THE EVOLUTION OF KENYA'S DEVOLUTION

What's working well; What could work better

April 2014

AN INFORMATION NOTE FOR WORLD BANK GROUP STAFF

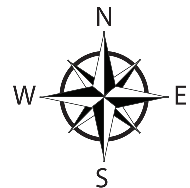
THE WORLD BANK
Working for a World Free of Poverty

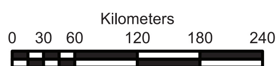
THE EVOLUTION OF KENYA'S DEVOLUTION

What's working well; What could work better

KENYA COUNTY MAP

Turkana
Mandera
Marsabit
Wajir
West Pokot
Samburu
Trans Nzoia
Isiolo
Bungoma
Elgeyo Marakwet
Uasin Gishu
Baringo
Busia
Laikipia
Kakamega
Nandi
Meru
Siaya
Vihiga
Kisumu
Tharaka Nithi
Nyandarua
Kericho
Nakuru
Nyeri
Garissa
Kirinyaga
Homa Bay
Nyamira
Embu
Bomet
Kisii
Muranga
Migori
Kiambu
Narok
Nairobi
Machakos
Kitui
Tana River
Makueni
Lamu
Kajiado
Kilifi
Taita Taveta
Mombasa
Kwale





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Abbreviations and Acronyms

BPS	Budget Policy Statement
BROP	Budget Review and Outlook Paper
CARA	County Allocation of Revenue Act
CASB	County Assembly Service Board
CBEC	County Budget and Economic Forum
CDF	Constituency Development Fund
CEC	County Executive Committee
C-FSP	County Fiscal Strategy Paper
CGA	County Governments Act
CIC	Commission on the Implementation of the Constitution
CIDP	County Integrated Development Plan
CoB	Controller of Budget
CoG	Council of Governors
CPS	Country Partnership Strategy
CPSB	County Public Service Board
CRA	Commission on Revenue Allocation
DoRA	Division of Revenue Act
GoK	Government of Kenya
IBEC	Intergovernmental Budget and Economic Council
IFMIS	Integrated Financial Management Information System
KADP	Kenya Accountable Devolution Program (World Bank)
KEMSA	Kenya Medical Supplies Agency
KSG	Kenya School of Government
LA	Local Authority
LAIFOMS	Local Authorities Integrated Financial Operations Management System
LASDAP	Local Authority Service Delivery Action Plan
LATF	Local Authority Transfer Fund
MCA	Member of County Assembly
MDAs	Ministries, Departments and Agencies
MoDP	Ministry of Devolution and Planning
MoLG	Ministry of Local Government
MTDS	Medium Term Debt Strategy
PFM	Public Finance Management
PPOA	Public Procurement Oversight Authority
SRC	Salaries and Remuneration Commission
SBP	Single Business Permit
TA	Transition Authority
UACA	Urban Areas and Cities Act

Preamble

March 2014 marked twelve months since commencement of Kenya's devolved system of government. This makes now a good time to reflect on what elements of the transition are progressing well and which ones are not, and areas which need to be strengthened so as to achieve better results.

This *Information Note* comes almost a year-and-a-half after publication, in November 2012, of the *Devolution without Disruption* report, which covered priority issues to be addressed by Kenya's policy-makers, as the country sought to fulfil the constitutional promise of a more devolved government. The report addressed the importance of designing intergovernmental financial arrangements which reconcile the goals of fiscal stability and efficiency, with those of equalization across Kenya's regions. It suggested ways in which the Public Financial Management framework could be updated—at the national and the county levels—while supporting meaningful social accountability. Also, it discussed how the transition could be made more successful, including how urban areas could be better managed as well as priorities for reorganizing the civil service so as to ensure the continuity "without disruption" and improvement over time of service delivery.

As highlighted in this Note, much progress has been achieved over the last twelve months. The 'backbone' legislative and institutional framework for implementing devolution is in place. At the national level, the Ministry of Devolution and Planning is coordinating and managing devolution affairs, while the National Treasury oversees implementation of fiscal aspects, in line with the constitution. The forty seven County Governments have established (or are establishing) basic frameworks as they progressively take charge of functions and finances devolved to them.

The Note also draws attention to areas in which challenges continue to be experienced over the transition period. A major concern is the rapid pace with which devolution is being implemented —even faster than was originally envisaged in the constitution. This rapid pace, combined with the enormous scale of administrative and political transformation, has exposed key sectors to service disruptions. Other challenges highlighted in the Note include: potential fiscal risks arising from a mismatch between funding and service delivery obligations at both levels of government; the vulnerable funding of urban areas; personnel management transition issues; and, weak engagement of citizens by County Governments. This Note includes some proposals on how these challenges might be addressed moving forward, although given Kenya's broader devolution context, there will be no quick fixes.

The World Bank is committed to supporting successful implementation of Kenya's devolution. Through the Kenya Accountable Devolution Program (KADP), the Bank is currently providing technical and analytical support to national government agencies involved in formulation and implementation of devolution-related policies. This support has also been extended to county governments since their establishment. A brief description of KADP is included on page 40, together with a list of the Program's main support 'pillars' and its current priority areas.

The hope is that this Note will enable World Bank staff to reflect on Kenya's year-old devolution endeavour so as to better understand the rapidly-evolving implementation ecosystem, and to extract important trends to inform their various policy discussions. It is also the hope that the Note will contribute towards ongoing preparation of the World Bank Group's Country Partnership Strategy (CPS) for the Republic of Kenya for the period FY2014-2018.

Acknowledgements

This *Information Note* was prepared by a team led by Fred Owegi and consisting of Kathy Whimp, Wangari Muikia, Christine Owuor, Rabya Nizam, Peter Lilford and Laban Maiyo.

The team acknowledges the following Kenya Country Office colleagues for the their contributions in respective chapters:

- **County PFM Systems:**
  - Winston Cole *(Senior Financial Management Specialist, AFTME);*
  - Josephine Kabura *(Financial Management Specialist, AFTME);* and,
  - Efrem Fitwi (*Senior Procurement Specialist, AFTME).*
- **Health:**
  - G. N. V. Ramana *(Lead Health Specialist, AFTHE);* and,
  - Isabel Waiyaki *(ET Consultant, AFTHE).*
- **Roads:**
  - Josphat Sasia *(Lead Transport Specialist, AFTTR)* .
- **Water:**
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  - Patrick Mwangi *(Senior Water and Sanitation Specialist, WSP);* and,
  - Chris Heymans *(Senior Water and Sanitation Specialist, TWIAF).*
- **Agriculture:**
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The note benefited from insights as well as guidance from Pablo Fajnzylber *(Sector Manager, AFTP2),* Apurva Sanghi *(Lead Economist for Kenya, Rwanda and Eritrea)*, George Larbi *(Lead Public Sector Management Specialist, AFTP2)* and Christopher Finch *(Senior Social Development Specialist, AFTCS).*

Special appreciation to Lucy Musira for effective program support during preparation of this publication.

Executive Summary

Kenya's devolution is one of the most revolutionary underway in the world, involving large-scale political, fiscal, and administrative decentralization. Many countries—both rich and poor—have transferred power and resources to lower levels of government. Few have done so to entirely new subnational units, and with such speed.

Devolution is however, only one of several fundamental transformations brought about by the country's 2010 constitution. As part of these transformations, Government institutions have been significantly reorganized. The electoral system has been overhauled, so too the method of political representation. And the policy formulation process has been restructured. Through devolution, the Kenyan Republic now comprises two 'inter-dependent' levels of government, reflecting full separation of powers. Mechanisms have been introduced for national oversight over county governments. The mechanisms include: expenditure controls and transparency in counties; budget implementation and accountability in withdrawals from all public funds; scrutiny of accounts; and, legislative supervision through Parliament.

The new changes have seen key functions transferred to 47 new counties, although management of urban areas has been re-centralized. In general, policy functions are assigned to the national government, with counties assuming responsibility for implementation and delivery of services, mainly in agriculture, health, water and county roads: the bulk of education is not devolved, except for pre-primary education and village polytechnics. In terms of management of urban areas, the previously existing system of local governments is abolished, leaving urban functions in the hands of county assemblies and executives. Subject to definitions of cities and municipalities contained in a new law, only a handful of urban areas will be managed by corporate entities. The challenge in recentralizing urban management is that municipal services could in future be neglected, and possibly be under-funded, which might impinge negatively on the country's long term economic growth agenda.

Earlier plans to transfer functions in phases over a three-year transition period were discarded as this implied 'delaying' devolution to already-lagging regions. As per the Sixth Schedule of the Constitution, the transfer of functions to counties was to take place gradually. The Transition Authority (TA) was established to facilitate and coordinate the transition, including assessing whether or not individual counties had the capacity to run specific functions. This assessment by TA was to form the basis for asymmetric transfer of functions, which implied that devolution to weaker already-lagging regions would be 'delayed'. This notion proved to be politically unfeasible and, consequently, all counties were declared 'capable' of delivering identical functions, effectively discarding the phased function transfer. Theoretically, the political difficulties of phased transfer might have been resolved using the approach of transferring functions as bundles—as suggested in World Bank (2012)—but this option was never explored.

> *In general, policy functions are assigned to the national government, with counties assuming responsibility for implementation and delivery of services, mainly in agriculture, health, water and county roads*

Another major shift relates to the new mechanisms on how subnational units are to be financed. Counties will be funded primarily through unconditional equitable share transfers, which in aggregate terms should not fall below 15 percent of nationally-collected revenues. These transfers are distribution between counties using a formula which favors previously 'marginalized' regions. Counties may be given additional conditional or unconditional allocations from the national government's share of the revenue. An Equalization Fund has been established, of one half percent of nationally-collected revenues, which is to be transferred directly or indirectly (i.e. through conditional grants) to 14 counties in which "marginalized communities exist". In terms of local sources, counties are permitted: (i) property and

entertainment taxes; (ii) several license fees e.g. trade and liquor license; and, (iii) various service charges such as for vehicle parking and markets.

But the effects of an inverted sequence of transfer of funding *before* functions are now being experienced. Ideally, the processes of transferring functions and funding should be closely aligned, and in the same order: funding *after* functions. Such sequencing permits funding needs to be determined on the basis of clear service delivery roles and responsibilities. In Kenya this sequence was inverted, with important decisions on revenue sharing and transfer of funding to counties coming before function assignment had been figured out. Formal function assignment began after the March 2013 elections, when budget preparation was already underway. Before this, only the responsibilities of defunct Local Authorities (LAs) had been transferred, in late February 2013. Most devolved functions were handed over in August 2013, five months after counties were established, and three months after they had submitted their initial budgets. Consequently, most counties did not plan adequately for functions transferred to them in August—many failed to budget fully for the attendant costs related to these responsibilities, specifically devolved-personnel emoluments and drugs.

In a quest to correct historical inequities in the regional distribution of public spending, new horizontal fiscal inequities might arise with 'newly rich' counties running the risk of not delivering the historical lacking services, for lack of capacity, and the 'cash poor' counties falling behind

…And there are concerns that the adopted fiscal decentralization system—while consistent with the goal of equalization—could foreshadow likely new fiscal inequities. Vertical revenue sharing negotiations in the first year of devolution generated equitable share transfers to counties considerably above pre-devolution levels of subnational spending on similar functions. The transfers were also more than double the constitutional minimum mentioned earlier. The concern here is that aggregate funding to the two levels of government could be mismatched with service delivery responsibilities at both levels. The national government for instance, might end up with a shrinking share of the pie and with service responsibilities that may not have shrunk accordingly. On the other hand, as already indicated, the adopted horizontal distribution formula favors smaller/poorer regions. Their service deficit notwithstanding, these 'newly rich' regions are receiving higher per capita allocations vis-à-vis their lower inherited costs. The main concern is that larger/more urbanized counties might be receiving transfers which even in combination with their own-source revenues are inadequate to finance inherited costs (including debts and other liabilities). So, in a quest to correct historical inequities in the regional distribution of public spending, new horizontal fiscal inequities might arise with 'newly rich' counties running the risk of not delivering the historical lacking services, for lack of capacity, and the 'cash poor' counties falling behind.

As the devolution process evolves, support should focus on how to minimize service disruptions in key devolved sectors. In health, this focus should include ensuring more efficient management of devolved personnel, and sustaining county budget allocations towards crucial operations and maintenance as well as for pharmaceuticals. In addition, streamlining conditional grant implementation arrangements for the Health Sector Services Fund (HSSF) should be prioritized, as the Fund is the lifeline for public primary health facilities. In the roads sub-sector, a major priority is to develop and implement a policy framework that is in keeping with the constitution, especially in the assignment of roles between county governments and the institutions in existence prior to devolution. A similar need exists in the water sector, where counties should additionally desist from levying new charges, or 'raiding' water company revenues from hitherto ring-fenced accounts that fund operations, rehabilitation and investments. In general, the important roles of national water regulatory and enforcement agencies should be maintained. Finally, in agriculture, the priority is to clarify the role of county governments *vis-à-vis* that of the sector's numerous state corporations involved in regulation, policy, productivity and marketing.

1. Overview

Brief history of Kenya's constitutional reform process

Kenya's 2010 constitution marked a milestone following a three decade effort to overhaul the country's legal, administrative and institutional arrangements. The current constitution—the third since independence—developed from a series of reform efforts initiated in the late 70s, but which erupted in the 90s, alongside similar movements in other parts of Africa. The constitution itself represents an emblematic departure from previous ones, and implementing it involves several fundamental changes which collectively, were central to the above reform effort. The reform sought to address multiple objectives: tackle long-term, deeply entrenched disparities between regions; increase the responsiveness and accountability of government to citizens; and, allow greater degrees of autonomy to different regions and groups. Thus, apart from devolution, the new changes include: (i) reorganization of institutions and organs of Government e.g. Parliament, the Judiciary, independent commissions and offices, and the public service; (ii) overhauling the system of electioneering and in particular the management of elections; and, (iii) reformulation of policies. Of these changes, devolution is seen as the most transformational.

Successive legal changes curtailed the powers of sub-national government, first the federal power of regions, and then those of local governments. In 1966, provincial assemblies were abolished, as part of systematic consolidating amendments to the independence *majimbo*, or federal constitution. This weakened the administrative basis of subnational units. Simultaneously, the Senate was joined with the House of Representatives to create a unicameral National Assembly. This removed any legal support structure for devolution. In 1969 a new constitution was adopted that consolidated the above amendments and drastically increased the powers of the president—for instance, the president was able to order the arrest and detention of opponents and bar them from contesting elections. What was left of subnational government was a system of Local Authorities (LAs), whose basis was the Local Government Act (Cap. 265) rather than the constitution.[1]

The Local Authorities were further weakened through significant reforms, which trimmed away major functions and diminished important revenue bases. Through the Transfer of Functions Act (1969), functions such primary health and health services were removed from LAs—except in the seven major municipalities. In addition, the Act removed the right of the LAs to levy the graduated personal tax which had been their most important source of revenue.[2] These reforms had two important consequences for the LAs:

Kenya's Constitutional reform sought to address multiple objectives: tackle long-term, deeply entrenched disparities between regions; increase the responsiveness and accountability of government to citizens; and, allow greater degrees of autonomy to different regions and groups

- Their activities were henceforth directed and supervised by the Ministry of Local Government (MoLG), which, assigned them minor functions: major public services were provided through parallel systems such as district-based line ministries and the CDF arrangement; and,
- They were permitted a narrow range of local taxes, fees and charges, which left the LAs with poor own-source revenue potential, and also caused wide variations in this potential between rural and urban authorities. To forestall a financial crisis among the authorities, the central government introduced Local Authority Transfer Fund (LATF) grant in 1998, on which majority of LAs depended almost entirely. Up until their dissolution in 2013, many authorities remained unable to remunerate their councillors, let alone finance crucial service delivery operations.

[1] *The last version of the Local Government Act made numerous references to amendments having been made in 1963, which suggests that the Act itself may have become effective earlier than this. It follows therefore that until their dissolution after the March 2013 elections, Kenya's Local Authorities had one of the longest continuous traditions of local government in Africa.*

[2] *See Smoke (1994) - 'Local Government Finance in Developing Countries: The case of Kenya,' Oxford University Press, p.72.*

There were major setbacks to the constitutional reform effort in the 80s, followed by some important gains. In response to a coup *d'état* in 1982, Kenya's government further centralized power—the country became a one-party state, and the secret ballot system was substituted with the *mlolongo*[3] system, in which voters queued behind their preferred electoral candidates. The next eight years were marked by a groundswell of opposition which forced the reinstatement of multi-partyism (in 1991) and the re-introduction of presidential term limits, a central demand in earlier reform efforts.

The first major breakthrough came in 2000, paving a path to the present constitution, and to devolution. In 2000, a Constitutional Reform Commission was established, the outcome of which were several rival drafts of the constitution. The government-sponsored draft was rejected in the 2005 constitutional referendum, setting the stage for volatile elections in 2007 and the ensuing political clashes. The post-election clashes ended in early 2008, through an internationally-mediated pact, which had constitutional reform as one of its four priorities. After much consultation, the final text of the present constitution was published, approved in a national referendum and promulgated, all within the space of four months—May to August 2010.

The post-election clashes ended in early 2008, through an internationally-mediated pact, which had constitutional reform as one of its four priorities

Several new independent bodies were established that are relevant to the development and operation of the system of devolution. The first of these to be appointed in late 2010 was the Commission on Revenue Allocation (CRA), which is responsible for recommending on revenue sharing between national and the county governments and among the county governments. In June 2012, the Transition Authority (TA) was constituted, pursuant to the Transition to Devolved Government Act (2012), as well as provisions under section 15 of the sixth schedule to the constitution. The TA's primary role is to facilitate and coordinate how Kenya moves to the new devolved system of government. Specifically, the TA's objectives are to: (i) provide the legal and institutional framework necessary for a smooth transition; (ii) oversee the transfer of powers and functions to the national and county governments; (iii) ensure that the constitution is implemented effectively; (iv) deal with operational aspects (notably assets and liabilities, personnel, pensions and staff benefits of former LA employees and closure and transfer of public records); and, (v) assess capacity gaps and provide mechanisms for the filling of such gaps. Annex 1 contains more detailed functions of CRA and TA, as well as other bodies involved in managing Kenya's devolution.

Much of the detail of the system of devolution was developed after the constitution was enacted. Soon after the constitution was promulgated, a Task Force was formed to develop the laws relating to devolution that are referenced in the constitution. The constitution also required that these laws should be subjected to scrutiny and public consultation under the guidance of the Commission on Implementation of the constitution (CIC). Throughout 2011-2012 a series of laws was proposed by the MoLG and subjected to a vigorous public debate. In addition to the constitution, the framework for devolution is thus now contained in the laws described in Annex 2. These laws were enacted in response to constitutional deadlines specified in the Fifth Schedule. Because of disagreements between Parliament and the Executive about some key provisions, a number of these laws were not finally enacted until mid-late 2012.[4]

[3] *Swahili word meaning 'a queue'.*

[4] *A further set of additional transitional laws that had not been foreshadowed in the constitution were enacted in early 2013, but these have now ceased to have legal effect as they applied only to the period from March-September 2013.*

2. Institutional Architecture

Structure of the national and the county governments

Kenya's Parliament comprises the National Assembly and the Senate, each with distinct roles. Among the National Assembly's roles are appropriation of funds for expenditure by government, and oversight over national revenue and public spending. In addition, the National Assembly determines the allocation of national revenue *between* the levels of government. The Senate debates and approves Bills pertaining to counties, and also participates in the oversight of State officers. Further, it determines the allocation of revenue *among* counties besides exercising oversight over national revenue allocated to the county governments.[5] In terms of numerical strength, the National Assembly is five times larger, with 350 members, compared to the Senate's 68 (both inclusive of *ex-officio* House Speakers). Early in the life of this new bicameral Parliament some confusion emerged over the respective roles of the two houses in relation to decisions on the sharing of revenue between national and county governments. In October 2013 the Supreme Court ruled that the Senate does play a role in the division of revenue process. Figure 1 compares the old structure of Kenya's government to the new.

Below the 47 county governments, there are 290 constituencies and 1,450 wards. The constituencies are used to elect Members of Parliament (MPs), who are representatives into the National Assembly, while wards are used to elect Members of County Assemblies (MCAs). Article 89(5) of the Constitution provides that "the boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota, but the number of inhabitants of a constituency may be greater or lesser than the population quota in the manner specified in clause (6)." The population quota is obtained by dividing the national population by the number of constituencies. In turn, the number of wards per county was determined based on the number of constituencies, such that each constituency has between 3 and 5 wards. Prior to devolution, there were 210 constituencies and 3,465 wards.

The existence of two inter-dependent levels of government underscores the idea of 'mutual relations on the basis of consultation and cooperation'. The national and the county governments have each been assigned specific functions (more details in chapter three) and revenue sources (see chapter four). Executive authority for the national government's functions is vested in the Cabinet, which comprises the President, the Deputy President, the Attorney-General and (currently) eighteen Cabinet Secretaries, who are non-Parliamentarians. Executive authority for devolved functions is vested in the County Executive Committee (CEC), which comprises the Governor, the Deputy Governor as well as appointed members. In counties having less than thirty members of county assembly (MCAs), CEC members are not to exceed one third the number of MCAs. Larger counties with more than thirty MCAs are allowed up to ten CEC members.

Separation of powers means that each of the three branches of government has separate and distinct functions, but also allows each branch to restrain the powers of the other branches through a system of checks and balances

Separation of powers

Structures at both levels of government reflect separation of powers, an underlying objective of Kenya's devolution. Essentially, separation of powers means that each of the three branches of government has separate and distinct functions, but also allows each branch to restrain the powers of the other branches through a system of checks and balances. Nevertheless, as is the case between the national and the county

[5] *Constitution of Kenya (CoK), Article 93 - 96.*

Figure 1: Structure of The Republic of Kenya

Source: Adapted from ICJ (2013)

governments, the constitution underscores the need for interdependence *between*: (i) the National Assembly and the National Executive; and, (ii) County Assemblies and CECs. In each instance, the constitution contains provisions for legislative and executive arms to moderate each other. It is instructive to note that whilst Kenya's Judiciary is not devolved, its independence is affirmed in the constitution.[6]

National oversight over counties

Under Kenya's devolution, national powers of oversight over county governments are to be exercised primarily along four channels. The first channel is the National Treasury, which ensures expenditure control and transparency in counties, and also establishes mechanisms to ensure implementation of the controls. In the event of breaches of established measures (e.g. under the Public Finance Management Act), the National Treasury can stop transfers of funds to counties. The second channel is the Controller of Budget (CoB), who oversees implementation of county budgets by approving withdrawal of funds from the County Revenue Fund, or from other public funds including the Consolidated Fund and the Equalization Fund. A third channel is the Auditor-General, who scrutinizes the accounts of county governments and all funds thereof, provided they are public funds. Reports from the CoB and the Auditor-General are presented to Parliament, which is the fourth oversight channel, with overall legislative oversight over counties. This parliamentary oversight role includes providing a legislative framework for the national government to intervene (including, if necessary, by assuming responsibility for county functions) if a county government (a) cannot perform its functions or (b) does not operate a financial management system that complies with national legislative requirements.[7] The constitution also provides for suspension of county governments in event of internal conflict or war, or any other exceptional circumstance.[8] The legislative provisions on county suspension are included in the County Governments Act (CGA). A more detailed discussion of how these oversight powers are exercised is contained in chapter six.

Management of urban areas

Kenya's devolution is unique in that it decentralizes key services and resources from the national to the county governments, while simultaneously recentralizing management (including financing) of urban areas.[9] The constitution makes county assemblies responsible for urban functions,[10] subject to a law on the governance of cities and urban areas. During the debates by the Task Force on Devolved Government it was decided that Kenya would not have an elected system of third level government, but instead county governments would be empowered to establish urban management bodies. Since most counties are still predominantly rural, and county governments control the allocation of resources to urban functions, this raises a risk that urban services may be neglected and possibly be under-funded. Moreover, the definitions of cities and municipalities in the Urban Areas and Cities Act (UACA) mean that only three urban centers will have municipal or city boards with corporate status. Twenty-one urban centres with more than 80,000 residents are entitled to management only by town committees, which have no executive power. A recent bill proposed to lower the threshold to include all urban centers with over 75,000 residents as municipalities, along with all county capitals.[11] To make the UACA effective, specific functions (followed by resources) will need to be delegated to city and municipal boards by county governments.

Twenty-one urban centres with more than 80,000 residents are entitled to management only by town committees, which have no executive power

[6] CoK, Article 160.
[7] CoK, Article 190(3)-(5).
[8] CoK, Article 192.
[9] This paragraph is summarized from World Bank (2012) Devolution without Disruption (chapter 14).
[10] Like markets, firefighting, storm water management, street lighting, traffic and parking and licensing of dogs (see Constitution, Fourth Schedule).
[11] See Statutes (Miscellaneous Amendments) No. 2 Bill 2013. At the time of writing, in March 2014, it seemed unlikely that this bill would pass. However, it is to be hoped that these amendments are represented in another form.

3. Functions

What is assigned and what is not?

The Fourth Schedule of the constitution defines the assignment functions and responsibilities to either the national government or the county governments. In a number of areas, policy functions have generally been assigned to the national government and implementation functions to the counties. Under Section 186 of the constitution, any function assigned to both levels of government is concurrent, or shared; while any function not assigned under Schedule Four is a national function. However the Schedule Four functions are 'composite' in nature, meaning that they need further interpretation and unbundling. For example, it is not clear which level of government is responsible for social welfare and child protection (since these are not listed under either level of government), or whether these are a subset of a listed function. County governments have power to make laws on the functions that are assigned to them. While the national government can also pass laws on these areas, it should do so only in very limited circumstances.

Given the March 2013 election and the legal requirement to present a budget less than seven weeks later, important decisions on revenue sharing had to be made well before county governments came into being

Transfer of functions

Transitional arrangements provided in the Sixth Schedule of the constitution have proved more difficult to implement in practice than was anticipated. The Sixth Schedule provides for legislation to specify the phased transfer of functions over a period of up to three years. It also specifies the criteria to be applied in determining if counties are ready to receive functions, and requires the national government to support county governments and assist in building their capacity. The law envisaged in the Sixth Schedule is the Transition to Devolved Government Act 2012, under which the TA is created.

These important processes were not well prepared, fundamentally due to delays in establishing the Transition Authority. The TA was not constituted till mid-2012 and its internal structure took several months to complete. TA staff was still being hired well into the last quarter of 2013 when most of the key decision deadlines had already passed. Placement of the TA directly under the Cabinet (initially in the Ministry of Local Government and currently in the Ministry of Devolution and Planning) may have undermined its operational and financial autonomy. Likewise, the TA's inability to convene important national actors to prepare for devolution led to county governments being established in March 2013 before any preparatory analysis of which functions and staff would be transferred and how.

Despite significant consideration of transition arrangements in the constitution, the process for devolving functions and funding were misaligned. Given the March 2013 election and the legal requirement to present a budget less than seven weeks later, important decisions on revenue sharing had to be made well before county governments came into being. In contrast, the laws provided for formal assignment of functions to begin only after March, by which time budget preparation was well advanced. Function assignment was to occur in two phases, the first of which took place thirty days before the March 2013 elections.[12] In late February the TA transferred to county governments most of the functions previously undertaken by defunct LAs. It was expected that the second phase of function transfer would be preceded by a systematic evaluation of county capacities, to determine their preparedness to effectively undertake specific devolved roles. While the TA was still preparing to undertake this process, political pressures emerged that demanded uniform and immediate transfer of functions to all counties across the board.

Almost all remaining functions were transferred in August 2013, well after funding for those functions

[12] *Section 23, Transition to Devolved Government Act.*

had already been devolved. Annex 3 sets out the full list of functions transferred to all counties in August, together with some significant exceptions. While this rapid transfer of functions may appear to have been forced on national government by demands of county governments, it should also be remembered that the resources to pay for all these functions had already been included in the calculation of the county funding approved by Parliament. Had the functions remained with the national government it would have experienced difficulty paying for them, unless it held back some resources from the equitable share payments to the counties.

Putting devolution of resources ahead of devolution of functions caused a number of problems. The transfer of funding before functions led some counties to believe they should receive more funding to cover the functions transferred in August. Since no decision on function transfer had been made by the time they prepared their budgets in May 2013, counties did not know what costs they should include. As a result, many did not budget adequately for the staff they would inherit along with the functions. No arrangements had been put in place for counties to manage the payroll of these almost 70,000 staff, so an agreement was reached for national ministries to keep managing the payroll and for counties to reimburse them.(See further discussion in chapter 7). Although some funding for county roads had been devolved, the National Assembly protested that the two road authorities, Kenya Urban Roads Authority (KURA) and Kenya Rural Roads Authority (KeRRA) should receive at least enough funding to finish planned projects. Protesting the imminent transfer of payroll responsibilities to counties, health staff went on a nation-wide strike in late November after a court threw out arguments that their transfer to county governments should not proceed.

Emergence of intergovernmental relations

The need to negotiate issues around the assignment and financing of functions provided the impetus for early establishment **of intergovernmental mechanisms.** The Intergovernmental Relations Act provides for sector forums that will be made up of national and county staff and can serve this purpose. It is also expected that functions delegated from one level of government to another will be discussed and negotiated within these forums. For example if the national government wants to delegate some education functions to the counties, this is where the negotiation will happen. The TA has convened a number of sector forums and these are currently working through a range of issues including: health financing, future management of water services, and the impact of a range of new or proposed laws on the constitutional assignment of functions. These sector forums are mandated under the Intergovernmental Relations Technical Committee—which will assume responsibilities of the TA when it winds up at the end of the three year transition period.

Financing of capital projects is emerging as an area where negotiations might be required. The Constituency Development Fund (CDF), which finances small capital projects at the county level (building hospitals, drilling boreholes, building schools, etc.) is still managed at the national level, but financing the operational and maintenance costs to keep these projects operating would fall under the purview of county governments, since these are county functions. Under the new CDF Act (of 2013), the Fund will be managed by a Board that is now a body corporate. As was the case previously, a constituency-level committee (which includes the Member of Parliament) retains responsibility for prioritization of projects and for ensuring appropriate consultations with relevant government departments. In order to reduce duplication and overlap, as well as conflict, more clarity is needed around what the Fund should finance at the county level, and how counties will be consulted to ensure that projects do not create unsustainable recurrent cost burdens for them.

The transfer of funding before functions led some counties to believe they should receive more funding to cover the functions transferred in August

From a World Bank perspective, the impact on Bank-funded projects will vary. Projects that are clearly national are not expected to change significantly. However if a project has functions that are fully or partially assigned to county governments, then the management structure may have to be reassessed or restructured. A summary of all ongoing and planned World Bank-financed projects has been prepared to inform County Governors in their planning. Going forward it will be important to loop in counties, possibly through the Council of Governors (CoG) on upcoming projects affecting their counties.

4. Revenue Assignment

Taxes: property rates and entertainment tax

Own revenue sources for county governments are limited but important. The constitution assigns two tax bases to county governments, property rates and entertainment tax. In addition, counties are assigned several licensing functions under the Fourth Schedule, including trade licensing (previously a function of LAs) and liquor licensing (previously a function of district administrations). County governments can also collect fees and charges for services they provide.[13]

Property rates are a source of considerable fiscal space potential at county level but only for some counties. Many LAs underperformed badly in collecting property rates, for two main reasons. First, the base for property rates is poorly defined. Valuation rolls are incomplete and many years out of date. Second, collection has been inefficient and ineffective. Computerization is likely to be an important component of any modernization approach that improves the efficiency of collection. However, property rates may not hold much scope for enhancing revenue generation in more rural counties where land is not titled, values are low, and citizens have a limited capacity to pay. Realizing the potential of property rates is likely to be a major and time-consuming undertaking for those counties with significant collection potential. Property and land taxes are data intensive and in most counties this data does not currently exist.

Realizing the potential of property rates is likely to be a major and time-consuming undertaking for those counties with significant collection potential

Legal basis for continued revenue collection

The legal basis for counties to continue raising revenues inherited from Local Authorities is uncertain. LAs raised revenues under a variety of national laws and regulations including the Rating Act and the Local Government Act. Powers and procedures relating to licensing and regulatory functions are set out in national laws. None of these laws were amended in anticipation of county governments replacing LAs, and in the case of the Local Government Act, the law was repealed by the introduction of county governments. The County Governments Public Finance Management Transition Act included a bridging provision that authorized county governments to continue collecting local government revenue sources, but the Act has since lapsed.[14] Mombasa County, which is being supported by KADP to address its constrained revenue position, passed three county revenue laws drafted by the Bank, on 24th December 2013. This makes Mombasa the only county so far with a sound legal basis for collecting property rates and single business permits (SBP).

There has been much focus on local fees and charges set out in county Finance Acts, but most counties are still reliant on outdated LA revenue generation systems. While Finance Acts set the level of fees or charges, the legal power to impose them is generally found in other legislation dealing with various regulatory processes administered by county governments, such as public health, building control and development planning laws. Many of these laws still refer to LAs, and need to be amended to empower county governments to administer them. Moreover, in some counties, as many as 12

[13] *Taxing provisions are in CoK Article 209.*
[14] *It was expressed to repeal on 30th September, 2013.*

former LAs managed revenue collection in parallel, and integrating these will be a crucial component of any county revenue system initiative.

Proposals by counties to introduce new service charges or raise existing ones have generated controversy and further highlighted the need for better coordination and coherent policy frameworks. Between July 2013 and January 2014, many county governments introduced new and/or higher charges including parking fees, business permits, health inspection and transport licenses, rents and payments for billboard adverts. In most cases, the new charges were significantly higher than previous levels, which has generated concern over the potential impact on local-level business costs especially for small business operators. In some counties, introduction of the new charges caused widespread protests by traders, consumers and investors. In the case of Mombasa County, a proposal to increase rental charges by more than 350 percent culminated into a court injunction. Moreover, disparities in the new charges between different counties complicate cross-county business operations. Clearly, drastic increases in local taxes could have detrimental effects on county revenues in the medium term, particularly if they drive away business and investment. A clearer response is needed from national agencies, as well as better coordination and a well-defined framework for regulating county-level taxes.[15]

The constitution provides that taxation should not be discriminatory nor prejudice economic activity but it is not clear how this provision will be enforced. Revenue-raising powers of county governments must not be exercised in a way that prejudices national economic policies, economic activities across county boundaries, or the national mobility of goods, services, capital or labour.[16] The PFM Act requires county governments to ensure their taxes and revenue measures respect these provisions, and to seek the views of the National Treasury and the CRA before imposing any new revenue measures.[17] However, it is not clear what could be done to enforce this requirement, since there are no provisions allowing the national Parliament to disallow county laws. Possibly the only avenue would be a court action seeking to have the county law declared unconstitutional.

Low revenue collection by counties

Quarterly budget implementation reports by the Controller of Budget suggest that counties are struggling to maintain revenue levels by former Local Authorities. The reports cover the period March – June 2013 and July – September 2013. Analysis of historical LA collections suggests that total annual collections by counties were trending towards Kshs 26 billion. However, an optimistic projection based on county collections from March-September 2013 suggests county annualized revenues may not exceed Kshs 22 billion. A contributing factor may be the long delay in passing County Finance Acts occasioned by the MCA strike over their remuneration. This apparent reduction in local revenue collections is in stark contrast to the extremely ambitions revenue estimates published by counties in their annual budgets. The CRA published a report on county budgets that documented revenue estimates exceeding Kshs 61 billion, while the CoB quarterly budget implementation report for July – September reports county local revenue budget targets of over Kshs 67 billion. Annex 4 contains estimated local revenue collections by counties, alongside other revenue sources—equitable share, conditional grants and the Equalization Fund.

Revenue-raising powers of county governments must not be exercised in a way that prejudices national economic policies, economic activities across county boundaries, or the national mobility of goods, services, capital or labour

[15] *In separate media reports, both CIC and the TA agreed with the new county service charges, only arguing for more public consultations. However, on January 8th 2014, the Senate's Committee on Finance, Commerce and Economic Affairs jointly with the National Treasury recommended the cancellation of the new levies, on the basis that the levies could sabotage the national economy, stifle the business environment and scare away investors. The National Treasury is reportedly seeking the Attorney General's legal opinion on the new service charges.*
[16] *CoK, Article 209(5).*
[17] *PFM Act, Section 161.*

5. Financing and Borrowing

Overview of transfers—what they are for, and how

The constitutional framework for county government transfers incorporates three kinds of transfers as shown in Figure 2.

Vertical sharing in the first and second devolution years

2013/14 is the first full year of revenue sharing under the new constitution.[18] Table 1 shows the outcomes of revenue sharing between the national and county governments. The equitable

Figure 2: County government transfers

TRANSFER	DETAILS OF TRANSFER AND CONSTITUTIONAL BASIS
Equitable share	• In aggregate not less than 15 percent of nationally collected revenues Art 202(1)] • Calculated on the basis of audited accounts approved by the National Assembly [Art 203(3)] • CRA makes recommendations on National and County shares [Art 205; 206] • Actual share is decided annually through DORA [Art 218] • Basis for sharing among counties is decided by the Senate [Art 217] • Actual distribution determined annually in CARA [Art 218] • Sharing between National and County levels and among counties should be based on criteria in Article 203
Equalization Fund	• In aggregate 0.5 percent of all revenues collected by the National Government [Art 204] • National Government may use the Fund to provide basis services in marginalized areas • May be paid through conditional grants to counties, or indirectly • Allocation is decided after CRA's recommendations • Fund lapses after 20 years
Additional conditional or unconditional transfers	• Paid from the National Government's share [Article 202(2)]

Abbreviations: **DORA** - Division of Revenue Act **CARA** - County Allocation of Revenue Act

Source: World Bank, based on constitution of Kenya

Table 1: Revenue sharing outcomes in 2013/14

	Kshs billion	USD billion	Percent
County share	190	2.20	
County share as percent of audited base year shareable revenues *(Note 1)*[19]			31.2
County share as percent of 2011/12 shareable revenues *(Note 2)*			27.9
County share as percent of 2013/14 net revenues excluding A-in-As *(Note 3)*			20.7
National share	730	8.43	
Equalization fund	3.4	0.04	
Conditional grants	3.4	0.04	
Net national share	724	8.34	
Total county allocations as percent of net revenues *(excl. A-in-As; Note 4)*			21.4

Notes:

1. Division of revenue is required to be based on last audited revenues approved by Parliament. The 2013/14 revenue sharing should have been based on 2011/12 audited revenues, but as these had not been approved by Parliament, the last approved revenues from 2010/11 were used.

2. Had 2011/12 revenues been used as the base, the equitable share would have been 27.9 percent of shareable revenues.

3. Shareable revenue is different from total net revenue. Shareable revenue excludes certain kinds of revenues defined as not being included by the definition in the Commission of Revenue Allocation Act. Appropriations-in-Aid (A-in-A), are departmental revenues, and amounts earmarked to statutory funds.

4. However, a more meaningful comparison is to show county allocations as a percentage of the total revenue available to the national government. A-in-As have been excluded.

[18] *Allocations for the four-month period between the March-2013 establishment of counties and the July-2013 start of the FY were contained in a separate legal framework, the Transition County Allocation of Revenue Act. The Act allocated an estimated Kshs 186 billion between the national and the county governments on a ratio of 90:5. The allocation of Kshs 9.78 billion to counties was to cover wages and administration costs for the new county executive and county assemblies.*

[19] *Actual shareable revenues for 2010/11 and 2011/12 is Kshs 608.1 billion, and Kshs 682.1 billion, respectively. Estimated shareable revenue for 2013/14 is Kshs 863.0 billion, out of net revenues of Kshs 918.9 billion.*

share for 2013/14 is Kshs 190 billion. There is also provision for additional conditional grants of Kshs 3.4 billion to 12 counties that are responsible for level 5 hospitals, and also Kshs 3.4 billion in Equalization Fund transfers. The DoRA also allocates an additional Kshs 16.6 billion to counties as conditional grants for donor projects that finance devolved functions, although these funds will not be paid directly to county governments.

In real terms, county governments are entitled to receive 21.4 percent of the estimated revenues to be received into the consolidated funds. Table 1 shows the overall distribution of revenue shares for 2013/14. Using the constitutionally mandated base for revenue sharing (the one to which the 15 percent minimum applies), county governments received over 31 percent—more than double the constitutionally required minimum. For 2014/15, the National Treasury proposed that counties receive a total of Kshs 221.2 billion as their equitable share of nationally-collected revenue. In real terms, this would equate to 20.6 percent of total shareable revenue, which is Kshs 1,074.7 billion as per the Division of Revenue Bill 2014. The Bill further proposes that counties receive conditional additional allocations from the national government's share of Kshs 7.3 billion (cost of rural electrification function that, unless transferred to county governments before the division of revenue is passed, will be spent and accounted for by the national government on behalf of the county governments) plus Kshs 13.9 billion (from loans and grants from development partners, together with the mandatory counterpart funding from national government's share).

The equitable share of Kshs 190 billion was allocated to counties according to a formula approved by the National Assembly in November 2012. The application of the formula was enshrined by the County Allocation of Revenue Act (CARA), which also included allocation of the conditional grants (although it did not break down the amount for each different grant). The formula includes five components: population (45 percent); equal shares (25 percent); poverty (20 percent); land area (8 percent); and fiscal responsibility (2 percent). Figure 3 shows the outcome of the allocation to counties of the equitable share, conditional grants for level 5 hospitals and the Equalization Fund, which was however, not disbursed in the first year.

Some confusion emerged over the inclusion of donor funding in the conditional grants to counties in 2013/14. Both the DoRA and CARA included an amount of 16.6 billion for donor loans and grants, which gave county governments a misleading impression that they would receive these funds into their own accounts. The actual projects covered in this amount were not specified in either law. The confusion was compounded by the omission of these same amounts from ministry budgets—creating bottlenecks in managing the funds at national level. While the funds were later reincorporated into the national budget when the supplementary budget was passed, the issue of whether county governments would receive the funds directly has remained unresolved. The draft CARA for 2014/15 provides more clarity around donor funding. While the bill does not specify specifically how funds will be managed, it does specify the donor projects that are covered, and requires that the funds be appropriated in the national budget.

The overall impact of the vertical and horizontal sharing arrangements is to bring about significant

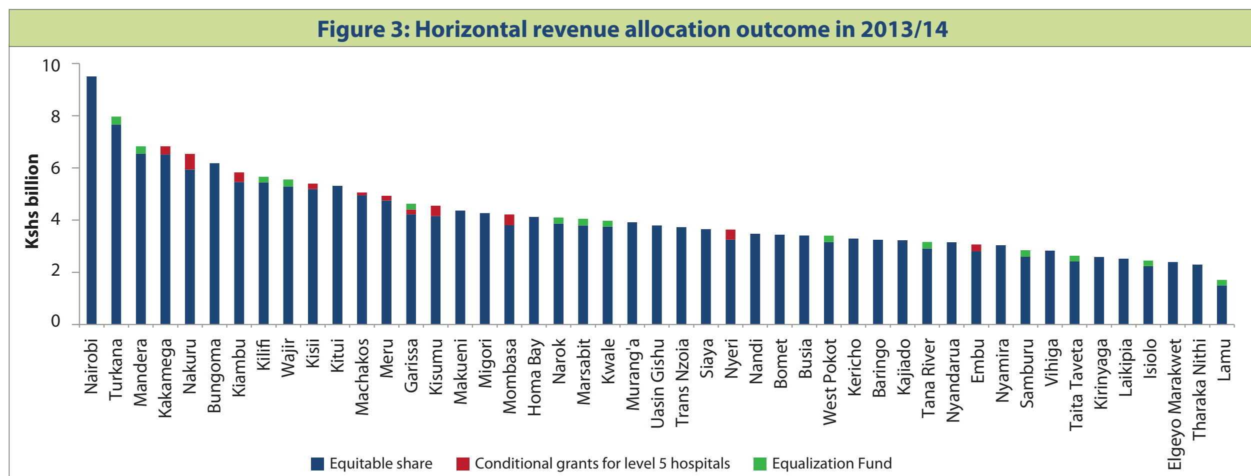

Figure 3: Horizontal revenue allocation outcome in 2013/14

Source: World Bank staff computation

fiscal equalization in the first year. The fiscal impact of revenue sharing is a product of the interaction between the vertical and horizontal dimensions. County governments are inheriting highly inequitably distributed recurrent cost responsibilities, principally in the form of staff of national ministries that have been transferred to county governments along with the devolved functions. A critical question is whether the revenue sharing arrangements in total (transfers and local fiscal capacity) provide sufficient funding for counties to discharge these cost responsibilities while still meeting the fiscal responsibility requirement of the PFM Act to allocate a minimum of 30 percent to development (capital) expenditure. The World Bank is currently investigating this question, which can only be confidently answered if more robust data on inherited non-discretionary costs (salaries of staff, new costs of establishing decentralized structures, and essential operations and maintenance expenditures) are available.

A critical question is whether the revenue sharing arrangements in total provide sufficient funding for counties to discharge their cost responsibilities while still meeting the fiscal responsibility requirement of the PFM Act to allocate a minimum of 30 percent to development expenditure

Revenue sharing was highly politicized for 2013/14. The draft Division of Revenue bill tabled in Parliament on 30th April 2013 by the National Treasury proposed a Kshs 154 billion equitable share allocation to counties plus Kshs 40 billion as conditional grants including allocations for Level 5 (or provincial) hospitals and a "hold harmless" grant to counties that would receive less from the formula than had been estimated to be spent on devolved functions in those counties prior to devolution.[20] The proposal was based on an assessment of the funding that had been provided to devolved functions when they were a national government responsibility. It is possible to see what was counted in this analysis by looking at the 2012/13 budget, which attaches a "98" code to these programs. Thus the total proposed by Treasury was Kshs 194 billion, but with only Kshs 154 billion being allocated on the basis of the formula adopted by Parliament. Subsequent negotiations while the bill was in the National Assembly saw the equitable share increased to Kshs 190 billion, plus conditional grants of Kshs 20 billion. The proposed "hold harmless grant" was dropped. After being considered by the National Assembly the bill passed to the Senate, which proposed to increase the equitable share to Kshs 238 billion plus Kshs 20 billion in conditional grants—the figure which the CRA had recommended. The National Assembly then passed the bill but ignored the Senate's recommendations. A Senate challenge to the constitutional validity of the DoRA was upheld in the Supreme Court, which ruled that both the National Assembly and the Senate should participate in debates on, and passage of the Division of Revenue Bill. A further push for additional allocations to counties came from Governors, who wanted to see their equitable share raised to 40 - 50 percent.

Compared with the National Treasury's original proposal, the revenue sharing negotiations around the vertical share had a profound impact on the horizontal distribution. Whereas Nairobi City County would have received around Kshs 14 billion under the original Treasury proposal, its share of the Kshs 190 billion equitable share is around Kshs 10 billion. Moreover, the result of more funding being unconditional was a larger variation in county transfers, signifying more pronounced horizontal disparities. In general, larger counties that inherited significant numbers of staff are now realizing the fiscal burden this will impose. To some extent the full realization of this burden was deferred until the second two quarters of 2013/14, because national government had continued to pay staff of national ministries. Now that the payroll for these staff is fully transferred, counties will have to assume full responsibility for these costs, estimated at around Kshs 77 billion in aggregate.[21] (See more discussion on payroll transfers in chapter 7).

Recommendations for vertical revenue sharing covering the second full year of devolution have followed the current approach. The recommendations of the CRA were released on 29th November 2013. Out of shareable revenue of Kshs 682 billion for FY 2014/15, the CRA proposed to allocate national government Kshs 400 billion (equivalent to 59 percent)[22] and county governments Kshs 279 billion (41 percent) with

[20] *The effect of the 'hold harmles' grant would have been to ensure that each county at least received the same nominal level of transfer as in the period preceding devolution.*

[21] *These estimates include staff of devolved ministries, former Local Authorities, and new offices required for the devolved systems, such as chief officers, Members of County Assemblies, etc.*

the balance (0.5 percent) going to the Equalization Fund. CRA's approach is based primarily on "historical allocations to devolved functions supplemented by the 2013/14 county government budgets on costs relating to the running of the new county structures." Two other approaches (zero-based costing and needs-resources gap) are considered but not applied because they are: (i) costly and time-consuming and require unbundling of functions and development of unit costs and standards; and, (ii) measuring needs can be highly subjective especially in the absence of minimum standards. CRA anticipates however that these latter approaches could be used after the short term.[23]

Borrowing and the need for sovereign guarantee

The question of how county governments will borrow for capital development is yet to be fully fleshed out. Under the constitution, county governments can only borrow with a national government guarantee and with the approval of the county assembly.[24] Further provisions are set out in the PFM Act, which specifies that:

- The Cabinet Secretary may guarantee a loan (subject to Parliamentary approval), provided that guarantees may only be issued in respect of loans for capital purposes and the borrower must demonstrate capacity to repay and service the loan.
- Recommendations of the Intergovernmental Budget and Economic Council must be taken into account in approving guarantees for county governments.
- County governments may only borrow for development purposes.
- The county assembly can set a limit on total borrowing and must approve any loan, including any borrowing for short-term cash management purposes.
- To cover temporary cash shortfalls, the county assembly may authorize short-term borrowing (i.e. by way of Treasury Bills, bank-overdraft or other instrument) but this should not exceed five percent of audited revenues and must be repaid within a year. [25]

For the moment, the CRA has recommended that county governments should not borrow for the first three years, while they establish their PFM systems.

Issues about the equitable allocation of the stock of public debt were vigorously debated during the preparation of the Public Finance Management Act. Proponents of a separate public finance law for counties argued that there should be a Loans and Grants Council[26] to allocate public debt between competing national and county governments. In the Act as passed by Parliament this function has been given to the IBEC, which is responsible for 'matters relating to borrowing and the framework for national government loan guarantees, criteria for guarantees and eligibility for guarantees.'[27] However, some stakeholders still argue that a separate forum for negotiating access to debt is needed. The formation of the Loans and Grants Council appears in the Jubilee Manifesto, the overall policy statement of the coalition government.

While the question of whether county governments should automatically inherit the liabilities of county governments is yet to be formally determined, in practice county governments are in most cases assuming responsibility for at least servicing these debts

Disposal of liabilities of former local authorities

The question of outstanding debts owed by former Local Authorities is still being addressed. Under the Transition to Devolved Government Act, the TA is responsible for undertaking an inventory of liabilities of former LAs, and developing criteria to determine their transfer. While the question of whether county governments should automatically inherit the liabilities of county governments is yet to be formally determined, in practice county governments are in most cases assuming responsibility for at least servicing these debts. It is believed that the most indebted counties are Nairobi (with estimated debt of around Kshs 5 billion) and Mombasa. It is anticipated that the national government will address this matter through policy and legislation.

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[22] *As noted in Table 1.*

[23] *CRA's report points out that the "historical allocations" approach has certain disadvantages, including the fact that it "propagates the status quo, ignores costs of new county structures and is not based on county specific needs and priorities". Source: CRA (2013). Recommendations on the Sharing of Revenue raised Nationally between the National Government and the County Governments for FY 2014/15.*

[24] *CoK, Article 212.*

[25] *Sections 58, 140 and 142, Public Finance Management Act.*

[26] *The model is based on a now defunct Australian mechanism for allocation of public sector debt between national and state governments.*

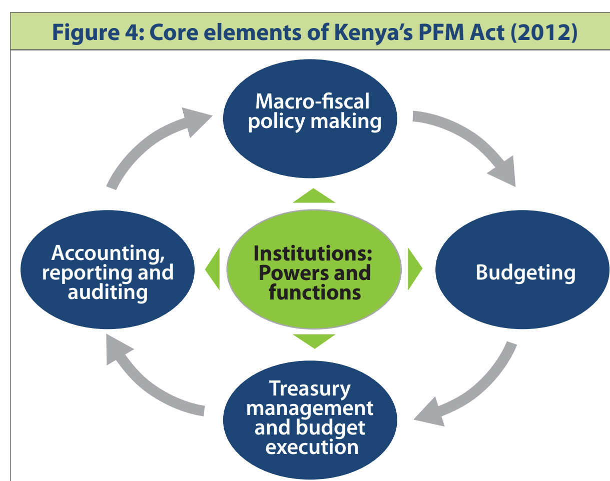
[27] *Section 187(2)(c), Public Finance Management Act.*

6. Public Finance Management

Key elements of the new PFM framework

A single PFM system will apply to the whole country, and detailed regulations are being developed to support it. This new PFM framework is anchored in Chapters 11 and 12 of the constitution, and it is being implemented through various Acts, namely: the PFM Act (2012); the CRA Act (2011); the Independent Offices (Appointment) Act (2011); the Salaries and Remuneration Commission Act (2011); the County Government PFM Transition Act (2013); the annual DoRA and CARA; and, the National and County Finance and Appropriation Acts. The PFM Act and the soon to be tabled national and county government PFM regulations (2013) cover the core elements shown in Figure 4.

Figure 4: Core elements of Kenya's PFM Act (2012)



Source: World Bank staff, based on PFM Act (2012)

The new PFM architecture introduces new oversight institutions each with distinct roles. As discussed in chapter 2, there is now a bicameral Parliament with the Senate playing a role in oversight of county matters and allocation of revenue. In addition, County Assemblies are providing oversight over public finances including approving county budget estimates. County Executives are responsible for approving fiscal policy and preparing county budget estimates, while County Treasuries are in charge of county public finances. Other than the CRA, the CoB, and the Auditor-General (whose roles have been discussed in earlier sections) the following three additional institutions have been (will be) created:

- *Public Sector Accounting Standards Board* - provides frameworks and sets standards for the development and management of accounting and financial systems by all State organs, public entities and levels of government, including prescribing minimum standards of maintenance of proper books of account, internal audit procedure and financial statements.
- *Public Debt Management Office* - Once established it will carry out the government's debt management policy; maintain a debt data base for all loans taken by the national government, county governments and their entities including other loans guaranteed by the national government; prepares and update the Medium-Term Debt Management Strategy; prepare and implements the national government borrowing plan including servicing of outstanding debt; monitor and evaluate all borrowing and debt-related transactions to ensure that they are within the guidelines and risk parameters of the debt management strategy; and, process the issuance of loan guarantees including assessment and management of risks in national government guarantees.
- *Intergovernmental Budget and Economic Council (IBEC)* - provides a forum for consultation and cooperation between the national government and county governments on *inter alia,* the contents of the Budget Policy Statement (BPS) which is a medium term fiscal strategy document; the Budget Review and Outlook Paper (BROP) which is an update/ progress on the BPS; and, the Medium-Term Debt Management Strategy (MTDS), as well as matters relating to budgeting, the economy and financial management, borrowing and the framework for national government loan guarantees, schedule for the disbursement of cash from the Consolidated Fund.

A key new dimension of the reformed PFM architecture is a significant change in the role of Parliament in the budget process. As the Cabinet Secretary for Finance is not a Member of Parliament (MP), s/he cannot control the passage of the budget through Parliament. This raises the prospect of gridlock if Parliament and the President cannot agree. The three arms of government are each entitled to propose their budgets independently, instead of having them included in the executive budget as was the case in the past. Moreover, any MP can introduce a money bill (a law for the raising or spending of money) outside the normal budget process. Similar dynamics have affected a number of County Assemblies already, with MCAs forcing governors to include specific spending in budgets in order to get them passed. One county insisted on at least fifty percent of the budget being allocated to assembly purposes. A number of county governments are now considering ward development bills, which seem likely to operate like county versions of the Constituency Development Fund, putting funding for small projects in wards under the effective discretion of the ward member.

The macro-fiscal policy framework is also significantly enhanced at both the national and the county level. At the national level, there will be two crucial processes namely preparation of the BPS and the BROP. Similarly, each county government will prepare a County Fiscal Strategy Paper (C-FSP) and County BROP. In addition, county governments are required to have county annual development plans setting out their strategic priorities, programmes to be developed, capital expenditure and grants/transfers and subsidies to be made on behalf of county governments. Finally the PFM Act contains fiscal responsibility principles that cap spending on development and recurrent expenditure, limit borrowing to only development expenditure purposes and set a ceiling for national and county debt.

The budget cycle will start with the issuance of budget circulars by the 30th August of each financial year and is completed once the annual audit reports are tabled in Parliament. A notable change to the previous process is the allocation of revenue between the national and the county governments, and among the county governments determined by the revenue sharing process that precedes the start of the budget process. Budget processes of county governments are independent from the national government. The PFM Act specifies that county budgets should be prepared on a programme basis. The review of budget estimates should be in accordance with the approved Fiscal Strategy Paper. There is also limited scope for expenditure changes midstream through strict definition of contingencies, and use of supplementary budgets, and reallocation. Figures 5 and 6 show the budget processes and budget calendar respectively.

A number of county governments are now considering ward development bills, which seem likely to operate like county versions of the Constituency Development Fund

Quarterly and annual financial statements/ reports are now not only submitted to the National Treasury and Auditor General but to the CoB and the CRA. The CoB also provides quarterly reports on budget implementation for both national and county governments. The process through which the CoB authorizes funds for withdrawal at both the national and county government level is largely similar.

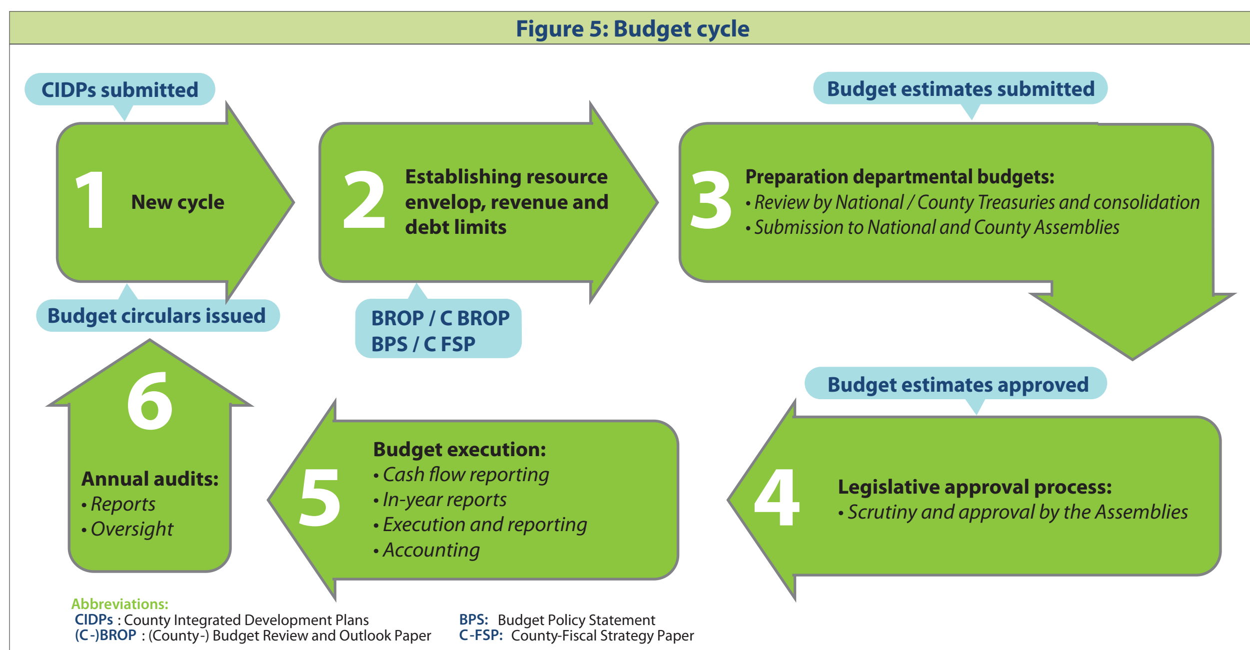
Progress in establishing county PFM systems

An ongoing initiative to fully operationalize the Integrated Financial Management and Information System (IFMIS) in all counties will extend to them benefits of the system's 'full cycle end-to-end integrated approach'. The system was previously operational only at the national government level, with several achievements having been made through a re-engineering initiative launched in 2011. For example, all government ministries, departments and agencies (MDAs) were already connected to a single PFM system through a core network. A 'plan-to-budget' module was developed and used to prepare the

revised budget in December 2012. It is envisaged that full operationalization of all IFMIS modules in the counties will enable them integrate their PFM process from end-to-end, thereby enhancing financial controls, improving efficiency in resource allocation and information management for decision making, among other benefits.

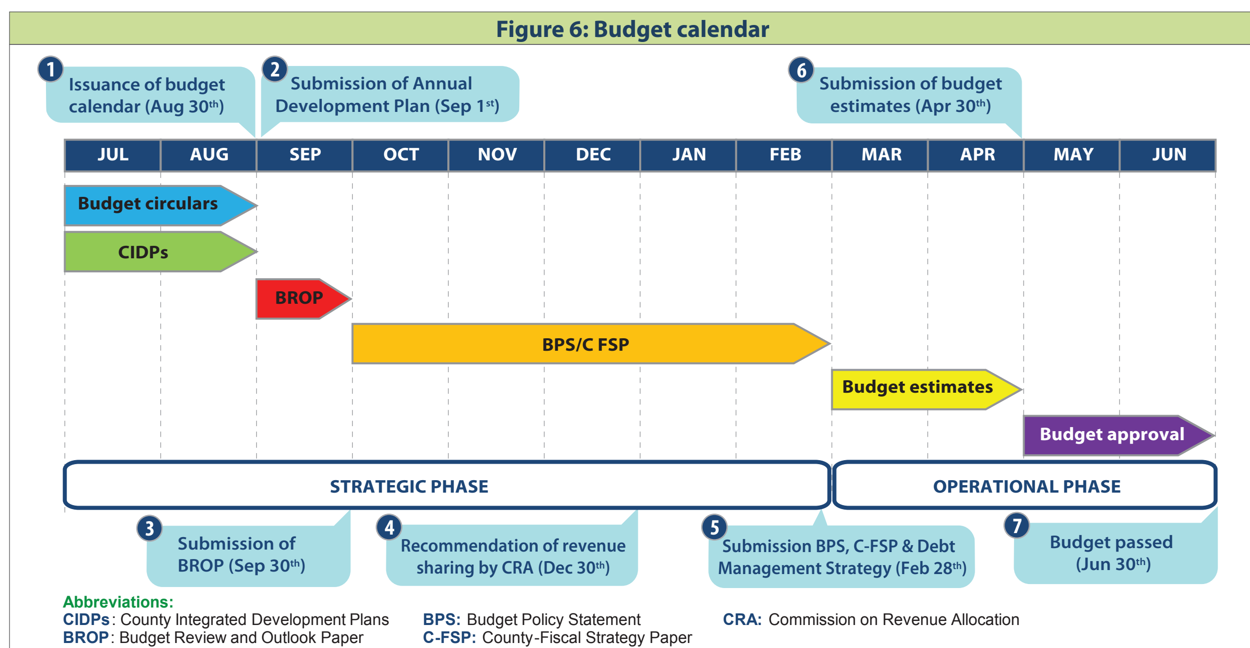
For the intended PFM system integration benefits to be realized, the remaining IFMIS modules will need to be accelerated. One such module is the 'revenue-to-cash' module, which involves collection, recording and reporting of revenues, as well as auto bank reconciliations and cash flow management. To enable it capture county revenues, this module would need to be linked with the Local Authorities Integrated Financial Operations Management System (LAIFOMS), which was previously used by LAs and still available in counties. In the absence of this module, a number of counties have taken steps to commission the development of integrated systems to handle the above functions, and also incorporate land information systems that are central to both property rates and management of county development and planning approval functions. Two other outstanding IFMIS modules

Figure 5: Budget cycle



Source: World Bank, based on Kenya constitution and PFM Act

Figure 6: Budget calendar



Source: World Bank, based on Kenya constitution and PFM Act

are 'procure-to-pay' (which is an automated supply chain system), and 'plan-to-budget' (which links planning, policy objectives and budget allocation). These modules would need to be in place urgently as the 2014/15 county budgets will be done in IFMIS as opposed to uploaded into IFMIS as in the 2013/14 budget year.

The quality of the 2013/14 county budgets was undermined by a number of factors during the preparation process. First, county budgets for the last four months of 2012/13 were provided through a single national appropriation law. In any case, the county budgets covered only three functions: assembly, executive, and financial management.[28] The TA recruited and deployed a transition team to each county that included around six treasury officials, and a transitional PFM law provided a basic architecture of financial accountability including an accounting officer. From the time they were inaugurated, county governments had less than three months to prepare their 2013/14 budgets. No county government had adopted a five year development plan, not all had CEC members appointed, and very few had begun the process of recruiting their permanent county treasury staff. Moreover, very little guidance was provided to counties as to what functions they should include in their budgets, or how to cost the functions.

Implementation of the 2013/14 budget was quite delayed for a number of reasons. First, because of the legal dispute between the Senate and National Assembly, the CARA was not gazetted until 12th August, almost 6 weeks into the financial year. A cash disbursement schedule was submitted to the Senate for approval on the 28th August. The first transfer of equitable shares to county governments followed on 30th August, a full two months into the fiscal year. Almost half the county governments had budgeted for unfinanced deficits, causing the CoB to advise that no county budget would be approved unless it was balanced.[29] A number of counties had to resubmit budgets to their assemblies to comply with this directive. Unfortunately this coincided with the beginning of a long strike by MCAs, who were protesting the refusal of the SRC to increase their remuneration package. As a result a number of county governments were not able to pass their supplementary budgets until very late in 2013. Passage of many county finance laws was held up for similar reasons.[30] In effect, many counties only began to properly implement their budgets in the second quarter.

The national government will follow an eight-step process in releasing funds into county revenue fund accounts. The steps are outlined in Figure 7. Releases from county revenue funds will follow similar steps with the Governor and County Treasury replacing the functions of the President and National Treasury, and withdrawals now being from the County Revenue Fund rather than the Consolidated Fund.

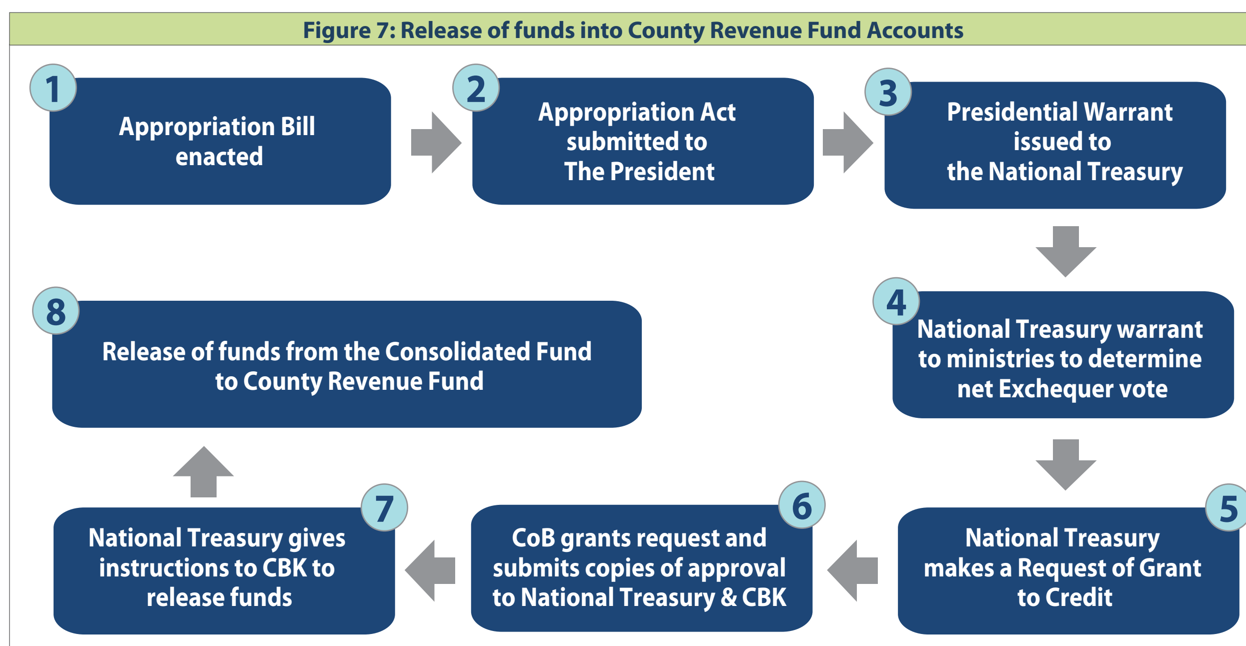
> *From the time they were inaugurated, county governments had less than three months to prepare their 2013/14 budgets*

County PFM capacity, procurement

County PFM capacity is largely built on LA capacity even though the two systems have important differences. In terms of budgeting for instance, the Local Authority Service Delivery Action Plan (LASDAP) process required LAs to forward their budgets to the Ministry of Local Government (MoLG) for approval. Budgets of County Governments are approved by their respective County Assemblies. In terms of procurement, the national procurement law—the Public Procurement and Disposal Act (2005) is currently being revised to align it with the system of devolved government. In the meantime, the Public Procurement Oversight Authority (PPOA) has been issuing various Legislative Supplements to guide counties on how to undertake public procurement.

[28] *County Governments Transition Appropriation Act 2013.*
[29] *Commission on Revenue Allocation, Report on County Budgets, 12th August 2013.*
[30] *Finance laws provide authority for county revenue raising.*

Figure 7: Release of funds into County Revenue Fund Accounts



Source: World Bank staff, based on PFM Act (2012)

7. Administrative Arrangements

Staffing and secondment arrangements

County governments have established their own public services, although the constitution envisages a uniform norms and standards framework to be legislated by Parliament. As per the County Government Act (CGA, 2012), counties are required to form County Public Service Boards (CPSBs) and County Assembly Service Boards (CASBs) for the management of county public and county assembly services, respectively. The boards have powers to appoint, discipline and remove officers in those offices as established by the respective boards. The powers and functions of the boards will be exercised in accordance with the principles and objectives of public service as per the constitution and the CGA, respectively. Salaries will be based on the advisement of the SRC, which is currently developing a remuneration and benefits policy.[31; 32]

Counties have also commenced appointment of their permanent public service, a move that will involve absorbing—or shedding—around 100,000 existing civil servants. Of these, around 33,000 are inherited from former LAs, and around 67,000 are national civil servants attached to line ministries that were performing what are now devolved functions. The latter are on secondment to counties. It is not clear who is responsible for meeting the retrenchment costs for civil servants that do not win positions in a county public service. The CGA allows these staff to be returned to the national government, which may however lack budgetary resources to sustain any higher staff levels.

Transitional arrangements for the national government to pay salaries, remuneration, allowances and other benefits due to seconded staff led to some confusion. According to the CGA, the national government was expected to pay salaries of seconded staff until their secondment ended by either (i) sending them back to national government or (ii) engaging them in a permanent position in the county public service.[33] However, the Act was not clear whether once functions were transferred to counties, the attendant staff would no longer be deemed to be seconded. As a result, many counties failed to understand that the national government's payment of secondee

[31] Includes members of county assemblies, county executives and governors.
[32] CoK, Article 230.
[33] Section 73(2), County Government Act.

salaries was a temporary arrangement, which led to some confusion causing some to not budget adequately for personnel emoluments.

Transfer of payroll responsibilities

An agreement was reached in which the National Government retained responsibility for payment of seconded civil servants for the first six months of 2013/14. Part of the basis for this arrangement was that staff records had not yet been handed over to counties. In the meantime, the National Government commenced an exercise to develop guidelines, operational procedures and structures for the transfer of staff to counties (including payroll). The transfer of payrolls to counties commenced on 6th January 2014, following completion of preparations to enable counties undertake this function effectively. The preparations comprised three aspects namely:

- Installation of the Integrated Payroll and Personnel Database (IPPD) system in all 47 counties;
- Training of at least 219 officers on county payroll management; and,
- Drafting of guidelines for management of seconded staff—These guidelines seek to operationalize the secondment of staff to counties and provides for terms and conditions of seconded staff, training, discipline, pension, establishment and abolition of offices during the transition period and overall management of seconded staff by county governments.

It was expected that the transfer of payroll records to counties would be accompanied by a major staff audit. This followed reports by a number of counties that staff shown as present in the county on payroll records could not be located. The problem was particularly acute in the health sector. Following an unsuccessful court case to oppose devolution, health workers went in strike in November 2013, and returned to work around four weeks later. They raised issues relating to the transfer of their pension entitlements, and maintenance of transferability between counties.

Grading structure and capacity development

A generic organization and grading structure is being developed jointly by the national and the county governments. It is expected that a sample of position descriptions, grading and organizational structures will be developed that could be adopted by all counties in order to standardize human resource structures across national and county governments.

Many counties failed to understand that the national government's payment of secondee salaries was a temporary arrangement, which led to some confusion causing some to not budget adequately for personnel emoluments

Responsibility for supporting development of county capacities rests with the national government. In practice, the Ministry of Devolution and Planning (MoDP) carries the responsibility for coordinating capacity development, as well as providing technical assistance to counties. MoDP also has responsibility for several key agencies that play important roles in capacity building, including the TA, the Kenya School of Government (KSG), and the former Special Ministry of State for Public Service.

8. Social Accountability, Transparency and Citizen Participation

Kenya's devolution laws contain three important social accountability provisions. The provisions involve: (i) making information transparent; (ii) enabling citizens to participate in local government, and (iii) holding local leaders to account. These three provisions form the basis for a system of social accountability at the local level.[34]

Policy and legal framework for transparency and citizen participation

The policy and legislative framework that has been adopted also provides for the scaling up and institutionalization of citizen participation. The objective of this provision is the improvement of efficiency, accountability, and inclusiveness of local service delivery. The overarching principles and values in these documents consistently commit the Government of Kenya to transparency, accountability and civic engagement in devolved governance.[35] The challenge ahead is to activate the legal provisions (or make them effective) by translating them into operational guidelines, working systems and capacities.

Strong emphasis has been put on citizen participation and transparency, including in government planning, budgeting, and monitoring processes. The constitution refers to these principles in Articles 10 and 174. Reference is made specifically to participation in public finance (Art. 201), policy-making processes (Art. 232) and, the governance and management of urban areas and cities (Art. 184). Commitment to citizen participation in the planning, delivery of services, budgeting and monitoring is well articulated across the legislation. Figure 8 summarizes the basic pillars of social accountability in Kenya's legislative framework.

The World Bank has developed a guide to support stakeholders in promoting social accountability and the productive engagement of citizens in county governance. The guide is entitled: "Policy Framework for Social Accountability at the County Level" and it compiles a set of minimum conditions (as mandated by legislation) and proposes a set of indicators for social accountability in planning, public financial management and monitoring at

Figure 8: Basic pillars of social accountability in Kenya's legislative framework

PILLAR	DETAILS OF PILLAR AND CONSTITUTIONAL BASIS
Communications and transparency around citizen engagement	• Counties to create structures, mechanisms and guidelines for citizen participation • The structures and guidelines should ensure open participation to all without discrimination, and have safeguards against domination of the consultations by one group [PFM Act, Section 207]
Participatory planning	• County planning, should serve as a basis for engagement between county governments, citizens, other stakeholders and interest groups [CoK Art 232; CGA Section 30 & 102] • Governors to ensure citizen participation in planning and the delivery of services.
Financial transparency and participatory budgeting	• County budget circular should prescribe the manner in which the public will participate in budgetary and financial issues including through direct representatives • County Executive Committee (CEC) member for finance should ensure citizen participation in planning and budgeting [PFM Act, Section 125 & 128]
Participatory monitoring	• County Governments Act provides for citizen participation in the implementation of county policies and the evaluation of public service performance through the County Performance Management Plan process facilitated by the CECs [CGA Section 47]
Government responsiveness and accountability to citizens	• County Government authorities, agencies and agents have a duty to respond to petitions and challenges from citizens • Public authorities should promote accountability; ensure that expenditure of public funds is subject to effective oversight; and, promote informed debate on issues of public interest [CGA Section 89; FOI Clause 27]

Source: World Bank, based on Constitution of Kenya and various legislation

[34] *World Bank, "Devolution without Disruption: Pathways to a successful new Kenya", pg. 147.*

[35] *The CGA (Sections 3 and 6); the PFM Act (Section 10); the Transition to Devolved Government Act (Section 14); the Freedom of Information (FOI) Bill (Section 3) and the Urban Areas and Cities Act (Section 3) are all guided by principles of transparency, accountability and participation.*

the county level. Annex 5 of this note contains a set of minimum social accountability standards which the Bank has proposed as part of the guide described above.

Medium-term challenges, risks and opportunities going forward

The first months of Kenya's devolution have encountered challenges that cannot be addressed within the constitutional and legal frameworks, strong as these may be. The challenges include: (i) high expectations from citizens for quick engagement as well as for immediate results; (ii) strong interest from county governors—but not from all counties—compounded by lack of dedicated county staff and resources; (iii) compressed devolution timetables which have hindered effective citizen engagement; and, (iv) lack of frameworks/guidelines to guide county governments and citizens.

Furthermore, the gap between policy and current practice remains wide. The preparation of subsidiary legislation, regulations and implementation guidelines to operationalize the new policy framework is now underway. It is critically important to ensure that these are prepared in a professional and participatory manner, drawing on international good practices with regard to both content and process. The provision of specialized technical assistance and participatory process support to the government entities responsible for defining new regulatory frameworks is also underway.

A lot can be learned from the first full year of the budget cycle, which can help to improve the quality of public participation in county budgeting and planning. The most important lessons include the need to: (i) ensure that every county has the required frameworks for access to information and public participation, to facilitate effective and practical implementation of the processes of participation; (ii) ensure that correct data is available and accessible for effective decision making to guide people's priorities, this would include developing citizen-friendly budgets to enable communities engage more effectively in the budget process; (iii) institute a cross county assessment of the level of institutionalization of social accountability frameworks to structure optimal citizen-county engagement; (iv) institute county performance measurement and assessment to monitor whether a county is budgeting and implementing according to the approved plan; (v) contribute to the capacity of citizens to enable them engage effectively in the affairs of the county through a coordinated civic education program; and, (vi) each county to build capacity of their human resource staff including sub-county, ward and village administrators to foster community participation.[36]

Commitment to citizen participation in the planning, delivery of services, budgeting and monitoring is well articulated across the legislation

[36] *The performance management plan in section 47 of the County Government Act would provide this.*

9. Sector Specific Issues

The speed and scope of Kenya's devolution has exposed key devolved sectors to major transition challenges, which will require ongoing negotiation to resolve. First, as there was insufficient time to design a robust revenue sharing system to match the extensive fiscal decentralization approach that was adopted. As the approach does not correspondingly balance needs against cost responsibilities—for both the national and the county governments—the risk exists of a mismatch between funding the two levels of government and their respective service delivery obligations. Secondly, the reverse sequencing of functions and funds transfer at the start of the devolution generated negative effects (e.g. salary delays and slowdown in O&M activities) both at the national and the county level.

Below are summaries of sector-specific issues arising from Kenya's devolution and its implementation to date:

Health

Health is the most labour intensive service to be devolved. Out of Kshs 47 billion in salaries of national ministry staff that was devolved to the county level, salaries of health staff account for Kshs 38 billion. Adequate financing of health services is complicated by arrangements that were in place prior to devolution. Some of the challenges included substantial locally-generated revenues (hospital user fees) that were not recorded in the budget, continuation of centrally financed and managed procurement and distribution of pharmaceutical budget through drawing rights, and a very significant off-budget contribution, particularly by the US Government. The political visibility of county hospitals poses risks to effective primary services. With the national decision taken to remove the user fees, primary facilities are now entirely dependent on government funding to meet their operational costs.

> *A major concern is whether or not counties will themselves remain consistent in ordering drugs and making the necessary allocations in their budgets*

In health, a major transition issue relates to personnel management and ensuring adequate funding for operations, and maintenance and pharmaceuticals. The retention of health personnel by poorer counties is already a concern. A recent survey shows that majority (97.3 percent) of health workers in remote rural areas prefer to work in a different county than their current locations, which means that the poorest counties risk losing their health personnel to richer ones.[37] Retention of health workers in remote rural areas will require adequate housing and social amenities as well as improved incentives—currently the majority of health personnel receive a monthly hardship allowance in the range of Kshs 650 – 8,130 ($8-94).

Counties are now responsible for financing purchase of pharmaceuticals, but there should still be access to economies of scale, assured supply chain and quality assurance that comes from centralized procurement. The other transition issue is that of pharmaceutical supplies to county public health facilities: how to ensure that counties comply with the national essential drug list, how to ensure that counties adopt sound procurement practices, and that the national drug supply chain, whose business model is currently being restructured, remains efficient while being responsive to the devolved setting. A major concern is whether or not counties will themselves remain consistent in ordering drugs and making the necessary allocations in their budgets.

Roads

The main issue in the roads sub-sector concerns the need for a policy framework that is consistent with the constitution, especially in the assignment of roles between county governments and Kenya Urban Roads Authority (KURA) and Kenya Rural Roads Authority (KeRRA). Earlier in the transition period, an attempt by the national government

[37] *John Njuguna, Pius Mwangi and Njoroge Kamau. "Incentives among Health Workers in a Remote Kenyan District: Implications for Proposed County Health System." Journal of Health Care for the Poor and Underserved 25.1 (2014): 204-214. Project MUSE. Web <http://muse.jhu.edu/>.*

to retain responsibility (as well as funding) for rural and urban roads drew opposition from county governments. While the constitution recognizes only national trunk roads and county roads, the issue was that some roads in the latter category have previously been managed by two road authorities which still exist, namely KURA and KeRRA.[38] A draft policy has now been prepared according to which the two existing road authorities will be retained, but only to undertake planning, designing, developing and maintaining of county road network. The next step is to update both transport and roads sub-sector policies, and amend the Kenya Roads Act (2007) to establish a new institutional framework, and also restructure the Kenya Roads Board (KRB) as an agency of the national government to manage proceeds of the fuel levy collected under the Roads Maintenance Levy Fund (RMLF). A proposal to establish new County Roads Committee while at the same time retaining existing Constituency Roads Committees is likely to generate overlaps. As in other sectors, the concern of the national government is that counties lack capacity to independently manage roads falling under their jurisdiction.

Water

The main issue in the water sector relates to the need for a clear policy and legal framework to operationalize devolution. A revised Water Policy and a Water Act fully consistent with the constitutional system and right to water are necessary to make the devolution process smooth. Key issues concern the transfer of staff and assets to counties and ensuring sustainable services focusing on the poor and underserved.[39] Separately, whilst a number of counties have included elaborate water development projects in their CIDPs, most county budgets for the current fiscal year do not reflect adequate financial allocations for both recurrent (personnel) and development (O&M) costs of water service provision. Going forward, counties should be supported to enable them understand the importance of not commencing any major institutional changes e.g. dissolving water service providers (WSPs) as has been reported in some places. In addition, counties should avoid charging for the 'export' of water to other counties, or raiding water company revenues from hitherto ring-fenced accounts that fund operations, rehabilitation and investments. Although the constitution implies that counties may legitimately demand control over some aspects of regulation, recognition of the important role of a national regulator in monitoring and enforcement of compliance by all stakeholders especially at the county level will remain vital to the sector sustainability.

Agriculture

Successful implementation of devolution in agriculture probably holds the most promise for Kenya's socioeconomic transformation, but will this be achieved? Agriculture accounts for more than one-fifth of GDP and three-quarters of employment. The sector is a key Vision 2030 pillar, besides having major implications for food security, employment generation and poverty reduction, especially for Kenya's majority rural populations, as well as those in the informal economy. The sector has been devolved against the background of low productivity, low value addition (most produce is exported 'raw'), high post-harvest losses and underfunding.[40] Below are additional concerns which have been generated through the devolution process:

The sector has been devolved against the background of low productivity, low value addition (most produce is exported 'raw'), high post-harvest losses and underfunding

[38] National trunk roads include: Class A (international trunk roads); B (national trunk); C (primary); and, roads in national parks and game reserves. County roads include inter-divisional, -location and -sub-location roads, which are found both in urban and rural areas. National trunk roads will continue to be managed by the Kenya National Highways Authority (KeNHA). GoK (2012) Policy on Aligning the Roads Sub-Sector with the constitution; September 2012; Ministry of Roads.

[39] WSP (2013) Devolution in Kenya: Opportunities and Challenges for the Water Sector; September 2013.

[40] Even before devolution, Kenya's agricultural was far from meeting the Maputo Declaration which requires a minimum allocation of 10 percent of the national budget to the sector. A critical look at county governments' budgets for 2013/14 reveals that this target is still unlikely to be met.

- Personnel management challenges – before devolution there was an estimated 4,000 agricultural, livestock and fisheries extension workers at the local level. Most counties are yet to fully absorb these staff—some counties are instead recruiting new staff with doubtful credentials. This has created two parallel extension service systems which have major budgetary and operational implications, and in some cases have led to total disruption of services. This is worsened by the complexity of communication lines between national and county government, which makes resource management and service delivery even harder.
- Funding challenges – having been 'cut' from the national budget, funding for crucial agricultural support activities (e.g. Animal Health & Industry Training Institute: AHITI) is currently being distributed to counties using an equitable formula. Consequently, such activities face the risk of underfunding. Furthermore, it not clear how the farmer and other training institutes will be managed and funded as some of them catered for more than one county while others like the AHITI had a national coverage.

> *Majority of the rural counties have introduced new and very controversial local cess charges, many of them targeting agricultural activities e.g. coffee, tea and livestock*

- The need to clarify the role of county governments *vis-à-vis* that of the sector's numerous state corporations involved in regulation, policy, productivity and marketing. Stakeholders are concerned that the Agriculture, Fisheries and Food Authority, which was created in early 2013, appears to re-centralize some of the powers already devolved under the constitution and thus, could undermine both county governments and the Cabinet Secretary responsible for agriculture.
- Having been a major challenge under a centralized administration, integration is likely to be a major issue in a devolved context. New approaches will be needed to aggregate small scale farmers across counties (e.g. to connect them to exporters). Likewise, in the livestock subsector, creation of sizeable disease-free 'exclusion zones' timely procurement and distribution of fertilizer and seeds, and coordinating food security programmes will need careful thought.
- Risk of county-level decision makers being captured by local elites e.g. larger farmers, to the detriment of the majority small-scale farmers.
- In a bid to raise local revenue, majority of the rural counties have introduced new and very controversial local cess charges, many of them targeting agricultural activities e.g. coffee, tea and livestock. Some of the cess is charged directly on pro-poor farming activities such as chicken and access to local markets. These charges are not coordinated among counties are in some cases have resulted in traders paying more than once depending on the areas of operation. If not checked, the new charges may raise transaction costs in agriculture and livestock farming as well as trade, making the sector even less attractive.

Institution	Functions
Commission on the Implementation of the Constitution (CIC)	• Monitor, facilitate and oversee the development of legislation and administrative procedures required to implement this constitution; • Co-ordinate with the Attorney-General and the Kenya Law Reform Commission in preparing for tabling in Parliament, the legislation required to implement this constitution; • Report every three (3) months to the constitutional Implementation Oversight Committee on: (i) progress in the implementation of this constitution; and, (ii) any impediments to its implementation; • Work with each constitutional Commission to ensure that the letter and spirit of this constitution is respected; and, • Exercise such other functions as are provided for by the constitution or any other written law.
Commission for Revenue Allocation (CRA)	CRA's functions include making recommendations on: • The basis of equitable sharing of revenue raised by national government between national and county governments; • The basis of equitable sharing of revenue raised by national government among county governments; • Matters concerning the financing of both the national government and county governments; and, • Matters concerning financial management of both national and county governments.
Salaries and Remuneration Commission (SRC)	SRC sets and regularly reviews review the remuneration and benefits of all state officers; and, advices the National and County Governments on the remuneration and benefits of all other public officers. SRC's functions include: • Inquiring into and advise on the salaries and remuneration to be paid out of public funds; • Keeping under review all matters relating to the salaries and remuneration of Public Officers; • Advising the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector; • Conducting comparative surveys on the labour markets and trends in remuneration to determine the monetary worth of the jobs of Public Officers; • Determining the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation; • Making recommendations on matters relating to the salary and remuneration of a particular State or Public Officer; • Making recommendations on the review of pensions payable to holders of Public Offices; and, • Performing such other functions as may be provided by the constitution or any other written law.
Ministry of Devolution and Planning (MoDP)	Amongst Kenya's 18 ministries, MoDP has the broadest list of functions attached to it, of which the following would affect devolution directly or indirectly: • Coordination and management of devolution affairs as well as intergovernmental relations including the Intergovernmental Summit; • Capacity building and technical assistance to county governments, and in particular in the areas of HR management and development, career design and development; • National development planning, national statistics management, M&E, National Economic and Social Council (NESC) and Vision 2030 advisory; • Public sector transformation, including operational standards and process re-engineering, Public Service Reform and Performance Management; • Coordination and management of youth, women, gender and family affairs, as well as population policy management, emergencies and disasters, special programmes (e.g. food relief, internally-displaced persons, etc.); and, • Coordination of the Constituency Development Fund, Northern Kenya and other Arid Lands development policy.

Institution	Functions
Transition Authority (TA)	The TA is established under section 4 of the Transition to Devolved Government Act, 2012, and its mandate is to facilitate the realization of a devolved system of government through effective coordination of the transition process. Below are the TA's specific objectives: • To provide a framework for provide a legal and institutional framework for a co-ordinate transition to the devolved system of government while ensuring continued delivery of services to citizens; • To provide for the transfer of powers and functions to the national and county governments; • To provide mechanisms to ensure that the CIC performs its role in monitoring and overseeing the effective implementation of the devolved system of government effectively; • To provide for policy and operational mechanisms during the transition period for audit, verification and transfer to the national and county governments of: i) assets and liabilities; ii) human resources; iii) pensions and other staff benefits of employees of the government and local authorities; and, iv) to provide for closure and transfer of public records; and • To provide for the mechanism for capacity building requirements of the national government and the county governments and make proposals for the gaps to be addressed.
Council of County Governors (CoG)	The Council of County Governors was established in April 2013, pursuant to the Intergovernmental Relations Act (Sections 19 – 23). The Council consists of the governors of the 47 counties, with the chairperson and vice chairperson elected from amongst its members. The Council is expected to provide a forum for: • Consultation amongst county governments; • Sharing of information on the performance of the counties in the execution of their functions with the objective of learning and promotion of best practice and where necessary, initiating preventive or corrective action; • Considering matters of common interest to county governments; • Dispute resolution between counties within the framework provided under the Act; • Facilitating capacity building for governors; • Receiving reports and monitoring the implementation of inter-county agreements on inter-county projects; • Consideration of matters referred to the Council by a member of the public; • Consideration of reports from other intergovernmental forums on matters affecting national and county interests or relating to the performance of counties; and • Performing any other function as may be conferred on it by this Act or any other legislation or that it may consider necessary or appropriate. The Council is empowered, under section 20(2) of the Intergovernmental Relations Act, to establish other intergovernmental forums including inter-city and municipality forums.

Annex 2: Legislative framework implementing devolution			
Law	**Brief description**	**Date of assent**	**Date of commencement**
Urban Areas and Cities Act	Gives effect to Article 184 of the constitution to provide for the: • classification, governance and management of urban areas and cities; and, • criteria of establishing urban areas, to provide for the principle of governance and participation of residents and for connected purposes. *Defines cities, municipalities and towns; prescribes management arrangements for each; includes some savings provisions relating to old local authorities.*	Aug 27th 2011	Act came into operation after the first elections held under the constitution
Commission on Revenue Allocation Act	Makes further provision as to the functions and powers of the CRA, the procedure for appointments to the Commission and for connected purposes. *Includes definition of "revenue" for the purposes of sharing between national and county governments.*	Aug 27th 2011	Aug 30th 2011
County Governments Act	Gives effect to Chapter Eleven of the constitution to provide for county governments' powers, functions and responsibilities to deliver services and for connected purposes. *Spells out provisions in relation to the operation of county assemblies and county executives. Establishes and empowers county public service boards and provides some regulation of county employment as well as secondment of national staff to county governments. Includes prescription of sub-county administrative arrangements, planning, service delivery arrangements, citizen participation and accountability, and procedure for suspension of county governments. Provides for repeal of the Local Government Act (and thus abolition of local authorities).*	Jul 24th 2012	Provisions came into operation upon the final announcement of the results of the first elections under the constitution
Transition to Devolved Government Act	Provides a framework for the transition to devolved government pursuant to section 15 of the Sixth Schedule to the constitution, and for connected purposes.	Feb 27th 2012	Mar 9th 2012
Intergovernmental Relations Act	Establishes a framework for consultation and co-operation between the national and county governments and amongst county governments; to establish mechanisms for the resolution of intergovernmental disputes pursuant to Articles 6 and 189 of the constitution, and for connected purposes. *Establishes intergovernmental bodies including the National-County Coordinating Summit, the Council of County Governors, and intra-county forums.*	Feb 27th 2012	Provisions came into operation upon the final announcement of the results of the first elections under the constitution
Public Finance Management Act 2012	Provides for: • the effective management of public finances by the national and county governments; • the oversight responsibility of Parliament and county assemblies; and, • the different responsibilities of government entities and other bodies, and for connected purposes. *Establishes the legal framework for public finance management at both levels of government, including specifying planning, budgeting, accounting, and reporting requirements for national and county governments. Expands on the sequence of the annual revenue sharing process and establishes an intergovernmental forum, the Intergovernmental Budget and Economic Council.*	Jul 24th 2012	Aug 27th 2012 (for provisions other than those relating to county governments)
National Government Coordination Act 2013	Establishes an administrative and institutional framework for co-ordination of national government functions at the national and county levels of governance; to give effect to Articles 131(1)(b) and 132 (3) (b) of the constitution and for connected purposes. *Entrenches the existing system of deconcentrated national government administration (previously called 'provincial and district administration), defines the powers of officials, and aligns the system to county government.*	Jan 14th 2013	Provisions came into force upon the announcement of the results of the first general elections under the constitution

Law	Brief description	Date of assent	Date of commencement
County Governments PFM Transition Act 2013	Provides for, pursuant to section 15 of the Sixth Schedule of the constitution: • a framework for establishment and functions of Transition County Treasuries; • the transition county budget process; • transition revenue raising measures and expenditures for county governments; • responsibilities of transition county; and, • accounting officers and receivers of revenue and for connected purposes.	Jan 14th 2013	Jan 25th 2013
Transition County Appropriation Act 2013	Authorizes the issue of a sum of money out of the relevant County Revenue Fund and its application towards the service of the year ending on the 30th June, 2013 and to appropriate that sum for certain respective county public services and purposes.	Jan 14th 2013	Jan 25th 2013
Transition County Allocation of Revenue Act 2013	Provides for allocations for wages and administration costs for the county executive and county assemblies for the period March to June, 2013 and the responsibilities of national and county governments in relation thereto and for connected purposes.	Jan 14th 2013	Jan 25th 2013
Legal Notice # 137 on the Transfer of Functions	Pursuant to section 15 of the Sixth Schedule to the constitution (as read with sections 23 and 24 of the Transition to Devolved Governments Act, 2012) and further to the Legal Notice No.16 of 2013, the Transition Authority through this notice, approves the transfer of the functions specified in the Schedule to county governments with effect from the 9th August, 2013.	NA	Aug 9th 2013
Division of Revenue Act 2013	Provides for the equitable division of revenue raised nationally between the national and county governments in 2013/14 financial year, and for connected purposes.	Jun 11th 2013	Jun 11th 2013

Annex 3: Devolved functions as per Legal Notice # 137 (August 9th 2013)

Below is a list of devolved functions as specified in Legal Notice # 137 on the Transfer of Functions published 9th August 2013. (Exceptions are shown in shaded boxes):

1. Agriculture:

(a) Crop husbandry-

- (i) Provision of agricultural extension services or farmer advisory services;
- (ii) Development and implementation of programmes in the agricultural sector to address food security in the county;
- (iii) Construction of grain storage structures;
- (iv) Enforcement of regulations and standards on quality control of inputs, produce and products from the agricultural sector;
- (v) Availing farm inputs such as certified seeds, fertilizer and other planting materials, such as cassava cutting or potato vines, to farmers;
- (vi) Development of programmes to intervene on soil and water management and conservation of the natural resource base for agriculture;
- (vii) Promotion of market access for agricultural products;
- (viii) Provision of infrastructure to promote agricultural production and marketing as well as agro-processing and value chains;
- (ix) Enhancing accessibility to affordable credit and insurance packages for farmers;
- (x) Management of agricultural training centers and agricultural mechanization stations;

Provided that the management of agricultural training centers and agricultural mechanization station shall be transferred after six months, to enable the requisite structures and mechanisms to be put in place by the Transition Authority;

- (xi) Land development services such as construction of water pans for horticultural production for food security;
- (xii) Formulation and review of county specific policies;
- (xiii) Developing and enacting legislation and regulatory frameworks for county specific policies; and,
- (xiv) Implementation of national and county specific policies and legislation.

(b) Animal husbandry including livestock extension services to deliver husbandry technologies to livestock farmers and pastoralists, through farm demonstrations, farmer field days, farmer field schools, agricultural shows, individual farm visits, farmer training courses (residential and non-residential), barazas, farmer tours, posters, brochures or leaflets.

(c) Plant and animal disease control including carrying out, coordinating and overseeing-

- (i) Communal dipping and spraying operations and vaccination campaigns; and,
- (ii) Control of plant pests, diseases and noxious weeds that arc specific to counties.

(d) Fisheries including-

- (i) Fisheries extension services;
- (ii) Up scaling sea weed, fin fish and crustacean culture;
- (iii) County fish seed bulking units;
- (iv) On-farm trials;
- (v) Fish health certification;
- (vi) Development and maintenance of fish landing stations and jetties, fish auction centers and fish landing fees;
- (vii) Demarcation of all fish breeding areas and fencing of fish landing stations;
- (viii) Fish trade licensing and fish movement permits;
- (ix) Collection of fish production statistics;
- (x) Enforcement of fisheries regulations and compliance with management measures;
- (xi) Implementation of fisheries policy, fisheries management measures and regulation and limiting access to fishing;
- (xii) Fisheries monitoring, control and surveillance; and,
- (xiii) Zonation for aquaculture-county specific disease control.

2. County health services:

(a) County health facilities and pharmacies including-

(i) County health facilities including county and sub-county hospitals, rural health centres, dispensaries, rural health training and demonstration centres. Rehabilitation and maintenance of county health facilities including maintenance of vehicles, medical equipment and machinery. Inspection and licensing of medical premises including reporting; and,

(ii) County health pharmacies including specifications, quantification, storage, distribution, dispensing and rational use of medical commodities.

Provided that until alternative intergovernmental arrangements are made, all counties shall procure medical commodities from the Kenya Medical Supplies Authority except where a particular commodity required by a county government is not available at the Kenya Medical Supplies Authority

(b) Ambulance services including emergency response and patient referral system.

(c) Promotion of primary health care including health education, health promotion. community health services, reproductive health, child health, tuberculosis, IIIV, malaria, school health program, environmental health, maternal health care, immunization, disease surveillance, outreach services, referral, nutrition, occupational safety, food and water quality and safety, disease screening, hygiene and sanitation, disease prevention and control, ophthalmic services, clinical services, rehabilitation, mental health, laboratory services, oral health, disaster preparedness and disease outbreak services. Planning and monitoring, health information system (data collection, collation, analysis and reporting), supportive supervision, patient and health facility records and inventories;

(d) Licensing and control of undertakings that sell food to the public including food safety and control;

(e) Veterinary services to carry out, coordinate and oversee veterinary services including clinical services, artificial insemination, and reproductive health management; but excluding regulation of the profession; and,

(f) Enforcement of waste management policies, standards and regulations; in particular -

(i) Refuse removal (Garbage) including, provision of waste collection bins, segregation of waste at source, licensing of waste transportation;

(ii) Refuse dumps including zoning waste operational areas, conducting environmental impact assessment for the siting of dumps, fencing of dumps, controlling fires, monitoring waste characteristics and monitoring of waste water from the dumpsite (leachate); and,

(iii) Solid waste disposal including enforcement of national waste management policies, standards and laws with respect to landfilling, incineration with energy recovery, compositing, recycling and operation of transfer stations.

3. Control of air pollution, noise pollution and other public nuisance including:

(a) Control of noise pollution and other public nuisances;

(b) Licensing for persons exceeding the permissible noise levels; and,

(c) Noise mapping and action plan development, excluding the implementation of nationally set ambient air quality standards.

4. Cultural services, public entertainment and public amenities:

(a) County betting, casinos and other forms of gambling;

(b) Racing;

(c) Cinemas; and,

(d) Libraries excluding Kenya National Library Services; and museums.

5. County transport including:

(a) County roads including primary roads linking all sub-county headquarters and minor roads linking markets and administrative centers …

…excluding roads being managed by Kenya Urban Roads Authority, Kenya Rural Roads Authority, Kenya Wildlife Service and Kenya Forest Service

(b) Mechanical and transport equipment shall be retained by the national government for a period of six months and the Transition Authority shall during that period develop modalities of sharing the mechanical and transport equipment; and,

(c) Public road transportation licensing of public service vehicles operations.

6. Trade development and regulation:

(a) Fair trading practices including-
- (i) Verification of weighing and measuring instruments;
- (ii) Inspection of weighing and measuring instruments and pre-packed goods;
- (iii) Investigation of complaints relating to unfair trade practices; and,
- (iv) Prosecution of offences arising from unfair trade practices.

(b) Co-operative societies-
- (i) Promotion of co-operative societies;
- (ii) Processing of application for registration;
- (iii) Inspections and investigations;
- (iv) Training needs assessment for co-operative movement;
- (v) Market information dissemination & advisory services;
- (vi) Banking inspections local Savings and Credit Cooperative Societies;
- (vii) Risk assessment in Savings and Credit Cooperative Societies;
- (viii) Investment advisory services;
- (ix) Co-ordination and monitoring of cooperative indemnity by co-operative leaders;
- (x) Promotion of co-operative ventures and innovations for local co-operatives;
- (xi) Carrying out certification audits;
- (xii) Carrying out continuous and compliance audits;
- (xiii) Co-operative advisory services;
- (xiv) Pre-cooperative education;
- (xv) Settlement of disputes (arbitration); and,
- (xvi) Registration of co-operative societies audited accounts.

7. County planning and development:

(a) Statistical services including-
- (i) Custodian of official statistics in the county;
- (ii) Maintenance of a comprehensive and reliable county socio-economic database:
- (iii) Quality assurance of statistical information;
- (iv) Collection and compilation of statistical information:
- (v) Analysis of statistical information;
- (vi) Publication and dissemination of statistical information for public use: and,
- (vii) Co-ordination, monitoring and supervision of the county statistical system.

(b) Boundaries and fencing including-
- (i) Determination of property boundaries:
- (ii) Solving of property boundary disputes;
- (iii) Showing of property boundaries;
- (iv) Ensuring fencing and development of properties; and,
- (v) Finalization of surveying of administrative boundaries within the counties.

(c) Identification of the renewable energy sites for development–

…excluding identification and implementation of the rural electrification projects management of the Rural Electrification Fund and development of isolated diesel stations which shall be transferred within the transition period as per the Rural Electrification Authority schedules

8. Village polytechnics.

9. Implementation of specific national government policies on natural resources and environmental conservation:

(a) Soil and water conservation -

(i) Implementation of county specific water conservation and forestry policies through water resource users;
(ii) Water pollution control; and,
(iii) Borehole site identification and drilling.

(b) Forestry including farm forest extension services, forests and game reserves formerly managed by local authorities excluding forests managed by Kenya Forest Service, National Water Towers and private forests.

10. County public works and services:

(a) Public works including designing, documentation, post contracting, project management of construction and maintenance of public buildings and other infrastructural services. Construction of footbridges; and,

(b) Water and sanitation services including rural water and sanitation services, provision of water and sanitation service in small and medium towns without formal service providers, water harvesting (specific to counties), urban water and sanitation services with formal service provision including water, sanitation and sewerage companies …

…excluding Water Service Boards Water Services Regulatory Board and Water Resources Management Authority

11. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

Annex 4: Estimated county revenues from all sources, 2013/14 (Kshs)

County	County revenue estimate*	Equitable share	Conditional grants for level 5 hospitals	Equalization Fund
Baringo	284,249,442	3,247,853,215		
Bomet	106,125,708	3,442,638,623		
Bungoma	410,039,633	6,180,666,881		
Busia	277,836,860	3,412,404,160		
Elgeyo Marakwet	142,879,741	2,392,011,591		
Embu	447,149,187	2,807,082,691	259,887,437	
Garissa	78,908,567	4,221,433,715	184,227,574	225,760,000
Homa Bay	149,687,631	4,121,429,825		
Isiolo	209,219,006	2,235,583,337		215,220,000
Kajiado	409,891,002	3,227,409,859		
Kakamega	445,383,727	6,515,510,758	311,303,176	
Kericho	654,242,158	3,295,019,652		
Kiambu	1,486,114,788	5,458,860,860	367,887,751	
Kilifi	495,566,047	5,442,533,482		219,980,000
Kirinyaga	302,761,528	2,587,865,089		
Kisii	451,640,354	5,188,303,957	211,155,681	
Kisumu	1,820,663,899	4,155,298,066	395,636,481	
Kitui	275,654,280	5,315,309,833		
Kwale	218,357,236	3,748,952,670		229,160,000
Laikipia	367,832,244	2,523,013,037		
Lamu	358,289,103	1,500,755,102		208,080,000
Machakos	907,769,692	4,950,617,061	108,529,283	
Makueni	190,366,309	4,366,239,078		
Mandera	67,972,612	6,550,232,929		278,800,000
Marsabit	86,586,945	3,795,591,042		255,340,000
Meru	433,345,075	4,749,444,426	183,151,299	
Migori	238,170,020	4,269,095,296		
Mombasa	1,684,294,149	3,801,758,313	414,381,657	
Murang'a	332,816,524	3,917,395,471		
Nairobi	9,410,971,586	9,505,766,405		
Nakuru	1,578,041,599	5,936,313,837	600,436,911	
Nandi	129,414,868	3,477,901,827		
Narok	3,318,429,475	3,867,590,331		233,240,000
Nyamira	70,561,058	3,038,643,767		
Nyandarua	293,723,915	3,150,207,289		
Nyeri	445,354,102	3,254,175,229	382,128,747	
Samburu	196,929,775	2,598,153,222		250,580,000
Siaya	140,445,916	3,653,579,335		
Taita Taveta	190,622,557	2,420,630,003		216,580,000
Tana River	71,941,434	2,914,328,551		247,520,000
Tharaka Nithi	84,338,008	2,294,827,947		
Trans Nzoia	401,509,545	3,729,874,627		
Turkana	117,828,775	7,664,402,594		302,260,000
Uasin Gishu	1,109,050,131	3,796,628,687		
Vihiga	227,112,844	2,831,564,442		
Wajir	48,356,636	5,290,052,180		267,920,000
West Pokot	75,732,811	3,155,049,726		249,560,000
Total	**31,244,178,499**	**190,000,000,018**	**3,418,725,997**	**3,400,000,000**

**Explanatory notes for each column are shown below:*

1. ***Column 1:*** *County revenues as estimated by the World Bank. These are optimistic projections based on historical data up to end September 2012. Revenue estimates contained in county budgets are not used because: 1) the majority of counties appear to have greatly exaggerated local revenue potential in their original budgets, and 2) supplementary or revised budgets for the majority of counties have not been published (as of end Feb 2014).*
2. ***Column 2:*** *These are based on the County Allocation of Revenue Act (CARA) 2013.*
3. ***Column 3:*** *Level 5 hospital grant as reported in the National Treasury's' July 2013 report 'Indicative County Allocations'.*
4. ***Column 4:*** *Equalization Fund as reported in the 2013/14 Budget Estimates of Recurrent Expenditure.*

Annex 5: Minimum requirements for accountable systems at the county level based on legislation

Transparency, Disclosure of Information and Civic Education	Reference in Legislation
1. CGs should adhere to the Freedom of Information Act through proactive disclosure of information, inform and educate the public on their rights under the Act, promote access to information, and; approve dissemination procedures. CGs should promote access to information for minorities, marginalized groups and communities.	CoK, CGA, PFM Act, and draft freedom of Information Act. (Specifically Article 35 and 254:3)
2. CGs and its agencies shall designate an office for purposes of ensuring access to information and shall enact legislation to ensure access to information for which reasonable fees may be imposed.	CGA Section 96 and CoK, Art. 35
3. CGs should establish mechanisms to facilitate public communications and access to information with the widest public outreach using media, which may include: television stations, information communication technology centres, websites, community radio stations, public meetings; and traditional media).	CGA Section 94 and 95
4. The County Governor should publicly deliver an annual State of the County Address.	CGA Section 30K
5. CGs should develop city-level interactive websites on which planning information will be posted and feedback received.	Draft Urban Development Policy
6. CGs should respond to requests for information expeditiously (within 15 days) and inexpensively.	Proposed Freedom of Information Bill (Clause 30)
7. CGs should create legislation to provide the institutional framework for facilitating civic education and establish a civic education unit.	CGA Section 1001-101
8. County Governors are responsible for promoting and facilitating citizen participation in the development of policies and plans, and the delivery of services and for submitting an annual report to the county assembly on citizen participation in the affairs of the county government.	CGA, Section 30 and 92
Participatory Planning	
9. County Governors are responsible for ensuring citizen participation in planning and the delivery of services.	CoK Art. 232 and CGA Section 30
10. Citizens should be engaged in preparation of integrated development plans. Citizens should be represented in the boards of cities and municipalities including representatives of professional associations, private sector, registered associations of informal sector, neighbourhood associations and associations of urban areas and cities.	Urban Areas and Cities Act (Section 22 and Second Schedule Clauses 1 and 2)
11. County planning should serve as a basis for engagement between county governments, citizens, other stakeholders and interest groups.	CGA Section 102
12. County Assemblies should develop laws and regulations supporting effective citizen participation in development planning and performance management.	CGA
13. The County Planning Unit will be responsible for ensuring meaningful citizen engagement in planning processes through: - A 5 year County Integrated Development Plan (coordinated by the County Planning Unit). The plan will outline goals, objectives, M&E, reporting, and institutional framework for internal transformation and is intended to inform the budget and action plans. - A 10 year County Sectoral Plan (developed by county departments as part of the County Integrated Development Plan). This plan will be program-based, provide the basis for budgeting and performance management, be reviewed every five years and updated annually. - A 10 year County Spatial Plan (GIS based database system spatial plan for each county). - A Cities and Urban Areas Plan. This plan stipulates land use, building and zoning plans, recreation and public facilities, basis for development facilitation and control. It should be aligned to county government plans and reviewed annually.	CGA Section 105

Complaints mechanisms/Feedback Loops	
14. CGs should develop complaints (grievance redressal mechanisms) which are followed up and have the confidence of citizens. These should be based on common standards, with clear regulations and operational mechanisms.	PFM Act, draft Freedom of Information Bill, UAC Act. Draft Urban Development Policy
Financial Transparency – Public Financial Management (PFM)	
15. Various budget documents (e.g. Audited accounts, Annual Reports, Quarterly Report, Pre and post-election reports) should be published and publicized within laid out times in user friendly formats (e.g. have executive summary and narrative) so the citizens can provide meaningful input and engagements.	PFMA Act Section 48 Section 139
16. Municipal and city boards should make public their annual audited financial statements; to be published in two major public dailies, as well as on Board's website, and in a conspicuous place at the Board's office.	The Urban Areas and Cities Act, Section 48
Citizen participation in Budgeting	
17. County Governments should create structures, mechanisms and guidelines for citizen participation. The structures and guidelines should ensure participation is open to all without discrimination and have safeguards against domination of the consultations by one group (whether politicians, elites or CSOs).	PFMA Section 207
18. The County Executive Committee member for finance should ensure citizen participation in planning and budgeting.	PFMA Section 125
19. Counties should form a County Budget and Economic Forum to provide meaningful consultation over the budget process by county inhabitants.	PFMA Section 137
20. Public should be consulted in preparation of the County Fiscal Strategy Paper.	PFMA Section 117
21. The relevant committee of the County Assembly should take into account public views in considering budget estimates.	PFMA Section 131
22. The accounting officer of an urban area or city should ensure that the public participates in the preparation of the annual budget estimates/strategic plan.	Urban Areas and Cities Act Section 21, draft Urban Policy pg. 18, PFMA Act Section 175
23. The County Budget circular should prescribe the manner in which the public will participate. Participation could take various forms including but not limited to direct participation, written comments and through representatives.	PFMA Section 128
Participatory Monitoring	
24. Each County should establish County Public Service Boards. The CPSPs should be responsible for: (i) reporting to the county assembly; (ii) informing and education county public officers; and (iii) advising the county governments on the implementation and monitoring of the national performance management system which should involve citizens facilitated by the County Executive Committee.	CGA Section 59 and 47 PFM Section 48 and 139
Government responsiveness and accountability to citizens	
25. County Government Authorities, agencies and agents have a duty to respond to petitions and challenges from citizens. Public authorities should promote accountability; ensure that expenditure of public funds is subject to effective oversight; and promote informed debate on issues of public interest.	CGA Section 89, FOI Clause 27

Annex 6: Urban population in main towns by county (as per 2009 Census)

County	Town[41]	Population
Baringo	Kabarnet	25,346
	Eldama Ravine	17,872
	Marigat	6,661
	Maji Mazuri	4,265
	Mogotio	3,701
	Timboroa	3,150
Bomet	**Bomet**	**83,729**
	Litein	9,103
	Sotik	8,366
Bungoma	**Kimilili**	**94,927**
	Bungoma	55,867
	Webuye	41,344
	Malakisi	17,083
	Chwele	7,206
	Kapsokwony	6,152
	Cheptais	3,899
	Tongaren	2,793
Busia	Busia	51,981
	Malaba	21,477
	Port Victoria	6,561
	Nambale	4,941
	Bumala	3,504
Elgeyo Marakwet	Iten/Tambach	42,312
	Kapsowar	4,492
	Kapcherop	3,168
Embu	Embu	60,673
	Runyenjes	19,548
	Siakago	2,694
Garissa	**Garissa**	**116,317**
	Masalani	14,012
	Daadab	5,723
Homa Bay	Homa Bay	58,936
	Oyugis	35,451
	Awendo	17,992
	Kendu Bay	14,747
	Sindo	6,362
Isiolo	Isiolo	45,989
	Merti	6,532
	Kinna	4,867
	Garbatulla	3,774
Kajiado	**Ngong**	**107,188**
	Kitengela	58,167
	Ongata Rongai	40,178
	Kiserian	18,096
	Kajiado	14,860
	Loitokitok	11,064
	Namanga	9,066
	Isinya	8,670
	Bissil	5,376
Kakamega	**Mumias**	**99,987**
	Kakamega	**91,768**
	Butere	12,780
	Lumakanda	10,580
	Malava	4,070
Kericho	**Kericho**	**101,808**
	Kipkelion	46,760
	Londiani	43,152
	Kabuti	4,237
Kiambu	**Ruiru**	**238,858**
	Kikuyu	**233,231**
	Thika	**136,917**
	Karuri	**107,716**
	Kiambu	**84,155**
	Limuru	**79,531**
	Juja	40,446
	Githunguri	10,007
	Gatundu	5,550
Kilifi	**Malindi**	**118,265**
	Kilifi	48,826
	Mtwapa	48,625
	Mariakani	24,055
	Watamu	10,030
	Majengo	7,788
	Mazeras	6,886
	Magarini	6,051
	Marereni	5,949
	Kaloleni	5,573
Kirinyaga	Kerugoya/Kutus	19,422
	Sagana	10,551
	Kagumo	3,449
	Kagio	3,357

Source: KNBS; 2009 Census

[41] *Towns highlighted in red had core- and peri-urban populations above 250,000 in 2009. Those highlighted in blue had urban populations between 75,000 – 250,000. All other towns had urban populations below 75,000.*

County	Town	Population
Kisii	**Kisii**	**81,801**
	Suneka	50,818
	Keroka	41,654
	Tabaka	15,351
	Ogembo	3,475
	Mogonga	2,545
Kisumu	**Kisumu**	**388,311**
	Awasi	**93,369**
	Ahero	50,730
	Muhoroni	34,457
	Chemelil	7,888
	Maseno	5,103
Kitui	**Kitui**	**109,568**
	Mwingi	15,970
Kwale	Ukunda	62,529
	Kwale	19,880
	Msambweni	11,985
	Kinango	7,958
	Lunga Lunga	3,670
Laikipia	Nanyuki	38,198
	Nyahururu	36,450
	Rumuruti	10,064
	Kinamba	2,319
Lamu	Lamu	18,382
Machakos	**Kangundo-Tala**	**218,557**
	Machakos	**150,041**
	Mavoko	**137,211**
	Matuu	50,750
	Kathiani	3,365
	Masii	2,501
Makueni	Wote	9,875
	Makindu	8,621
	Emali	7,024
	Sultan Hamud	6,636
	Kibwezi	5,871
	Mtito Andei	4,520
	Machinery	2,505
Mandera	**Mandera**	**87,692**
	Rhamu	26,367
	Elwak	24,368
	Takaba	21,474

County	Town	Population
Marsabit	Moyale	37,387
	Marsabit	14,907
	Sololo	5,104
	Loiyangalani	4,208
	Laisamis	2,643
Meru	Meru	53,627
	Maua	17,226
	Timau	8,333
	Nkubu	7,551
	Lare	4,614
	Mitunguu	3,402
Migori	**Rongo**	**82,066**
	Migori	53,100
	Kehancha	30,109
	Mbita Point	11,989
	Sori	8,964
	Muhuru Bay	6,254
Mombasa	**Mombasa**	**938,131**
Muranga	Makuyu	44,007
	Murang'a	28,775
	Maragua	26,374
	Kabati	3,128
	Kangari	2,810
	Kiria-ini	2,457
Nairobi	**Nairobi**	**3,133,518**
Nakuru	**Nakuru**	**307,990**
	Naivasha	**169,142**
	Molo	40,651
	Gilgil	35,293
	Njoro	23,551
	Mai Mahiu	11,230
	Subukia	7,309
	Dundori	5,221
	Salgaa	4,740
	Mau Narok	4,357
	Bahati	3,833
	Rongai	2,215
	Olenguruone	2,119
Nandi	**Kapsabet**	**86,803**
	Nandi Hills	10,120
Narok	Narok	38,653
	Kilgoris	9,865
	Nairagie Enkare	5,907
	Lolgorian	2,689

County	Town	Population
Nyamira	Nyamira	41,668
	Nyansiongo	5,637
Nyandarua	Mairo-inya	9,858
	Njabini	6,042
	Engineer	2,033
Nyeri	**Nyeri**	**119,353**
	Karatina	8,499
	Naro Moru	5,805
	Othaya	5,137
	Mweiga	3,583
	Endarasha	3,049
Samburu	Maralal	15,860
	Baragoi	7,992
	Archers Post	6,275
	Wamba	6,226
Siaya	Bondo	33,468
	Siaya	22,586
	Usenge	10,098
	Ugunja	7,242
	Yala	6,412
	Ukwala	5,187
	Ndori	2,522
Taita Taveta	Wundanyi	62,404
	Taveta	19,865
	Voi	17,152
	Mwatate	5,573

County	Town	Population
Tana River	Hola	17,337
	Madogo	15,824
	Garsen	2,904
Tharaka Nithi	Chuka	43,470
	Chogoria	28,415
Trans Nzoia	**Kitale**	**106,187**
	Kiminini	11,659
Turkana	Lodwar	48,316
	Kakuma	36,875
	Lokichogio	17,695
Uasin Gishu	**Eldoret**	**289,380**
	Moi's Bridge	14,596
	Matunda	10,031
	Burnt Forest	4,925
	Jua Kali	3,427
	Turbo	2,831
Vihiga	**Vihiga**	**118,696**
	Luanda	49,346
Wajir	**Wajir**	**82,800**
	Habaswein	8,500
West Pokot	Kapenguria	34,046

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About the Kenya Accountable Devolution Program

The Kenya Accountable Devolution Program (KADP) is providing devolution support to the Government of Kenya and other stakeholders through analytical and technical assistance. The support specifically focuses on:

- Managing the fiscal impacts of devolution at both the National and the County Government levels;
- Strengthening sub-national Public Finance Management and performance monitoring systems as well as capacities; and,
- Strengthening mechanisms that enable County Governments to be responsive and accountable to their citizens.

KADP is a World Bank executed Trust Fund financed through DfID and the Australian Government. Below is a description of the main support 'pillars' forming KADP's current priority areas:

Support pillar	Summary of ongoing activities
Analyzing fiscal impacts of devolution with particular attention to vertical and horizontal imbalances	• *Fiscal analysis of the 2013/14 revenue sharing process:* Analyzing the fiscal position of both the National and the County Governments after revenue sharing; and, assessing impacts of county-level allocation to specific sectors via-a-vis national allocation to the same sectors in the years preceding devolution. • In-depth financial and fiscal analysis of cash strapped and highly indebted counties: The main focus is Nairobi, Mombasa and Kisumu but also other counties based on request from the Government.
Supporting PFM capacity building at County levels	• *Developing PFM guidelines/manual for counties, and developing training materials for use in strengthening county capacities:* Building on the curriculum provided by the National Treasury, the Bank is supporting development of these materials. This is being done jointly with nominated resource people within Treasury, and with the Kenya School of Government (KSG). In addition, the Bank will continue to support County Public Service Boards on wage bill sustainability, service standards, etc. • *Supporting enhanced revenue collection at county level:* The Bank is working with selected counties to: protect legal basis for revenue collection; develop policy and legislation to expand revenue base (focusing on property rates); produce guidance on administrative efficiencies to reduce revenue leakage and improve collections; make recommendations on regularization of national laws that support county-level revenue collection; and, explore options for expanding county revenue bases.
Developing / piloting a performance assessment tool for County Governments	• *Conduct baseline assessment of PFM capacity of counties* (census or sample based): This tool will initially focus on indicators which measure development of the core systems needed by County Governments for them to operate efficiently, and which will allow County Governments to effectively convert financial and human resource inputs into service delivery outputs. • *Develop a county performance assessment tool:* It is intended that this tool will contribute in forming the basis of performance-linked grants to County Governments to create incentives for improvements. As part of this activity, the Bank will work with IFC on incorporating subnational business performance indicators for the 7 counties they are doing this for into the tool.
Providing support for enhancing the functioning of devolved service delivery through the World Bank's portfolio, and providing on-demand Technical Assistance to the Bank's sector teams	• *Developing a conditional grant framework for the health sector* using restructuring of Bank-supported HSSF (and possibly infrastructure). The Bank will explore options for building a pilot conditional grant framework for health into Kenya's intergovernmental financing arrangements. • *Mapping World Bank support to county governments:* Compile a user-friendly guide to Bank support towards devolved functions at County level, explaining: which projects are being financed by the Bank; which counties we are receiving Bank support; planning and management arrangements at National and County level; and, how allocation of project resources between counties is determined.
Providing cross-cutting support in social accountability and Open Data	• *Deepening social accountability, transparency, and participation* in County (as well as National) systems, for example, through building citizen engagement mechanisms into performance guidelines/systems in the PFM agenda. • *Strengthening Open Dat*a at county level.

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Design/layout: Robert Waiharo