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Society for International Development

Public Finance Reforms in Kenya

Some Emerging Issues and their Relevance under the Context of Devolution

Introduction

The Government of Kenya has made deliberate efforts to decentralize development planning over the past ten years. However, it is the enactment of the Constitution of Kenya 2010 that has put public finance management (PFM) at the centre of policy reforms aimed at ensuring fiscal efficiency and discipline in the use of public finances for the betterment of Kenyans. These reforms are heralded through the Public Financial Management Act No. 18 of 2012.

The Act aims to promote openness, accountability and public participation in the management of public finances; promote equity and equality at both national and county levels; ensure prudent and responsible use of public resources; ensure responsible financial management with clear reporting; among others. It defines the key responsibilities of the various institutions and players and also outlines the fundamental guiding principles to be followed, such as openness, accountability, and responsibilities. It defines the various processes, including budget preparation, execution and reporting.

Policy Concerns

Kenya goes into elections in March 2013. These elections are a key milestone in the implementation of the Constitution, and effectively the public financial management reforms. The key policy concerns as the country begins to implement the Constitution are the following:

- Are the county governments well prepared to implement the devolved government structures?
- Do the new institutions established through the PFM Act have the capacity to ensure efficiency and discipline in the use of public finances?
- Are the established mechanisms clear and sufficient to ensure a smooth transition to devolved government system?
- Will these mechanisms ensure sufficient public participation and enhance equity, equality, and accountability in public financial management?
- What are the inherent risks in the PFM and how can they be addressed to ensure public resources are well safeguarded against misuse and misappropriation?
- What needs to be done to ensure that the transition is smooth, and achieves the envisaged benefits?

The Current Situation

Clarity of Roles and Responsibilities in the Bottom Up Approach to Implementation of the PFM Act

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 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. While efforts have been made to harmonize the various process issues, relationships and allocation of responsibilities, the structure is still complex and not well understood by the many actors.

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.

Skills and Structures at the County Level

Most counties are ill-prepared in terms of the requisite structures and human resources for effective country governance, and various analyses have pointed out this deficiency in majority of the counties. While the government is making various efforts to ameliorate the situation, there seems to be lack of clarity on responsibilities, and lack of coordination. While each ministry is trying to train its own staff, there are some issues that are common among ministries, which should be addressed jointly and in a coordinated manner. In terms of implementation of the PFM Act, 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 and Constitutional Affairs. The Transition Authority (TA) is mandated to assess the skills and structure gaps at the county level, and ensure preparedness. There is a feeling that the Authority has been slow in performing this function, and has equally been inefficient in coordinating activities among the various agencies tasked with implementation of the PFM Act.

Functions will only be transferred to the national government if the TA so approves. While 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, there is need to ensure that seconded staff are capable of carrying out the various tasks at the county level. In this regard, there is 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 have both appropriate leadership and financial management skills needed to implement the PFM Act. Civic education must therefore emphasize on people to elect credible leaders for the post of Governor, and for the county and national assemblies.

Lack of Financial Management System at the County Level

While the national government has an Integrated Financial Management Information System (IFMIS), this has not been rolled out to the county governments. Thus, 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. Time seems to be running out in terms of ensuring that counties will have effective financial systems that are well linked to the national system.

Stoppage of Funds

When there is material breach, the Cabinet Secretary in charge of finance can stop disbursement of funds, but must provide reasons for stoppage to the National Assembly in time. While this section of the Act guards against misuse of resources, 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.

Inadequate Infrastructure

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

Equity, Equality and Gender

The Equalization Fund is a means through which equality in resource allocation is enhanced. Based on the recognition that counties are not the same, the formula for resource allocation is seen as instrumental in ensuring equity and equality as proposed in the Constitution.

Accountability and Oversight Roles in 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. Moreover, the Cabinet Secretary responsible for finance has the power to stop the transfer of funds to a state organ or any other public entity. 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, 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 the 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 the Constitution. Some stakeholders have, however, expressed concerns over the potential duplication of effort in the preparation of these reports.

Citizen Participation in Implementation of the PFM Act

There are specific clauses that require public participation in the financial management process. 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.

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 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, 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 on 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.

Shifting management of resources from the national to the county level is expected to 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 the Vision 2030. Moreover, development activities are supposed to be prioritized in such a way that counties are seen to implement both medium and long terms plans.

The issue of distribution of revenue raised from natural resources is, however, 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 counties, and this might generate some discontent 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.

Policy Recommendations

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.
- There is need to elect governors with good educational background, and who are 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 a platform to exercise their rights and monitor implementation of projects. This should happen through civic education and sensitization at the community level. People's voice is important, and therefore the need for systems where issues raised by the public can be picked up. There is need to have a clear mechanism of picking these issues in order to strengthen management.

- Finally, There is need to have uniform and coordinated civic education amongst all stakeholders.

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The Society for International Development (SID) is an international network of individuals and organizations with an interest in development, policy and governance research and dialogue. Since its creation in 1957, SID has consistently been at the forefront of reappraising prevalent development ideas and has confronted the theory and practice of development,challenging existing practices and suggesting alternative approaches. Over the years, three values have been – and remain – at the core of the Society's work – respect for diversity, participation and equity. SID East Africa is incorporated as a Company Limited by Guarantee under the Laws of Kenya. It serves as the Regional Office of the SID International Secretariat which is headquartered in Rome, Italy.

Society for International Development

Regional Office for Eastern Africa

Britam Centre, First Floor, Ragati/Mara Road

P O Box 2404 – 00100 Nairobi Kenya

Telephone: +254 - 20 - 2737991 • Fax: +254 - 20 - 273 7992

Email: sidea@sidint.org • Website: www.sidint.net