

PUBLIC FINANCE REFORMS IN KENYA

ISSUE & RELEVANCE UNDER THE CONTEXT OF DEVOLUTION



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PREFACE

Following the enactment of Kenya's new constitution (2010), issues relating to fiscal decentralization and public financial management are now at the center of policy reforms. The Public Financial Management Act 2012 was signed into law on July 23rd 2012. The PFM Act 2012 sets out to promote transparency and accountability in the management of public finances at the National and County Government levels. The Act details how resources will be shared in the country between the national government and the county government and also creates new institutions with a public financial mandate such as the Commission on Revenue Allocation (CRA) and the Office of the Controller of Budget, amongst others, with distinct functions aimed at enhancing efficiency within the sector.

The need for reforms in the public financial management sector in Kenya arose out of previous challenges faced and gaps identified that lead to embezzlement of public funds, inequities arising in resource redistribution nationally and centralized systems of governance with inadequate checks and balances. The PFM reforms in Kenya were aimed at making public financial management more efficient, effective, participatory and transparent resulting in improved accountability and better service delivery.

SID undertook a study to critically review the PFM Act 2012 with the aim of highlighting the gains for gender equality as well as accountability structures for the devolved government. The study involved a review of the highlights of the Act as well as situational analysis on the implementation of the Act in various counties in the country. We sought the views of representatives of key institutions in the public finance sector in Kenya specifically relating to the gains as well as challenges that will face the implementation of the PFM Act in Kenya.

This report documents the findings of the study and provides useful recommendations that would lead to a successful implementation of the Act in Kenya. We will also have a Policy brief highlighting these findings that would be a useful resource to those tasked with implementing the Act in Kenya.

We do hope that you find the information in this publication a useful contribution to better public financial management in Kenya.

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and equality in public finance management under the new constitution of Kenya', that is being implemented by Society for International Development Regional Office for Eastern Africa.

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Abbreviations/Acronyms

CEC	County Executive Committee
CIC	Constitution Implementation Committee
COB	Controller of Budget
CRA	Commission for Revenue Allocation
DMS	Debt Management Strategy
IFMIS	Integrated Financial Management Information System
KENAO	Kenya National Audit Office
KRA	Kenya Revenue Authority
LATF	Local Authorities Transfer Fund
PEF	Poverty Eradication Fund
PFM	Public Finance Management
SEBF	Secondary Education Bursary Fund
SRC	Salaries and Remuneration Commission
TA	Transition Authority
YEDF	Youth Enterprise Development Fund



Introduction

The enactment of the Constitution of Kenya 2010 has put fiscal decentralization and public financial management (PFM) at the centre of public financial management policy reforms. The reforms are aimed at ensuring both fiscal efficiency and discipline in the use of public finances for the betterment of the Kenyan people. The Public Financial Management Act No. 18 of 2012 aims to achieve better public finance management as envisioned by the Constitution under public finance (Chapter 12). Enactment of this Act repealed the Public Financial Management Act No. 5 of 2004. Currently, there is momentum to reform the PFM in Kenya to make it more efficient, effective, participatory and transparent, thus resulting in improved accountability and better service delivery. The purpose of this paper is to review the application of the Public Financial Management Act at the devolved government level and its implications on the fundamental principles of equity, equality and accountability. It also aims to assess the level of preparedness in terms of the skills and structures required to implement the Act, especially at the county government level.

The specific interpretations of the terms of reference are to:

- Evaluate the key issues that arise from the Public Financial Management Act and how the Act aligns with the new constitution;
- Establish why the amendments of the PFM Act were necessary;
- Evaluate how the PFM enhances equity, equality, gender and accountability in public financial management under the devolved county level government;
- Assess how resource allocation, management as well as accountability will be conducted under the Act to ensure equity and equality to the public;

- Provide an analysis of the skills and structures required at the County level to implement the PFM Act;
- Evaluate the challenges inherent in implementation of the Public Financial Management Act and how they can be addressed to ensure that public resources are safeguarded against misuse and misappropriation; and
- Provide recommendations on how the public financial system can be implemented for the betterment of all Kenyans.

1.1 Background

Decentralized Funding Regimes in Kenya

The Government of Kenya has made deliberate efforts to decentralize most of its development projects over the past ten years with the aim of establishing funding programmes that bring development closer to the people. Devolved funding structures that have been implemented in the past include the Constituency Development Fund (CDF), Local Authority Transfer Fund (LATF), Constituency Bursary Fund or Secondary Education Bursary Fund (SEBF), Constituency HIV/AIDS Fund Youth Enterprise Development Fund (YEDF), Women Enterprise Fund, National Development Fund for Persons with Disability, and the Poverty Eradication Fund (PEF). There have, however, been several challenges in the implementation of these funding regimes, where for instance funds have been used to boost political power (Gachomo, 2007), where there has been inadequate administrative capacity at constituency levels, as well as limited participation by vulnerable groups (Ng'ang'a, 2011). In some instances, these funds have resulted in white elephant projects, or have given immense power to Members of Parliament, resulting in increased corruption (Nyamori, 2009).

Public Financial Management under the New Constitution

The Constitution of Kenya 2010 has introduced fundamental changes in the way public finances are managed. These changes had, unfortunately, received little or no attention prior to the referendum and the subsequent promulgation of the Constitution in August 2010 (Kirira, 2011). Prior to the new constitution, the Government Financial Management Act No. 5 of 2004 aimed at streamlining the management of government financial affairs, and provided for persons to be responsible for government resources. This Act has now been repealed into the Public Financial Management Act 2012.

The Public Financial Management (PFM) Act is an Act of Parliament meant to provide for effective management of public finances by the national and county governments. In developing the PFM Act, Parliament was keenly aware of the importance of having a good PFM system in determining the success or failure of devolution. To ensure a good PFM system, two objectives were taken into account:

- i. That the PFM was consistent with the Constitution and in particular provide for safeguarding autonomy in financial management at both levels of government but within a unitary system of devolution. This autonomy is supported by articles 6 and 189 of the Constitution. Article 6(2): The governments at the national and County levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation; article 189(1)(a): Government at either level shall perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the Constitutional status and institutions of government at the other level.

The spirit of these articles is that both levels of government should not interfere in the day-to-day management of finances and other affairs in the other level of government. Specifically, each level of government should be able to formulate, plan, implement and report on their budgets and plans without the interference of the other government. To operationalize this concept and to avoid favouring one level of government over the other, the Act has mirrored many of the institutional structures for financial management of the national government at the county government level as shown below:

NATIONAL ASSEMBLY		COUNTY ASSEMBLY
<p>Reviews the Budget Policy Statement and makes recommendations to National Treasury</p> <p>Approves the Budget Estimates for National Government, Parliament and Judiciary</p> <p>Provides overall oversight at National Government level</p> <p>Approves the establishment of other National Government public funds</p> <p>Monitors budgets and public finances and related matters</p> <p>Approves the Budget Policy Statement (BPS) and the Budget Review and Outlook Paper (BROP)</p> <p>Reviews the Annual Budget Estimates for National Government</p>	National Assembly	<p>Reviews the Fiscal Strategy Paper and makes recommendations to County Executive Committee</p> <p>Approves the budget estimates for County Government, Urban areas and Cities</p> <p>Provides overall oversight over public finances at the County Government level</p> <p>Approves the establishment of other County public funds</p> <p>Monitors budgets and public finances and related matters</p> <p>Approves the Fiscal Strategy Paper (FSP) and the County Budget Review and Outlook paper (C- BROP;</p> <p>Reviews and approves the Annual Budget Estimates for the County Government</p> <p>Has powers to establish a County Emergency Fund but with approval of County Assembly</p>
CABINET		COUNTY EXECUTIVE COMMITTEE
<p>Approves the Budget Policy Statement (BPS) and the Budget Review and Outlook Paper (BROP)</p> <p>Reviews the Annual Budget Estimates for National Government</p>	Cabinet Secretary	<p>Approves the Fiscal Strategy Paper(FSP) and the County Budget Review and Outlook paper(C- BROP;</p> <p>Reviews and approves the Annual Budget Estimates for the County Government</p> <p>Has powers to establish a County Emergency Fund but with approval of County Assembly.</p>

NATIONAL TREASURY	COUNTRY TREASURIES
<p>Has overall responsibility for macroeconomic formulation and management</p> <p>Prepares annual budget estimates of revenues and expenditure of National Government and coordinates the preparation and implementation of the National Government budget</p> <p>Prepares the BPS for the National Government.</p>	<p>Head of County Treasury and oversees formulation of economic policies</p> <p>Manages the County Government budget process</p> <p>May at the request of Cabinet Secretary stop transfers of funds to a County Government entity for serious material breach or persistent material breaches</p> <p>Has power to raise loan on behalf of County Government in accordance with the law</p> <p>Has overall responsibility for economic affairs at the County Government</p> <p>Prepares annual budget estimates for County Government and coordinates the preparation and implementation of the CG budget</p> <p>Prepares Fiscal Strategy Paper, as the integrated Development Plan for County Government</p> <p>Enforces the Fiscal responsibility principles at the County Government</p>
NATIONAL GOVERNMENT	COUNTY GOVERNMENT
<p>Accounting Officers are responsible for accounting for money appropriated by Parliament</p> <p>Accounting Officers for National Government entities, Parliament and the Judiciary are accountable to the National Government for financial management</p> <p>Accounting officers for National Government entities are to be designated by Cabinet Secretary for Finance</p> <p>Accounting Officers to ensure that public resources are used lawfully, effectively and efficiently</p> <p>Receivers of National Government revenue are to be designated by the Cabinet Secretary– Finance</p> <p>Receivers of National Government revenue are to be responsible for receiving and accounting for National Government revenue</p> <p>Kenya Revenue Authority has been retained in the PFM Act as collector of National Government revenue</p>	<p>Accounting Officers are to be responsible for money appropriated by County Government</p> <p>Accounting Officers for County Government entities are accountable to the County Assembly for financial management</p> <p>Accounting Officers for County Government entities are to be designated by County Executive Member responsible for Finance</p> <p>Accounting Officers to ensure that public resources are used lawfully, effectively and efficiently</p> <p>Receivers of County revenue are to be designated by County Executive Committee member –Finance</p> <p>Receivers of County Government revenue are to be responsible for receiving and accounting for County Government revenue</p> <p>County Executive Committee member–Finance has to appoint KRA as collector of County Government revenue</p>

- ii. To ensure that the PFM Act is firmly anchored in article 201 of the Constitution that deals with the principles of public finance. In particular, this Act provides for openness, accountability, public participation, equitable sharing of revenue and tax burden, promote equitable development, promote equitable sharing of debt burden/benefits between current and future generations, and ensure prudent and responsible use of public resources and responsible financial management and clear fiscal reporting.

This Act has also other links to other sections of the Constitution: article 206 spells out the principles of management of consolidated funds and other public funds; article 207 establishes the County Revenue Funds and provides for setting up of other funds at the county level; article 208 provides for the setting up of contingencies fund; articles 211 to 214 spell out on the borrowing and guarantees; article 220 requires national legislation to prescribe the form, content and timing of budgets; article 225 provides for financial controls at the national and county level; and article 226 requires an Act of Parliament to provide for financial records and audit of all accounts of governments, and article 227 on public procurement.

- iii. A third objective was to consolidate the many public financial management laws into one integrated PFM law. With the enactment of the PFM, the following acts have been repealed:
 - The Government Financial Management Act, 2004;
 - The Fiscal Management Act, 2009;
 - The Internal Loans Act;
 - The External Loans Act;
 - The National Government Loans Guarantee Act, 2011; and
 - The Contingencies Fund and County Emergency Funds Act, 2011.

The Act also caters for all legislations required under the Fifth Schedule of the Constitution, except for the procurement law, which will be separate.

- iv. The final objective was to ensure that the Act incorporated best international practices. The Act did this by:
 - Holding extensive public consultations within/outside government, counties, getting more comments from international/local experts on public financial management;
 - Ensuring the PFM as a single law at the county and national government; and
 - Basing the policy framework on the five core areas of a good system of public finances, as shown in the diagram below.

Figure 1: Five core areas of a good PFM system

The main objective of the Act is to ensure that national and county governments manage public finances in accordance with the principles spelt out in Article 201 of the Constitution, and that public officer's account to the public through Parliament and county assemblies. The PFM Act outlines a new budget calendar with clear deadlines, and clarifies the roles and responsibilities of the various stakeholders. The Act also introduces new PFM reforms, such as a Single Treasury Account, which will have far reaching implications on public finance management.

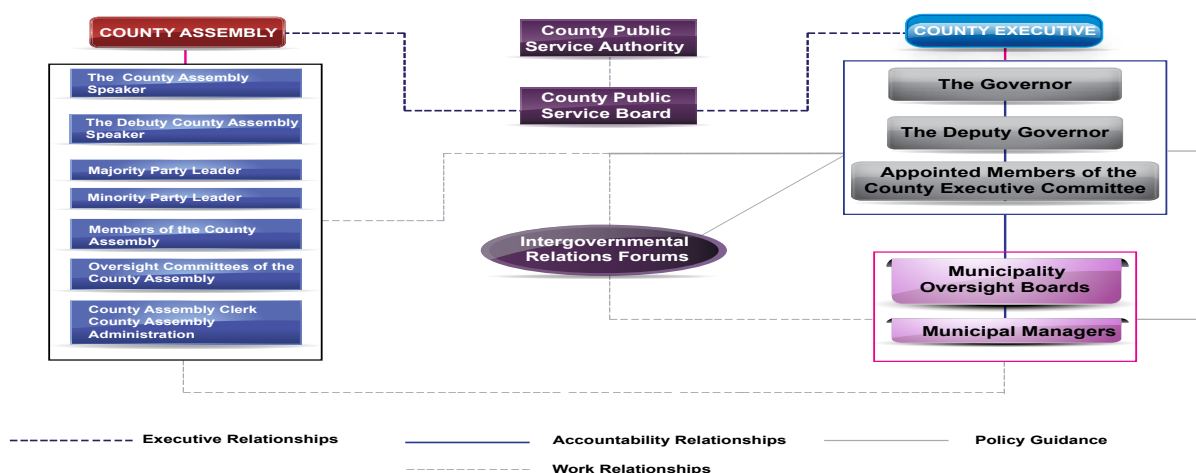
Initially, the PFM Act was divided into two: a National Act and the County Act. Due to obvious overlaps, it was found necessary to merge the two. Amendments to the Act were therefore necessary because the previous drafts did not clearly promote accountability at both the national and the county level. For instance, previous drafts of the Act only indicated how resources would be disbursed but did not indicate which institutions were involved and how and when this should have been done.



Devolved Government Structure and the PFM Act

The devolved government structure at the county level, as envisaged under the Constitution of Kenya 2010, is composed of the County Executive and the County Assembly (Figure 2). The County Executive exercises executive power and other administrative functions at the county. The County Executive comprises the County Governor, who is directly elected by voters in the county, the Deputy County Governor nominated by the County Governor as his or her running mate, and members of the County Executive Committee, appointed by the Governor with approval of the County Assembly.

Figure 2: County government structure



Source: Association of Professional Society in East Africa (APSEA) <http://www.apsea.or.ke/reforms/>

The County Assembly exercises the power to enact laws at the county level. It exercises oversight over the County Executive Committee and other county executive organs, receives and approves plans and policies for management of the county's resources, infrastructure and institutions. Members of the County Assembly are elected by voters from wards. The PFM Act outlines the roles to be carried out by these institutions in implementing the Act.

2.1 Financial Management at the County Level

2.1.1 Financial responsibility

In terms of financial management at the county level, Part IV of the PFM Act gives the County Government the legal responsibility to manage the finances allocated from the National Government. In addition, it establishes County Treasuries, a move that primarily devolves public finance management. It stipulates that each County Government adheres to the principles of public finance as set out in Chapter 12 of the Constitution of Kenya 2010. The County Executive Committee is required to observe principles of collective responsibility in exercising their functions under the Act. Furthermore, decisions are to take cognisance of Article 216 (2) of the Constitution, which mandates the Commission on Revenue Allocation to make recommendations on the financing of, and financial management by the county government. The responsibilities and powers of the County Treasury are elaborated in Section 104-108 of the Act, which discusses the general responsibilities and powers of a County Treasury. The national government will second some staff to the counties to enhance capacity, as may be necessary for the County Treasury to better carry out its functions under the Act. The County Treasury is to manage public finances in accordance with the principles of fiscal responsibility set out in Subsection (2) of the Act.

The responsibilities of the County Treasury with regard to public funds are outlined in Section 109-116. Each county government is required to establish a County Revenue Fund. The County Treasury for each county is to ensure that all money raised or received by or on behalf of the county government is paid into the County Revenue Fund, except money that is outlined in Subsection 2a-c. The Act allows the County Executive Committee to establish county government emergency funds, which will consist of money from time to time appropriated by the County Assembly through an appropriation law. The purpose of an Emergency Fund is to enable payments to be made in respect of a county when an urgent and unforeseen need for expenditure for which there is no specific legislative authority arises. Authority is conferred to the County Executive Committee to make payments from emergency funds.

On accountability, the County Treasury is required to submit a financial report to the Auditor-General in regard to utilization of the Emergency Fund. Subsection 2a further outlines what should be included in the financial statement. In addition to the emergency funds, the County

Executive Committee (CEC) is permitted to establish any other public fund, with approval of the CEC and the County Assembly, and appoint a designated person to administer such public fund.

The key responsibilities of government regarding county budget process are elaborated in Section 117-118. The County Treasury is to prepare and submit to the County Executive Committee the County Fiscal Strategy Paper for approval. The County Treasurer will then submit the strategy paper to the County Assembly for approval. Thus, the principle of responsible financial management with clear fiscal reporting is upheld. The County Treasury is also required to prepare a County Budget Review and Outlook Paper, to be submitted to the County Executive Committee. Subsection 2(a) gives specifications on how the budget review and outlook papers are to be prepared.

Other responsibilities of the county treasuries include: making banking arrangement for county government and its entities; management of cash at county government level; procurement for county government entities; maintaining of records of county government loans; submitting county government Debt Management Strategy (DMS) to the County Assembly, and to provide the County Assembly; with additional reports when required (Section 119-124). The county government budget process is outlined in Section 125-134. These sections elaborate on the stages in county government budget process, preparation of development plans, and cash flow projections. The County Executive Committee member for finance is to manage the budget process at county government level, and submit budget estimates to the County Executive Committee for approval.

Sections 137-146 establish a forum for consultations by county governments, thus promoting the principle of openness, for example through establishment of a county budget and economic forum for county budget consultation process. The forum is to provide a means for consultation by the county government on: (a) preparation of county plans, County Fiscal Strategy Paper, Budget Review and County Budget Outlook Paper; and (b) matters relating to budgeting, the economy and financial management at the county level; conditions in which county governments or entities may receive grants and donations; regulations on grant administration; authority for borrowing by county governments; obligations and restrictions regarding county government borrowing; borrowing by county government entities; persons authorised to execute loan documents at county government level; securities on borrowed loans; lending of money by county government; and issues of joint infrastructure investment. Responsibilities of government entities and their accounting officers are elaborated in Section 147-154. Subject to the principle of accountability outlined in the Constitution, the accounting officer of a County Assembly who is actually the Clerk to the County Assembly and the Public Service Board is to monitor, evaluate and oversee the management of their public finances, including: (a) promoting and enforcing transparency, effective management and

accountability with regard to the use of their finances; (b) ensuring that accounting standards are applied; (c) implementing financial policies in relation to their finances; (d) ensuring proper management and control of, and accounting for, their finances in order to promote the efficient and effective use of budgetary resources; (e) preparing annual estimates of expenditures; (f) acting as custodian of the entity's assets, except as may be provided by other legislation or the Constitution; (g) monitoring the management of finances and financial performance; (h) reporting regularly to the county assembly on the implementation of the budget; and (i) taking such other action, not inconsistent with the Constitution, as will further the implementation of this Act. Responsibilities of county government entities and their accounting officers are discussed in section 148-159.

2.1.2 Financial reporting

Section 160-165 discusses financial reporting by government entities. The County Executive Committee member for finance may authorize the Kenya Revenue Authority (or appoint a collection agent) to be a collector of county government revenue in accordance with regulations. The measures for raising revenue are to conform to Article 209 (5) of the Constitution. Section 162 of the PFM Act discusses the obligations of public officers regarding county government resources. The Act proposes annual reporting to be done by accounting officers and receivers of revenue at the county government.

2.1.3 Management of finances in urban areas and cities

Financial management in urban areas and cities is elaborated in Section 169-181 of the Act. The section discusses the responsibilities of the accounting officer in revenue management; criteria for allocating funds to urban areas or cities by county governments; principles to be observed by urban areas or cities in managing public finances; the budget and budget process for urban areas or cities; how to respond to delays in approval of annual budgets by urban towns and or cities; borrowing by urban areas or cities; conditions in which urban areas or cities may receive grants; issues related to bank accounts; reporting by urban areas or cities; and transitional arrangements.

2.2 The Role of Intergovernmental Fiscal Relations

The relations between national and county governments are outlined in Part V of the Act. Section 185-186 establishes the Budget and Economic Council, which will be known as the Intergovernmental Budget and Economic Council. This council will comprise of:

- a. the Deputy President who shall be the Chairperson;
- b. the Cabinet Secretary;
- c. a representative of the Parliamentary Service Commission;
- d. a representative of the Judicial Service Commission;

- e. the Chairperson of the Commission on Revenue Allocation (CRA) or a person designated by the Chairperson;
- f. the Chairperson of the Council of County Governors;
- g. every County Executive Committee member for finance; and
- h. The Cabinet Secretary responsible for intergovernmental relations.

The purpose of the Council is to provide a forum for consultation and cooperation between the national government and the county governments.

Section 189-191 of the Act identifies the process of sharing revenue raised by the national government between the national and county governments, and among the county governments, thus upholding the principle of promotion of equity at both national and county levels.

Recommendations of the Commission on Revenue Allocation (CRA) are discussed in Section 190 of the Act. It states that the Commission shall submit to the Senate, the National Assembly, the County Assembly, the National Executive and the County Executives, recommendations for the following financial year regarding: (a) an equitable division of revenue raised nationally, among the national and county levels of government; and (b) the determination of each county's equitable share in the county share of that revenue. This should be done at least six months before the beginning of the financial year, or at a later date agreed between the Cabinet Secretary and the Commission on Revenue Allocation. Furthermore, when making its recommendations, the Commission is to take into account the criteria listed in Article 203(1) of the Constitution and the recommendations of the Intergovernmental Budget and Economic Council in terms of this Act. The Division of Revenue Act and County Allocation of Revenue Act is discussed in Section 191. The Division of Revenue Bill shall specify the share of each level of government of the revenue raised nationally for the relevant financial year.



Study Methodology

The study uses both primary and secondary data. Primary data was collected through in-depth interviews of key persons in institutions involved in crafting and implementing the PFM Act. Secondary data was collected through analysis of the new constitution, PFM Act, among other devolution legislation. Qualitative data collected from the interviews was analysed thematically.





Findings

This section presents and discusses the data collected from in-depth interviews of key informants in institutions concerned with the implementation of the PFM Act. The first section focus on skills and structures required at the county level, the second focuses on how equity and equality in enhanced at the county level, the third looks at resource allocation at the county level, while the final section of the findings looks at the challenges in the implementation of the PFM Act.

4.1 Skills and Structures at the County Level

The Transition Authority is to ensure preparedness at the county level by ensuring that proper structures and human resources are in place. According to the key informants, lack of adequate skills at the county level will be a huge challenge. In order to address these inadequacies, there are plans to deploy staff from the national government (secondment staff) as well as train local staff and develop guidelines that will be available to all county officers on the implementation of the Public Financial Management Act 2012. The County Transition Authority (CTA) will assess the skills and structure gaps at the county level.

Functions will only be transferred to the national government if the CTA so approves. The national treasury is mandated to ensure that counties have qualified accountants, both at the national and county level. This has been lacking in previous devolution efforts. Initially, counties may need the secondment of national government staff and develop key skills at the

county level. Initially counties will spend the first few years equipping people with skills. In the event that skills are not matching, then capacity building can take place.

The Public Finance Management reforms have been given a time span of 5-10 years. During this period, it is expected that there will be a lot process re-engineering, automation, introduction of multiyear budgeting and programme budgeting, review of revenue patterns and taxes, and creation of new cadres of staff. There will also be need for substantial capacity building to empower line managers on their new financial management responsibilities. As part of the reforms, the Public Service Commission will come up with qualifications for personnel in key departments at the county level.

At the county level, the national government may have to post officers who will be able to match the new skills requirements. In the meantime, there are elaborate plans for training of various county staff, through the County Transition Authority.

The government has to ensure that there are people capable to do the tasks at the county level. The government will have to post officers who will be able to match the skills required, and the public service has come up with requirements for these positions. The County Secretary is mirroring the current position of Permanent Secretary. There are ministry officers who will be posted to the county to perform technical duties related to the ministry. These will not be employees of the Governor. There is an elaborate plan to train county staff; the CTA can also request for training especially for the technical staff. PFM training is a requirement for staff. There is need for political good will at both national and county level right from the beginning.

4.2 The PFM Act and Provisions of the Constitution of Kenya

4.2.1 Equity, equality and gender

On the requirement of equity, equality and gender, respondents identified various means through which these principles are upheld in the PFM Act. For instance, proposals of stakeholders in the county shall be considered during development planning. The County Executive Committee is expected to hold consultations on any key policy issue, ensure equity, and have special seats catering for marginalized groups, including women.

The Equalization Fund ensures equality in resource allocation is enhanced. Based on the recognition that counties are not the same, the formula for resource allocation is instrumental in ensuring equity and equality as proposed in the Constitution. The respondents observed that

the PFM Act operationalizes the provisions of the Constitution in terms of equitable revenue allocation.

4.2.2 Accountability and oversight roles in the PFM Act

The framework of accountability should provide for avenues that would enable bridges to be built between the government at the two levels, and the people of Kenya. The people of Kenya have to be provided with the requisite information to be able to interrogate the budget and exercise control over and above legislation.

Accountability of public officers is discussed in Section 79 of the PFM Act. The National and County governments have the responsibility of ensuring accountability in resource use. The involvement of the Auditor General, the Controller of the Budget, and the National Treasury result in a continuous process of monitoring of resource use. The Cabinet Secretary responsible for finance has the power to stop the transfer of funds to a state organ or any other public entity, as mandated under Section 225 of the Constitution of Kenya, subsection 3. The Act proposes that the Accounting Officer should directly report to Parliament. The report should show what was budgeted and how the resources were spent, and Parliament will play an oversight role of directly questioning any misuse of funds. This will ensure fool proof accounting for county resources.

The PFM Act creates the office of the Controller of Budget, who will oversee the implementation of the budgets as approved by the different levels of government. The holder of this office will ensure that money is spent in accordance with the appropriations law or, in the case of money drawn from the Contingency Fund shall be subject to an Act of Parliament. However, some actors are of the view that the Controller of Budget should have been granted more power than the Treasury because the establishment of the office was key in checking on utilization of public resources.

In terms of auditing, the PFM Act has not totally answered the call of constitution on accountability. This is because the office of the Auditor General has not been granted enough independence to perform its duties. For instance, the office of the Auditor General is directly funded by Treasury. This may make it difficult for this office to freely carry out its duties if, for instance, the executive decided to reduce the Auditor General's budget. There are also concerns that including auditing in the PFM Act results in an overlap of activities, thus matters of auditing should be left to the Audit Act.

In addition, there will be an extensive financial reporting system at the county and national level. The Controller of Budget and the Auditor General will be required to prepare reports on the use of financial resources at the county level. This will be done independently without the

interference of the County Governor. These reports will then be consolidated and presented to the National Assembly. County treasuries are also required to prepare reports on resource use. This process will result in clear fiscal reporting as demanded in Chapter 12 of the Constitution. Some stakeholders have, however, expressed concerns over the potential duplication of effort in the preparation of these reports.

4.2.3 Participation

There are specific clauses that require public participation in the financial management process. These are outlined in Section 207 of the PFM Act. Most importantly, counties must provide forums that will allow people to come together to discuss provisions in the Act. Whereas there have been efforts to inform the public about the PFM Act by other institutions such as the Constitution Implementation Committee (CIC), Commission for Revenue Allocation (CRA), Kenya National Audit Office (KENAO), office of the Controller of Budget, and Ministry of Finance, there is still need for intensive civic education on the financial management processes envisaged under the PFM Act.

4.3 Resource Allocation

The PFM Act is clear on how resources will be allocated at both levels of government. At the national level, the Central government will generate revenue mainly from taxes, bonds, and loans (internally and externally). Section 132 and 138 discusses how counties will generate revenue from loans and grants and the taxes from property and entertainment. Furthermore, legislation will be developed by county governments on how resources will be divided within the county.

In terms of management of public assets at the county level, Section 104 outlines the functions of the County Treasurer. All assets of the county will be under the County Treasury. The County Assembly will check on loans and grants and ensure accountability in resource use. Revenue will be collected centrally and shared based on a yet to be agreed revenue allocation formula. This is viewed as a more effective and integrated bottom up approach to planning because most decision making in resource utilization will be done at the county level. Counties will come up with priorities at the lower level and forums will be held to get people's views on development priorities. This process will result in increased participation of the public in the development process. One respondent was of the view that "there will be more efficient use of resources because more eyes will be on the projects".

Shifting management of resources from the national to the county level will have a high impact on development, since resources will be brought closer to the people. Currently, most resources are spent in recurrent expenditure, thus greatly reducing resources available for development.

The budget prepared by county officers will be required to show what percentage will be going to recurrent and what will go to development projects. More resources are expected to go towards development projects. Reports on expenditure are also to demonstrate that the money was used for the intended purpose. Furthermore, development plans must be aligned with the Medium Term Plan for Development, and Vision 2030.

Development plans shall be developed through a consultative process, and once developed will guide the development of the counties. The plans are supposed to be linked to Vision 2030. Moreover, development activities are supposed to be prioritized in such a way that counties should be seen to implement both medium and long terms plans.

The issue of distribution of revenue raised from natural resources is of great concern. The only proposed legislation on revenue sharing from natural resources is found in the proposed Minerals Bill. There is no clear guideline on how revenue from other natural resources will be shared. Retaining 15% of natural resource revenue might not be sufficient to the respective county and this might generate some discontent conflicts as witnessed in other African countries. Furthermore, there must be commitment by the government to ensure that the 15% of natural resource revenue will actually be retained at the respective generating county.

4.4 Challenges in the Implementation of the PFM Act

Various agencies that will be involved the implementation of the PFM Act have identified various challenges that are likely to be faced in the implementation of the Act.

Lack of financial management system at the county level

While the national government has an Integrated Financial Management Information System (IFMIS), this will need to be rolled to the county governments. In fact, it will be very difficult for the Controller of the Budget to approve funds to a county that does not have an established financial system.

Leadership and financial management

The posts of Governor and Senator at the county level are highly political. The Governor will be expected to appoint officers who will implement the PFM Act, and should thus exercise professionalism and integrity in doing so. Furthermore, the Governor should be knowledgeable in financial management. It is assumed that counties will have elected governors with appropriate leadership and financial management skills. Civic education must therefore emphasize on people to elect credible leaders for the post of Governor, and for the county and national assemblies.

Skills and structures available at the county level

The skills and structures required for effective country governance are inadequate in most counties. While each ministry is trying to train its own staff, there are some issues that are common among ministries and should be addressed jointly, with need for coordination. This is currently lacking. For instance, staff training is being carried out by the Ministry of Finance, Ministry of Local Government, Public Service Commission, and Ministry of State for Planning, National Development and Vision 2030. At the same time, civic education is being spearheaded by the Ministry of Justice. The Transition Authority should play the role of coordinating these institutions so as to avoid duplication of efforts.

Secondment of staff to the counties

Where there is lack of appropriate staff on the ground, it is expected that the Government will second staff to the counties. It is important to address the potential challenge of ‘accommodation’ of such staff by Governors who may have their own interests, with also possibility of split loyalty of such staff between the Governor and the seconding authority. Moreover, it is assumed that the Governor will appoint professionals to implement the PFM Act.

Stoppage of funds

When there is material breach, the Cabinet Secretary in charge of finance can stop disbursement of funds. According to Section 92-99, the Cabinet Secretary must provide reasons for stoppage to the National Assembly in time. This section of the Act guards against misuse of resources. However, there are concerns that this can also be abused; stoppage of funds could be used to ‘starve’ counties that do not politically support the government of the day.

Slow implementation of transition issues

A Transition Authority has been established with a function of carrying out a gap analysis in the financial management, in order to facilitate the implementation of the PFM Act at the county level. However, there is a feeling that the Authority has been slow in performing this function. They have equally been inefficient in coordinating activities among the various agencies implementing the PFM Act.

Inadequate infrastructure

Very few counties have equipped offices for staff, including for the County Governor. While the government has allocated funds for these offices, with the Transition Authority being charged with the responsibility of ensuring this infrastructure is in place, it is unlikely that these structures will be available by the time the elections are held in March 2013.



Summary, Recommendations and Conclusions

To ensure efficiency and effectiveness in the implementation of the PFM Act and management of public resources, the following recommendations need to be considered:

- There is need to quickly roll out IFMIS at the county level so as to bring about accountability. There will be a single treasury account where the government will be able to hold funds, monitor usage, and ensure resources are fool proofed by checking on the movement of funds. The PFM Act allows for the establishment of a committee to check on the use of funds, and disciplinary measures that can be taken for misuse are outlined in Section 156 and in Section 197. Proper monitoring of public resources is only possible if IFMIS is operational up to the county level.
- Taking of loans must be procedural and this is outlined in the Act.
- There is need to elect governors with good educational background and well informed on matters of management of county resources.
- In terms of implementation of financial management at the county level, there is need to develop manuals/tools that will guide the county officers. There is also need for proper capacity building on the procedures to be followed in implementing the PFM Act.
- Capacity building of County Treasury staff and induction of the same on the PFM Act 2012 should be an ongoing exercise.

- There is need for sensitization of other partners on devolution. A lot of resources will be devolved; the public should be able to check on what is happening. Citizens should be given platform to exercise their rights and check on what is happening. This will happen through civic education and sensitization at the community level. People's voice is important, having a system where issues raised by the public can be picked up. There is need to have a clear mechanism of picking these issues as they could strengthen management.
- There is need to have uniform and coordinated civic education amongst all stakeholders.

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Appendix 1: Provisions of new constitution on public finance management and devolution

s/no	Constitutional Provision
1.	<p>Article 201: Principles of public finance</p> <p>Provides for guiding principles and framework to guide public finance, which include:</p> <ul style="list-style-type: none"> • Openness, accountability and participation • Promote an equitable society, and ensure <ul style="list-style-type: none"> – Tax burden is shared fairly – Nationally raised revenues are shared equitably between national and county governments – Public expenditure promotes equitable development in the country, and provides for disadvantaged groups and marginalized areas
2.	<p>Article 202 : Equitable sharing of resources between national and county governments</p> <p>Calls for equitable sharing of debt burden between present and future generations</p> <p>Articulates prudent and responsible use of public funds</p> <p>Stipulates responsible management with clear reporting</p> <p>Revenues are to be shared equitably among national and county governments</p> <p>County governments to get additional allocations from national government with or without conditions</p>
3.	<p>Article 203: Equitable share and other financial laws</p> <p>Criteria for revenue sharing to take into account:</p> <p>National interest and provisions for national debt obligations</p> <p>Needs of national government</p> <p>Ensure county governments are able to deliver services</p> <p>Fiscal capacity and efficiency of county governments</p> <p>Ensure developmental needs of counties are met</p> <p>Ensure economic disparities within and between counties are remedied</p> <p>Ensure affirmative action for disadvantaged areas and groups</p> <p>Need to optimize economic potential and capacity of counties</p> <p>Ensure stable and predictable revenue allocations</p> <p>Need for flexibility to respond to emergencies and similar other temporary needs</p> <p>A minimum of 15% to be allocated to counties based on the latest audited government revenue receipts</p>

4.	<p>Article 204: Creation of Equalization Fund</p> <p>Equalization Fund funded by “one-half per cent” of revenues collected nationally set aside each year based on most recent audited accounts of revenue receipts</p> <p>Money to provide basic services, e.g. water, roads, health care and electricity to marginalized communities</p> <p>Expenditure from Equalization Fund to be used according to the Appropriation Act; can either be direct or indirect as conditional grants to counties with marginalized communities</p> <p>The Commission on Revenue Allocation (CRA) is to be consulted and its recommendations considered before Appropriation Act is passed in Parliament and money appropriated</p> <p>Balances of unspent money be retained in the Fund at fiscal year end</p> <p>Equalization Fund expires after 20 years if not extended by more than half the members of the National Assembly.</p> <p>Life of fund may extend for a fixed period if Parliament enacts a legislation to extend it</p> <p>Withdrawals from the Fund must be approved by the Controller of Budget</p>
5.	<p>Article 205: Consultation on financial resources affecting counties</p> <p>Acts on revenue sharing and other financial matters to be allocated by the CRA, which will make recommendations to both Houses (National Assembly and Senate)</p> <p>Each House to consider the CRA recommendations before voting on the Act</p>
6.	<p>Article 207: County revenues</p> <p>Revenue Fund established for each county into which:</p> <p>All moneys received or raised on behalf of each county shall be paid into unless excluded by an Act</p> <p>Money shall be withdrawn from that fund only as a charge against the Fund, or as provided by Parliament, or county legislature</p> <ul style="list-style-type: none"> – Withdrawals from the Fund to be authorized by Controller of Budget – Legislation may make provision for withdrawal from a Revenue Fund or establish other funds
7.	<p>Article 209: Revenue raising powers and public debt</p> <p>Article shares responsibility as follows:</p> <ul style="list-style-type: none"> • National government to impose: <ul style="list-style-type: none"> – Income tax – Value added tax – Customs tariff (import as well as export duties) – Excise taxes • Counties to impose: <ul style="list-style-type: none"> – Property rates – Entertainment taxes – Any other tax authorized by law <p>> National government prohibited from levying any taxes on areas set aside for counties</p> <p>> Counties not to impose any taxes that prejudice national economic policies or activities or hinder movement of goods and services, or labour or capital</p>

8.

Article 211: National debt/borrowing

Parliament to enact law on:

- National government borrowing, including terms and reporting
- Cabinet Secretary for Finance to report to either House of Parliament within seven days if so requested by resolution and relevant committee and to include details on:
 - Extent of total indebtedness; principal and interest
 - How debt resources have been used or will be used
 - Debt servicing (or repayment schedule)
 - Progress so far in repayments of the debt

Article 212: Borrowing by counties

County governments to borrow only if:

Guaranteed by national government

Approved by the County Assembly

Article 213: Guarantees by national government

Parliament to enact a law and prescribe how national government may guarantee loans

Within two months of fiscal year end, national government to publish a report on all guarantees issued during past year

9.

Article 217: Division of revenue between counties

- To be reviewed by Senate every five years through a resolution to determine basis for allocation using:
 - The criteria in Article 203 (1)
 - The recommendations of a Revenue Sharing Commission
 - Outcome of consultations with county governors, organizations within county and Cabinet Secretary for Finance, and
 - Submissions by stakeholders and professionals
- Within ten days of Senate resolution, the Speaker (Senate) to refer it to Speaker of the National Assembly.
 - If National Assembly does not vote on resolution within 60 days, resolution to be considered approved without amendment
 - Resolution approved if two-thirds of the members of Parliament support it; rejected if two-thirds of members vote against it.
 - Within 60 days, the National Assembly may consider the resolution and vote to approve it with or without amendments or reject it
- National Assembly may:
 - Refer the matter to a Joint Committee of both Houses; if approved the resolution is binding.

Article 218: Annual division and allocation of revenues (between counties and the national government)

- Two months before end of financial year, Division of Revenue Act introduced in the National Assembly to:
 - Divide revenue raised among national and county governments
 - County Allocation Revenue Act to divide among county levels of government in accordance with Article 217
- Acts required by clause (1) to be accompanied by:
 - Memorandum explaining revenue allocation proposed in the Act
 - An evaluation of the Act using criteria in Article 203(1)
 - Summary of deviations, if any, from the recommendations of the CRA, with an explanation for each deviation
- **Article 219 requires transfer of county's share of revenues without undue delay or deduction unless transfer is** stopped on account of material breach by a county under Article 225

10.

Article 225: Financial control

- Legislation to provide for establishment, functions and responsibilities of the national Treasury
- Parliament to enact law on transparency and expenditure control in all governments, including mechanism for their implementation
- Cabinet Secretary for Finance to stop the transfer of funds to a county or other public entity:
 - For serious or persistent material breach of measures introduced by legislation for not more than 60 days
 - Not more than 50 per cent of funds due to a county government (stopped)
- Lapses retrospectively within 30 days if Parliament does not approve it by a resolution of both Houses
- Parliament may renew decision to stop transfer but not for more than 60 days at a time
- > Parliament may not approve/renew decision to transfer funds unless:
 - COB submits a report on the issue to Parliament; and or
 - The affected entity is given an opportunity to present and defend its case before the relevant Committee

Article 226: Accounts and audit of public entities

- Legislation to provide for keeping of financial records and auditing of accounts of all government and public entities
- Prescribe other measures for efficient, transparent fiscal management
- Designate an accounting officer for each entity
- Accounting officer of a national public entity accountable to national assembly and county public entity to county assembly
- Accounts of the Auditor General be audited and reported on by a professional accountant appointed by the National Assembly
- Holder of public or political office to be held liable for loss or
- Use of public funds contrary to law or instructions and shall make good the loss whether still in office or not

12.

Article 228: Controller of Budget (COB)

Provides for a COB nominated by President and approved by National Assembly, who

Must be qualified and posses extensive knowledge of public finance and at least ten years experience

In line with provisions of Article 251, holds office for eight years and is not eligible for re-appointment

Authorizes withdrawals from Public Funds for national and county governments under Articles 204, 206 and 207

Oversees budget implementation

Must be satisfied withdrawal is in accordance with the law, and to submit to each House a report every four months on implementation of budgets of national and county governments

Article 229: Auditor General

- Nominated by President, approved by National Assembly and appointed by the President

- Must have extensive knowledge in public finance, or ten years experience in auditing and public finance management

- Shall hold office for eight years and not eligible for reappointment, subject to provisions of Article 251

- Within six months after end of financial year, audit and report on the accounts of:

- National and county government

- All funds and authorities of the national and county governments

- All courts

- Every commission and independent office

- The National Assembly, Senate and county assemblies

- Political parties

- Public debt, and

- Any other entity that is funded from public funds and requires Auditor General to audit

- Every audit must confirm public funds have been spent lawfully and effectively

- The reports to be submitted to Parliament or the relevant County Assembly

- Upon receipt of audit report, Parliament or the county assembly to consider the report within three months, debate and take appropriate action



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