Pamoja Tutetee Haki

KENYA HUMAN RIGHTS COMMISSION

Abridged Version

DEVOLVED GOVERNANCE THROUGH A HUMAN RIGHTS LENS

A COMPARATIVE ANALYSIS ON EMERGING TRENDS, ISSUES AND GOOD PRACTICES IN THE IMPLEMENTATION OF DEVOLUTION IN KENYA

KHRC August 2015

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EXECUTIVE SUMMARY

The survey aimed to gather county baseline data to establish: 1).What counties have done on the ten points? 2). How much information is readily available about what County Governments have done and are doing? 3). Existing gaps on the same to facilitate a better and more informed engagement with the counties. Findings show that despite County Governments involving the people in many "public" forums and utilizing several media to make information available, public participation, communication and access to information is still problematic. Policies, legislation and important mechanisms and frameworks are missing and leaders do not differentiate public participation from civic education, which they have assumed are the same thing.

About eight in ten Kenyans find it difficult to participate in key county activities and to access information on county budgets, legislation, and project plans mainly because the information is not easily accessible to the wider population while the media commonly used is out of reach for the majority of people.

Despite majority of counties lacking a policy on inclusion and integration in county development and governance, good progress has been made women, youth, and PWDs have been recruited; facilities and special programs for them provided; and, budgetary allocation set aside.

Agriculture, infrastructure and health have been prioritized; County Land Management Boards (CLMBs) and revenue collection mechanisms established. Nevertheless, Corruption, financial mismanagement and poor governance persists in counties; introduced taxes either unfair or illegal, while many counties lack M&E mechanisms.

'Nyumba Kumi initiatives' and community policing committees are the common strategies for crime prevention while violent robberies, gender based violence and ethnic violence are the common security threats.

BACKGROUND

The Kenya Human Rights Commission (KHRC) is the premier flagship non-governmental human rights and governance institution founded in 1991 with a vision to *'secure human rights states and societies'* and a mission to *'foster human rights, democratic values, human dignity and social justice'*. Towards this, the KHRC is implementing a project named "***Towards a Human Rights Centred Devolved Governance***," that aims to ensure that the devolved governance system in Kenya is enhanced and accountable in services delivery and protection of human rights. KHRC formulated and published the ***Ten Point Model County Award Criteria and Scheme,*** on March 12th, 2015, outlining ten human rights and governance principles that define a model county, and which the performance of counties was to be monitored.[1]The objective of the survey was to gather baseline data per county on each of the identified parameters to enable KHRC measure change achieved in each of the parameters in the course of the project, which will form the basis for the conferment of the model county award in 2016. The survey relied on desk review.

[1] 10 principles are: Public participation and Access to Information; Integrity, Transparency and Accountability; Economic and Social Rights and Development; Equality and Non-Discrimination; Access to Justice and Security; Tax Justice, Fiscal Prudence and Trade Development; Land Rights and Natural Resources Governance; Other Fundamental Rights and Freedoms; Devolution of Power; Monitoring and Evaluation Process. These were regrouped further into: effective public participation; leadership and integrity; devolution and equity; access to justice and effective service delivery

THEME 1: Public Participation, Civic Education and Access to Information

Introduction

Public participation is the direct influence and involvement of citizen and other stakeholders in governance on matters that affect their lives and involves the processes, spaces and capacity for citizens (and groups) to exercise their rights. Effective public participation entails clear mechanisms for participation and communication between citizens and government. Public participation is a national value and principle of governance[2] and County Governments are required to ensure citizen participation in the governance process.[3] Since public participation cannot be effective without information, citizens have the right to access information held by the State and (any other) person acting on behalf of the State.[4]

Policy and laws for Public Participation

County Governments have embraced provisions for effective public participation; have held several "public" forums; and divergent communication frameworks. However, most counties do not have the relevant policies, even where they have legislation in place, meaning that the majority of legislation made is not anchored on any policy. For example, of the 31 counties with public participation legislation, none had a public participation policy; of the 47 counties, none has a policy on public participation, while 31 counties (64%) have legislation. The others 16 don't have it.[5] By mid-June 2015, 20 counties[6] had passed Public Participation Act(s),[7] while 11 County Assemblies[8] had tabled bills before their respective assemblies. Thus, 16 counties had neither introduced nor passed similar acts.[9] (Figure 1)

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[2]GoK, 2010.The Constitution of Kenya, 2010. Article 10(2) (a): Nairobi: National Council for Law Reporting (KLR) with the Authority of the Attorney General, 2010. Also found at www.kenyalaw.org

[3] CoK (2010), Fourth Schedule

[4] GoK 2010. The Constitution of Kenya 2010. Article 35(1) (a&b)

[5] They include Homa Bay, Isiolo, Kilifi, Kirinyaga, Kitui, Kwale, Mandera, Migori, Nyamira, Nyandarua, Tana River, Trans Nzoia, Uasin Gishu, Vihiga and Wajir Homa Bay, Isiolo, Kilifi, Kirinyaga, Kitui, Kwale, Mandera, Migori, Nyamira, Nyandarua, Tana River, Trans Nzoia, Uasin Gishu, Vihiga and Wajir

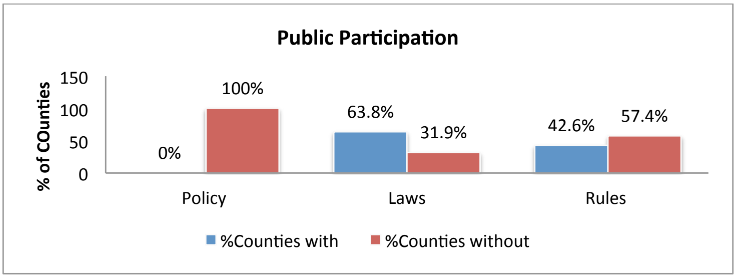
[6] Baringo, Bomet, Bungoma, Busia, Elgeyo-Marakwet, Kajiado, Kericho, Kiambu, Kitui, Laikipia, Machakos, Meru, Nairobi, Nakuru, Nandi, Nyandarua, Siaya, Tharaka Nithi, Turkana, West Pokot

[7] County Assembly Forum. (2015, June 15) County Assemblies take up Public Participation Bill in Ernest. *County Assembly Forum News*. Retrieved from www.countyassembliesforum.org

[8] Embu, Kirinyaga, Kisii, Kwale, Lamu, Mombasa, Muranga, Makueni, Narok, Nyeri, and Samburu

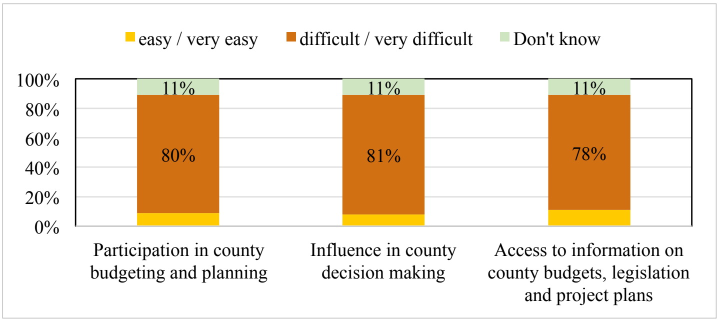
[99] County Assembly Forum. (2015, June 15) Op Cit

Figure 1: Framework for Public Participation



The most commonly used platforms for citizen participation are: public hearings and budget preparation or validation forums, which are in every county; public planning; ICT Platforms, mainly, interactive websites, Twitter feeds, Facebook pages and ICT departments); development projects sites; visitation forums; public watchdog groups; focus group discussions (FGDs); citizen's advisory boards and county open days.

Figure 2: Participation in County Affairs



Despite participation being an important Constitutional principle in Kenya embedded in policy framework, legislated and provided in governance mechanisms, the realization of participatory governance remains pathetic.[10] According to Afrobarometer study[11] only 11% of the citizens polled find it easy to participate in county budgeting and planning. Over 78% found it either difficult or very difficult to participate in county affairs. (Figure 2) 58% of Kenyans sampled are not satisfied with the extent of public participation in the

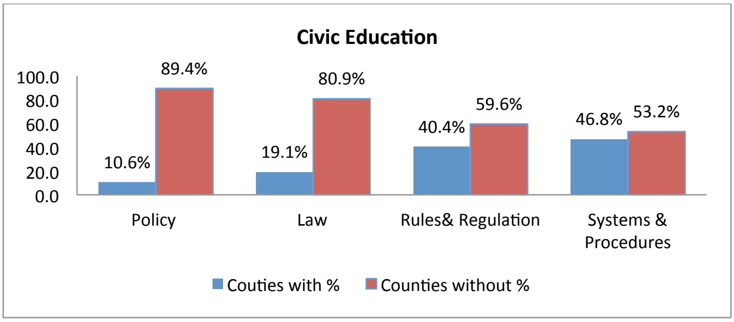
[10] Mitullah, Winnie, September 2015, Kenyans register mixed feelings about devolution, Afrobarometer Dispatch XXX, September 2, 2015
[11] Data was collected in December 2014.

operation of county governments. Only 26 % of Kenyans are satisfied with participation. This calls for increasing citizen's contacts with county leadership. In the Afrobarometer study, between 2013 and 2014, only 4 per cent of the population had contact with leadership several times, while another 9 per cent had contact once or twice a year. Majority (73%) of the population had no contact but would do if they had a chance.

Civic Education

County governments are mandated to build capacity of the people (through civic education) to engage in local governance.[12] Civic education is meant to produce an informed citizenry that actively participates in governance.[13] As figure 3 shows, civic education frameworks are at various stages of development with most counties having not developed a policy or law for civic education. Only 5 counties (11%) have developed policy on civic education,[14] while 9 counties (19%) have developed legislation.[15]

Figure 3: Framework for Civic Education



The absence of a national standards and content on civic education; the failure to distinguish civic education from public participation[16] and the failure to prioritize it are responsible for poor progress on civic education in counties. More funding, better

[12] CoK, 2010 Schedule 4(2), function number 14; CoK Fourth Schedule. Part X of the County Government Act, 2012.
[13] Section 100 of the County Governments Act requires counties to establish civic education programs and civic education units.
[14] Makueni, Meru, Tana River, Vihiga and West Pokot)
[15] They include: Baringo, Bomet, Bungoma, Busia, Isiolo, Kajiado, Kericho, Kirinyaga, Laikipia, Machakos, Meru, Makueni, Nakuru, Nyamira, Taita Taveta, Tana River, Tharaka Nithi, Turkana, Wajir, West Pokot, Trans Nzoia and Vihiga.
[16] CIC (June, 2014), Assessment of the Implementation of the System of Devolved Government: From Steps to Strides

prioritization of civic education by county governments and more engagement with CSOs and government institutions is needed.[17]

Communication and Access to Information

The Constitution provides citizens the right to timely access information held by the state and other entities, and requires it to be published and publicized.[18] Majority of counties have not put in place policies, legislation and frameworks for communication or accessing information. Only Five counties[19] have developed such policy and 4 counties[20] enacted legislation.[21] Counties have nevertheless made a significant amount of information public and have provided opportunities and platforms for feedback.

Majority of counties have established an ICT Department (in charge of communication); used available media to communicate with the public—print, radio and television appearances and call-ins; notice boards; announcements in markets, churches, mosques, schools, county offices and other buildings; and, county websites. This notwithstanding, there are numerous accusations from the civil society and key Constitutional Commissions that counties are either deliberately keeping information secret or not disclosing important information to the public.

While counties have had relatively great successes in making information available, citizens' access to it has been limited. The commonly used mechanisms for communication—County websites and newspapers are not easily accessible to the majority of the people especially in the more rural counties or those in remote areas of the country. Despite also gaining popularity social media (Facebook and Twitter) are also out of reach of the majority of citizens. Platforms favor the more urban and well-up, leaving the poor, illiterate and rural populations behind.

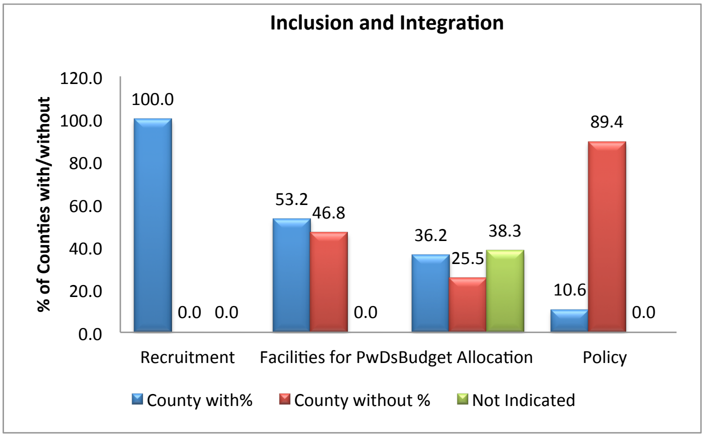
Strategies for Inclusion and Integration

The Constitution requires the inclusion of marginalized communities and groups;[22] the recruitment and development of special facilities; budgetary allocation; and development of special programs for such groups.[23] Despite most counties lacking a policy on inclusion

[17] Africog (2014), Delivering on Devolution? Evaluating County Budgets 2013-2014
[18] Article 35 of the Constitution of Kenya, Section 87 (a) of the County Governments Act of 2012
[19] Kisumu, Laikipia, Marsabit, Mombasa and Nandi
[20] Makueni, Taita Taveta, Turkana and Vihiga)
[21] CIC (June, 2014), Assessment of the Implementation of the System of Devolved Government: From Steps to Strides
[22] Article 177(1) (c): nominations to county assemblies to include members of marginalized groups and PWDs
[23] CoK 2010. Article 179: Appointments of CECs should be subject to regional, ethnic and gender balances

and integration (89%),[24] all counties have recruited at least minority, marginalized woman and/or PWDs. Further, 53% have provided facilities for PWDs[25] while 36% have provided a budgetary allocation for inclusion and integration.[26] (Figure 3)

Figure 4: Strategies for Inclusion and Integration



THEME 2: Leadership and Integrity

Introduction

Leadership and integrity are two important national values and cure for poor governance that Chapter six of the Constitution and the Leadership and Integrity Act, 2012 deal exclusively. The Act seeks to ensure that public officers discharge their responsibilities with integrity and sets a high threshold for all.

Leadership and Integrity

Although the use of public office for private gain was rampant and corruption had become institutionalized in pre 2010 Kenya,[27] findings from the study shows that little seems to have changed with the introduction of the County Governments. Corruption for example,

[24] Only 6 counties have. They include Bungoma, Embu, Kiambu, Kisumu, Machakos and Makueni

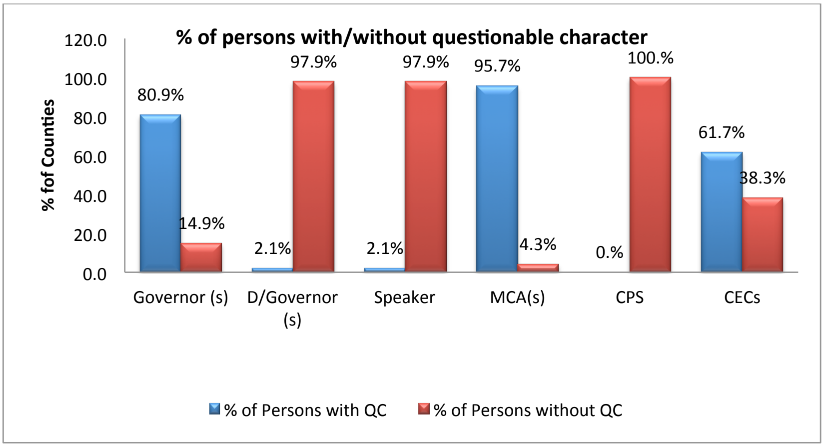
[25] The 27 that have include: Baringo, Bomet, Bungoma. Busia, Elgeyo Marakwet, Garissa, Isiolo, Kajiado, Kericho, Kiambu, Kirinyaga, Kisii, Kisumu, Laikipia, Lamu, Meru, Migori, Murang'a, Nairobi, Nakuru, Nandi, Narok, Nyandarua, Nyeri, Taita Taveta, Uasin Gishu and West Pokot.

[26] These ten include Elgeyo Marakwet, Garissa, Homa Bay, Kilifi, Meru, Nandi, Narok, Nyamira, Tana River, Tharaka-Nithi, Turkana and Wajir. A further 18 have not indicated how much they have set aside. They include: Kajiado, Kirinyaga, Kisii, Kisumu, Kitui, Kwale, Mandera, Marsabit, Migori, Mombasa, Murang'a, Nakuru, Nyeri, Samburu, Siaya, Taita Taveta, Trans-Nzoia, and Uasin Gishu.

[27] Mumo Matemu (2013), Entrenching Good Governance And Integrity In Public Office

is increasing and the vice is being replicated at the counties. From Figure 5: over 95% and 81% of MCAs and Governors,[28] respectively, have been accused of corruption and other ills, as have been 61% of CECs. 61% and 58% of Kenyans believe that Governors/officials in their offices and MCAs are corrupt, respectively.[29] This is despite the signing of performance contracts (PCs) by 30 CECs.[30] No county has publicized PCs, meaning the public cannot hold them to account.

Figure 5: Persons with Questionable Character (QC)



Financial Management and Accountability

Chapter 12 of the Constitution of Kenya 2010 outlines the principles of public finances emphasizing on openness, accountability, participation, prudence and equity. Public Financial Management Act (PFMA) of 2012 outlines the management of county public finances; establishes a County Treasury[31] and specifies its responsibilities[32] and powers;[33]

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[28] These include: Alfred Mutua of Machakos; Cyprian Awiti of Homa Bay; Josephat Nanok of Turkana; Hassan Joho of Mombasa; Amason Kingi of Kilifi; Godana Doyo of Isiolo; Nathif Jama of Garissa; Ukur Yatani of Marsabit; Ahmed Abdullahi Mohamad of Wajir; Evans Kidero of Nairobi; Isaac Ruto of Bomet; Samuel Tunai of Narok; Okoth Obado of Migori; Jack Ranguma of Kisumu County

[29] Afrobarometer studies, Round 6

[30] Counties yet to implement performance contracting are: Garissa, Isiolo, Kakamega, Kericho, Kiambu, Kisii, Kisumu, Laikipia, Lamu, Machakos, Marsabit, Nandi, Nyandarua, Siaya, Tharaka Nithi and Turkana.

[31] Public Financial Management Act, section. 103

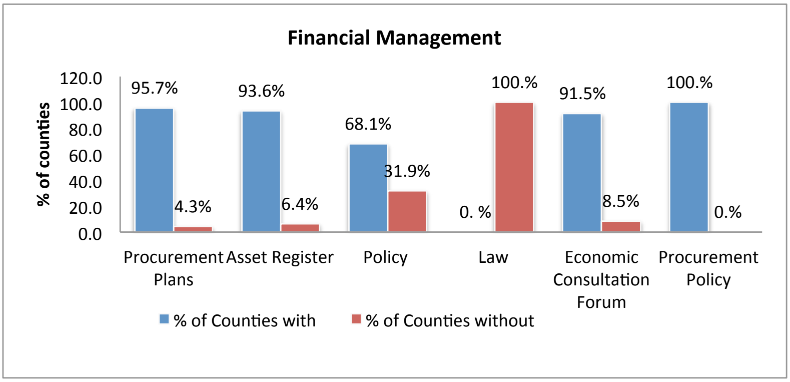
[32] Ibid Section 104

[33] Ibid Section 105

mandates expenditure not to exceed total revenues[34]; and, at least 30% of spending on development.[35] The PFM Act also provides for supplementary budgeting[36] borrowing for capital spending.[37]Every County Treasury is required to establish a consultation forum for the budget process, in the form of the County Budget and Economic Forum (CBEF).[38]

As Figure 6 below shows: most counties have put in place a County Financial Management system; 91% have CBEF; 68% have a procurement policy as mandated by law before they do county purchases;[39] 95% have developed procurement plans on a regular basis; [40] and, 93% have an asset registry.[41] According to the Auditor General these registers need to be kept current.[42]

Figure 6: Financial Management



Financial Management Policy

Despite counties establishing Tendering, Public Asset and Disposal Committees (all counties); Financial Management policy (32 counties);[43] and, County Budget and Economic

[34] Ibid Section 107 (2)
[35] Ibid
[36] Ibid Section 135
[37] Ibid Section 58 and sections 140-142
[38] Ibid Section 137
[39] Report of the Auditor-General on the Financial Operations of the County Assembly of Mombasa 1 July 2013 To 30 June 2014
[40] Only Busia and Embu do not have.
[41] These are: Embu, Garissa and Marsabit.
[42] The Auditor General's Report has consistently raised concern that these asset registers are not up to date.
[43] These are, Kiambu, Kirinyaga, Kisii, Kwale, Laikipia, Machakos, Marsabit, Meru, Mombasa, Murang'a, Narok, Nyandarua, Siaya, Taita Taveta, and Vihiga.

Forum (43 counties),[44] most counties have reported irregularities in their financial management. The Auditor General's Report for the FY 2013/2014 shows that ALL counties had financial irregularities. The most common are: county governments opening and operating undisclosed bank accounts, especially for locally collected revenue, under-banking of the monies collected, illegal payments of allowances and general disregard of financial prudence. Action needs to be taken by implementing the Auditor General's Report.

THEME 3: Devolution and Equity

Introduction

The Constitution of Kenya (2010) assigns specific planning functions to the national and county governments. Article 220 of the Constitution provides for mandatory planning before budgeting. After 4th March 2013, each county government was immediately required to generate its first 5 year County Integrated Development Plans (CIDPs).[45] It is in these CIDPs that counties outline their development priorities for the next five years. Counties have listed their development priorities with the most common being agriculture, infrastructure and health. Figure 6 below is a summary of the first 3 identified county development priorities and the amounts allocated to each of the identified priorities. Amounts are in Kshs/Millions.

In the FY 2014/15, the total approved budget estimates for County governments was Kshs.321.56 billion. Kshs.181.28 billion (56.4%) was allocated for recurrent expenditure and Kshs.140.29 billion (43.6%) to development expenditure.[46] The allocation for development activities conforms with Section 107(2) (b) of the Public Finance Management Act, 2012, which requires that over the medium term, a minimum of 30% of the County Government's budget should be allocated to development. By the 3rd quarter of FY 2014/2015, counties had spent a total of Kshs.65.71 billion (35.8%) on development activities and Kshs.117.93 (64.2%) for recurrent activities. Counties that recorded the highest development expenditures rates are Nandi, Meru, and West Pokot at 70.9 %, 64.5%,

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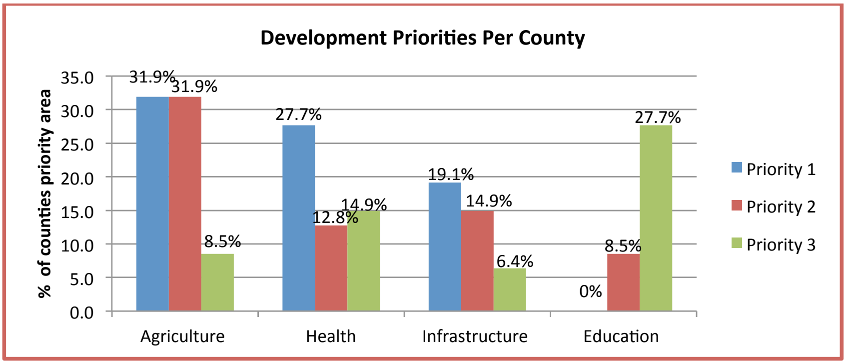
[44] Embu, Isiolo, Kilifi and Kirinyaga, are the only counties which are yet to establish the County Economic Consultation Forum.

[45] IEA (June, 2014), First County Integrated Development Planning: Experiences and Lessons from Laikipia, Nandi, Uasin Gishu, and Meru Counties. Issue No.18

[46] Office of the Controller of Budget (2015), County Governments Budget Implementation Review Report Third Quarter FY 2014/2015

and 62.2% respectively. Kirinyaga, Tharaka Nithi and Nairobi recorded the lowest rates at 17.2%, 14.4%, and 9.4% respectively.

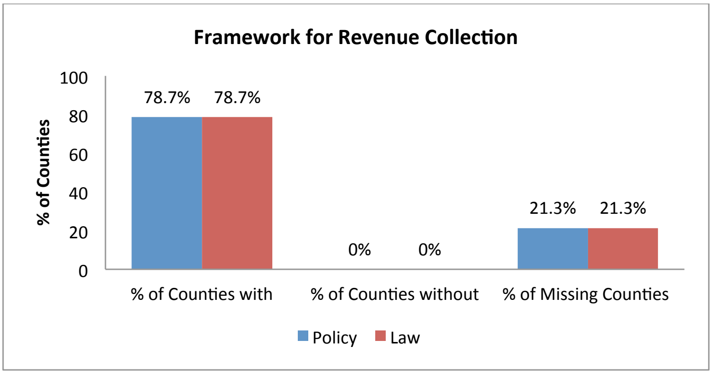
Figure 7: Development Priorities per County



Framework for Revenue Collection

All counties have laws and policies on revenue collection, mainly contained in the yearly County Fiscal Strategy Papers. Currently, 78.7% of counties have developed their Fiscal Papers for the year 2015. For the remaining 21.3%, the study could not establish whether fiscal strategy papers had been developed or not.

Figure 8: Framework for Revenue Collection



In each financial year, counties are mandated to set targets for revenue collection. However, no county seems to be meeting its revenue collection targets. This can be attributed to the lack of a clear revenue collection framework. Taxation and single business permits constitute the core sources of revenue across counties. Others include, cess, license fees and land rates. Most counties still depend on the national government for resources. In total, for the FY 13/14 county governments had budgeted for Sh261.1 billion, of which Sh100.4 billion was intended for development. However, the national government availed Sh193.4 billion.

According to Annual County Budget Implementation Review Reports for the FY 2014/15 counties had targeted to net Sh. 57.2 billion from local revenue sources. By the 3rd quarter of the FY 2014/2015 County governments had generated a total of Kshs. 25.17 billion from local sources, which translated to 44.0 % of the total annual local revenue target. Nairobi County generated the highest local revenue in absolute terms at Kshs. 10 billion during the period, followed by Mombasa and Nakuru that raised Kshs. 1.80 billion and Kshs. 1.59 billion, respectively. Counties that raised the lowest amount of local revenue were Lamu and Tana River at Kshs. 42.93 million, and, Kshs. 20.06 million respectively.[47]

Marsabit County attained the highest proportion of local revenue against its annual revenue target at 145.4% followed by Elgeyo Marakwet and West Pokot Counties at 89.5% and 81.4%, respectively. Counties that recorded the lowest proportion were Vihiga at 20.6%, Turkana 19.9% and Tana River County at 16.7%.[48]According to the Report, 43 counties did not meet their revenue targets. Although Nairobi County collected the highest revenue, the county did not meet its revenue target. Only four counties exceeded their annual revenue targets.[49] Bungoma County raised the lowest revenue in relation to its target at Sh2.76 billion.

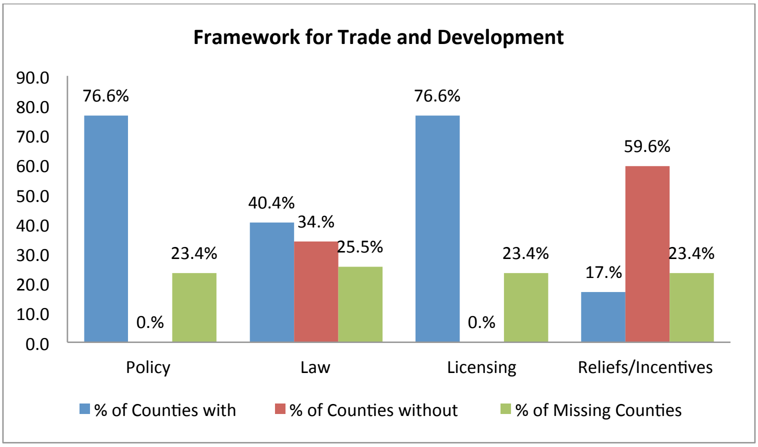
Trade and Development

County leaders have a responsibility to facilitate trade and investment by championing an enabling environment for domestic and international investment in their counties. All counties have policies for trade and development and framework for taxation through licensing. This is mainly in form of trade and investment ministries or departments headed

[47] Controller of Budget County Governments Budget Implementation Review Report Third Quarter FY 2014/2015
[48] Ibid
[49] West Pokot, Kericho, Marsabit and Tharaka-Nithi counties

by a county executive officer. However, 11 counties are yet to develop legislation.[50]Most counties do not offer reliefs or incentives on taxation in the counties.[51] It is not clear however, whether these incentives are extended to both local firms as well as foreign corporations.

Figure 9: Framework for Trade Development



County Taxation Policies

Article 209 of the Constitution allows counties to impose property rates; entertainment taxes; and any other tax that it is authorized to impose by an Act of Parliament. Eager for more revenue, county governments have imposed or proposed new taxes. However, according to a Senate Report, most of the new taxes being imposed or proposed by county governments are unfair or even illegal.[52]

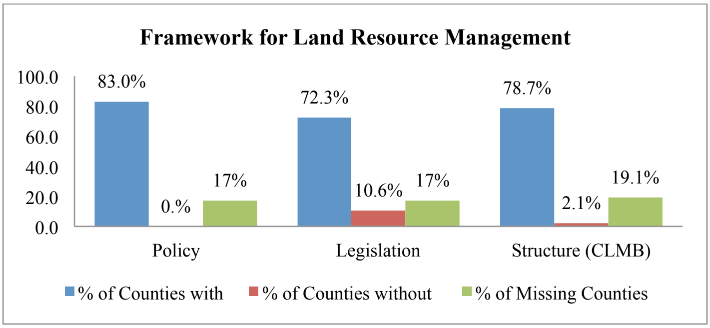
Land, Environment and Resource Management

All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals[53] and hence it is to be held, used and managed in a manner that is equitable, efficient, productive and sustainable.[54] Further Article 62 states that all public

[50] Bomet, Bungoma, Elgeyo/Marakwet , Kajiado, Migori, Nandi, Nakuru, Narok, Tharaka-Nithi, Vihiga, and Wajir
[51] Among the counties offering tax reliefs and incentives are Kakamega, Kericho, Kisumu, Murang'a, Nairobi and Samburu.
[52] Report by the Senate's Committee on Finance, Commerce and Economic Affairs and the National Treasury
[53] Article 61 (1) of the CoK (2010)
[54] Article 60 of the CoK (2010)

land (whether held by the national or county government) is held in trust for the people. County governments are responsible for planning and development of land and natural resources. Counties are mandated to survey and map land. These functions necessitated the creation of a Land Department or 'Ministry' as an implementing arm of the county government.

Figure 10: Framework for Land and Resource Management



All the counties have established a County Ministry in Charge of Land, led by a county executive committee member. These ministries are the custodians for County land and resource management policies.[55] However, most counties are yet to develop legislation on land and natural resource management. It is only Kilifi, Laikipia, Meru, Nyamira and Uasin Gishu counties that have developed legislation on land and natural resource management.

Environment and Shared Resource Management

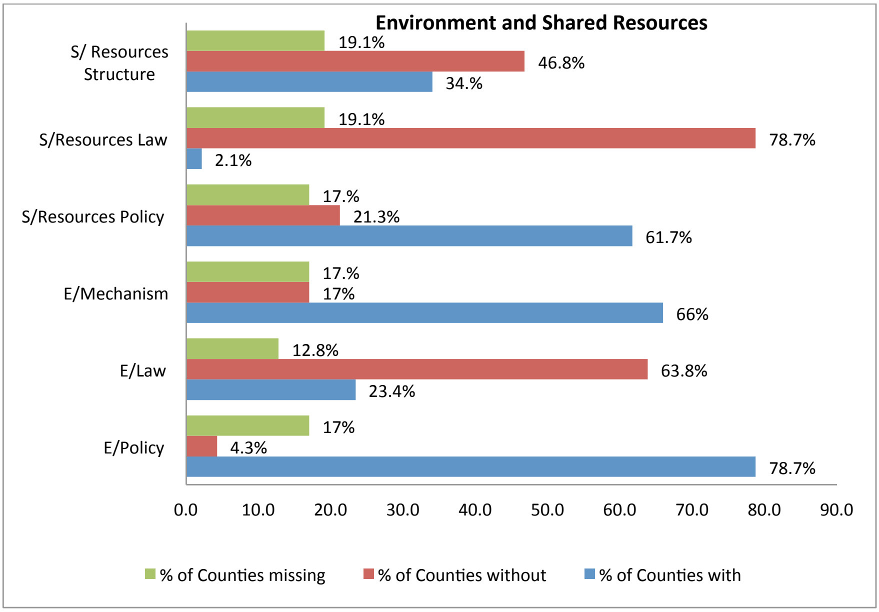
Most counties have a County Land Management Board (CLMB) in accordance with the National Land Commission.[56] While others are in the process of developing these. Only 10 counties do not have them.[57] Another 16 counties have structures for the management of shared resources,[58] while 10 do not have any law, policy or structure.[59]

Most counties have adopted the national framework in the management of the environment. However, Kakamega County has gone further and developed a County State of Environment Report to inform policy and planning and therefore contribute to

[55] Fourth Schedule of the Constitution of Kenya (2010)
[56] The National Land Commission Act No. 5 of 2012
[57] They include Baringo, Bungoma, Elgeyo Marakwet, Migori, Nandi, Tharaka Nithi, Vihiga and Wajir counties.
[58] Baringo, Embu, Kajiado, Kakamega, Kilifi, Kwale, Laikipia, Makueni, Marsabit, Meru, Narok, Nyandarua, Nyeri, Trans Nzoia and Turkana
[59] Bomet, Bungoma, Elgeyo Marakwet, Migori, Nandi, Tharaka Nithi, Vihiga and Wajir

the environmental sustainability. Of the 47 counties, only Busia and Lamu are yet to develop an environmental policy. However, this is yet to translate into legislation as only 23% (11) out of the 47 counties have legislation on environmental management.[60]

Figure 11: Environment and Shared Resources



To promote collaboration, counties are supposed to come up with effective frameworks to manage shared resources so as to avoid disputes or even conflict between counties. Although most counties have a policy on the management of shared resource, this has not translated to either legislation on shared resources or setting up of structures for the management of such resources. Of the 47 counties, only Narok has legislation on the management of shared resource.

[60]These are, Baringo, Kajiado, Kakamega, Kilifi, Kitui, Machakos, Meru, Mombasa, Nairobi, Nakuru and Narok.

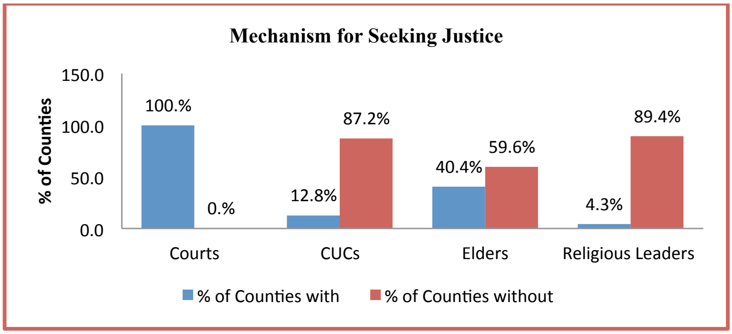
THEME 4: Access to Justice and Security

Introduction

Access to justice is the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards. Article 48 of the Constitution of Kenya (2010) is fairly succinct in what it provides. It states that State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice. Article 29 guarantees freedom and security of every person. Most justice and security apparatus fall within the national government and therefore this analysis is limited to the extent to which justice and security principles are enjoyed by people in counties.

The most common incidents of insecurity in in Kenya are violent robberies, gender based violence and ethnic violence. The common root causes of insecurity have been, economic deprivation, unemployment, and corruption especially laxity on the part of security agents. To prevent inter-community violence, provide an early warning system and act as an intervention mechanism, the national government has been forced to reintroduce community policing. County Commanders are required to form local community policing teams in each county. In line with this, most counties have established 'Nyumba Kumi initiatives' and community policing committees to reduce incidents of crime. Of all the 47 counties, only Kitui, Mandera and Meru are yet to have a county policing committee. Nyumba Kumi programs are present in all the 47 counties. Courts are the most common mechanism for seeking justice. Local elders, Court User Committees and religious leaders are also an avenue for redress.

Figure 12: Mechanisms for Seeking Justice



THEME 5: Effective Service Delivery

Introduction

There needs to build capacity in terms of skills and personnel for effective service delivery. Section 121 of the County Governments Act (2012) provides for the National Government ministry or department responsible for matters relating to intergovernmental relations to provide support to county governments to enable them to perform their functions effectively. The Kenya School of Government Act No. 9 of 2012 mandates the School to build capacity and provide training, consultancy and research services for the Public Service. A National Capacity Building Framework (NCBF) has been developed to support the capacity building for devolved governance. So what is the situation in terms of capacity in counties?

In spite of the efforts to address the capacity needs of counties, there still exists training and skills gaps in the public service. Major challenges have been experienced in the management of public finance, information and communication technology, human resource management, procurement, development planning, research and development, as well as leadership. In some counties inadequate skills and inefficient management information systems in budgeting and finance have resulted in budget revisions by some counties and caused delays in implementing projects. This has been reported in 12 counties.[61]

Some counties in conjunction with the KSG have had induction sessions to train county governments on the required skills. The table below is a summary of counties that have carried out capacity enhancement exercises for Members of the County Assembly, County Executive Committees or Public Service Board. Training for County Executive Committees for Laikipia, Homabay, and Narok is being organized. Further, other counties have carried out training using independent consultants.[62]

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[61] Elgeyo-Marakwet, Homa Bay, Nandi, Machakos, Makueni, Marsabit, Meru, Mombasa, Muranga, Nairobi, Nakuru and Nyandarua.
[62] These include: Nyeri County (for its Assembly members); Nyandarua, Wajir and Turkana (for MCAs) and Bungoma and Bomet for its Public service Board.

Table 1: Summary of Training already done for Counties at the KSG

Capacity Building for…	Counties Training/Induction done
CECs	Kwale, Taita Taveta, Mandera, Marsabit, Isiolo, Meru, Isiolo, Tharaka Nithi, Murang'a, Kiambu, Turkana, Samburu, Kajiado, Kericho, Elgeyo Marakwet, Kirinyaga
CPS Board	Kwale, Kilifi, Tana River, Taita Taveta, Garissa, Mandera, Marsabit, Meru, Tharaka Nithi, Samburu, Kakamega, Vihiga,
MCAs	Machakos
Score-card Champions	Nairobi
Finance Officers	Busia

Inter-County Conflict and Collaboration

The Constitution prescribes the desirable relationship between the county governments and national government. These two levels of governments are distinct and inter-dependent and are expected to conduct their mutual relations on the basis of consultation and cooperation pursuant to Article 6(2) of the Constitution. The Inter-governmental Relations Act of 2012 establishes the framework for consultation, cooperation and dispute resolution between the national and county governments and amongst the county governments. The law requires that governments at either level relate in a harmonious, collaborative and coordinated manner.

Conflicts have taken place in the counties at three levels: 1). between the national and county governments; 2). between/among county governments, and 3). between county government and other agencies. The main causes of the conflicts include disputed shared resources, boundaries and functions. Of the 47 counties, 34 of them have experienced inter-county conflicts. Among the most prominent of these inter-county conflicts have been: Kisii-Nyamira over Keroka Town; Kericho and Kisumu County over land; Kisumu and Vihiga County over Maseno border ; Baringo, Turkana and Samburu over pastoral land; Makueni and Machakos over Konza City; Nairobi, Kiambu and Murang'a Counties over water (Ndakaini); Mombasa versus Kwale and Taita Taveta over water resources; Uasin Gishu versus Elgeyo Marakwet over water resources; Others include, Garissa, Mandera, Wajir Isiolo, Trans Nzoia, Kisumu, Tana River, Lamu; Mandera, Pokot Nyahururu, Laikipia, Nandi, Taveta, Kajiado, Bomet, Kwale, and West Pokot.

A number of counties have also been having disputes with the national government. Among the most prominent have been Bomet, Kericho and Nandi counties over tea plantations whose lease is almost expiring.None of the 47 counties have a county level policy or law dealing with inter-county collaboration. Collaboration within counties operates under the Inter-governmental Relations Act of 2012. However, some counties have set up collaboration structures among themselves. Of the 47 counties, 11 have set up structures for collaboration amongst themselves.[63]

Structures set up by counties for inter-governmental collaboration include, the Regional County Forum on Trade and Investment in Western Kenya region to facilitate dialogue between Kisumu, Siaya and Busia on matters of trade and investment, the Border Inter-Counties Forum between Kisumu, Migori, Narok and Homa Bay Counties on harmonization of laws, rules and regulations on cross-border trade. The Lake Region Economic bloc is made up of Bungoma, Busia, Homa Bay, Kakamega, Kisii, Kisumu, Migori, Nyamira, Siaya and Vihiga. Three other counties, Bomet, Trans Nzoia and Kericho have agreed to be part of the regional blueprint making a total of thirteen. The blueprint is expected to enable individual counties that are sometimes too small to leverage economies of scale, to jointly implement large projects. Coast Counties namely Kilifi, Tana River, Taita Taveta, Lamu and Mombasa have also formed an economic bloc to deal with challenges including education and tourism.

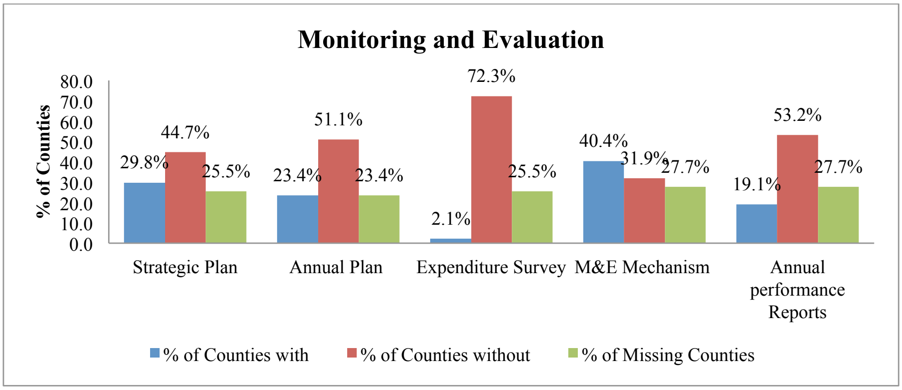
[63] These are: Bungoma, Busia, Homa Bay, Kakamega, Kisii, Kisumu, Migori, Mombasa, Nyamira, Siaya, Trans Nzoia and Vihiga counties. These are: Bungoma, Busia, Homa Bay, Kakamega, Kisii, Kisumu, Migori, Mombasa, Nyamira, Siaya, Trans Nzoia and Vihiga counties.

Monitoring and Evaluation

Counties need a number of documents for effective planning for development in the counties. These are: the CIDP, strategic plan and annual plan. All the counties have developed county integrated developed plans. However, most counties have not developed county strategic plans. Of the 47, only 14 have developed strategic plans,[64] while only 11 have developed county annual plans.[65]

Checks and Balances (expenditure survey, M&E Directorate, annual performance reports). Monitoring and evaluation is important because it informs citizens of a county how much has been achieved in realizing the development goals promised to them each year. There is a nation-wide M&E system online so that Kenyans can track the latest achievements on public sector projects and programs they pay taxes for. This assists in making evidence-based policies, and to respond swiftly to any project implementation difficulties. There should be an implementation matrix detailing projects and programs, costing, implementing agencies as well as monitoring tools and indicators for all projects undertaken by the county governments.

Figure 13: Monitoring and Evaluation



[64] These are Baringo, Garissa, Homa Bay, Kericho, Kiambu, Laikipia, Meru, Mombasa, Nairobi, Narok, Nyamira, Nyandarua

[65] They are Baringo, Kilifi, Kirinyaga, Kitui, Laikipia, Marsabit, Mombasa, Nairobi, Nyandarua, Samburu and West Pokot.

To this end counties should put in place an M& E mechanism. Of the 47 counties, only 19 have set up an M&E mechanism.[66] On conducting expenditure surveys, none of the counties has conducted an expenditure survey since 2013. Most counties also haven't prepared their annual performance reports: only 9 have these Reports.[67]

[66] These are Garissa, Kiambu, Kilifi, Kirinyaga, Kitui, Lamu, Makueni, Marsabit, Meu, Mombasa, Nairobi, Narok, Nyamira, Nyandarua, Nyeri, Trans Nzoia, Turkana, Uasin Gishu and West Pokot.

[67] Those that have prepared include, Kiambu, Kilifi, Kitui, Makueni, Mombasa, Nairobi, Nyeri, Samburu and Trans Nzoia.

CONCLUSION

A number of conclusions can be drawn from the foregoing. First, County Governments have involved the people in many "public" forums; have made information about county governments available and have utilized websites, the print and social media to make information available to the people. Nevertheless, communication and access to information is still problematic. Second, most counties do not have the relevant policies even where they have legislation in place, meaning that the majority of legislation made is not anchored on any policy.

Third, counties have made good progress in inclusion and integration: majority of counties have recruited women, youth, and PWDs and provided facilities and special programs for them; and, have set aside budgetary allocation for them. Fourth, there are leaders, in all levels of County Government, whose character is in contradiction with Chapter 6. Fifth, counties have listed their development priorities: the most common being agriculture, infrastructure and health. Development and recurrent expenditure have however, been uneven. Sixth, counties have developed frameworks for county taxation to generate revenue, although most of the new taxes are unfair or even illegal. Seven, Courts of law, Court User Committees, and traditional mechanisms (through elders) remain the common mechanisms for seeking justice in the counties. Eighth, most counties have established County Land Management Boards (CLMBs), while others are in the process of developing. However, the majority of counties have adopted the national framework in the management of the environment. Last, but not least, not many counties have established an M&E mechanism.

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