# 50 Things Every County Government Official Needs To Know About Public Finance Under The Constitution

Commission for the Implementation of the Constitution
Utekelezaji wa katiba, jukumu la wote

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## Preface

This publication is the second of several publications planned for joint publication by the Commission for the Implementation of the Constitution (CIC) and the International Budget Partnership (IBP) in the area of public finance.

**THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION (CIC)**

The Commission for the Implementation of the Constitution is established under Constitution of Kenya 2010 with the mandate of monitoring, facilitating and overseeing the development and reform of legislation and administrative procedures for the effective and timely implementation of the Constitution. CIC is also required to ensure public participation in all processes and programs that it is engaged in. In CIC's view, there can be no effective public participation if the public and public officers are not sufficiently aware of their obligations under the constitution and the laws enacted thereunder, hence this publication.

We are honored to work jointly with IBP in this process and reaffirm our commitment to work with State and Non-State institutions in ensuring that the intents of the Constitution are met. We also appreciate the Embassy of Netherlands, Japanese Embassy, the Embassy of Sweden and the UNDP for their support in this and other PFM related projects.

**INTERNATIONAL BUDGET PARTNERSHIP (IBP)**

The International Budget Partnership collaborates with civil society around the world to analyze and influence public budgets in order to reduce poverty and improve the quality of governance. The IBP provides training and technical assistance to State and Non-State actors and conducts research on transparency and accountability of public finances in Kenya and around the world. Dr. Jason Lakin is the IBP's Senior Program Officer and Research Fellow based in Nairobi.

**THE PUBLICATION**

This publication responds to various concerns that have been raised by public officers engaged in the implementation of public finance in light of the new dictates on public finance management under the Constitution, the Public Finance Management Act (PFM) and other laws seeking to implement the constitutional provisions on the management of public resources. Unlike the first publication "50 things that every Kenyan needs to know about public finance under the constitution" which targeted the public generally, this publication is focused on public officers engaged in the public finance management process at different levels. It will still be a handy tool for persons with a more than average interest in public finance management.

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# FY 2013/2014

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## New Rules For Public Finance

**1. Why do county public officials need a guide to public finance?**

Public finance is one of the most critical areas of reform in the 2010 Constitution. The vast majority of the institutional changes that the Constitution set in motion--changes in the balance of power between the executive, legislature and judiciary, between the national government and local governments, and even between the role of elected bodies and independent commissions--were designed to change the way that public money was raised, shared and spent in this country.

Kenyans desired these changes because of deep suspicions about the ways in which the state has managed resources in the past. Proper checks and balances and a well-designed public finance management system are intended to ensure that public resources are used fairly and efficiently, and to limit corruption and abuse.

**2. There appear to be many rules related to public finance. Isn't the problem more about enforcement of rules against abuse than the lack of sufficiently detailed rules?**

Simple rules that limit abuse and sanctions for those that break them that are consistently implemented are part of the solution, and they are also part of the PFM Act (see Q47). But proper use of public funds is about much more than reducing corruption.

Good financial management is about setting clear objectives through policy and plans and then ensuring that budgets are directly linked to these plans. While the executive (Governor and County Executive Committee) takes the lead in proposing plans and budgets, these plans and budgets must be agreed to by a number of actors, including the legislature (county assembly) and citizens. The process of checking the executive's proposals is not only designed to reduce abuse; it also ensures that plans and budgets take into account a wider set of priorities. This is important because public money is spent to improve the lives of the public, not the government. Public spending should therefore, to the fullest extent possible, be aligned with the preferences of the broader public.

One of the big problems in the past in Kenya (and many other countries) has been that budgets are not built on plans. Well conceived plans are developed but then budgets are developed separately without a clear link to the plans. Another challenge is that when policy is reviewed and changes proposed, budgets often prove sticky, meaning they do not shift with policy change. A good PFM system should also reduce the likelihood of this happening by keeping a number of eyes on the planning and budgeting process.

**One of the big problems in the past in Kenya (and many other countries) has been that budgets are not built on plans**

Once a budget has been approved, it must be implemented. In many countries, this is where the system begins to fail. Even when nice plans have been developed and the budget is linked to these plans, this all becomes theoretical once the budget is implemented. Again, this can happen because of abuse, but it can also happen because of limited capacity of government agencies to follow procedures and spend money. Or it may be that other political events cause the government to spend money in ways that were not budgeted for. Think about the various labor strikes in Kenya that led to an unexpected increase in wage payments for government workers in 2012/2013. This is not an example of abuse or corruption, but it is an example of ways in which the public finance and budgeting system can be undermined by factors that affect spending plans and priorities during the implementation of the budget.

The rules for implementing the budget require constant reporting and checks to ensure that any problems that arise when trying to spend the budget can be addressed before full implementation. Once the budget has been fully implemented over the year, we then look back to see whether spending met our targets and, if it did not, why we fell short. There is also a formal audit to ensure that money was not wasted or misused.

What we learn from the success and failures of the past should help us to design a better budget going forward. For example, if we found that certain agencies were not spending money, we should learn why and address the problems or reduce their funding. We may find that agencies are spending more than we intended on certain types of expenditure (say, hospitality) and want to adjust their budgets going forward.

When a well-structured PFM system is not in place, serious problems can develop. For example, it is not uncommon to see governments spending more than they raise in revenues. This can lead to deficits and rising debt levels. When debt levels are very high, countries risk financial collapse, as we have seen recently in Greece. One of the characteristics of a good financial management system is that it helps the government to control its spending and "live within its means."

### 3. What does it mean for government to "live within its means," if county governments can borrow to allow them to spend more?

The rules on borrowing are discussed below (Q17). Counties can borrow, though there are many limitations on this power.

More broadly, we should keep in mind that any government has limitations on its spending. The main source of government finance is always revenues, not loans. For national governments, this is usually in the form of taxes and royalties. For subnational governments, like counties in Kenya, this would also include transfers from the national government (themselves paid for out of taxes).

Borrowing is essentially a way to change the timeframe for when money is raised and spent. When we borrow, we are taking money we hope to earn in the future and using it to increase our spending today. We will have to pay that money back in the future, though, so by increasing spending today, we are actually reducing our incomes in the future.

Why do so many governments choose to borrow? The best argument for borrowing is investment. Just as a student may borrow to go to school, knowing that this will allow them to have a higher income in the future, a government may borrow to invest in infrastructure that will allow the economy to grow faster and generate more tax revenues in the future. Although this is risky, it makes sense. But this is very different from borrowing just to spend more on *nyama choma* today, and then leaving yourself with no way to pay back the loans in the future. For this reason, all borrowing should be studied to ensure that it will lead to increased income in future to pay back the loans. Note that borrowing is expensive, so even if the money is used for investment, it may not pay off if the cost is too high.

## 4. What are the new rules that guide public finances and where do I find them?

Most of what public officials need to know is contained in the Constitution, Chapter 12 on Public Finance, and the Public Finance Management (PFM) Act 2012. Those are the focus of this guide as well. However, there is also important information contained in

- Chapter 11 of the Constitution on County Governments
- County Governments Act 2012
- Urban Areas and Cities Act 2012, and other pieces of legislation.

In addition, Treasury is currently preparing regulations to guide the implementation of the PFM Act.

The Constitution and the PFM Act 2012 in particular provide guidance on how counties should manage public finances, their main sources of revenue, how county finances relate to national finances, the key steps in the budget process, and the requirements for transparency and public participation.

The rest of this guide will help explains the new rules and how to interpret them.

## 5. What are the main responsibilities of county officials with regard to public finance?

The first thing counties must do is set up the County Treasury. The County Treasury runs the county budget process and is responsible for most matters of public finance at county level. The County Treasury consists of the County Executive Committee (CEC) member for finance, the Chief Officer (the civil servant in charge of finance under the CEC member), and any department below the Chief Officer responsible for financial matters.[1]

The County Executive Committee as a whole is responsible for discussing the county's approach to finances and assessing its performance. County officials must, as soon as possible, set up the County Budget and Economic Forum, a formal body that brings together government and citizens to consult on plans and budgets.[2] Officials are also charged with ensuring that the county follows fiscal responsibility principles that are in the PFM Act (more on this in Q27). Finally, the county must properly manage the cities and urban areas within its borders according to the PFM Act 2012 and the Urban Areas and Cities Act 2011.

## 6. What are the main roles of the County Treasury?

The responsibilities of the County Treasury are significant and very diverse. Like the National Treasury, the County Treasury is responsible for guiding all economic and fiscal policy at county level. This includes projecting how much revenue the county is likely to raise, managing the budget process, managing all of the county's revenues, tracking all county assets, controlling and issuing debt and opening and managing county bank accounts. Each of these responsibilities comes with reports that must be filed by certain deadlines.

The County Treasury is also responsible for appointing accounting officers to all county entities (departments and offices of the county government). These officers are in turn responsible for managing the finances of the


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

entity they have been assigned to. County accounting officers must report to the county assembly on the finances of the entity they have been assigned to. [3]

The County Executive Committee member for finance is responsible for ensuring that these people perform their duties and do not misuse funds.[4] In order to carry out this responsibility, the Treasury can set guidelines for financial management in the county, monitor compliance with these guidelines, and demand records and explanations from any county official regarding all financial matters.[5]

**7. It appears that the County Treasury has quite a number of responsibilities. You mentioned many reports with deadlines. What are these and when are they due?**

The County Treasury is going to be an extremely busy department of the County Government. In order to carry out the county's economic and fiscal policy, the County Treasury must produce reports almost every month. The contents of these reports will be discussed further below (see Q30-35), but we give the list of reports and deadlines here.

The financial year starts on July 1, so the list below starts in July. However, notice that the first report is a Fourth quarter budget implementation report. Recall that there are always at least two budget processes happening at the same time. For example,

- If it is April, the county will be preparing to table its new budget proposal for the financial year starting on July 1, but it will also be implementing the fourth quarter of the current budget (the fourth quarter runs from April 1 to June 30).

- In July, the government will be starting to implement its new budget, but it will still have to report on implementation of last year's budget.

- In August, the county will be implementing the first quarter of the current budget, but will also be issuing guidelines to start preparing the budget for the next year.

- In September, the county will be looking at three budgets. The first quarter of the current budget year will be ending, the preparation for the next budget year will be ongoing, and there will be a review of the previous budget year through the County Budget Review and Outlook Paper.

The Treasury is always working on at least two budgets, and often three: the review of the previous year, the implementation of the current year, and the preparation of the coming year. This is why the calendar below is full. At the same time, note that there are no major reports due in

- November
- December
- March
- May

It is important to use these months to prepare for reports due in January, April and June.

## Box 1: Key Reports and Deadlines

### July

**Fourth quarterly implementation report.** After each quarter, the County Treasury must submit to the county assembly a report on the financial and nonfinancial performance of all county departments and offices within one month (meaning within one month of the end of the fourth quarter, which ends on June 30= no later than July 31).[6] This is usually referred to as a "budget implementation report" or an "in-year report" on budget implementation.

**Fourth quarterly loan report.** The County Treasury must submit a report to the county assembly of all loans taken by the county government each quarter.[7] A precise deadline is not given by the law, but it can be assumed that this report will come with the quarterly implementation report (above) and will therefore be submitted within one month after the quarter ends (by July 31 for the last quarter).

### August

**Tax and fee waiver report.** The law states that a report on all waivers for taxes and fees granted by the County Treasury must be sent to the assembly by two months after the end of the financial year (two months after June 30= by August 30).[8] Although the law says that the report shall be submitted by any "receiver of revenue" for the county, it also indicates that the County Treasury has the power/responsibility to grant and maintain a record of all tax and fee waivers.[9] It would appear that it is therefore the County Treasury that must submit this report.

**Budget circular.** The County Treasury must issue a circular by August 30 each year to all government entities, and any urban areas or cities within its borders, to guide them in preparing their budget requests. The circular will generally contain a set of priorities that the budget submission should address, as well as a timeline for submission and review.

### September

**County Budget Review and Outlook Paper.** To be submitted to County Executive Committee by September 30 each year. The Paper must be approved by the Committee within 14 days and then it must be tabled in the assembly within a further 7 days after that.

**Annual revenue report.** The law says that a report on revenues must be submitted no later than 3 months after the end of the financial year (meaning 3 months after June 30= by September 30) to the Auditor.[10] The law states that this must be done by a "receiver of revenue" in the county. Receivers of revenue are appointed by the County Treasury. However, it also appears from the law that it is the role of the County Treasury to consolidate all revenue reports and send them to the Auditor, with copy to the Controller, National Treasury and Commission on Revenue Allocation.

### October

**Annual financial statements.** Within four months after the end of each financial year (that is, four months after June 30= by October 30), the County Treasury must submit the county's financial statements to the national Auditor General for review. This should include a statement of the county's debt position.

**First quarterly performance report.** After each quarter, the County Treasury must submit to the county assembly a report on the financial and nonfinancial performance of all county departments and offices within one month (meaning within one month of the end of the first quarter, which ends on September 30= no later than October 31).[11]

### November

No reports. Budget preparation ongoing. Implementation of second quarter of current budget ongoing.

### December

**No reports.** Budget preparation ongoing. Implementation of second quarter of current budget ongoing.

### January

**Second quarterly implementation report.** After each quarter, the County Treasury must submit to the county assembly a report on the financial and nonfinancial performance of all county departments and offices within one month (meaning within one month of the end of the second quarter, which ends on December 31= no later than January 31).[12]

### February

**The County Fiscal Strategy Paper (CFSP).** To be approved by the County Executive Committee and submitted to the County Assembly by February 28 each year. More on this in Q33.

**Debt management strategy statement.** To be submitted to the assembly by February 28 every year, with the County Fiscal Strategy Paper. More on this in Q18.

### March

**No reports.** But, after the approval of the CFSP by the assembly, the budget estimates will need to be developed for presentation in April.

### April

**Budget summary and budget estimates.** The Governor's budget proposal must be submitted to the county assembly no later than April 30 each year. This allows the county assembly to debate the proposal for up to 2 months before the financial year ends.

**Third quarterly implementation report.** After each quarter, the County Treasury must submit to the county assembly a report on the financial and nonfinancial performance of all county departments and offices within one month (meaning within one month of the end of the third quarter, which ends on March 31= no later than April 30).[13]

### May

**No reports.** County assembly debates budget proposal and County Treasury to begin preparing Appropriations Bill based on any amendments passed by the assembly.

### June

**Appropriations bill.** After the budget estimates are approved by the assembly, the authorization to spend comes in the form of the Appropriations Bill (incorporating any changes made to the estimates by the assembly), which must be submitted to the assembly in time for them to approve the bill by June 30.

**Annual cash flow plan and projection.** This must be submitted by June 15 to the Controller of Budget at national level, as well as the National Treasury and the Intergovernmental Budget and Economic Council (which is a body chaired by the Deputy President and comprising all County Executive Committee members for finance and the National Cabinet Secretary for Finance).

**County Finance bill.** The Finance Bill is a separate bill from the budget that, once passed, authorizes government to raise revenues. This must be presented before the end of the financial year (June 30), and must be approved by the assembly within 90 days of approving the Appropriations Bill.

**8. There has been a lot of discussion of the need for "public participation" in county financial matters. What do we have to do to meet this requirement?**

Both the Constitution and the PFM Act emphasize public participation in public finance. Some of the requirements are very explicit, and others will require innovation, discussion and consensus within each county.

The first requirement is that many of the reports mentioned in Q7 have strict deadlines by law for public disclosure, beyond the reporting deadlines. We list these deadlines below. Beyond public disclosure, there are requirements for consultation in the development of county plans and budgets.

For example, the law establishes a new body at county level called the County Budget and Economic Forum (CBEF). This body is supposed to organize consultation with the public about county plans and budgets, including the county development plan, the County Fiscal Strategy Paper and the County Budget Review and Outlook Paper. It is a mixed body that contains the Governor, County Executive Committee members and also nominees from the private sector and non-state actors.[14] The county must set up a nomination process and form this committee as soon as possible after coming into office. For more on how this body could work, and core principles of public participation in public finance, see: ***http://internationalbudget.org/wp-content/uploads/Joint-Brief-on-Participation-in-Kenyas-New-PFM-Law.pdf.***

**Both the Constitution and the PFM Act emphasize public participa-tion in public finance**

In general, the law requires that there be public participation both in terms of input into the budget and in terms of monitoring the implementation of the budget. This means that citizens must be given adequate time and information to participate effectively.

**Here are the public disclosure deadlines for key documents:**

**March 7. *County Fiscal Strategy Paper.*** Must be made available within 7 days after tabling in county assembly (deadline for county assembly tabling is February 28). The debt management strategy paper does not have the same hard deadline, but should be made available around the same time ("as soon as practicable").

**May. *County budget estimates.*** The law does not provide a specific date but says "as soon as practicable" after tabling in the county assembly (deadline for county assembly tabling is April 30).

**July. *Approved budget.*** The law requires that the approved budget be made available to the public within 21 days of approval. Normally, the budget will be approved by June 30, meaning that the approved budget should be available by third week of July. The law is also explicit that the approved budget should be published in a format that is easy for the public to understand.[15]

**September 8. *County development plan.*** Within 7 days after tabling in the assembly (deadline for tabling=September 1), the plan must be made public.

**October 30.** ***First quarterly performance report.*** Within 30 days after the end of the quarter, a report must be made available to the public on budget implementation for the quarter. Additional quarterly reports must be made public by end of:

**January**
**April**
**July**

**November.** ***County Budget Review and Outlook Paper.*** The paper is discussed and approved by end of October and must be made public "as soon as practicable" after that.

### 9. What is the connection between the county budget process and the national budget process?

The national budget process is critical for the county budget process because the national budget process determines the total amount of money that will be given to counties from national revenues each year. It will also determine the specific amount for each county and may set some rules for how that money is to be used.

This will be done through the Division of Revenue Bill and the County Allocation of Revenue Bill (we describe this process in detail in Q14).

National government is also responsible for many policy areas under the new Constitution, and policies that are set through the budget process will affect counties, especially in areas where there are shared responsibilities, such as health, agriculture and water.

The national Budget Policy Statement, released by mid-February, will indicate where national priorities are going to be for the coming financial year. If those priorities align with county priorities, there may be less need for county resources in a particular area. If those priorities are different, counties may need to prepare to put more of their own money into their priority areas. To take an example, if the national government opted to put less money into agriculture in a particular year, but this was a key priority in your county, you would potentially wish to shift some of your own funding to agriculture. However, this would depend on national policy. A national policy might encourage a county to put funds into a particular area in exchange for a contribution to that area by the county.

### 10. How do counties make their views known on issues related to national policy, national spending, and the sharing of revenues between the two levels of government?

The Constitution and PFM Act 2012 expect national and county governments to debate and coordinate fiscal policy in a number of ways. First, it is the role of the Senate to represent counties in the national Parliament. This includes debating and passing bills that affect counties, including the annual County Allocation of Revenue Bill, which divides resources among the counties. The Senate is given considerable power to influence the overall criteria or formula used to share resources among counties every five years as well (every three years for the first two formulae/criteria).[16]

The Senate can also adjust the formula at any time with the support of two thirds of its members. Thus, any issues which affect the overall distribution of resources to counties, or national policies that affect county spending, should be dealt with by the Senate, and any county should approach their Senator on these issues.

The PFM Act also creates another body for consultation, known as the Intergovernmental Budget and Economic Council (IBEC). This body is chaired by the Deputy President, but the principal members of the Council are the Cabinet Secretary for Finance at national level, and the County Executive Committee members for finance from all of the 47 counties.[17] It also includes the CRA and representatives from the Parliamentary and Judicial Services Commissions (both of whom make their own budgets under the law). The Council may discuss any financial or economic issue relevant to the members, but it is explicitly created to discuss:

- The national Budget Policy Statement, Budget Review and Outlook Paper and Medium Term Debt Management Strategy
- Budgeting at both levels of government
- Debt and loan guarantees
- Sharing of revenues between national and county and among county governments
- And the timetable for disbursing funds from the national Consolidated Fund (which is similar to the County Revenue Fund but at national level)

This body is to meet at least twice a year.

## Sources of Revenue for Counties

### 11. How will counties fund their operations?

Counties will have two main sources of funding: revenues they raise on their own, and revenues that are transferred to them by the national government. The revenues from national government, which must be at least 15 percent of revenues collected by national government, will be the larger share. It is possible for counties to receive funding from loans or grants from donors as well (see Q20). But, for most counties, their single biggest source of revenue will be in the form of transfers from the national government.

Nevertheless, counties will also want to find ways to enhance their own revenues. As per the Constitution, counties can generate revenues from property and entertainment taxes, and from fees charged for services. Any additional taxes that counties may wish to introduce must be approved by Parliament first (see Q39 for more on taxes). The Constitution also gives the new Commission on Revenue Allocation (CRA) responsibility for assisting counties (and national government) to find new sources of revenue (see Q14 for more on CRA).[18]

### 12. You didn't mention the Equalisation Fund. Is that not another source of revenue for counties?

The Constitution does create something called an Equalisation Fund. This Fund receives one half of one percent of all national revenue each year and is to be used for basic services in poor areas.[19] However, the Constitution says that the Fund may be spent either directly by the national government, or it may be given to counties as a conditional grant. The Commission on Revenue Allocation (see next question for more on CRA) must make a recommendation on this.

If the money is given to counties as a conditional grant, then it will be part of their revenues. However, if it is spent by national government, it would not be part of a county's funding. Either way, the Fund will only constitute about 3 billion KSh based on the 2010/11 budget figures, or less than 2 percent of the total monies that are to go to counties based on the CRA recommendations from 2012.

No final decision has been made about how to use the

Equalisation Fund, but the CRA has released a draft policy for discussion. Among the recommendations are that the Fund should be used as a conditional grant to counties, and that it should only be used to fund basic services in 14 marginalized counties (as defined by CRA).[20] The 14 counties are listed below:

1. *Turkana*
2. *Mandera*
3. *Wajir*
4. *Marsabit*
5. *Samburu*
6. *West Pokot*
7. *Tana River*
8. *Narok*
9. *Kwale*
10. *Garissa*
11. *Kilifi*
12. *Taita Taveta*
13. *Isiolo*
14. *Lamu*

**13. What is the process for determining the size of the transfers that my county will receive from the national government?**

Counties can actually receive two main kinds of transfers. The first and most significant of these for now is known as the "equitable share," sometimes also referred to as the "15 percent," because the Constitution requires counties to receive a minimum of 15 percent of national revenues. This is an unconditional grant. It is unconditional because it can be spent according to county priorities and is not tied to specific items. It is not "free" money, however, because it is the main source of funding for all county functions as assigned by the Fourth Schedule of the Constitution. In other words, it is the main source of money for county health, agriculture, housing and infrastructure. It is also the main source of funding for all salaries and administrative costs that counties must pay across their areas of responsibility.

Counties can also receive additional transfers from national government. These grants may be unconditional or conditional (tied to spending on specific items). It appears that the national government has tried to estimate the cost of delivering services in counties in order to determine the size of the "equitable share" grant, such that if the cost is above 15 percent, counties will receive more than 15 percent of the revenues in the form of an unconditional grant. Estimates of the size of the equitable share have ranged from about 20 to 34 percent of revenues. However, debate continues about the assignment of functions to each level of government and the correct costs of these functions, so this figure may change. It cannot be less than 15 percent, however. Recall that this is 15 percent of revenues for all counties as a whole. The money must then be divided among the counties.

Beyond the equitable share, any additional transfers to counties are likely to come in the form of conditional grants, meaning that counties can access the funds only if they use them for particular things. For now, these conditional transfers are likely to be smaller than the equitable share.

**14. Let's start with the equitable share transfer. How and when is a County's share determined?**

The Constitution says that a new body called the Commission on Revenue Allocation (CRA) must make recommendations around revenue sharing, including the equitable share. The CRA must send its recommendations at least six months before the beginning of the financial year (that is, by the beginning of January), unless the Cabinet Secretary for Finance and the CRA agree to a later date. Although the CRA makes a recommendation on the total share of revenues that go to counties, and the amount that goes to each individual county, the actual decision remains with the Senate and the National Assembly. The formula or criteria must be revised every five years, except for the first two arrangements, which will be revised after three years.[21] However, the Senate can, with two-thirds of members supporting, opt to amend the formula/criteria at any other time.[22]

In 2012, CRA proposed, and Parliament adopted, the first formula for sharing money between the counties. The formula weighs different factors in deciding how much each county will get. The CRA based its formula on "expenditure needs," or a very simple and rough estimate of factors that make the cost of services higher in some counties than others. The final formula has the following weights (in order of importance):

- county population (45 percent)
- a basic share that is equal for all counties (25 percent)
- county poverty level (20 percent)
- land area of the county (8 percent)
- and county's level of fiscal responsibility (2 percent)

This does not mean that the counties will receive the same amount every year. For example, suppose that Parliament agrees that each county should receive a certain amount of money based on its population. Then it will continue to receive money based on its population until the criteria (or formula) are discussed again by the Parliament. However, if the total amount of money to be shared changes each year (e.g., because total government revenues increase), or new data shows that the populations of counties are changing (e.g., new census data is released), the actual amount they receive each year will be different based on these changes.

Therefore, the actual sharing of resources must be approved by the Parliament annually through a Division of Revenue Bill and a County Allocation of Revenue Bill. The Constitution requires these two bills to be presented to Parliament no later than when the overall budget estimates are presented (by April 30). However, the PFM Act actually moves this up so that they are to be presented with the national Budget Policy Statement (by February 15). This is helpful to counties, because you must prepare your County Fiscal Strategy Paper by February 28 and it will help to know how much money is being proposed for your county's equitable share transfer. These two national bills are to be approved within 30 days of tabling in Parliament.

## 15. What about conditional grants?

As of now, the main conditional grant, proposed by the CRA, is the Equalisation Fund transfer (see Q12). However, there is some additional funding in the 2013/14 County Allocation of Revenue Bill to support certain services, such as hospitals that serve people from multiple counties. There are also conditional transfers to maintain services that are paid for by donors and that cannot be devolved directly.

The Constituency Development Fund was revised in the CDF Act 2013 to allow it to continue as a conditional grant, but it is currently designed as a grant that bypasses counties, and will therefore not be part of county revenues (The CIC has questioned the constitutionality of the CDF Act 2013, so it is not clear if it will remain as currently structured.) Kenya has a number of other smaller conditional grants that may or may not continue. For example, the Health Sector Service Fund (HSSF) is a direct grant to lower level health facilities. The manner in which these Funds will be handled will be determined through the intergovernmental negotiation mechanisms established under the Intergovernmental Relations Act.

### 16. When will my county receive money transferred from the national government?

The law states that these transfers for counties must be sent at the beginning of every quarter, and no later than the 15th day of the quarter.[23] This is very important, because in many countries that have tried devolution, there are long delays in receiving money from the national government. Making it a legal requirement that money be distributed regularly at a set time provides counties with certainty and legal standing to ensure they are financed in a timely fashion.

The actual amounts to be disbursed in each quarter will be based on the schedule prepared by the national Treasury after it has consulted the Intergovernmental Budget and Economic Council (see Q10). The figures will need to reflect the realities of the national government's cash flow throughout the year, as revenues tend to come in faster at certain times than others.

### 17. Can a county borrow money?

There are two kinds of borrowing that a county may do. One is longer-term borrowing for capital projects, such as infrastructure. The other is short-term borrowing to manage a county's cash flow. For example, sometimes a county may run short of cash while waiting for a revenue transfer from national government and would need to borrow money for just a few weeks. These are very different types of borrowing. In this section, we discuss longer-term borrowing.

The Constitution and PFM Act limit the degree to which counties can take on debt. First, counties may only borrow long-term for capital expenditure.[24] The borrowing must be consistent with the goals of the County Fiscal Strategy Paper and debt management strategy, and it must be approved by the county assembly.[25]

All loans that a county wants to obtain must be guaranteed by the national government, meaning that national government agrees to pay off the loan if the county fails to do so.[26] This means that county governments will have to request a formal guarantee from the national government before they agree to a loan, in addition to getting the approval of the County Assembly.[27] Before approving any loan guarantee, the National Treasury is supposed to consult with the Intergovernmental Budget and Economic Council, which is a body consisting of all the County Executive Committee members for finance (see Q10). The Council can only recommend, but if a county does not have the support of other counties, it may be difficult to get a positive recommendation. Finally, all loan guarantees provided by the national government have to be approved by Parliament.[28]

The reason the Constitution and PFM Act put limits on county debt are because the debts taken on by counties basically become part of the overall national debt of Kenya. This is particularly true because of the national guarantee for county debt. Around the world, when local governments have borrowed very heavily, this has led to major debt problems at national level. Therefore, the law introduces a number of rules to prevent excessive county debts. Counties should in turn conduct serious analysis of their capacity to take up and repay loans before contracting them. Recall that Kenya's local authorities found it very hard to pay off their debts. This is one reason counties have inherited so much debt from local authorities.

As mentioned above (Q7), by February 28, along with the County Fiscal Strategy Paper, the county government must present a debt management strategy paper to the County Assembly each year. During the year, the County Treasury must also report every quarter on county government loans to the County Assembly.

**18. What information must be in the debt management strategy paper?**

The debt management strategy must contain the following [29]:

- The county's total debt
- The sources of all loans made to the county
- The risks of these loans to the county's finances (for example, loans can be risky if they have interest rates that change over time and can suddenly rise, or if the loans are made in foreign currency, meaning they can be affected by a sudden change in the exchange rate as occurred in 2011)
- Any assumptions upon which the strategy is based (for example, debt strategies are usually based on an assumption about how fast the economy will grow)
- An analysis of how sustainable the county's debt is (debts are unsustainable if the cost of repayment takes an increasing share of the budget over time, leaving less money for other priorities)
- A medium term (3-5 year) strategy for managing the county's debts so that they contribute to county development without becoming unsustainable

This is not the only information that the county must maintain regarding loans, however. The law allows the county assembly to request information on any and all loans at any time and to receive the information within 7 days. Therefore, the County Treasury must also maintain the following information.[30]

- The principal of each loan, the currency of the loan, and all the terms of repayment (interest, other charges, etc.)
- The amount of the loan that has been advanced at a particular time
- The amount that has been repaid at that time
- The balance to be paid
- And the purpose for the loan, and the benefits that have come from taking the loan

**19. Okay, so what about short-term borrowing?**

Short-term borrowing for cash flow is allowed, but it is also restricted. The law permits a county to borrow for no more than a year for this purpose, and the amount that may be borrowed is no more than 5 percent of the county's last audited financial accounts. Because the budget tends to grow over time, this means that this will be less than 5 percent of the current year's budget, and may be based on the budget from two years earlier if that is the most recent audited account.

**20. What about grants or donations from others? Can my county receive grants?**

Yes. With the approval of the County Executive Member for finance, the county can accept grants and donations.[31] These grants may be given directly to the county government or to a county government department or office (entity). Once approved, receipt of these grants must be reported to the County Treasury.

They must also be appropriated through the county budget process.[32] This is an important point: county offices are not free to accept grants without informing the County Treasury and requesting authorization as part of the county budget process. Grants must be tracked using the same accounting rules as all other financial transactions.

**County offices are not free to accept grants without informing the County Treasury**

Some grants require the recipient to also put in their own funds (known as matching or counterpart funding). In this case, the law also prevents government agencies from starting to spend money from grants before the matching funds have been appropriated by the county assembly, or the County Executive Committee member for finance has otherwise given written approval. This is designed to prevent county offices from beginning projects based on matching funds that have not yet been officially committed by the county assembly.

### 21. Can national government stop the flow of funds to counties for any reason?

Yes. Under exceptional circumstances, the Constitution allows the national government to stop up to 50 percent of the funds flowing to a county government for a period of 60 days. Parliament must approve this stoppage of funds, and must renew by legislation any stoppage that is longer than 60 days. Such measures can only last 60 days at a time before they must be renewed.

The Constitution says that the national government may only stop the flow of funds to county governments for "serious material breach or persistent material breaches" as established by legislation. This is then further spelled out in the PFM Act. The PFM Act defines these breaches to include:

- failure (by the county) to make payments when due
- default on financial obligations
- excessive deficits beyond what the law allows
- more than 2 months delay in submitting financial statements to the Auditor-General
- concerns raised by the Controller of Budget or the Auditor General about the finances of the county
- and any additional financial problems that prevent the county from carrying on normal business of procuring goods and services.

Within 7 days of stopping funds, the Cabinet Secretary for Finance must seek approval from Parliament, which has 30 days from the date of stoppage to grant it.

When a county has had its transfers stopped by the national government, the national Cabinet Secretary for Finance must come up with a "recovery plan," working together with the county governor, to fix the problems in the county and eventually restore funding. This must include a clear timeframe for a full recovery of funding.

## Managing County Funds and Accounts

**22. You mentioned that the Controller of Budget or the Auditor General could raise concerns leading to a stoppage in funds flowing to a county. What are the reporting requirements to ensure that funds continue to flow to a county?**

In Q7, we described all of the reports that a county must produce during the course of the financial year. Below, we provide more detail about the contents of these reports (starting with Q30). The Constitution requires counties to follow national laws on financial reporting and budgeting. Any county that wants to ensure regular financial flows from the national government should prepare and submit all of the required reports on time. There are some particularly important requirements that may trigger a stoppage in funds:

- The county must report to the Auditor General on its annual finances no later than four months after the end of the financial year (meaning no later than end of October each year).[33] As in Q21, if the county were to delay reporting more than 6 months, this could lead to an automatic stoppage of funds (meaning if the county did not report by end of December). This report must also be given to the Controller of Budget.

- No money can be withdrawn from the county's bank accounts without written approval of the Controller of Budget.[34] Any violation of this rule could lead to a stoppage of funds.

- Other key reports that must be submitted to the Controller include the county's cash flow plan,[35] quarterly budget implementation reports,[36] and the annual revenue report.

Counties must also follow the law with respect to the management of the county's bank accounts, following the rules for accounting and banking. We discuss this further in the next question.

Finally, the Constitution is very clear that counties must use financial management systems that are compatible with the national system.[37] The PFM Act requires the National Treasury to prescribe the financial management system to be used by the County governments. The Treasury has already done so, requiring the Counties to follow the Integrated Financial Management and Information System (IFMIS) used by the National Treasury. In fact, the Constitution permits the national government to intervene in any county that fails to use a financial system that is compatible with the national system.[38] This is further clarified in the PFM Act.[39]

**23. So where does a county bank the money it receives? Are there any restrictions on how a county holds the money that is transferred to it?**

There are two considerations here: the establishment of "Funds" and the establishment of bank accounts. These are related but separate. A Fund is usually created through a set of bank accounts that may be linked in different ways.

For example, the main Fund that every county must establish is known as the County Revenue Fund. A County Revenue Fund is created through the opening of an account in a bank. In theory, a county could open several linked accounts that would all be under a single Revenue Fund. However, the law does not allow this. The law requires that a single account be opened that is known as the County Exchequer Account.[40] The County Exchequer Account holds all money that is in the County Revenue Fund.

The law requires that the County Exchequer Account be opened either at the Central Bank of Kenya, or at a bank that is approved by the County Executive Committee member for finance.[41] However considering that the Act also requires that the county operate a Treasury Single Account (Q25), the guidelines so far issued on the operation of the County Revenue Funds require that the Fund be opened at the Central Bank of Kenya.

The County Revenue Fund is similar to the Consolidated Fund at national level. Except in special circumstances, all money that a county receives must be paid into the County Revenue Fund (CRF).[42] For example, this will be the Fund into which all major transfers and grants are paid. At the same time, the CRF is also the main Fund from which all county spending will be drawn. This would include most spending authorized by the county budget through the Appropriation Act. An exception would be donor funding given directly to a county entity (office or department) that was appropriated by the assembly, but did not pass through the County Treasury.

## 24. Is the County Revenue Fund the only fund my county may have?

No. The county is required to open at least one additional fund, the County Emergency Fund. In addition, a county is permitted to open additional funds.[43] However, all of these funds must be operated through what is called a Treasury Single Account. More on this in the following question (Q25).

The County Emergency Fund (CEF) is a separate Fund which shall be operated through a separate bank account from the County Exchequer Account (Q23). The CEF is similar to the Contingencies Fund at national level and is only to be used in exceptional circumstances that pose a danger to human life, welfare or the environment. Payments from the Emergency Fund should not be greater than 2 percent of the previous year's total revenues. These payments must be approved within two months after they are made by the County Assembly.[44]

To open additional funds, the County Treasury must seek and receive the approval of the County Executive Committee and the county assembly. The County Executive Committee member for finance must appoint an administrator for each fund. This is essentially like an accounting officer for the fund, who must manage inflows and outflows from the fund and report on these to the county assembly and the Auditor General.[45]

The purpose and use of all money passing through additional funds must be made public and the administrator is responsible for ensuring that any money withdrawn is used for that public purpose.[46]

## 25. Okay, so what is the Treasury Single Account?

Every county must open a Treasury Single Account (TSA). This is the responsibility of the County Treasury. The TSA must be opened either at the Central Bank of Kenya or another bank approved by the County Treasury.

A Treasury Single Account is like a master bank account under which all other bank accounts that are run by the Treasury must sit. Suppose that a County Treasury operates four funds: the County Revenue Fund, the County Emergency Fund, an Infrastructure Fund and a Natural Resource Fund. These four funds could operate through four different bank accounts.

Now suppose that there is no TSA. In this case, there is no link between the accounts. They are all run separately. The disadvantage of this is the following. Suppose that in a given month, the Infrastructure Fund has to make a payment to a contractor, but the Fund account is empty. This could happen because a donor that was to contribute money to the Infrastructure Fund has delayed a payment.

If the donor funds are likely to come within, say, the next month, the county might need to borrow short-term funds to cover the payment to the contractor and then repay these when the donor money comes. Remember that the county is allowed to borrow short-term (see Q19). The normal way for a government to borrow short term is either to go to the short-term money market, or to take an overdraft from the bank (a bank overdraft means borrowing from the bank by drawing down more than you have in your bank account). These types of short-term borrowing come with high interest costs.

However, if a government has money in one of its own accounts that it is not using immediately, it may make sense for one Fund to borrow against another Fund. Maybe there is money sitting in the Natural Resource Fund that is not being used and this could be lent on a short-term basis to the Infrastructure Fund.

The advantage of this is that the cost of the Natural Resource Fund lending money to the Infrastructure Fund is much less than if the government had to borrow this money from the bank or the money market. It saves government money when it can lend funds to itself that are not being used, rather than borrowing. (This is only practical for short-term loans, because otherwise a disruption in one Fund may cause a disruption in other Funds. For example, if the money in the Natural Resource Fund was needed soon, then we would have just spread the problem from the Infrastructure Fund to the Natural Resource Fund.)

A TSA makes borrowing across accounts possible by keeping track of the balances of all government accounts in one place under a single unified account. This way, if one account is short of funds, while another has money in surplus, a short-term "loan" can be made that will prevent the government from needless borrowing.[47]

### 26. Who is actually authorized to collect revenue for the county?

The law says that the County Executive Committee member for finance must appoint "receivers of revenue." A receiver of revenue is responsible for ensuring that money due to the county is collected and turned over to the relevant fund or account.[48] This part of the law is designed to ensure that there is one person who is responsible and can be held accountable for revenues in different county offices. For example, if a particular department of the county receives revenue from a donor, there is only one person in that office who is responsible as a receiver of revenue for ensuring that the money is handled properly.

A receiver of revenue can in turn appoint a collector of revenue to do the actual revenue collection, but that person is accountable to the receiver. Any other person who collects funds on behalf of the county must turn those funds over within 3 days to a designated receiver or collector. A county can also appoint the Kenya Revenue Authority to be a collector of revenue within the county.[49]

## Spending County Funds

### 27. Are there any restrictions on the way my county spends its money?

Yes. Counties must follow the same fiscal responsibility principles that the national government must follow. These are listed here:

- The county's recurrent spending should never exceed its total revenues
- When we look at spending over a three to five year period, at least 30 percent of the budget should go for development (or capital) expenditure
- Some limit should be put on the share of spending that goes for wages and benefits for public officers (but the exact limit is to be defined by county regulations)
- Again over a three to five year period, government borrowing should only be used for development (capital expenditure)
- Public debt should be maintained at a sustainable level (though this is to be defined by County Assembly)
- Tax rates should be reasonably stable and predictable

Counties are also required to table county development plans by September 1 each year. The budget (and therefore county spending) must be aligned with this development plan.[50]

The law also says that the overall fiscal strategy pursued by the county should align with national objectives contained in the Budget Policy Statement.[51]

Finally, the Constitution also lists several principles that must guide all matters related to public finance.[52] These include:

- Openness and accountability including public participation in financial matters
- Promotion of an equitable society, including sharing the burden of taxation fairly, and making special provision for marginalized groups
- Prudent and responsible use of public money
- Clear fiscal reporting

**28. Can the national government tell counties on what to spend county funds?**

Within certain areas, the national government can tell counties how to spend their funds. First, any money which is given in the form of a conditional grant will come with restrictions on how the money may be used by counties (see Q15).

Second, while counties will have broad autonomy to use the funds they receive through unconditional transfers, like the equitable share (see Q14), the national government retains control of policy in a number of areas. For example, according to the Fourth Schedule of the Constitution, the national government retains control of agriculture, health and housing policy, among others. To the extent that policy in these sectors sets targets or county performance standards, counties will need to use their resources to try to meet these targets.[53] However, the Constitution also makes it clear that finance should follow function, and counties should not be asked to do anything for which they have not been given adequate funds.

## The County Budget Formulation Process

**29. What are the key dates in the county budget process?**

We have discussed some of these already in Q7, with a focus on all reporting. The county budget process is also described in Box I below. For convenience, this Box also highlights key moments in the national budget process.

## Box 2: Budget Timeline at County (and National) Level

**August 30.** National Treasury releases a circular to all government agencies starting the process, and setting out guidelines for public participation. The County Executive Member for finance must also release a circular by this date doing the same at county level.

**September 1.** Counties must prepare and table a county development plan in the County Assembly by this date. The plan must be made public within 7 days.

**September 30.** County Executive Committee member for finance must submit the Budget Review and Outlook Paper to the Executive Committee.

**September 1 to February 15.** During this time, the National Treasury and the various ministries and agencies should undertake some type of consultation with the public and other stakeholders. This can include sector hearings as in the past, or visits by Treasury to counties to solicit views. Views from the public should feed into the formulation of the Budget Policy Statement. A similar process should occur at county level under the direction of the County Treasury.

**January 1.** By January of every year, the Commission on Revenue Allocation should submit its recommendations for the division of revenue between national and county governments, and among the counties, to the rest of government.

**February 15.** Cabinet Secretary for Finance to submit the national Budget Policy Statement to Parliament. Also the deadline for the debt management strategy paper, and the Division of Revenue and County Allocation of Revenue Bills to go to Parliament.

**February 28.** Deadline for Budget Policy Statement to be approved by Parliament. This is also the deadline for the County Fiscal Strategy Paper to be tabled in each County Assembly.

**March 1.** Deadline for Budget Policy Statement to be made available to public.

**March 16.** This is the deadline for passing the Division of Revenue and County Allocation of Revenue Bills.

**April 30.** This is the deadline for the Cabinet Secretary to submit the budget proposal, or Budget Estimates to Parliament. It is also the deadline for the Judiciary and the Parliamentary Services Commission to submit their own budgets to Parliament. This is also the date for the county budget proposal to be submitted to the County Assembly.

**May.** This is likely when the national and county Budget Committees will begin to hold public hearings on the budget.

**May-June.** This is when the national and county Budget Committees will table their recommendations on the budget in Parliament.

**May 15.** This is the deadline for the national Cabinet Secretary to give any comments on the Judiciary and Parliamentary budget requests.

**June.** The national Finance Bill to authorize tax and revenue collection is tabled in Parliament. A County Finance Bill is to be tabled at this time in the County Assembly.

**June 30.** This is the end of the financial year, and the deadline for the Appropriations Bill to be passed by Parliament to authorize spending for the new budget year. The deadline is the same for the county Appropriations Bill.

**July.** Sometime in the latter half of July, the final approved budget estimates should be available to the public.

**October 31.** County government to publish an implementation report on first quarter of budget implementation (July-September) no later than one month after the end of the quarter.

**November.** Government must publish the Budget Review and Outlook Paper, reviewing last year's budget performance and this budget year's initial forecasts from the Budget Policy Statement in February. There is no deadline for the publication of the County Budget Review and Outlook Paper, but it should be available around this time as well.

**November 15.** National government must publish an implementation report on the first quarter of budget implementation from July-September no later than 45 days after the end of the first quarter.

**30. So the budget process starts with the Treasury circular in August. What should that circular contain?**

The circular is basically designed to provide a timetable for each step in the budget process and to highlight key priority areas that each county department/sector should take into consideration. In addition, the circular should contain:

- The rules for reviewing each department/sector's spending, and for projecting future spending
- Guidelines and a format for preparing budget requests to the County Treasury
- The formal opportunities that will be provided to the public to input into the budget

While many of the steps in the budget process are required to happen at specific times by law, the period from September through January is largely open for departments to prepare spending plans. The circular should lay out how and when these plans are to be submitted and revised.

**31. The next step is the county development plan. What should this contain?**

In many ways, the county development plan is like a mini-budget. Although the plan is to be presented to the assembly every year by September 1, it is supposed to have a medium-term perspective (3-5 years). The plan should explain how the county is trying to respond to changes in the economy and how it is developing all of its resources (human and physical).

It should identify:

- Key county development objectives and the county programmes that are designed to meet these objectives
- The list of goods and services to be provided under each programme, and performance indicators for their delivery
- A budget for each programme
- Major capital projects
- Details related to any funds to be spent by others, such as donors, in the county

No more than seven days after submitting the plan to the assembly, it must be made available to the public.

It should be noted that each county is also required to prepare a set of additional plans under the County Governments Act 2012. These include:

County sectoral plans (health, agriculture, etc.)
County spatial plans
Cities and urban area plans

The annual county development plan described in the PFM Act also appears to be part of a broader five year county integrated development plan.[54] For more details on these planning requirements, see the County Governments Act, Part XI.

**32. After the development plan, what is the next major step in the budget process and how does a county prepare for it? It looks from the calendar like the next document is the Budget Review and Outlook Paper. Is that right?**

Again, remember that there are always at least two budget processes happening at the same time. The county will be implementing this year's budget while it prepares the coming year's budget. By end of September, the county must prepare a Budget Review and Outlook Paper (BROP). Although this is the next immediate step after the county development plan, it is actually not part of preparing the coming year's budget. Instead, it is a review of last year's budget, and an updating of the current year's budget.

This is easy to see if we look at the contents of the BROP.[55] The main areas of focus for the BROP are the following:

- A review of actual spending versus the budget for the previous year (the financial year that ended in June), including an explanation for differences between budget and actual spending
- An explanation of how the actual financial situation may have made it difficult to meet the fiscal responsibility principles (see Q27)
- An update of the forecasts used for the current budget year and contained in the County Fiscal Strategy Paper released in February (see next question)
- And an explanation for any failures to meet the objectives laid out in the CFSP and how this will be rectified going forward

**33. Okay, so if the BROP is not really the next step in the budget process for the coming year, then we should look next at the County Fiscal Strategy Paper. What should this contain?**

First, recall that the CFSP is similar to the Budget Policy Statement at national level. The BPS is submitted to Parliament by February 15. The CFSP is submitted to the county assembly by February 28. Synchronizing the activities required by these two timelines may cause some complications, because the first rule for the county to follow in preparing its own Fiscal Strategy Paper is to align it with the BPS. Even though the BPS is submitted before the CFSP, Parliament can amend the BPS, and does not have to approve it until February 28, which is the same day that the counties must table their Strategy Paper.

Obviously, this puts some limits on the degree to which the county can align its own CFSP with the BPS. Nevertheless, the core of the Budget Policy Statement is to provide a sense of how the economy is likely to grow and how much the government will have to spend. These forecasts then inform the broad spending by categories, but the details will only come later. At this very broad level, the changes from Parliament are unlikely to be too significant (although if Parliament strongly disagrees with the economic forecasts, the changes could be much larger).

The main purpose of the CFSP is to provide an overall sense of the estimated size of the county budget based on expectations for economic growth, revenues, spending and borrowing. Like the development plan, these estimates are to be provided for 3-5 years, not only for the coming year. A CFSP should also describe how the expected flow of money will help the county to meet key policy objectives, which generally means that, like the BPS, it should give an indication of broad spending plans by sector.[56]

**The law requires the County Treasury to seek views from the public in formulating the CFSP**

The law requires the County Treasury to seek views from the Commission on Revenue Allocation and the public in formulating the CFSP.

### 34. After the County Fiscal Strategy Paper is presented to the County Assembly, what kinds of changes can they make to it?

The main issues under discussion with the CFSP are the aggregate figures for revenues, spending and borrowing, and the assumptions or forecasts these are based upon. In addition, the county assembly can raise issues about the overall policy direction, if assembly members feel that a particular sector is getting too much or not enough weight. The assembly can make amendments to the CFSP and then approve it. Once approved, this then forms the basis for the aggregate revenue and spending figures in the budget proposal that will come in April.

Any changes that are made to the CFSP must still respect overall limits on county borrowing and deficits, and the other fiscal responsibility principles (see Q27).

### 35. What are the guidelines for the presentation of the budget proposal to the county assembly in April?

The budget estimates are to be composed of two sections.[57] The first section is a summary with a narrative explanation of the budget's objectives and key policies. The second section is a detailed presentation of each vote (department, office, government "entity" etc.), programmes within the vote, and the amount of money set aside for these.

The first section must contain the aggregate information that informed the County Fiscal Strategy Paper: revenue, expenditure, deficit, debt. There must also be information on how the budget aligns with the fiscal responsibility principles (Q27). Finally, there must be a memo explaining how any recommendations from consultations with the county assembly were taken into account.

The second section must contain detailed information on:

- All types of revenues expected, including transfers, own revenues, revenues from Equalisation Fund, other grants, and so on, projected for 3-5 years
- All expenditures for each vote and programme, including a clear division between recurrent and development (capital) expenditure
- Information on any loans made and their costs to the government in the current year in terms of principal, interest and other charges

- Additional information about any payments that are not part of the budget but are required by other laws or the Constitution

- And a memo on how recommendations made by the assembly on last year's budget performance are being taken into account in the proposed budget

**36. What happens after the budget estimates have been tabled in the assembly?**

The county assembly has two months to debate, amend and approve the budget estimates in order to finalize them by June 30, the end of the financial year. However, as at national level, the budget estimates do not immediately go to the floor of the assembly for debate. They are first reviewed by the budget committee in the county assembly.[58]

The budget committee makes recommendations to the assembly that are then debated. The law requires that the public and the County Executive Committee member for finance must also be given an opportunity to give their views on these recommendations from the budget committee before they are debated.[59] This implies that the budget committee will hold some kind of public hearing to get these public inputs.

The county assembly will debate the budget estimates and the recommendation and may make changes. Both the County Governments Act and the PFM Act put some limits on the changes that the county assembly may make. The County Governments Act introduces a provision that restricts the changes that a county assembly may make to those that are "in accordance with the recommendation" of the budget committee.[60] This replicates the structure at the national level in Parliament and makes the budget committee in the assembly very powerful.

In addition to this restriction, the PFM Act also puts limits on the types of amendments the assembly may make, and these are also the same as those at national level. Essentially, the law says that if the assembly wants to spend more on a particular area, say health, it must cut an equal amount of funding from another area. This is designed to avoid changes to the budget that increase the deficit. The county assembly is allowed to cut spending without limit to decrease the deficit.[61]

If the assembly is not happy with the overall level of spending, revenues or the deficit, it can try to adjust these issues when it debates and amends the County Fiscal Strategy Paper (Q33). By the time of the budget proposal (budget estimates), however, it is restricted to making changes that do not raise the deficit.

**37. What happens if the county budget is not approved on time?**

The Constitution regulates this problem at national level.[62] The PFM Act creates a similar set of rules at county level.

When the budget is passed, it is done through what is known as an Appropriations Bill. This is basically just a bill that shows the total amount of money that Parliament is approving for each department (or each "vote"). So, once the assembly has made changes to the budget proposal, the County Executive Committee member for finance should lay an Appropriations Bill in the assembly specifying the funds to be used over the next year. Once approved, this becomes the Appropriations Act, and represents the final approved budget.

The PFM Act states that if the Appropriations Bill is not likely to be passed before the new year starts, the assembly can authorize spending up to one-half of the amounts that have been proposed for the coming year.[63] This is designed to avoid the government being shut down due to lack of money.

This issue has already led to lawsuits in Kenya at national level. The courts have ruled that, in general, this procedure can only be used if the Appropriations Bill has been tabled in Parliament, but is not likely to be approved on time. It cannot be used if the Treasury has failed to table any Appropriations Bill. Assuming that this principle will apply at the county government level, this is an important distinction, because the Appropriations Bill will reflect the changes made by the assembly, while, in the absence of such a bill, the vote to spend would be based on the original estimates from the County Executive.

**38. We are not always able to anticipate everything that may happen during the year. After the budget has been approved, is it possible to make changes?**

Yes. There is a procedure for a supplementary budget at county level, which is quite similar to that at national level. A supplementary budget request can be submitted for up to 10 percent of the total budgeted expenditure for the year, unless the County Assembly has specifically approved a higher limit. The money must be approved by the County Assembly within two months after it is used.[64] If the Assembly is not sitting at the time, the supplementary request must be made within two weeks after they return to session.

In addition to the supplementary budget, accounting officers within departments and entities can, with the approval of the County Executive member for finance, adjust spending within their agency (or vote) by up to 10 percent.[65]

Finally, we have earlier mentioned that, in extreme circumstances, the county also has access to its County Emergency Fund (see Q24).

**39. What about the revenue side? You said there is a separate Finance Bill that must be passed? What does a county have to do to prepare and finalize the Finance Bill?**

At both national and county level, a Finance Bill must be approved in order to authorize tax collection and the receipt of other revenues. The law does not state clearly the date on which the Finance Bill is to be introduced into the assembly. However, the bill must be approved by the assembly within three months after the Appropriations Bill is approved. Assuming the Appropriations Bill is approved by June 30, the Finance Bill must be approved by September 30.

For further guidance, the national Finance Bill is to be introduced to Parliament in June on the date when the budget has traditionally been read across the East African Community.

The Finance Bill is to be introduced along with a speech to the assembly, and a report containing recommendations of the Executive Committee member for finance. The form of the report is not specified, but certain guidelines are given for revenue proposals[66]:

- They must align with the overall fiscal framework for the county and the funds that are coming through the equitable share (County Allocation of Revenue Act)

- They must be consistent with principles of equity, consistency and ease of collection

- They must achieve a balance between direct and indirect taxes[67]

- They must take into account tax treaties and international obligations such as those under the East African Community

There are no restrictions on the amendments that a county assembly can make to the Finance Bill, but recall that the overall revenue figures are approved in the County Fiscal Strategy Paper and the budget, so it is not possible to suddenly change revenue policy in a way that would substantially change the overall revenues of the county government.

## Urban Areas and Cities

**40. What happens if there is a city or urban area in a county? Do they have a special budget process?**

Yes. Actually, urban areas must be allocated funds from the county, so this must be taken into consideration in the county budget process. Urban areas and cities also have their own budget process, but this budget must fit into the county budget.

Urban areas and cities are restricted in the types of revenues they can raise on their own, which is why they are to receive county funds. Cities are only allowed to charge fees for services they provide, but they cannot raise their own revenue through taxes. They may also receive grants and investment income.

The law says that the counties must use some form of "objective criteria" to determine the level of demand for services in urban areas when allocating funds to them. These criteria may include population, poverty, physical area, and so on. The criteria should also ensure a minimum amount of money to provide for effective delivery of essential services. The county assembly must also seek the opinion of the CRA when deciding on its criteria for sharing revenues with urban areas and cities.[68]

The budget process for these urban areas and cities should be led by the urban area's accounting officer. Like all other accounting officers in the county, this one will be appointed by the County Executive Committee for finance. In many ways, the urban areas/cities are like a department or office of the county. The August 30 circular that goes to all county departments should also go to urban areas and cities and provide guidelines for budgeting. The urban area/city must prepare a strategic plan and a budget each year, and these must be aligned with the county's plans and the County Fiscal Strategy Paper. Like the counties, the urban areas/cities must follow the same fiscal responsibility principles in preparing their budgets.

Like other county departments, the urban area/city will make budget requests to the County Treasury. The main difference between an urban area/city and a department is that the urban area/city is also managed by a Board, which must approve the budget requests before they go to the Treasury. The budget requests must include the cost of delivering current services as well as any requests for new services, including requests for construction and maintenance of facilities.

The law states that the Treasury shall comment on the budget request and then a more detailed budget request will be submitted for approval by the Board of the urban area/city. The final budget request for the urban area/city must be part of the Appropriations Bill that goes to the county assembly for approval.[69]

### 41. Can urban areas/cities borrow?

Urban areas and cities are restricted from borrowing on capital markets. They may only take loans from or through the county, or directly from a bank in the form of a bank overdraft.[70] They may, however, receive grants or donations with the approval of the County Executive Member for finance.[71]

## County budget implementation, reporting and oversight

### 42. Who is in charge of implementing the budget?

The budget is managed by accounting officers. Every government department/office/entity has an accounting officer appointed by the County Executive Committee member for Finance (see Q6). Accounting officers manage funds for the department or entity where they sit, and they are responsible for ensuring funds are used lawfully and efficiently. As per Q38, accounting officers can make small changes in the appropriated amounts for different entities with approval of the County Treasury. Some restrictions apply to this power, however. These include:

- Money appropriated for capital expenditure must be used only for capital expenditure
- Money appropriated for wages can only be used for wages
- Money appropriated for a particular entity can only be used in that entity.[72]

Accounting officers are also responsible for ensuring that money is accounted for using proper accounting standards, that contracts are properly written and executed, and that the county's assets are properly valued and managed.[73]

Accounting officers must also prepare records for audit and for oversight by the Controller of Budget, and must prepare responses to issues raised by external oversight bodies about the department/entity where they are placed.[74]

It should be noted that accounting officers are also in charge of planning and budgeting for their respective offices, not only implementing. During the initial stages of the budget process, from September to February, these officers will be working with their departments/ entities to help formulate plans and budget requests for the annual process.

### 43. How often do county entities have to report on their spending and how do they do so?

Accounting officers in each county entity must report quarterly on their spending. Within 15 days after the end of the quarter, they must prepare a report for the County Treasury. This report must provide information on both financial performance and non-financial performance. In other words, it must describe and explain if the entity has met its spending targets for the quarter as per the budget, and it must also provide information on performance targets, such as number of beneficiaries served or similar non-financial objectives of the entity.[75]

After receiving all of these reports from each county entity, the Treasury then has an additional 15 days (30 days after the quarter ends) to consolidate them and deliver them to the assembly as the quarterly implementation report (see Q7).

All administrators of public funds must also file quarterly reports following the same rules, except they must also submit their report to the Controller of Budget in addition to the Treasury.[76]

In addition to quarterly reports, all accounting officers and administrators must also submit annual reports. Annual reports are due three months after the end of the year and must go to the Auditor General directly. This requirement also applies to receivers of revenue.[77] Accounting officers and receivers must submit their reports to the County Treasury, Controller of Budget and CRA, in addition to the Auditor.

### 44. What happens if a county agency has not spent all of its money by the end of the year?

Any funds that have been appropriated for a county agency but that have not been spent by the end of the year are automatically returned to the county. If the money has been appropriated but not disbursed, then the money remains in the County Revenue Fund. If the money has been disbursed to the agency but not spent, it must be returned to the County Exchequer Account and a statement that money has been refunded must be sent to the Controller of Budget.[78]

### 45. Are county officials required to do anything else to provide oversight for management of funds?

Yes. External oversight by the Auditor General and Controller of Budget are important, but counties must also have their own internal checks. Of course, the county assembly is to review financial reports, which is one check on the use of county funds (Q43).

Another is the county's internal audit system. All counties must set up an internal audit system consistent with international standards, as well as guidelines set by the Accounting Standards Board in Kenya. The internal audit must ensure transparent management of finances and use of county assets, and will include audits of risk, value for money, and financial and accounting systems.[79]

## Accountability

### 46. Who holds public officers accountable?

The accounting officer in each county department or entity is responsible for ensuring that funds are used properly in that entity. If the accounting officer believes that another public officer has misused funds or behaved improperly, the accounting officer can take disciplinary action against the official.

Improper conduct is defined in the law to include:

- Violating the law
- Undermining financial controls or systems
- Allowing illegal spending
- Failing to pay government bills due

### 47. And who holds accounting officers accountable? What are the sanctions for improper conduct?

In the chain of command created by the law, an accounting officer is responsible for public officers under his or her control at the entity where he or she is an accounting officer, and is also responsible for disciplining them. The accounting officer is in turn under the disciplinary control of the County Executive Committee member for finance.[80] If the CEC member for finance believes that the accounting officer has behaved improperly, the accounting officer should be sacked. The definition of improper conduct for an accounting officer is the same as for any public officer (see Q46). The Constitution also makes accounting officers responsible directly to the county assembly, which appears to introduce a parallel accountability system.

If an accounting officer or other public officer is found to have misused public funds, the PFM Act prescribes punishments that can be applied. Part VII of the Act lays out the types of offences governed by the Act. For certain violations that involve abuse of power, the punishment is a prison fine of up to two years, and/or a fine of up to 1 million Kshs. For an additional set of violations, including corruption, officers may be imprisoned for up to five years and/or fined up to 10 million Kshs. Under the Constitution the government may also recover any loss of money that is caused by abuse of power or corruption on the part of public officers.[81]

**If a public officer is found to have misused public funds, the PFM Act prescribes punishments**

In addition, where a government agency has violated the law, for example by taking on debt which is not authorized, the agency may be sanctioned directly. Among the possible sanctions are to forbid the agency from further borrowing and to withhold funds that the agency would normally receive by law.[82]

## Procurement, county corporations and further questions

**48. A lot of services are actually not delivered by government, but have to be contracted from private providers. Does the PFM Act say anything about procurement?**

The PFM Act has little to say about procurement, but procurement is mentioned in the Constitution. The Constitution calls for separate legislation on procurement, and requires that the procurement of services be done in a way that is “fair, equitable, transparent, competitive and cost-effective.”[83] The Constitution prescribes sanctions for contractors that have not performed and for those involved in corruption, failure to pay taxes, or violations of fair employment law.

Procurement is currently regulated by the Public Procurement and Disposal Act (last revised in 2010), which created the Public Procurement Oversight Authority to manage procurement processes in Kenya. The Act has not been revised since the passage of the Constitution.[84] As an interim measure the Minister for Finance has gazetted the Procurement and Disposal (County Governments) Regulations to prescribe how county governments and their entities shall carry out procurements and disposals.[85]

## 49. Can counties also set up county corporations like national state corporations?

Yes. Counties may establish any county corporations they would like, subject to the approval of the County Executive Committee and only after taking into account the views of the County Treasury on the financial implications of creating the corporation.[86] Once created, a county may only further invest in such a corporation with the approval of the County Executive Committee as a whole, and again taking into account Treasury recommendations.

County corporations must meet all of the same reporting requirements as other county departments or entities. The County Executive Committee member under whom the county corporation falls is responsible for oversight.[87] For example, if a county creates an infrastructure-related corporation, that would fall under the infrastructure-related department and infrastructure-related CEC member.

An annual report must be tabled in the county assembly detailing all county corporations and the extent of county government investment in them.[88] This includes any payments or loans to the corporation and any money received by the county from the corporation. Moreover, an additional report is required every three years to justify continued involvement in all county corporations.[89]

## 50. This guide is helpful, but what do I do if I have further questions?

First, you should refer directly to the PFM Act, Constitution and other laws, as we have not covered everything here. We have only focused on what we think are the most important areas for county officers. But the Act has more to say about a number of financial issues, such as loan guarantees, derivatives, and so on. And of course there is more on national financial processes. If you are interested in these areas, you should refer to the PFM Act itself. You can also read more at:

http://internationalbudget.org/wp-content/uploads/brief15.pdf

Finally, remember that there are also regulations being drafted to support the PFM Act, and those regulations may contain more detail still about a number of issues, including report guidelines and guidelines for public participation.

If you want to rather speak to someone, there are a number of organizations working on issues related to budgeting in Kenya. The place to start is the Parliamentary Budget Office. You can access their website here:

http://www.bunge.go.ke/index.php?option=com_content&view=article&id=201:parliamentary-budget-office-pbo&catid=77:parliamentary-budget-office-pbo.

**And their contact information is:**

Parliamentary Budget Office
Protection House, 10th Floor (Parliament Road)
P.O. Box 41842 00100 - GPO
Nairobi, Kenya
Telephone: +254 (0)20 213 3074, 222 12913 or
284 8000
Email: info@parliament.go.ke

**You can also contact the CIC and the IBP at the following addresses:**

Commission for the Implementation of the Constitution
Parklands Plaza
P.O. Box 48041
Nairobi, Kenya
Tel: +254 (0)20 232 3510
Email: info@cickenya.org

International Budget Partnership
P.O. Box 19875 00202
Nairobi, Kenya
Tel: +254 729 937 158
Email: lakin@cbpp.org

**For questions about the budget process, you can also contact the independent, non-partisan Institute of Economic Affairs:**

ACK Garden House, 5th Floor, Block D
1st Ngong Avenue, Upper Hill/Community
P.O. Box 53989 00200
Nairobi, Kenya
Tel: +254 (0)20 271 7402, 272 1262
Email: admin@ieakenya.or.ke
Website: http://www.ieakenya.or.ke

## Notes


1. PFM Act, 102:2.
2. PFM Act, 137.
3. Constitution, 226:2.
4. PFM Act, 156:2.
5. PFM Act, 105.
6. PFM Act, 166:4.
7. PFM Act, 122:5.
8. PFM Act, 165:4.
9. PFM Act, 159.
10. PFM Act, 165:1.
11. PFM Act, 166:4.
12. PFM Act, 166:4.
13. PFM Act, 166:4.
14. PFM Act, 137.
15. PFM Act, 131:6.
16. Constitution, 96.
17. PFM Act, 187.
18. Constitution, 216.
19. Constitution, 204.
20. http://www.crakenya.org/cra-chairman-launches-marginalization-policy/
21. Constitution, Sixth Schedule, 16.
22. Constitution, 217:8.
23. PFM Act, 17:6.
24. PFM Act, 58:2.
25. PFM Act, 140.
26. Constitution, 212.
27. Constitution, 212.
28. PFM Act, 58.
29. PFM, 123.
30. PFM, 122.
31. PFM Act, 138.

32. PFM Act, 138:5.
33. PFM Act, 163.
34. PFM Act, 109:5.
35. PFM Act, 120.
36. PFM Act, 166.
37. Constitution, 190:2.
38. Constitution, 190:3.
39. PFM Act, 12:1(e).
40. PFM Act, 109:4.
41. PFM Act, 109:4.
42. PFM Act, 109.
43. PFM Act, 116.
44. PFM Act, 112-113.
45. PFM Act, 116.
46. PFM Act, 116:4,11.
47. For more on different ways of setting up Treasury Single Accounts, see http://www.imf.org/external/pubs/ft/tnm/2011/tnm1104.pdf
48. PFM Act, 157-8.
49. PFM Act, 160.
50. PFM Act, 126.
51. PFM Act, 117.
52. Constitution, 201
53. The Constitution gives the national government preeminence in setting “norms and standards” at national level to ensure uniformity and equal opportunity. Constitution, 191.
54. County Governments Act, Part XI, 107,108.
55. PFM Act, 118.
56. PFM Act, 117.
57. PFM Act, 130.
58. PFM Act, 131.
59. PFM Act, 131:2.
60. County Governments Act, 21.
61. PFM Act, 131:3.

62. Constitution, 222.
63. PFM Act, 134.
64. PFM Act, 135.
65. PFM Act, 154:2.
66. PFM Act, 132.
67. Direct taxes, like income tax, are paid directly by the person who bears the cost. For example, a worker has a certain amount deducted directly from income to pay the tax. Indirect taxes, like VAT, are often paid by someone else, such as a retailer, on behalf of the final consumer. But the cost of the tax is usually born by the consumer because the price of the goods will be higher to cover the tax paid by the retailer.
68. PFM Act, 173.
69. PFM Act, 175.
70. PFM Act, 177.
71. PFM Act, 178.
72. PFM Act, 154.
73. PFM Act, 149.
74. PFM Act, 149.
75. PFM Act, 166.
76. PFM Act, 167.
77. PFM Act, 165.
78. PFM Act, 136.
79. PFM Act, 155.
80. PFM Act, 156.
81. PFM Act, 196-199, 202 and Article 226(5) Constitution.
82. PFM Act, 204.
83. Constitution, 227.
84. http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Acts/PublicProcurementandDisposalAct_Cap412C_.pdf
85. http://www.ppoa.go.ke/downloads/Regulations/COUNTY%20GOVERNMENTS%20PROCUREMENT%20 REGULATIONS%202013.pdf
86. PFM Act, 182.
87. PFM Act, 184.
88. PFM Act, 185.
89. PFM Act, 185:3.

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