conflicts, Lamu, Mandera, and Wajir counties are affected by terrorist attacks. According to a recent report from the Food and Agriculture Organization, resource-based conflicts are intensifying

14 https://www.transparency.org/en/cpi/2021
15 The Standard, February 10th, 2022; https://nation.africa/kenya/counties/sh23bn-wasted-the-shame-of-counties-3704812

due to increased competition for water and pasturelands and rising malnutrition rates in affected areas of Ethiopia, Kenya, and Somalia.[16] Criminal gangs terrorize citizens at will in the main urban spaces such as Old Town Mombasa, and parts of Nairobi's informal settlements.

## 2.3. Socio-Cultural Terrain

Certain socio-cultural variables in Kenya have implications for citizens' engagement in the devolved system of governance. Two of these variables stand out. These are literacy levels, as well as norms regarding the place and role of men and women in the community. Although Kenya's population is largely literate (82 percent)[17] overall, there are significant disparities in literacy across the country. Turkana, Wajir, Garissa, Mandera, Marsabit, Samburu, and Tana River counties account for the majority of the uneducated population.[18] Turkana County for example has the highest proportion of uneducated people.

Citizens' ability to effectively engage with devolved governance systems is influenced by literacy levels. Education is also a key determinant of human development because it provides more opportunities and higher earnings. Inequality in access to education has a negative impact on poverty outcomes. Education also increases labor-force participation, boosts economic growth, and contributes to more equitable income distribution.

The norms surrounding the roles of men and women in the community are another socio-cultural variable influencing devolution in Kenya. In some Kenyan ethnic traditions, one is socialised to certain gender-based role expectations. What women and men can and cannot do is defined by their role in socialisation. In some communities, men are viewed as community leaders, limiting opportunities for women to participate in public decision-making. This, in turn, has an impact on public participation, resulting in gender-related participation gaps.

16 Food and Agriculture Organization of the United Nations, https://www.fao.org/newsroom/detail/drought-in-the-horn-of-africa-new-analyses-flag-mounting-risks-need-to-support-rural-families/en

17 World Bank, https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=KE

18 KNBS and SID, Inequalities in Kenya, http://inequalities.sidint.net/kenya/wp-content/uploads/sites/3/2013/10/SID%20Abridged%20Small%20Version%20Final%20Download%20Report.pdf

# 3. SECTOR ANALYSIS

## 3.1. Intergovernmental Relations


**Summary**

1) Coordination, cooperation, and consultation between the national and county governments, and independent institutions have improved tremendously between 2013 and 2022.
2) Conflicts over jurisdiction between national and county governments persist, for example, in the water, health, and transportation sectors. Such conflicts jeopardise service delivery, a key goal of devolution.
3) Jurisdiction also exists between the Senate and the National Assembly over mandate on certain legislations, for example on the Division of Revenue.
4) Tension between the County Assemblies and governors continues to negatively impact service delivery.
5) Transfer of equitable and conditional and unconditional grants from national to county governments have not been as effective as envisaged in Article 219 of the Constitution and Section 17(6) of the Public Finance Management Act.
6) Continued delays in the National Assembly in approving the latest audited accounts of revenue as the basis for equitable share.
7) The national government has not finalised the policy that guides establishing and operationalising regional economic blocs.
8) Constant wrangles among intergovernmental relations institutions over how to interpret their mandates.
9) Incomplete unbundling of devolved functions.


### The Problem

Significant progress has been made in cementing intergovernmental relations between the national government, county governments, and independent institutions between 2013 and 2022. There were conflicts over mandates between nascent county governments and the national government during the first generation of county governments (2013-2017). (e.g. over health, water, agriculture, and roads sectors). In some cases, the relationship between some of the county governments was also challenging (e.g. over taxes, and shared facilities such as cross-border markets).

While some of the issues with intergovernmental relations have been resolved during the second generation of county governments (2018–2022), there are still disputes over jurisdiction in some areas. One example is the national government's continued control of the health sector, even though it is one of the devolved functions. One such example is the national government's purchase of leased modern medical equipment for use by health facilities managed by county governments. The county governments objected to the national government leasing of the medical equipment because of the lack of involvement of the end user (i.e. county governments) and the view that health was a devolved function.[19]

19 IGRTC Publication 2021

Tensions between the national government and county governments regarding their mandates can also be seen in the transport sector. The national government has also retained control of key infrastructure services through semi-autonomous government entities such as the Kenya Rural Roads Authority and the Kenya Urban Roads Authority, resulting in additional jurisdictional conflicts with county governments. These jurisdictional disputes have a negative impact on service delivery. As a result, while progress has been made in cementing intergovernmental relations under the devolved governance system, some challenges remain. Among these are:

1) Delays in the disbursement of equitable share to the counties by the National Treasury thus disrupting the provision of services by the county governments.
2) There are still disputes between the national government and counties over key devolved functions such as water, agriculture, roads, and health.
3) The failure of the national government to finalise the policy that guides the formation and operation of regional economic blocs undermines their effectiveness.
4) The Senate and the National Assembly have also had disagreements about their respective mandates, such as disagreements over the Division of Revenue Bill and delays in passing the County Allocation of Revenue Act.
5) In some counties, the relationship between County Assemblies and Governors is strained, affecting service delivery.
6) Disagreements among IGR institutions based on revenue sharing among counties.
7) A lack of coordination, cooperation, and consultation between the two levels of government and among IGR institutions.

## Foundational Context

Tensions between centralisation and decentralisation forces characterised Kenya's first five years of devolved governance (2013–2017). On the one hand, some political actors believed that devolution would undermine their control of the central government but was afraid to say so publicly for fear of public backlash. Those who benefited from a centralised system of governance waged a silent battle against devolution forces. This rivalry persists, albeit to a lesser extent than before. Such positions are linked to entrenched political patronage and ethnic interests, which have been linked to undermining decentralisation incentives in Kenya (Kanyinga, 2016).

Barkan and Chege (1989)[20], regimes representing ethno-regional groups with enormous resources have no incentive to share resources with substantial units or other groups.
Devolution is much more popular in Kenya's historically marginalised regions, as such regions were frequently disadvantaged in national development discourses before 2013. This is due in part to their low numerical strength as vote baskets. This category includes many counties in northern Kenya, including Mandera, Marsabit, Garissa, Wajir, and Tana River. Similar regions can be found in arid and semi-arid counties such as Turkana, Samburu, Kilifi, and Baringo, to name a few.

20 Cited in Kanyinga, 2016

Parts of the country have historically been marginalised, which has weakened the state's presence in those areas. For example, in vast northern Kenya, the state security apparatus is inadequate, as evidenced by rampant insecurity cases. While county governments were formed to address the development challenge, security remains a function of the national government, necessitating much greater cooperation, coordination, and consultation with respective county governments on security issues in those areas.

The national government's delays in enacting a policy instrument to govern the formation and operation of regional economic blocs by counties may be informed in part by national government bureaucrats' concerns about threats to Kenya's sovereignty. The national government reacted with skepticism to the formation of some regional economic blocs (e.g., Jumuiya Ya Kaunti za Pwani), fearing that voices would use the regional economic blocs to galvanise support for seceding. These fears of secession may be rooted in the Shifta war of 1963-1967, during which ethnic Somalis in Kenya's Northern Frontier District attempted to join Somalia. Although the Shifta war ended in 1967, fears of some regions wanting to secede from Kenya remain.

## Policy, Legal and Regulatory Context

The Constitution of Kenya, 2010 envisions a situation where the national government and county governments, as well as independent institutions, work together in a spirit of coordination, cooperation, and consultation. The Constitution contains explicit provisions on intergovernmental relations in Articles 1, 6, 174, 186, 187, and 189. According to Article 189 (a), the two levels of government must carry out their functions and exercise their powers in a way that respects the functional and institutional integrity of the other level. Other provisions can be found in the County Governments Act 2012, the Public Finance Management Act 2012, and the Urban Areas and Cities (Amendment) Act 2019. There are both vertical and horizontal relationships.

The distinctiveness, interdependence, and respect for the mandate of the respective institutions at either level form the foundation of intergovernmental relations. Article 6(2) of the Constitution defines the national government and county governments as distinct and interdependent. The two levels of government should conduct their mutual relations in a consultative and cooperative manner.

## Actors

Several IGR institutions were established to facilitate cooperative governance in Kenya. These include; the National Government and County Governments Coordinating Summit, The Council of Governors (COG) the Inter-governmental Budget and Economic Council (IBEC), the Intergovernmental Relations Technical Committee (IGRTC), the Commission on Revenue Allocation (CRA), the Office of the Controller of Budget (COB), the Office of Auditor General (OAG), the Kenya Law Reform Commission (KLRC), the National Treasury, and Office of the Ombudsman. Other important institutions in intergovernmental relations are the Sector Forums and the Joint Intergovernmental Technical Committee.

While the existing legal framework delegated specific responsibilities and powers to these various actors in intergovernmental relations, the National Treasury wields significant influence over county governments. Controlling the flow of resources to devolved units, which is frequently characterised by delays in remitting the equitable share, deprives counties of funding for service delivery. Since 2013, the National Treasury has consistently failed to meet the deadlines for disbursing funds to counties. The controlled release of funds by the National Treasury has been blamed in part on a lack of funds.

The Council of Governors (COG) has become increasingly important in mobilising support for engagement between various actors and the county governments. Between 2013 and 2022, the COG became the county governments' voice on common policy positions. The COG has also been vocal in its engagement with the national government regarding delays in the release of funds to counties. Health, water, and agriculture all have active sector working groups.[21] The health sector working group, on the other hand, is the most active. There are also plans to form sector working groups for the roads and finance sectors.

## Dynamics in Intergovernmental Relations

Overall, the IGR institutions have largely performed their roles in facilitating cooperation, coordination, and consultations under the devolved system of government. Despite this progress, certain patterns can be discerned in terms of IGR space. First, the national government's desire to dominate county governments persists. The national government exercises this control in part through the National Treasury, by controlling the release of allocated resources to counties. The National Treasury rarely makes timely scheduled disbursements of funds to the counties. County governments' over-reliance on the National Treasury for development resources has been criticised as parasitic.[22] County governments have also been slow to create conditions that will allow them to generate more revenue from their own sources to fund their development priorities. Given this reliance, the National Treasury has taken a "perfect attitude" [23] towards the counties. However, relations between the county governments and the national government have improved significantly between 2018–2022 when compared to the period 2013–2017, when there was marked competition between the two levels of government.

> "*The two levels mostly operate as if they are competing. Some national government agencies are afraid of becoming extinct since their functions were given by the constitution to the counties.*" Key informant interview, June 2022.

> "*Regarding the relation between the national government and county governments, there were many concerns, particularly during the first phase of devolution, from 2013 to 2017, after which the relationship began to improve. There was fighting over positions, and the national government did not embrace the county governments.*

21 Participant, PEA workshop, May 13, 2022
22 Key informant interview, June 2022
23 Key informant interview, June 2022

*For example, the National Assembly thought it was superior to the Senate, which caused a lot of conflicts. From 2017 to the present, the rivalry has waned slightly in the second phase of devolution. The national and county governments should sit down and reason together without suspicion*." Key informant interview, May 2022.

The Constitution of Kenya, 2010 envisions a situation where no level of government would be subordinate to the other and that each must respect the functional and institutional integrity of the other. This implies a measure of equality and autonomy among the two levels so that each level has the flexibility to make its own decisions within its constitutional mandate.

Other examples of the national government's desire to control county governments include an interest in who is elected as chairperson of the COG. In this case, the national government's goal is to appoint a pro-regime person as chairperson of the COG. Following the August 9, 2022, general elections the two major political formations vied for the control of the COG through the election of their preferred candidates. The leasing of medical equipment on behalf of county governments by the national government without first consulting the counties reflects the national government's attitude towards the devolved functions.

The example of the County Government of Nairobi initiating the transfer of key functions to the national government linked to Nairobi Metropolitan Services in 2020 demonstrates the extent to which the national government can go to control strategic county governments. Thus, in February 2020, the national government through the Ministry of Devolution and the Arid and Semi-Arid Lands and the County Government of Nairobi signed a Deed of Transfer of Functions from the City County to the newly established Nairobi Metropolitan Services (NMS).[24]

Under the Deed of Transfer of Functions, Nairobi City County transferred the following functions to the national government: county health services; county transport services; county planning and development services; public works, and utilities and ancillary services. Thus, the County Government of Nairobi was left with less influential departments such as information communication and technology; early childhood education and sports; agriculture and livestock; trade and cooperatives; devolution, environment, and finance sectors. The Deed of Transfer heavily curtailed the power and the influence of the County Governor in the administration of the city. The bulk of the work was left in the hands of the national government appointee, the Director General of NMS, a military officer, who also sits in the national government cabinet.

24 Kenya Gazette Notice No. 1609, http://kenyalaw.org/kenya_gazette/gazette/volume/MjEwNg--/Vol.CXXII-No.38/ )

Weak coordination, consultation, and cooperation between the national government and the county governments have also been cited as undermining efforts to address insecurity in various parts of the country. Counties in the north that have frequent security problems have blamed the national government for failing to provide adequate security for both investments and personnel stationed in those counties.

While the various IGR institutions are functional, they have certain shortcomings that tend to undermine intergovernmental relations. The National and County Governments Coordinating Summit has not been as effective as envisioned and does not meet frequently, despite legal requirements that it meets at least once a year.[25] The Summit's failure to meet regularly, as required by law, limits opportunities for both levels of government to discuss issues affecting the implementation of the devolved system of government. Furthermore, the absence of elected representatives from national government and county governments in the IGRTC composition leaves a gap in the articulation of national and county issues affecting IGR. The IGRTC has also been ineffective in carrying out its mandate.

> "*The IGRTC (the successor to the Transition Authority) is responsible for providing a Secretariat for the Summit as well as assisting in the facilitation of Summit meetings. This Committee has been ineffective, which is affecting devolution. The effectiveness of these intergovernmental relations is critical to the success of devolution. If the two levels of government adhered to Articles 6 and Article 189 of the Constitution as well as the relevant provisions in the County Government Act 2012, regarding the relationship between the two levels of government, then problems relating to the implementation of devolution would be solved*." Key informant interview, May 2022.

The IGR framework serves as a sectoral mechanism for intergovernmental relations in some ways. Kenya approaches intergovernmental relations from a constitutional/legal standpoint. The constitutional approach is enshrined in the Constitution, which establishes a cooperative system of government based on the principle of distinctness and interdependence of government relations.
The Intergovernmental Relations Act 2012, which establishes intergovernmental structures, captures the legislative approach to IGR. Both the Constitution and the Act inform Kenyans about the sectoral mechanisms for IGR that can be used to maximise the effectiveness of devolution.

The importance of sectoral IGR mechanisms is emphasised. The suggestions for improvement are divided into three major areas of reform. To begin, there is a need for clarity regarding the status and role of the state, as well as the role of the IGR Forum. The second requirement is to ensure the recognition and respect of the principle of distinctiveness, as well as the integration of sectoral intergovernmental forums specific to each level of government's functional assignment.

25 Key informant interview, May 222

Third, any national policy or legislation that affects or has the potential to affect the discharge of county government functions must be published for counties to make representations about the draft legislation. This will prevent the implementation of national policy or legislation that strips county governments of their devolved powers and functions. It is also necessary to recognize that the cooperative form of devolved government cannot be achieved without developing appropriate intergovernmental structures at national and lower levels that deal with sectoral issues.

## Opportunities for Change

As KDP–*Timiza Ugatuzi* implementation enters the second year, analysis in this section points to certain variables within the IGR context, that may present opportunities to create the change anticipated in the design of the programme. Among these are:

1) Existence of a draft national policy on regional economic blocs. If this policy instrument is finalised it would provide clarity on the powers of the regional economic blocs, the financing of these blocs, ownership of projects undertaken through the regional blocs, and dispute resolution mechanisms for members in a regional economic bloc. It would also provide a framework for counties to contribute to the operations of regional bloc offices.
2) The general elections in August 2022 provided another opportunity to revitalise a key pillar of the IGR institutions. There are also opportunities to strengthen the COG's operations, which is critical for IGR. For instance, the relationship between the county governments and the Senate will be enhanced since some of the former governors are now in the Senate and vice versa. Since 2013, significant progress has been made in improving horizontal relations (for example, between county governments), necessitating the need to build on this momentum and improve vertical relations.
3) Despite progress, constant wrangling among IGR institutions over the interpretation of their mandates persists. Resolving this issue necessitates increased capacity interventions on IGR.
4) The COG has been vocal about delays in the disbursements of funds to the counties as well as the challenge of timely audited accounts as a mechanism of increasing resources flowing to the counties. This means that much work will be required to resolve these two concurrent challenges.

## Pathways for Change

One of the goals of the KDP-*Timiza Ugatuzi* Programme is to promote effective intergovernmental relations marked by sound coordination, cooperation, and consultation between the two levels of government and among IGR institutions. Given the IGR context described in this analysis, the following interventions may be sufficient:

1) Continue to engage relevant stakeholders in the development of a national policy to guide the formation and operation of regional economic blocs.
2) Work closely with relevant IGR institutions on a mechanism for the timely release of funds to county governments.

3) Undertake capacity-building interventions targeting various actors in IGR and especially those new to the offices given the August 9, 2022, general elections. For example, county executives, county assembly, Senate, COG, and County Assemblies Forum may require revitalisation through capacity-building initiatives.
4) Operationalisation of proper mechanisms for IGR oversight.

## 3.2. County Planning

**Summary**

1) Counties have established systems and structures for county planning, such as operational planning units.
2) CIDPs for the period 2022 - 2027 are being developed.
3) County Budget and Economic Forum are not effective in some counties as envisioned in the planning process.
4) Most counties have not prioritised spatial planning due to cost and a general lack of political will.
5) County statistics offices are weak and are characterised by a poor linkage with the Kenya National Bureau of Statistics.
6) Systems for involving citizens in county planning processes are weak, while where these exist, there are questions regarding the quality of citizen participation.

### The Problem

County governments are required by law to create several planning documents to guide development interventions in their respective jurisdictions. These include, among other things, the County Integrated Development Plan (CIDP), Annual Development Plans, sector plans, and spatial plans. The Annual Development Plans are informed by the CIDP, which in turn informs the county budget. While the law is clear in the county planning process, certain challenges can be identified:

1) There is a lack of consistency in the development and implementation of the CIDPs. When new governments take office, they significantly alter the CIPD to reflect their interests, which in turn influence the county's development agenda.

2) A lack of long-term planning culture, for example, few counties have developed ten-year sector plans or ten-year spatial plans.

3) Weak data collection, collation, and storage systems. This restricts access to up-to-date objective statistical data on key planning indicators. This is exacerbated by a lack of communication between the Kenya National Bureau of Statistics and county statistical units.

4) Systems for involving citizens in county planning processes are lacking, and where they do exist, there are concerns about the quality of citizen participation.

5) Low focus on spatial planning as it's not seen as a priority for the counties given the low level of political capital to be gained from financing physical planning.

6) According to the International Budget Partnership the national government and county government perform poorly in access to information. The score for the national government has increased marginally between 2012 (49 percent) and 2019 (50 percent). When compared to the national government, county governments perform significantly worse in terms of information access.

## Policy, Legal and Regulatory Context

The Constitution of Kenya, 2010 apportions responsibility of planning to both national and county governments. County governments are obligated by the County Government Act, 2012 to prepare and implement County Integrated Development Plans (CIDP); County Sectoral Plans, County Spatial Plans, and City/Municipal Plans. County plans are essential for the planning and development of the 47 county governments, and thus, each county should prepare a development plan to fulfill Article 220(2) of the Constitution of Kenya. These plans are also essential for the budgeting process in the counties and the achievement of the Kenya Vision 2030 goals (Republic of Kenya 2008, 2016). The purpose of the county plans is to guide, harmonise, and facilitate development within each county. According to the County Government Act (2012), county governments should designate county departments, cities and urban areas, sub-counties, and wards as planning units of the county.

County plans come in different forms and structures and they have been an integral part of development since independence in 1963. For example, economic planning is tasked with the organisation of real and monetary resources into a concerted and coordinated development effort; financial planning involves the determination of government revenues, recurrent expenditure, and capital budgeting and planning and creation of financial institutions; physical planning deals with land use and layout, and locational, transport and design problems in both rural and urban areas; and social planning is concerned with the welfare and social services, cultural development, the modification of traditional attitudes, the alleviation of social problems, self-help and community development (Republic of Kenya 2016: 5). Even on seemingly routine matters, none of these aspects of planning can be carried out without close coordination with the others.

The CIDP is a five-year plan (also known as the medium-term plan), that forms the basis of annual budgetary allocation by county governments. The CIDP must have clear goals and objectives, an implementation plan with clear outcomes, provision for monitoring and evaluation, and a clear reporting mechanism. In the context of devolution in Kenya, counties are now developing third-generation CIDPs. Essentially, CIDPs are required by law to realise coordinated and sustainable development planning in the counties, they should also include a clear process of plan preparation, visioning, stakeholder engagement, presentation of the plan outputs, and plan implementation. According to the Public Finance Management Act 2012, no county should allocate or spend its funds without a planning framework, developed by the county executive and approved by the

County Assembly. The CIDP should contain the five-year strategic priorities of the county governments and should contain information on development priorities that inform the annual budget process, particularly the preparation of Annual Development Plans, the Annual County Fiscal Strategy Papers, and the Annual Budget Estimates.

A Spatial Plan is a ten-year document prepared by physical planners to demonstrate the spatial vision of the county with the objective of how to achieve an organised, integrated, sustainable, and balanced development in a county (Republic of Kenya, 2016:1). It guides the long-term spatial development by informing the future use and distribution of natural resources. It also provides a framework for better county organisation and linkages between different activities within the county space. It also defines how the county spaces are utilised to ensure optimal and sustainable use of land. Drawing from the National Spatial Plan 2015 -2045, county governments are expected to develop their respective plans to guide the use of space and resources therein (Republic of Kenya, 2016 p.2). Ideally, spatial plans facilitate the achievement of the land policy principles of efficiency, equity, sustainability, and productivity. The National Spatial Plan is critical in the implementation of devolution because it serves as a guide for county development planning as they carry out their responsibility of preparing county and local plans. It establishes physical planning policies which county plans are expected to articulate and propagate.

A Sectoral Plan is a 10-year plan developed by a county government as part of the CIDP to guide operations of devolved sectoral programmes. They are the basis for programme-based planning, budgeting, and performance management. They are approved by the respective County Assembly in accordance with the law and are expected to be reviewed every five years to keep up with the county changes. They are, however, supposed to be updated on annual basis.

Finally, a city and/or municipality plan is an instrument for facilitating development and controlling development within a respective city or municipality. This plan is intended to facilitate land use, identify building and zoning areas, and show recreation and public facilities areas about urban settings. It also shows where various types of infrastructure are located within the city or municipality. All public entities and private citizens operating within the city or municipality are bound by the city or municipality's land use and building plans.

## Institutional Context

According to the Constitution, the county executive is expected to develop all county plans, which are then submitted to the County Assemblies for approval. Economic, physical, social, environmental, and spatial planning should all be integrated into the county planning framework. Citizens in the county should be effectively involved in the planning, approval, and implementation of all the county plans (public participation). The county government should designate county departments, cities and urban areas, sub-counties, and wards as planning authorities of the county. According to the County Governments Act (2012), the county executive committees are expected to develop county spatial plans that each respective county shall approve according to the procedures approved by the respective County Assembly. Spatial plans are to be reviewed every five years.

The planning cycle starts with the formation of planning committees led by the County Executive Committee Member (CECM) Finance and Department of Finance and Economic Planning which coordinates all activities. The CECM Finance constitutes both joint sessions and technical sector working groups. The process starts with data collection and analysis, which includes a review of the previous plans. Public participation should be enhanced at all stages of the planning process. The County Budget and Economic Forum (CBEF) is expected to provide leadership in matters of public participation in the planning and budgeting framework.

After gathering input from county residents, the committees should define the key priorities and development strategies that may necessitate a multi-sectoral approach, the criteria for spatial and sectoral allocation of resources, as well as any joint approaches to incorporate cross-cutting issues (such as climate change, gender, etc.) into the planning process.

Key actors in the planning for counties include finance and economic planning departments led by the chief officer and the director in charge; the department responsible for physical planning, representatives from devolved functions, members of the County Budget and Economic Forum (CBEF), monitoring and evaluation staff in the county, County Assembly and members of the public within the county. Sub-county and ward administrators are expected to play critical roles in data collection and public participation in planning documents.

County Executives are expected to establish respective departments for planning and facilitate them with human resources and budget. The minister (CECM) in charge should provide policy direction and coordination among various departments that are involved in the planning at the county level. There should be enhanced coordination between the County Executive and the County Assembly to enable seamless operation in the development, citizen engagement, and implementation of planning documents.

## Dynamics in County Planning

Counties are currently working on their respective CIDP 2022 -2027 which are at different stages of completion. As such this provides an opportunity for the KDP to support this process by co-creating capacities of the planning staff in respective counties. Counties are engaged in developing CIDPs but this process has been slowed down by the need to integrate the incoming governors' manifestos and political tensions in most counties. The process of developing the third-generation CIDPs in some counties has also been slowed down by the failure of the counties to allocate the process the requisite resources.

Every county has established finance and economic planning departments with staff and budgetary resources. Most counties also have physical planning units, despite staffing shortages (AHADI 2019). Most counties have M&E units, but they are not very active. In some counties, for example, these units are housed in the governor's office or the county secretary's office rather than the finance and planning department. Where these M&E units do not exist, their functions are assumed by economic planning units, which can be problematic. Many counties' M&E units face financial and personnel challenges, limiting their effectiveness (AHADI 2019). The CBEF are either not established in many counties or, if they are, they are ineffective in carrying out their mandate. Because their membership constitution and meetings are at the discretion of the governors, they remain largely ineffective if the governor does not convene a meeting for them.

Most counties do not develop spatial plans due to technical capacity constraints and a lack of political will. One of the major impediments to having spatial plans is the cost of establishing GIS labs to facilitate the capture, storage, and analysis of county data. External funding has been used primarily in the few counties where spatial plans have been developed. [26] According to AHADI (2019), most county-level physical planning departments face several challenges, including a lack of data collection tools and equipment such as office stationery and cameras, as well as a lack of information flow between planning departments.

Given the limited political capital to be gained from the investment, most county governors do not prioritise physical planning. Unlike projects such as road construction or water infrastructure provision, physical plans are not tangible investments and thus are not easily visible to the electorate. This makes it difficult for some governors to invest in physical plans. Most counties appear to prioritise planning that affects resource access (budgetary requirements) and those that result in political mileage. the effectiveness of these plans in informing actual project implementation is not well articulated.

## Opportunities for Change

The analysis of county planning brings to the fore certain opportunities that can provide potential entry points for the Kenya Devolution Programme. Some of these opportunities are:

a. The third-generation County Integrated Development Plans (2022-2027) are currently being developed. The recently concluded general elections also provide an opportunity to inform county development priorities, which the CIDP development process will need to take into account. This allows KDP partners who are working on planning to contribute in that regard.

b. The existence of county planning units that are clearly in place and operational, but have not been devolved to lower levels. There is a need to improve planning at the ward level.

26 Participant, KDP PEA seminar, May 2022

c. The existence of the National Spatial Plan 2015 – 2045 provides for an integrated approach for balanced and sustainable national development.

d. The legal and policy instruments that govern county planning are in place. This includes but is not limited to the Constitution of Kenya, 2010, the County Governments Act 2012, The Public Finance Management Act 2012, and the Cities and Urban Areas (Amendment) Act 2019, all of which provide a legal framework for planning.

e. The systems and structures for public participation in most counties are in place and there is a rising awareness of the place of public participation in the county and national planning processes.

f. The need to build on previous devolution support programmes, such as AHADI, in strengthening county governments' capacities in a variety of functional areas, including county planning.

## Pathways for Change

Given the issues raised under county planning, KDP may consider the following as potential pathways to positively impact the county planning function:

a. Finalise the development of the CIDPs in collaboration with the leadership of the third generation of County Governments Act (2022-2027).

b. Build the capacity of county departments to acknowledge the significance of long-term sector-based planning, such as ten-year plans.

c. Raise awareness of the value of spatial planning among the county leadership (County Executive and County Assembly).

d. Collaborate with county governments and non-state actors to strengthen systems and structures for public participation in county planning.

e. Support county statistics offices in implementing more robust data collection, collation, and storage systems for planning purposes.

## 3.3. Public Expenditure Management


### Summary

1) Counties have implemented the necessary systems and structures for public expenditure management (in line with PFM Act, PPOA). However, there are challenges to the functionality of these systems. For example, enforcement of accountability and transparency in the budget execution process is difficult.
2) Delays in the disbursement of funds by the National Treasury undermine service delivery by the counties.
3) Many counties are unable to meet their targets for their own source revenue, hence constraining the counties' ability to deliver services to the people.
4) Much more money is still being spent on recurrent expenses, despite the law requiring that development spending not be less than 30 percent of the county budget.
5) Most counties are dealing with unpaid bills as a result of poor procurement practices.
6) There is a need to strengthen the capacity of incoming county executives and county assemblies in order for them to carry out their respective mandates in terms of public expenditure management.
7) The public's capacity must be strengthened in order for them to participate in county governance processes that promote transparency and accountability in the use of public resources.


### The Problem

Effective public expenditure management is a key requirement if county governments are to deliver quality and timely services. Although counties have made significant progress in establishing systems and structures for public expenditure management, there are still some gaps. A few of these gaps include:

1) Corruption and unnecessary spending.
2) Poor budget execution systems.
3) Ineffective intergovernmental relations that hinder the two levels of government's public expenditure management process.
4) Weak and compromised oversight on budget execution by the County Assemblies.
5) Inadequate capacity for scrutiny of budget execution processes among County Assemblies.
6) Dysfunctional internal audit systems.
7) Inadequate procurement practices contributing to pending bills.

Overall, inadequate capacity, gaps in policy and legislation, corruption, and lack of political goodwill have adversely impacted the effectiveness of public expenditure processes and, as a result, service delivery.

## Policy, Legal and Regulatory Context

The Constitution of Kenya, 2010 establishes the foundation for the social, financial, and economic contract between the people and the state. One of the key provisions of this contract is about how resources are used for the common good, which is based on three key principles. The first principles include the principle of market failure, which states that governments should intervene in their citizens' economic activities to correct the consequences of market failure, which include insufficient resources, inefficiency in resource allocation, and a lack of equity in the distribution of goods and services (Kibua 2020, Rugo 2021; Transparency International 2014).

The second principle is about sound public finance management which underscores the attribute of fiscal responsibility. The third principle is that of enhancing accountability and value for money. This requires that public resources be accounted for in terms of allocative efficiency and effective utilisation by citizens' preferences for development. It further requires openness and transparency towards the public about government functions, fiscal policy intentions, and public sector accounts and projections. Overall, the constitution provides space for promoting transparency, accountability, participation, and equity in public finance.

Although the Constitution has created two levels of government, Kenya is still a unitary state. This means that even though the two levels are distinct, they are required to respect each other and work in harmony (Article 6(2)). This implies that the relationship between the two must be consultative and cooperative; that neither the county nor the national government is senior nor superior to the other; and that both levels of government have the power to secure resources. Article 201(b) provides that the public finance system must promote an equitable society and specifically the burden of taxation is to be shared fairly; the revenue raised nationally must be shared equitably between the national government and county governments; expenditure must promote the equitable development of the country, including by making special provisions for marginalised groups and areas (Rugo, 2021).

The Public Finance Management Act (2012) provides a framework for the effective management of public finances by both levels of government; the oversight responsibility of Parliament and County Assemblies; the different responsibilities of government entities and other bodies, and for connected purposes. This is accomplished by (1) specifying how public finances are managed by both levels of government; and, (2) identifying public officers who are given responsibility for managing the public finances and ensuring they do so in an accountable manner according to the principles of the Constitution, through the national and county assemblies (Transparency International 2014). Assemblies (national and county) are in line with this Act and are expected to provide oversight roles to both levels of government, respectively. The main purpose of the Public Finance Management

(PFM) Act is to regulate financial management in both the national government and county governments in Kenya by ensuring that all revenue, expenditure, assets, and liabilities of the respective government are managed efficiently and effectively; provide for the responsibilities of persons entrusted with financial management in that government (PFM Act 2012 Art (3)).

Chapter 12 of the Constitution of Kenya, 2010 (Articles 201 – 231) together with the PFM Act (2012) provides a comprehensive framework for financial management between the national government and county governments. Overall, the aim is to promote openness and accountability, including public participation in financial matters at all levels of administration. Guidelines for resource mobilisation, sharing of revenue, budgeting, expenditure, and procurement of goods and services are articulated in line with the spirit of equity and accountability.

County governments are expected to establish structures for financial management in line with the PFM Act as well as install integrated financial management information systems (IFMIS) which is the approved system for budgeting and expenditure operations. Counties are expected to have operational finance, budget, internal audit, revenue, and procurement departments as part of the structures for financial management. Counties are also expected to establish CBEFs in conjunction with economic planning. Counties are also expected to install procurement systems and processes that comply with the Public Procurement and Disposal Act (PPDA) (2015).

The Constitution established several institutions, actors, and processes for raising, sharing, using, and reporting on public funds. At best, the number of PFM institutions and their connection mechanism is a complex web (Rugo, 2021:134). Executive treasuries are in charge of managing revenues and disbursements to various service departments at the national and county levels. While the National Treasury had to reorient to working in an intergovernmental framework that included new budgeting steps, county treasuries had to be established from the ground up (Rugo, 2021).

This has not been an easy process. For example, both levels are still unsure how to classify recurrent and development expenditures. They have yet to establish effective public participation mechanisms in financial matters. The National Treasury staff's capacity building of county staff has not been sufficient. Despite these challenges, counties have managed their financial obligations.

Aside from the treasuries, another important institution is the Assembly, which is responsible for overseeing the use of public resources. (Republic of Kenya 2010). All laws and policies relating to public finance are approved at the national and county levels by the respective Assemblies. The Assemblies hold the executive accountable during implementation and approve audit reports, including directing specific actions when accounts are qualified. At times, the capacity of County Assembly members to hold their executives accountable has been questionable.

The Kenya Revenue Authority (KRA) is the primary institution in charge of collecting the majority of the national government revenue. County governments have a directorate and department within their county treasuries that manage their revenue collection (PFM Act 2012, Rugo 2021). Some counties have either outsourced or automated these services. In Kenya, the ability of county governments to generate their own revenue has been a challenge. According to the Commission on Revenue Allocation (CRA) study, only Nairobi, Mombasa, Kiambu, Nakuru, and Narok counties can raise at least 50 percent of their budgeted own revenue resources.

The other set of institutions are those that serve both the national and county government concurrently. These include the Commission for Revenue Allocation (CRA), Office of the Controller of Budget (CoB), Office of the Auditor General, Central Bank of Kenya (CBK), Salaries and Remuneration Commission (SRC) and the Intergovernmental Budget and Economic Council (IBEC) (see PFM Act Art. 187). Last but not least, the Public Procurement and Disposal Authority (PPDA) oversees all aspects of the procurement and disposal of public goods and services.

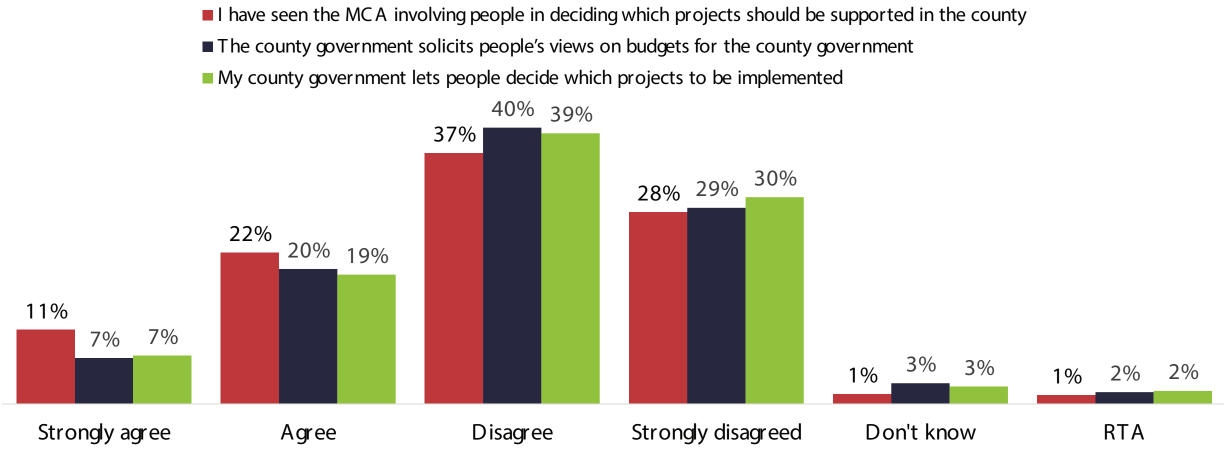
## Dynamics in PFM

While most financial management structures and systems have been implemented at the county level, there are variations in their efficiency and effectiveness for service delivery. Most county executives and Assemblies have focused on developing structures and documents with budgetary implications. For example, there is a tendency to fast-track budget reports and CIDP because of the implications these documents have on the release of funds by the National Treasury, they are prioritised over other documents that have a direct impact on service delivery at the county level.

Accountability and transparency in financial management have remained major obstacles to devolution. There have been instances where goods have been procured at exorbitant prices compared to the market price. This leads to resource waste at the county level.[27] The situation is made worse by counties' ineffective systems for engaging citizens in public expenditure management. A recent public perception survey by KDP shows that 69 percent of the respondents disagreed with the view that 'the county government solicits people's views on budgets for the county government" (Figure 3).

27 KDP mini-workshop, May 13, 2022

**Figure 3: Which of the following statements is closest to your view?**




Source: KDP public perception survey, June 2022

Because the Auditor General's report is released with some time lags, many county executives exonerate themselves since they were not in the office when transactions were taking place. In general, audit reports receive less attention than formulation and approvals.

Disbursement of funds allocated to counties is still a challenge. When disbursements are delayed, county executives turn to commercial banks for borrowing to cover operational costs such as salary payments. There are also challenges with the Integrated Financial Management Information System (IFMIS), which has many downtimes that affect counties' ability to spend or access funds.

Finally, there are challenges with the county spending between development and recurrent expenditures. While the PFM Act provides for 30 percent development and 70 percent recurrent, studies show that some counties are spending more than 90 percent of their budget on recurrent expenditures (AHADI, 2019). There is also variation between the budgeted projects and those implemented. This has resulted in a large number of pending bills at the county level. The newly elected governors (August 9, 2022, general elections) will have to grapple with huge pending bills and stalled projects.

## Existing Capacities for PFM

County governments have developed structures and systems for public finance management as a result of devolution (PFM). These are some examples:

1) Counties have established systems and structures for managing public expenditures, such as county treasuries, revenue, internal audits, procurement, and so on.

2) There exists a vibrant public finance-related IGR institution such as the Commission on Revenue Allocation, Controller of Budget, Auditor General, and Public Procurement

and Disposal Authority, among others.

3) The new county leadership, both Executive and Assembly, provides a renewed impetus to invest in the capacity of their incoming staff.

4) Existence of a diverse set of stakeholders undertaking programmes on public expenditure management in the counties.

## Pathways for Change

Given the issues raised by public expenditure management, KDP may consider the following as some of the potential pathways to positively impacting public expenditure management:

1) Build the capacity of the County Executive and County Assembly on public expenditure management.

2) Collaborate with key partners and create modules that will be used to simplify financial documents so that ordinary citizens can read and understand them.

3) Lobby and raise awareness among county governments about the importance of posting public expenditure management documents on their websites so that citizens can easily access them in accordance with Article 35 of the Constitution which recognises the public's right to access all public information.

4) Strengthen procurement procedures and processes at county levels where goods and services are sometimes procured at exorbitant prices and in an opaque manner.

5) Strengthen programmes that promote citizen engagement in public expenditure management.

## 3.4. Staff Performance


**Summary**

1) Counties have adopted performance management in order to provide better value for money while also connecting with citizens' needs and priorities.
2) At the county level, there are inadequate systems for managing staff performance, such as limited automation of the human resource function, staff salary delays, and so on.
3) Overstaffing and eventual high wage bills continue to undermine county service delivery.
4) Political pressure and interference in the operations of the county public service boards have a negative impact on the performance of the human resource function in the county e.g. lack of financial autonomy.


### The Problem

County governments just like the national government is confronted with the challenge of demonstrating results from the collection and use of public resources. This has resulted in increased demands for accountability on the part of the public service. In addressing this challenge, County governments have embraced various instruments that include performance management plans and reports, performance contracts, staff appraisal, service charters as well as an array of social accountability mechanisms.[28] The caliber and attitudes of the human resource staff working in the country's public service are at the heart of the county performance management framework.

As a consequence of the transition to a devolved system of governance in the country, counties were confronted with different layers of staff in the public service, each with differing motivations. Some were newly recruited by the county public service boards, those inherited from the former local authorities, as well as those seconded by the national government. While the disharmony witnessed between 2013–2017 regarding the varied staff working for the county governments has largely fizzled out, several challenges remain that impact performance. Some of these challenges are:

1) A dysfunctional public service culture that continues to jeopardise service delivery and the use of public resources.

2) Weak public-sector performance management systems, such as limited automation of the human resources function.

3) Delays in paying county employees, which demotivates them and undermines service delivery.

4) Frequent strikes by county employees, particularly in the health sector.

28 Source: https://countytoolkit.devolution.go.ke/performance-management

5) The effects of an aging workforce on succession planning and management.

6) Some counties have an excess of personnel.

## Dynamics in Staff Performance

The management of human resources in the county is by the County Public Service Board, although shared to some extent with the respective county executive departments in charge of personnel and administration. The County Public Service Boards are by law required to recruit staff concerning the devolved functions as well as adhering to counter-marginalisation requirements in county public service. Some counties have failed to adhere to the provisions of Section 65(e) of the County Governments Act 2012, on the inclusion of minorities and marginalised groups in the county public service, resulting in the domination of county public service by the staff from the dominant ethnic communities. The result is increased localisation and loss of the national flavor in the county government.

Although the County Public Service Board is supposed to be semi-autonomous, the County Executive and County Assembly interfere with the board's work. These two put pressure on the board to hire people who support these politicians. In most cases, County Public Service Boards lack financial independence.

Kenya's current civil service is comprised of an aging workforce. The majority of this workforce is expected to retire over the next ten years. According to the Directorate of Public Service Management (DPSM), in 2019, 43 percent of civil servants were over the age of 50. In 2020, 35 percent of civil servants were over 50, while 53 percent were between 46 and 50, approaching retirement age. This is a challenge because it indicates a significant loss of critical skills and competency, as well as a lack of a well-defined career development policy. In 2009, the retirement age was raised from 55 to 60 years to prevent the loss of critical skills and allow for succession planning to ensure continuity of service delivery. With the workforce skewed to the older group, the problem of succession planning persists. Some civil servants have sought waivers from retirement or re-engagement contract upon reaching the age of 60 years.

However, with effect from January 2021, these extensions ceased to be approved to encourage human resource departments to proactively engage in succession planning. To contain the escalating wage bill, the government has imposed a ban on new hiring until 2024, further compounding the issue. At the county level, the management is affected by the political cycle. County governments' performance normally reduces when there is a restructuring of County Executive Committee Members, changes in the County Public Service Board, national elections, and employment of new leaders. During the transition, some leaders tend to recruit new leaders and employees which affects the morale of people working with the county governments. As a result, the staff is constantly in a dilemma where leadership has a direct influence on who is to be relieved of their duties and who will be retained.

Budgetary constraints also have an impact on succession planning. This results in minimal allocation to recurrent vote heads, such as staff promotion and training. An adequate budgetary allocation is required to cover staff training and promotion after the seniors leave the system.

Both the national government and county governments are concerned about succession management. The current study found a misalignment between actual and perceived succession management practices. There is no evidence of succession planning within the institutions to identify, train, groom, and develop potential top management successors rather than relying on external outsourcing. Because working environments are rapidly changing, succession planning is a necessary process in today's governmental institutions. This exposes institutions to significant unpredictability and uncertainty. As a result, institutions must rely on their most valuable asset, their employees.

Some county governments have adopted policies on staff performance and appraisal that serves as guidelines for county staff appraisal. Employee performance and commitment are influenced by their compensation package. Counties could use employee compensation to increase employee motivation and commitment to the county. The working environment also affects the performance of employees at the national and county levels. Job security has a tremendous influence on employee performance and this is guaranteed at the two levels since all the employees are civil servants. However, work-related attitudes and commitment moderate the effects of job insecurity on job performance.

## Opportunities for Change

In light of the identified dynamics, the following provide useful entry points to strengthen county performance management:

1) Most counties have adopted a performance management culture. This is consistent with the Council of Governors' 2017 Performance Framework for County Governments. The framework identifies performance contracting and staff performance appraisal as key elements, among other things. The institutional arrangements for staff performance at the county level, such as the performance contracts secretariat and the County Public Service Boards, are also in place.

2) The concluded August 9, 2022, the general election provides an opportunity for county governments especially those with newly elected governors to entrench staff performance management in the county public service.

3) The existence of functional County Public Service Boards in most counties.

## Pathways for Change

In light of the identified dynamics and opportunities, the KDP partners can focus on the following to improve staff performance in the counties:

1) Provide technical assistance in performance management throughout the county public service.
2) Encourage efficiency and transparency in county-level staff recruitment which should be based on an assessment of human resource needs.
3) Strengthen County Public Service Boards' capacity to serve as accountable secretariats for performance management, including performance contracting.

## 3.5. Public Participation

**Summary**

1) Counties have made progress in putting in place legislation and administrative infrastructure to facilitate public participation, such as laws and public participation units/departments.
2) Counties recognise the importance of mainstreaming inclusivity in public participation efforts in order to close disparities in participation, such as gender, disability, minorities, and marginalised groups.
3) Weak coordination of public participation among county departments.
4) Failure to fully implement the Access to Information Act of 2016 limits citizens' access to public information.
5) Citizens' feedback mechanisms are weak across counties, with little public awareness of various feedback mechanisms, such as petitions, litigation, and so on.
6) Limited civic education continues to be the weakest link in increasing people's participation in the county governance process.
7) Devolving governance beyond the ward to the village level would increase the citizen's participation in county affairs.

## The Problem

Article 1 of the Constitution of Kenya, 2010 states that all sovereign power belongs to the people. This affirms the value of self-government and the right of the people to participate in the exercise of state powers and in making decisions that affect them.[29] Extensive work has been done to establish the legislative and policy frameworks for public participation, which is enshrined in the Constitution of Kenya 2010.[30] The Constitution envisions a process of informing, consulting, involving, collaborating, and empowering through public participation (Republic of Kenya, 2016:1).

29 The Futures Bulletin March 2015 Issue no 19, Institute for Economic Affairs.
30 Article 10(2)(a) of the Constitution of Kenya, 2010.

Despite progress in incorporating public participation into county governance processes, several participation gaps remain,[31] these include:

1) Failure to fully operationalise public participation frameworks in the counties such as committing adequate human and financial resources to facilitate this function.

2) Public participation units are not immune to the county executive's influence in several counties.

3) Even where a legislative framework exists, there is a lack of political will to strengthen public participation.

4) Women's participation is limited in deeply patriarchal societies (e.g., northern Kenya, parts of North Rift, parts of Narok and Kajiado counties, etc.) because of their perceived place and role in society. In some other counties, however, it is young people who are missing from these forums.

5) There is incoherent coordination of public participation among county departments.

6) The cost of holding public participation forums is high because of how county governments have practiced public participation. The 'commercialisation of public participation' through 'facilitation fees' for attendees distorts the Constitution's intended application of public participation.

7) Although Article 35 of the Constitution recognises the public's right to access public information, the Access to Information Act of 2016 is not fully operationalised, limiting the public's enjoyment of this right.

8) Even when county governments make public information available, it is frequently in bulk, technical, out of date, or in highly summarised versions.

9) The provision of civic education to build the public's capacity to engage effectively with the devolved system of government is limited. The National Civic Education Framework is yet to be finalised at the national level.

This section focuses on the practice of public participation in the counties and highlights possible solutions to make public participation more effective, as envisioned in the Constitution of Kenya, 2010. The section is structured as follows: identification of deeply embedded structural issues impacting public participation in the counties; the policy, legal and regulatory context; analysis of stakeholders and their interests; the dynamics; and finally, opportunities for change.

31 See for instance article by Kibwi, Manga and Michuki (2019) on participatory budgeting in Makueni county.

## Foundational Context

Certain deeply embedded factors in counties influence the implementation of public participation. These factors limit the effectiveness of public participation and addressing them requires sustained long-term interventions that are sustained. Such factors include literacy levels, patriarchal norms, geographical terrain, poverty as well as insecurity.

Literacy disparities in different parts of the country stifle efforts to increase public participation in the country's governance processes. People gain skills and knowledge necessary for effective participation through education. Documents shared by the county must be reviewed by a population with some level of literacy. However, a sizable proportion (16.3 percent) of Kenyans aged three and above have never attended school or a learning institution (KNBS, 2019).

While literacy levels vary across the country, the situation is dire in the country's North Eastern parts. The proportion of people aged three years or older who have never attended school or a learning institution is as high as 77.2 percent in Wajir County, 75.2 percent in Garissa County, 71.7 percent in Mandera County, 68.7 percent in Turkana County, and 63.4 percent in Marsabit County.[32] People's participation in county governance processes is hampered by high levels of illiteracy in these counties (e.g. public participation).

The prevalence of insecurity in some parts of the country has a negative impact on efforts to increase public participation in those areas. This year, several counties (including Marsabit, Isiolo, Wajir, Mandera, Lamu, Baringo, West Pokot, Samburu, and Laikipia) have reported an increase in cases of insecurity. Terrorist attacks dominate in Lamu, Mandera, and Wajir counties, while resource-based conflicts dominate in Baringo, Isiolo, Samburu, Elgeyo Marakwet, Marsabit, and Laikipia counties.

According to a recent Food and Agricultural Organization of the United Nations (FAO) report, resource-based conflicts are escalating as competition for water and pasturelands grows and malnutrition rates rise in affected areas of Ethiopia, Kenya, and Somalia.[33] Criminal gangs terrorise citizens at will in major urban areas (e.g., Old Town Mombasa, and parts of Nairobi's informal settlements). Conflict situations (for example, inter-clan conflicts) make it difficult to engage people meaningfully.

Political patronage in county politics is undermining the design and full operationalisation of structures and mechanisms for public participation. Appointments to public institutions, both at the national and county level are made based on political considerations. In several counties, public participation units are placed directly under the Office of the Governor, making it easy for the governor to influence the unit's operations. Patronage undermines transparency and accountability and the rule of law in government. However, the very nature of Kenyan politics is based on patronage politics. Those appointed through political patronage owe allegiance to the appointing authority whether at the national or county level.

32 KNBS Population census, Vol. IV

33 Food and Agriculture Organization of the United Nations, https://www.fao.org/newsroom/detail/drought-in-the-horn-of-africa-new-analyses-flag-mounting-risks-need-to-support-rural-families/en

The country's high levels of poverty also have a negative impact on opportunities for public participation. Evidence suggests that poverty deprives citizens of the ability to express their grievances or demand their rights, limiting their ability to participate in governance matters. In 2015/2016, 36.1 percent of Kenya's population was classified as poor, with 32 percent food insecure.[34] The poverty situation in the country's arid and semi-arid regions is dire, indicating disparities in sharing the benefits of economic expansion. This harsh reality disproportionately affects women and children. According to the Kenya National Bureau of Statistics (KNBS) 2020 report, children make up the majority of the multidimensionally poor (48 percent). This means that a large proportion of the population is living in extremely difficult circumstances, making it impossible for them to participate in governance issues.

Another important aspect of public participation is the involvement of youth in county affairs. While the proportion of youth in the national population is high, their participation in public participation forums is low. According to the 2019 Kenya population census, 75 percent of the population is under the age of 35, with 39 percent being under the age of 15, and 20 percent being between the ages of 15 and 24. Many of these young people want a better society so county governments must constantly look for ways for young people to contribute to their county's development processes. It appears that county governments have not adequately tapped into the youth as a resource in running county affairs. Most youths avoid county-related meetings because they feel marginalised.

Given Kenya's ethnic diversity, there are a variety of deeply embedded gender norms that can either undermine or enhance one's ability to participate in public participation processes. In some parts of the country, women face restrictions that prevent them from fully participating in public governance processes. Women's participation in governance processes is minimal where patriarchal norms are deeply entrenched (e.g. in the northern parts of the county, parts of Kajiado, Samburu, and Narok counties). Women's voices are silenced in some of these communities, while men are treated as the 'voice' of their communities. As a result, it is not surprising that women are underrepresented in public participation forums in some parts of the country.

Remoteness in some parts of the country also has a negative impact on public participation. The intersection of remoteness and poor transportation and communication infrastructure limits county governments' ability to effectively conduct public participation. Remoteness is a structural challenge, particularly in arid and semi-arid regions (e.g. Isiolo, Marsabit, Turkana, Wajir, Mandera, and Garissa). In such terrains, the logistical mobilisation required to plan and execute a public participation event is frequently difficult.

34 KNBS, 2016. Report on well-being in Kenya

## Policy, Legal, and Regulatory Context

Most county governments have established structures and mechanisms to ensure public participation in their governance processes, as envisioned in the Fourth Schedule of the Constitution of Kenya, 2010. This includes establishing a legislative framework for public participation as well as making the law operational. Many counties have gaps in this area because most public participation units are under-resourced in terms of both financial and human resources. This jeopardises these units' ability to carry out their missions fully. Third-generation county governments have an opportunity to fully operationalise structures and mechanisms for public participation down to the village level, as the law requires.

The implementation of the County Budget and Economic Forums (CBEF) is mixed, with some counties fully embracing the provision and others having dysfunctional CBEFs. The purpose of these forums is to promote the integrity and transparency of the county's budgeting and planning processes. They are also meant to increase public participation in county affairs. Financial burdens to counties are frequently cited as reasons for CBEF dysfunction in counties. While counties have established various structures and mechanisms for public participation, citizens are generally unaware of them. Regular and sustained public awareness campaigns, as well as targeted civic education, would aid in closing this gap.

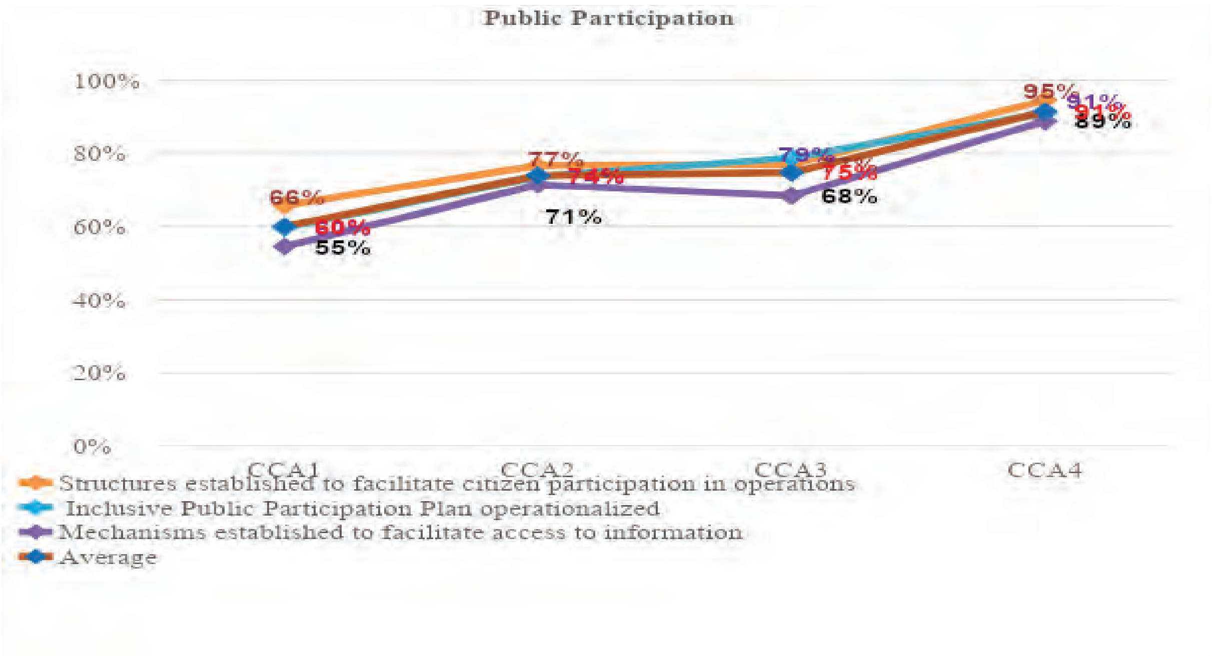
### Constitutional and legal provisions for public participation

1) Article 1(2) of the Constitution of Kenya
2) Article 10(2) a, b and c.
3) Article 27
4) Article 33
5) Article 35
6) Article 174(c)
7) Article 174(d)
8) Article 184(1)
9) Article 232(1)(d)
10) Fourth Schedule Part 2(14)
11) Public Finance Management Act, Sections 10 (2), 35(2), 125(2), 128 (3d), 131 (2), 137 and 207
12) County Government Act, Sections 6(6), 30(3g), 46(2g), 47 (2d-e), 50(3g), 51(3g), 87 – 96, 100 – 101, 115 – 119.
13) Urban Areas Act, Sections 21 and 22
14) Public Procurement and Disposal Act 2015, Sections 68(3), 125(5), 138 and 179
15) Access to Information Act 2016

Despite legal and policy provisions, one of the weakest links in public participation remains to be accessible to public information. In a study of twenty-two counties across Kenya between 2016 – 2019, the Agile and Harmonized Assistance to Devolved Institutions (AHADI) data shows that the county performance on the sub-indicator *mechanisms established to facilitate access to information* has oscillated between 55 percent in CCA1 (2016) to 89 percent in CCA4 (Figure 3). This is the weakest link in the performance area of *Public Participation*. Most of the counties lack structures to facilitate the public's access to information and should rely on national-level legislation and policy direction. However, some counties have taken steps to create structures for public access to information.

The establishment of public complaints and compliments desks is one such measure. In some counties, there is clarity on how public information requests are handled, including feedback records.

**Figure 4: Tracking county capacity on public participation 2016 - 2019**




Source: AHADI, CCA 4, Synthesis Report 2019.

## Actors

The County Governments Act 2012, identifies several stakeholders whose actions can either facilitate or hinder public participation at the devolved unit level. These actors include the Governor, County Executive Committee, Sub-County Administrator, Ward Administrator, Village Administrator, and the County Assembly. The county governor's political commitment is critical in fostering a culture of public participation in county governance processes. When it comes to public participation at the county level, the governor is the most powerful actor. The County Secretary, Speaker, and Clerk of the County Assembly are all powerful players. Furthermore, most counties have not devolved beyond the ward level, citing cost concerns.

Boards of cities and municipalities are also identified as key actors empowered by law to advocate for the residents' participation in public decision-making. The Urban Areas and Cities (Amendment) Act 2019, Section 21(1)(g), empowers city and municipal boards to ensure that residents participate in decision-making, activities, and programmes. Section 22 states that residents of a city, municipality, or town may actively participate in policy and lawmaking as well as service delivery in their respective areas.

Due to a lack of civic education, the push for public participation has been relegated to duty bearers (both county and national). Citizens' knowledge of the full range of feedback mechanisms, such as complaints, petitions, memorandums, and litigations, would be enhanced through civic education if they wanted to raise an issue with the county administration.

To be meaningful, public participation must include a well-thought-out mapping of sector-based stakeholders. This is informed by the level of interest that these actors may have in the topic of discussion. Such an approach requires that counties establish stakeholder registers based on various sectors within the county, providing a framework for inviting stakeholders relevant to a specific proposed policy, legislation, or development plan.[35] The sector stakeholder mapping should be done up to the ward level to be comprehensive. As a result, participants in public participation forums will vary depending on the industry and topic of discussion, which will influence the level of interest.

The landscape of public participation in the country is impacted at the national level by the actions or inactions of several other actors. These actors include the national government through the Ministry of Devolution, National Treasury; Council of Governors; and County Assemblies Forum among others. For instance, the national government is in charge of the overall policy framework on public participation and civic education.

## Dynamics in Public Participation

Although there is clarity on public participation, both levels of government tend to overlook these legal and constitutional provisions.[36] Seeking public input is emphasised in the Constitution, whether for policy, legislation, budgeting, or the design of development interventions. Citizens are increasingly questioning whether how public institutions carry out public participation processes satisfies constitutional requirements.

In some cases, actors have gone to court to challenge laws or processes that they believe do not meet the Constitution's requirements for public participation. Petition Number 104 of 2020 is one such example, in which the County Government of Nairobi was taken to court over the Finance Act 2018, which was found to violate the law, including

35 Public participation guidelines, p. 40 - 41
36 IGRTC, 2021, p. 12

that on public participation. Similarly, some residents of Kiambu County had sued their government over the finance law passed by the County Assembly on the basis that their views had not been sought.[37] Failure to consult citizens was also mentioned in the case of the Building Bridges Initiative.

County governments have also cited cost as an impediment to public participation. The cost stems from the production of documents required for public participation forums, transportation reimbursements for invited members of the public participating in those forums, and in some cases, participants are paid to participate in those forums. Devolution to the village level can also help to solve this problem. To reduce cost, the documents should also be availed on time in soft copies for those able to access them in that format. Ironically, public participation forums organised by the chief or the county commissioners attract very limited costs and people do not ask for transport reimbursements. County governments should learn how to mobilise public participation without incurring such high costs from national government structures.

People need access to critical information and relevant documents that will be subjected to public participation to participate effectively in public decision-making. Obtaining timely and relevant information to facilitate public participation remains a challenge.[38] By default, Kenyan government structures are designed to make it difficult for anyone who does not work in the system to access information. As a result, most members of the public who attend participation meetings lack information. If citizens are to participate meaningfully in such forums, they should have timely access to information in a format and language that they can understand.

**Q. How likely is it that you could get the following information from the government or other public institutions, or haven't you heard enough to say? - 2021**

| | Not at all likely | Not very likely | Somewhat likely | Very likely | Don't know | Total |
|---|---|---|---|---|---|---|
| **If you contacted the local school to find out what the school's budget is and how the funds have been used.** | 50% | 21% | 19% | 9% | 1% | 100% |
| **If you contacted your county government office to find out about the local development plan and budget.** | 55% | 21% | 16% | 5% | 2% | 100% |
| **If you contacted your county government office to request to see a contract for a government-funded project or purchase** | 59% | 20% | 14% | 4% | 3% | 100% |

Source: Afrobarometer, Round 9 (2021)

37 IGRTC, 2021, p. 12
38 For more details, see Rugo (2022, p. 129)

Despite studies indicating a low level of citizen participation in county public decision-making, citizens are concerned about whether their opinions are taken into account in informing county policy choices (Rwigi, Manga, and Michuki, 2020). For example, according to a study conducted in the fourth quarter of 2019, 23 percent of respondents reported participating in a forum organised by their county government to discuss development issues in the county. Even though people attend these forums, only 29 percent believe that the opinions of ordinary Kenyans are taken into account when making decisions.

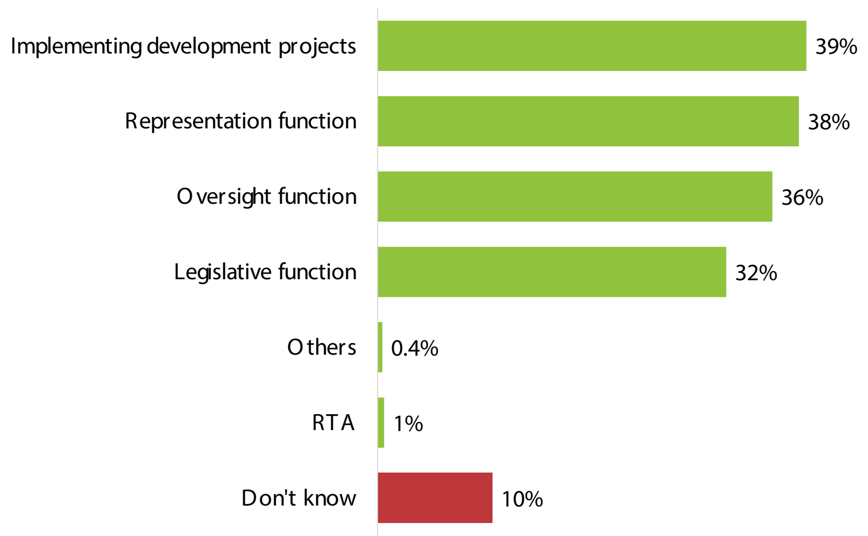
The counties' public participation is also riddled with various participation gaps (Rwigi, Manga, and Michuki, 2020). This, however, varies depending on the context: the issue being discussed, the location of the meeting, the demographic profile of the region where the meeting is held, and so on. For example, in some places, a public participation forum may primarily attract women, but only a small number of young people and men, resulting in participation gaps for those who are underrepresented. Some demographic groups may be underrepresented in these forums in some rural areas due to work-related commitments. To close this gap, counties must look for alternative methods of engaging the public, such as leveraging online interaction spaces to elicit feedback from those who are unable to physically attend public participation forums.

To address various participation gaps, the law requires that all groups in society be allowed to participate in public participation discourses aimed at informing decision-making. The issue of 'inclusion' is central to the constitution's implementation of devolution. This is particularly true for women, youth, people with disabilities, and other marginalised groups. Most counties are aware of this requirement and have put measures in place to ensure inclusive public participation by involving women, youth, and marginalised groups. Data from a study conducted in twenty-two counties under the AHADI Programme (2019), shows that counties recorded an improved score on the sub-indicator *inclusive public participation plan operationalised ("inclusive" means it addresses women, youth, and marginalised groups)* from 60 percent in CCA 1 in 2016 to 91 percent in CCA4 in 2019.

The level of civic awareness among the people determines the quality of public participation. Civic education helps people understand their civic responsibilities and develop the critical skills required for civic engagement. Although the function of civic education has been delegated to county governments, the national government has yet to provide a national framework for civic education. While some counties have passed civic education legislation, the counties are doing very little to put it into effect. However, some of the challenges counties face with citizens regarding public participation (e.g., reimbursement of transportation costs) can be addressed through ongoing civic education. They will gain civic knowledge and awareness of the importance of their voluntary participation in public decision-making in this manner.

Civic education would also help citizens fill knowledge gaps on other devolution issues, such as the County Executive and County Assembly mandates. According to the KDP – *Timiza Ugatuzi* public perception survey, citizens rank the implementation of development projects as the County Assembly's top function, while rating the core mandate of the County Assemblies on a lower scale (Figure 5). This misinformation can be corrected with ongoing civic education.

**Figure 5: What would you say are the key functions of the County Assembly**




Sustained civic education will also equip the citizens with knowledge and tools for social accountability.[39] Citizens with increased capacity can audit the quality of public services they receive from duty bearers and, if necessary, hold public officials accountable for shortfalls in service provision. Civil society organisations have been at the forefront of increasing citizens' social accountability capacity. However, because these organisations are more concentrated in large cities, rural counties are likely to lag.

***Q. What can counties do to strengthen citizens' participation in county affairs?***

> *"Citizens have yet to realise that they are critical and fundamental to ensuring that government functions. What the government should do is invest in mobilising citizens, educating and informing them about their role in county affairs. It is a difficult subject. CSOs, in my opinion, should engage citizens more. Citizens must be empowered to effectively engage their County Assembly members and governors. They can hold the government accountable."* (Key Informant Interview, May 2022)

39 The Futures Bulletin March 2015 Issue no 19, Institute for Economic Affairs.

While CSOs have undertaken interventions aimed to promote social accountability, human rights and governance-related civil society organizations in the country have continued to face hurdles that undermine their work over the last ten years. There were subtle threats to governance-related civil society groups in the country during the early years of President Uhuru Kenyatta's administration. The government has repeatedly attempted to deregister some civil society organisations for alleged financial violations.[40] The government has yet to implement the Public Benefits Organizations (PBO) Act, which grants CSOs greater operating freedom. Overdependence on donor funds has also harmed the capacity of the country's civil society organisations. The civil society movement has not escaped the country's political polarisation.

As previously stated, county governors wield significant power in county-level public participation processes and over institutions such as CBEF.[41] For ease of control, some counties place public participation units under the jurisdiction of the governor's office. As the Makueni participatory budgeting model demonstrates, the governor's political commitment to making public participation work is critical.

Most counties' public participation remains purely symbolic with poor quality. Citizens are dissatisfied as a result, believing that their opinions are rarely, if ever, considered in county decision-making processes. Feedback mechanisms are largely absent, and where they do exist, they are ineffective. While the Constitution advocates for public participation that empowers, fosters collaboration and promotes citizen control, in practice, public participation in Kenya is often a sign of tokenism (informing, consultation, and placation). The idea is to use public feedback to improve public decision-making processes, rather than simply 'ticking a box,' as is currently the case. Citizens' agency for self-determination and recognition is undercut by the current practice of public participation. A 2019 study by the Intergovernmental Relations Technical Committee[42] established that the nature and extent of participation contemplated by the Constitution and the laws have not been achieved at both levels of government. To some of the key informants, 'public participation as practiced in the counties is a sham, and only exists in law and ineffective on the ground.'[43]

***Q. What's your view on public participation? How are citizens involved in the planning of projects?***

*"There should be public participation at every stage of public decision-making. But who wins in this participation game? Some people simply raise their hands, people say yes to everything, people come for a cup of coffee, some lunch, and some bus fare back home and it turns into a separate business. As a result, participation has devolved into tokenism. Public participation forums have become profitable. However, if you ask some of those who attend those forums, they may be unable to provide an answer."* (Key informant interview, June 2022).

40 Freedom House, https://freedomhouse.org/countries/freedom-world/scores
41 International Budget Org, p. 2
42 Intergovernmental Relations Technical Committee, 2021
43 Key Informant Interview, June 2022

> "*Citizens are involved but not to the extent that we expect them to be involved. The political system we have automatically does not support public participation because there is no transparency in decision-making when it comes to development projects. While some citizens may be involved in planning, for example, we are now seeing others get involved for the sake of ticking the box. They may be involved in certain aspects. So, you realise that there are sections of society that participate, but in the larger society, few of them are involved in county government affairs. It depends on who mobilises them or whether the project has any political issues.*" (Key informant interview, June 2022).

> "*There are two answers to that question. If you ask the county government, they would say yes, they involve citizens in decision-making. They will give you attendance sheets that are signed by the people and tell you why are you saying we are not involving them and we went to this venue, people signed up, and all that. But within the context and I know you will refer to some of the rulings by Justin Odunga where he said, you merely calling people in a big hotel and saying they are involved that's not what involvement is. Moving to the no answer, people are not involved. Why? because we have citizens who are invited to public participation forums, at short notice through mediums they have no access to for example radios, local television stations, or the internet. Some people do not have these sources of information, and the information shared may not be in a format that ordinary people can understand. You and I can digest and see the CIDP plan but the mama mboga there needs to have that information put in a way that they can understand and it can be translated in their day-to-day usage*." Key Informant Interview, May 2022).

The expansion of the telecommunications sector has added a new dynamic to public participation mechanisms. Digital applications are becoming increasingly popular. Websites and social media platforms, for example, enable government entities to provide public information in more cost-effective ways. Given their increased presence in the digital space, young people place a premium on it. It is also possible to use the digital space to solicit public opinion to inform public policy.[44]

The coordination mechanism for public participation at the county level is disjointed. For greater coherence and effectiveness, the public participation unit should collaborate with other county departments to ensure effective public participation in decision-making.

A related issue concerning public participation is the practice of inviting residents for public participation twice on the same issue by the County Executive and the County Assembly.[45] Many county executives blamed this practise on Members of the County Assembly (MCA). Residents in some counties also objected to this practice, which is costly and results in double spending on the same issue. This is possibly one of the reasons why county governments consider the cost of public participation to be prohibitively expensive.

44 Key Informant Interview, June 2022
45 IGRTC, 2021, p. 12

## Opportunities for Change

The public participation analysis highlights certain opportunities that could serve as potential entry points for the Kenya Devolution Programme. Among these possibilities are:

1) The existence of systems and structures for public participation in the majority of the counties, even if their functionality varies from county to county. For example, Public Participation Act, calls for the establishment of a unit in charge of public participation at the county level, with functions devolved to lower levels of county governance.

2) Access to Information Act 2016, which provides a framework within which citizens can gain access to public information.

3) Expanding the role of digital spaces in closing participation gaps, such as reaching out to young people and people who may not have time to participate in physical forums but are interested in sharing their opinions through the virtual space.

4) Increase citizens' awareness of the importance of public participation in public governance processes.

5) The existence of a network of civil society organisations working on governance issues, including civic education, at the county level.

## Pathways for Change

1) Strengthening mechanisms for public access to information: There is a need to assist counties to develop policies, laws, and guidelines on access to information; establishing of public complaints mechanism; and training staff on public access to information. The goal is to ensure that people have access to timely relevant information understandably. For example, this may include simplifying the CIDP, CBROP, CFSP, ADP, budget, Finance Bill, etc, in a language that people can understand and participate in. This will help to empower citizens to exercise oversight over county decisions. When county officials fail to follow the law, there should be a mechanism in place to enforce the regulations and address impunity.

2) Invest in civic education that focuses on knowledge to address service delivery challenges and meets citizens where they are sustainable: It is essential to revitalise civic education delivery in counties to provide citizens with the knowledge and tools they need to engage government institutions. Civic education will also help address some of the challenges in public education e.g. culture of 'handouts' when a person attends a public participation event. Strengthening county civic education units would entail developing policies, laws, and manuals on civic education where none exist or are insufficient, as well as collaborating with local-level civil society organisations to deliver civic education sustainably. This would also be in accordance with Section 99 of the County Governments Act 2012, which addresses civic education.

3) Strengthening public participation structures to achieve greater coordination and coherence in how public participation is practiced across counties. This would entail assisting counties in developing the necessary policies, laws, and guidelines on public participation where none exist, as well as training county staff on how to provide feedback and engage in effective public participation. The development of guidelines, in particular, would help to streamline the coordination of public participation, which is currently disjointed across departments in the counties. Every department conducts its public participation, with little or no coordination with the unit on public participation, undermining learning opportunities.

4) Mainstreaming inclusivity in public participation: The Constitution emphasises the importance of leaving no one behind. However, in some circumstances, certain groups of people may be excluded from participating in public participation because of their gender, disability, ethnicity, marginalisation, or age, among other factors. The project will assist counties in developing policies and guidelines to improve inclusivity in public participation, as well as training staff on inclusivity in public participation.

5) Establishing a model of public participatory planning, budgeting, and oversight to improve inclusivity, credibility, and compliance in public expenditure and service delivery. This component will build on Makueni County's best practices while also investing more in social audit training for local community members to foster a culture of demand for social accountability.

# 4. CONCLUSION AND IMPLICATIONS FOR THE KENYA DEVOLUTION PROGRAMME

## 4.1. Conclusion

The discussion demonstrates that many factors shape the context of the Kenya Devolution Programme's implementation. The context offers both opportunities and challenges. The results of the August 2022 general election significantly altered county leadership, with twenty-eight newly elected county governors, eight former governors making a comeback, and eleven sitting governors re-elected. Overall, the election provides new energy and ideas for advancing the devolution agenda. However, the presidential election resulted in a more polarised country with deepening divisions, and the outcome of the presidential election was subject to Supreme Court adjudication.

Investments made through the previous devolution support programmes have increased counties' capacity to carry out their mandates. This is despite the capacity fluctuations caused by general elections such as those held in 2017 and 2022. Previous devolution support programmes have assisted counties in a variety of areas including intergovernmental relations, county planning, public expenditure management, human resource function, public participation, monitoring, and evaluation, as well as the County Assemblies. These investments have resulted in the development of laws and policies in the devolved sectors of the counties. As a result, most counties have systems and structures in place to support the delivery of devolved functions. However, the functionality of these systems and structures is still limited, and their operationalisation varies by county.

The discussion also reveals a lack of adherence to the constitutional, legal, and policy safeguards that govern intergovernmental relations, county planning, public expenditure management, staff performance, and public participation. Given the diverse elite interests across the country, accountability by counties and the national government for the use of public resources and service delivery is weak. The lack of active opposition in Kenya's political space has exacerbated the situation between 2018 and 2022.

## 4.2. Implications for Kenya Devolution Programme

The implications of various dynamics for the KDP–*Timiza Ugatuzi* have been identified through discussion in each section. Some of these issues are highlighted below.

1) General elections on August 9, 2022, despite being generally peaceful, have resulted in a polarised country. The outcome of the presidential election was challenged in court. Whatever the outcome of the presidential election, the divisions caused by it will persist in the short and medium term. To move the country forward, improved strategies for national cohesion will be required.

2) Learning from the previous devolution support programme, which ran from 2013 to 2022. As previously stated, these devolution support programmes have laid a solid foundation upon which the KDP–*Timiza Ugatuzi* can build. Previous devolution support

programmes have contributed to building the capacity of the county governments in various sectors such as planning, PEM, human resource, public participation, intergovernmental relations, monitoring, and evaluation among others. However, as a result of these devolution support interventions, capacity gaps persist in establishing a culture of accountability and transparency, as well as improved service delivery.

3) The nature of intergovernmental relations between the national government and county governments, as well as IGR institutions are constantly changing. For example, efforts to unite counties around regional economic blocs are constantly hampered by a lack of a national framework to govern their formation and operation. There are also ongoing disagreements among IGR institutions about how to interpret their respective mandates (e.g. Senate vs. National Assembly, Governors, and the County Assemblies). Delays in the disbursement of funds allocated to counties by the National Treasury are another ongoing challenge. Such challenges require increased capacity-building interventions.

4) The ongoing development of third-generation County Integrated Development Plans provides opportunities for counties to have well-thought-out development plans for the period 2022-2027. Most counties tend to ignore devolution at the village level when facilitating planning processes, instead opting to end the process at the ward level. The level and quality of citizen participation in the county planning process are inadequate. Furthermore, counties continue to prioritise visible physical projects over 'invisible' ones such as spatial planning.

5) Counties have implemented systems and structures for public expenditure management that are by the constitutional and legal requirements (e.g. county treasuries, internal audit units, procurement units, etc.). The functionality of these structures, however, is limiting accountability and transparency in county public expenditure management. Corruption and wasteful spending are common in counties, and budget execution systems are inadequate. Internal audit systems are also deficient, and irregular procurement practices contribute to pending bills. The County Assemblies' capacity to provide oversight over the use of county resources is also hampered, owing to limited technical capacity and interference by the County Executive. These capacity gaps point to potential interventions aimed at strengthening county public expenditure management.

6) Although counties have made progress in embracing performance management, some of the key challenges remain such as limited automation of the human resource function, frequent industrial strikes by county employees, and wage bills.

7) Citizens' engagement with the devolved governance system is hampered by the counties' failure to fully operationalise public participation frameworks. Coordination of public participation is another challenge that counties face. The provision of civic education to build the public's capacity to engage effectively with the devolved system of government is limited. The National Civic Education Framework has yet to be finalised at the national level.

# REFERENCES


Cheeseman, N., Lynch, G., & Willis, J. (2016). Decentralization in Kenya: the Governance of Governors. *The Journal of Modern African Studies*, *54*(1), 1-35.

Council of Governors, (2017). Performance Management Framework for County Governments. Nairobi: CoG.

El Messnaoui, A., Mrewa L., and Fe Silvosa, R. (2018). A Political Economy Analysis of Devolution in Kenya. Institute of Economic Affairs.

Kamau P. and Wanja, D. (2022). *Elites Politics and Fiscal Decentralization in Kenya: Lessons for Inclusive Citizenship and Service Delivery*. Draft Paper presented during the Carnegie _IDS Project Meeting in Naivasha. Great Rift Valley Lodge. March 28 - April 1, 2022.

Kanyinga, K. (2016). Devolution and the new politics of development in Kenya. *African Studies Review*, *59*(3), 155-167.

Kenya National Bureau of Statistics (2019). Distribution of Population by Socio-Economic Characteristics, Vol. IV. Nairobi: Government Printer.

Kenya National Bureau of Statistics (2018). Basic Report on Wellbeing in Kenya. Nairobi. Government Printer.

Kenya National Bureau of Statistics, and Society for International Development (2013). Pulling Apart or Pooling Together? Nairobi. SID.

Kibua, T.N. (2021). 'Financing Devolution' Chapter 7 in Peter Wanyande, Gichira Kibara and Joseph Kosure (eds). *Deepening Devolution and Constitutionalism in Kenya: A Policy Dialogue*. Nairobi: Intergovernmental Relations Technical Committee.

Kibui, E.R., Manga, E. and Michuki, G. (2020). "New Wine in an Old Wineskin? Socio-Political Context and Participatory Budgeting in Kenya" in *Journal of East African Studies.*

The Republic of Kenya. (2015). *National Spatial Plan 2015 -2045: An Integrated Plan for Balanced and Sustainable National Development*. Nairobi: Ministry of Land and Physical Planning.

The Republic of Kenya, the National Treasury, and Planning, 2021 Budget Policy Statement, February 2021, p. 2 -3. https://www.treasury.go.ke/wp-content/uploads/2021/03/2021-Budget-Policy-Statement.pdf

Robinson, M. (2007). Does Decentralization Improve Equity and Efficiency in Public Service Delivery Provision? IDS Bulletin 38:1 p. 7 – 17

Rugo, A. M. (2022). 'Public Finance Management in Kenya since 2012: A Review'. Chapter 9. In Ghai Yash Pal, Emily Kinama, Jill Cottelli Ghai (Eds.) *Ten Years on Assessing the Achievements of the Constitutions of Kenya 2010*. Nairobi: Katiba Institute.

Transparency International. (2014). Devolution Handbook. Nairobi: Transparency International.

United Nations Children Fund (2017). Political Economy Analyses of Countries in Eastern and Southern Africa: Case Study – Kenya Political Economy Analysis

Wanyande, P. and Gichira K. (2021). 'Kenya's Devolution Journey: An Overview'. In Peter Wanyande, Gichira Kibara and Joseph Kosure (eds). *Deepening Devolution and Constitutionalism in Kenya: A Policy Dialogue*. Nairobi: Intergovernmental Relations Technical Committee.

World Bank (2020). *Turbulent Times for Growth in Kenya Policy Options during the COVID-19 Pandemic*

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2021-2025