

# Technical Advisory to County Assemblies on Fiscal Affairs during the Covid-19 Pandemic

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REPUBLIC OF KENYA



COUNTY ASSEMBLIES' FORUM (CAF)



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# I. Introduction

## I.1 Background

The County Assemblies Forum (CAF) is the coordinating body of the 47 county assemblies in the Republic of Kenya through promotion of networking, synergy, liaising for intergovernmental relations and enhancing good practice in legislative development. Its functions include, among others, providing a platform for consultation amongst members of county assemblies and undertaking citizen engagement on the roles and functions of county assemblies.

Kenya, like other countries worldwide, is facing the Corona Virus Disease (COVID – 19) that has affected various sectors, the socio – economic development and well – being of its people. COVID – 19 was declared a pandemic by the World Health Organization (WHO) on 11 March 2020. It is caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS – CoV – 2) virus. Treatment for disease through vaccination is still being sought as countries globally resort to available therapies and measures of curbing its spread. The situation remains unpredictable as to when normalcy will resume.

The pandemic has posed new and serious challenges for legislatures in countries around the world. Measures taken to contain spread of the virus, make it difficult for legislative arms to operate particularly because existing rules and procedures demand physical presence of assembly for passing of resolutions. Parliaments also tend to be stuck on usual conduct of business and less focused on adopting digital and technological alternatives that may be useful for conducting business during unprecedented situations, like now.

CAF has the responsibility of providing technical advisory and material resources to facilitate continued service delivery of county governments amid the pandemic. Specifically, CAF is keen on ensuring that the 47 county assemblies continue to legislate and approve budgetary allocations to enable county executives expend towards addressing COVID – 19.

To this end, CAF working with the Commission on Revenue Allocation (CRA), has sought assistance of UNICEF towards provision of technical assistance to county assemblies on fiscal affairs in addressing COVID – 19. UNICEF has contracted an individual consultant to provide the TA to CAF.

## 2. Advisory on oversight of 2020/2021 budget implementation

### 2.1 Legal framework

2.1.1 Article 201(a) Chapter 12 of the Constitution sets broad provisions that govern public finance in the Republic of Kenya. The provisions cover the entire public expenditure management cycle from planning to budgeting to budget execution (encompassing expenditure, revenue and reporting).

2.1.2 The constitutional provisions on public finance are put in force through specific legislation enacted by Parliament and County Assemblies. The main legislations and applicable regulations the county assemblies will find useful during oversight include:

- i. The Public Finance Management Act, 2012 (PFMA);
- ii. The County Governments Act, 2012 (CGA);
- iii. The Public Procurement and Assets Disposals Act, 2015;
- iv. The Controller of Budget Act, 2016
- v. The Public Audit Act, 2015;
- vi. Other legislation enacted annually to govern the budget and expenditure processes that include:
  - Appropriation Acts;
  - Finance Acts;
  - Division of Revenue Acts; and
  - County Allocation of Revenue Acts.

### 2.2 Rationale

2.2.1 Article 201(a) and (e) of the Constitution speak specifically on transparency, openness, accountability and accurate reporting.

2.2.2 Article 226 details the requirements of keeping of financial records, accountability audit of public entities.

2.2.3 The PFMA and the CGA specify reports that executive is mandated to prepare and present to the county assembly for oversight. The reports must also be published and publicised for the purposes of accountability and transparency to the citizenry.

2.2.4 This advisory attempt to develop robust approaches to ensure that reporting on 2020/2021 expenditure is adhered to as required by the Constitution and related legislation.

### 2.3 Critical reports

- 2.3.1 Annual financial and non - financial reports (Sections 163 and 164 of the PFMA);
- 2019/2020 annual reports

- 2.3.2 Receivers of revenue reports on revenues collected (Section 165 of the PFMA);
  - 2019/2020
  - 2020/2021 in year reporting on quarterly basis
- 2.3.3 Quarterly financial and non – financial reports (Section 166 of the PFMA);
  - 2020/2021 in year reporting
- 2.3.4 Annual and quarterly reports by administrators of established Public Funds (Sections 167 and 168 of the PFMA);
  - 2019/2020
  - 2020/2021 in year reporting on quarterly basis
- 2.3.5 Financial and non - financial reports of the urban areas or cities (Section 180 of the PFMA);
  - 2019/2020
  - 2020/2021 in year reporting on quarterly basis
- 2.3.6 Financial and non - financial reports by county corporations (Section 185 of the PFMA); and
  - 2019/2020
  - 2020/2021 in year reporting on quarterly basis
- 2.3.7 Annual performance reports (Section 47 of the CGA)
  - 2019/2020 report prepared in accordance with the County Performance Management Framework

## 2.4 Highlights on approach

- 2.4.1 Article 226 (2) of the Constitution provides that an accounting officer of a county government entity is accountable to the county assembly. The responsible county assembly committees are expected to engage county executive through designated accounting officers and staff of specific departments or entities in overseeing and scrutinising of expenditure reports specified above.
- 2.4.2 Fiscal analysts and committee clerks are advised to document the above reports as requirements from executive for the respective county assembly committees' membership knowledge. This will enable demand of those reports where the executive has failed to provide.
- 2.4.3 The committees should remain vigilant on adherence to budgetary allocations on while scrutinising financial reports. On non – financial reports, focus should be on extents at which the executive meets objectives, targets, outputs and outcomes

committed in the specific sector programmes, this, including achievement of objectives set for addressing the impacts of the pandemic.

- 2.4.4 County assemblies are also required consider and make recommendations on the quarterly and annual reports by Controller of Budget and annual audit reports by the Auditor General
- 2.4.5 County assemblies are advised to ensure that the executive publishes and publicises the reports as required by legislation in advancement of accountability and transparency to the citizenry. To that end, county assemblies must follow up to ensure views of the public are acted upon by the executive.
- 2.4.6 County assemblies are advised to develop and document a framework of making follow up on recommendations they make on the reports. This is aimed at ensuring the executive implements the recommendations by reporting back to respective committees.

### 3. Progress on activity workplan

#### 3.1 Activity workplan matrix

| Task   | Indicative activities  | Expected outputs   | Time frame                                      | Progress remarks   |
|--|--|--|---|--|
| Developing work plan   | <ul style="list-style-type: none"> <li>Preparation of inception report with detailed work plan for undertaking the assignment</li> </ul>   | <ul style="list-style-type: none"> <li>Work plan agreed upon amongst CAF, UNICEF and consultant</li> </ul>   | To be done by 19 May 2020                       | <ul style="list-style-type: none"> <li>Done</li> </ul>   |
| An analysis of the measures being undertaken by county governments to address COVID – 19                           | <ul style="list-style-type: none"> <li>Conduct an analysis and share recommendation to county assemblies on how to legislate with view to protecting the most vulnerable in society (including children, women, PWDs, people living with HIV, elderly and the severely marginalised groups);</li> <li>Track the measures that county assemblies have taken, summarise good practices and share the good practices across the 47 counties.</li> </ul> | <ul style="list-style-type: none"> <li>Compiled analysis of measures being undertaken by county governments to address COVID – 19 and summarised report on measures taken by county assemblies with recommendations for sharing good practices.</li> </ul> | To be done between 2 and 30 September 2020      | <ul style="list-style-type: none"> <li>Partially reported in the July progress report with corresponding advisories</li> <li>It remains a challenge receiving responses on time because most assemblies are working virtually</li> </ul> |
| Comprehensive review of the fiscal measures appropriate for implementation by county governments during COVID – 19 | <ul style="list-style-type: none"> <li>Advise county assemblies on medium – term issues around the re –building of the economy and the fiscal issues and strategies that will need to be applied,</li> </ul>   | <ul style="list-style-type: none"> <li>Advisory and recommendations on how county assembly committees responsible for fiscal matters should conduct their roles</li> </ul>   | To be done between 2 June and 30 September 2020 | <ul style="list-style-type: none"> <li>The following advisories were completed:               <ol style="list-style-type: none"> <li>I. <b>June</b> Technical advisory on effective budget scrutiny</li> </ol> </li> </ul>               |

| Task  | Indicative activities   | Expected outputs  | Time frame  | Progress remarks  |
|---|---|---|---|---|
|   | <p>including preparatory measures need to be taken now towards recovery and resilience;</p> <ul style="list-style-type: none"> <li>• Conduct analysis and advise county assemblies on how to put in measures to support MSMEs to stay afloat and quickly rebound in medium – term.</li> </ul>   | <p>legislating proposed budget estimates for 2020/21 and subsequent 2021/22 MTEF strategies and programmes to address effects of COVID – 19;</p> <ul style="list-style-type: none"> <li>• Advisory and recommendations on legislating the Finance Bills and revenue raising measures to incentivise MSMEs.</li> </ul> |   | <p><b>2. July</b> Technical advisory on conduct of business for county assembly committees</p> <p><b>3. August</b> Technical Advisory on legislating the 2021/2022 budget and medium – term projections for 2022/2023 and 2023/2024</p> <p><b>4. September</b> Technical advisory on oversight of 2020/2021 budget implementation</p> |
| <p>Provide advisory opinion to the county assemblies in consultation with Senate, OCOB, PBO and the GOK COVID – 19 Response Committees)</p> | <ul style="list-style-type: none"> <li>• Develop technical advisories to county assemblies to provide common position and direction during legislation;</li> <li>• Develop comprehensive guidelines on the effective mode of conducting assembly business and techniques in technology to ensure business continuity;</li> <li>• Conduct a review of the available modes for legislatures to work remotely</li> </ul> | <ul style="list-style-type: none"> <li>• Technical advisories</li> <li>• Comprehensive guidelines on conducting assembly business</li> </ul>  | <ul style="list-style-type: none"> <li>• Technical advisories to be done as and when required during the period of the assignment;</li> <li>• Monthly advisory opinions to be done after conducting technologically hosted meetings – 30 June, 31 July, 30 August and 30 September</li> </ul> | <ul style="list-style-type: none"> <li>• Refer above for technical advisories</li> <li>• Two webinars were held based on the advisories. Responses to questions during the June webinar were reported in the June report while those to the September webinar are contained in this report</li> </ul>                                 |



| Task | Indicative activities   | Expected outputs   | Time frame | Progress remarks |
|------|---|--|------------|------------------|
|      | <p>while maintaining efficiency;</p> <ul style="list-style-type: none"> <li>Conduct monthly technology hosted meetings with relevant county assembly institutions including speakers, clerks, committee chairs on relevant issues analysed towards mitigating COVID – 19</li> </ul> | <ul style="list-style-type: none"> <li>Advisory opinions based on issues arising from meetings with county assembly institutions.</li> </ul> |            |                  |

## 3.2 Challenges, lessons learnt and recommendations

### 3.2.1 Update on tasks

The consultant's contract is expected to lapse on 30 September 2020. To date the following activities have been completed by the consultant:

- i. Preparation of the inception report – May 2020;
- ii. Preparation of technical advisory on budgeting and accountability – June 2020;
- iii. Participation in the first Webinar with stakeholders and preparation of responses and advisory on issues raised during the Webinar – June 2020; and
- iv. Preparation of framework and assessment of measures put in place by county assemblies to ensure continued legislating during the pandemic period – July 2020
- v. Preparation of technical advisory on legislating the 2021/2022 budget and medium – term projections for 2022/2023 and 2023/2024

### 3.2.2 Emerging issues

Execution of the assignment continued to encounter challenges emerging from the effects of the pandemic including working from home directives. For instance, it was anticipated that assessment of measures put in place by county assemblies would be completed by end of July 2020; this was not case. The consultant developed a framework that required county assemblies to provide responses as basis of further technical advisories. The work from home directive slowed down responses to the questions in the framework.

Conducting Webinars is also frustrated because of availability of participants considering that most of them are away from usual workstations and thus not able to get notifications on time.

The technical assistance was launched towards the end of the 2019/2020 financial year during which period county assemblies had already considered and adopted the 2020/2021 budget

estimate proposals. This rendered redundant effectiveness of the technical assistance specific to the process of legislating the estimates for 2020/2021 with view of ensuring effects of the pandemic were addressed.

It has now emerged that the pandemic continues to spread worldwide while its effects are expected to last over a longer period than anticipated earlier in the year. Because of this, it remains important to realign the technical assistance to ensure its effectiveness over the medium – term.

### 3.2.3 Aligning the technical assistance to respective financial years

The fiscal framework covered by the technical assistance is on the budget process for 2021/2022 including medium – term projections for 2022/2023 and 2023/2024 started in August

For purposes of legislating 2021/2022 budget process the technical assistance should be applied to:

- i. Consideration and approval of development plans – September 2020;
- ii. Consideration of the County Budget and Review Outlook Papers – October/November 2020;
- iii. Consideration and approval of County Fiscal Strategy Papers – March 2021; and
- iv. Consideration and approval of budget estimates – May/June 2021

### 3.2.4 Recommendation on specific tasks

Responding to the foregoing requires versatile approach on the methodology as follows:

- i. **TASK: Analysis of the measures being undertaken by county governments to address COVID – 19**

#### Indicative activities

- Conduct an analysis and share recommendation to county assemblies on how to legislate with view to protecting the most vulnerable in society (including children, women, PWDs, people living with HIV, elderly and the severely marginalised groups); and
- Track the measures that county assemblies have taken, summarise good practices and share the good practices across the 47 counties.

#### Indicative deliverables

- Periodical draft advisories on enabling legislation and financial management for consideration and review by CAF and CRA. At least one advisory on MSMEs; vulnerable cohorts of society like children, women, PWDs, people living with HIV and the elderly

**Recommendation: These activities are ongoing due to slow responses from counties. The first activity should be addressed through the 2021/2022 budget process during consideration of proposed programmes in each sector. The advisories should be**

provided at each stage of the budget process. Sharing of best practices will also be shared continually.

- ii. **TASK: Comprehensive review of the fiscal measures appropriate for implementation by county governments during COVID – 19**

#### Indicative activities

- Advise county assemblies on medium – term issues around the re – building of the economy and the fiscal issues and strategies that will need to be applied, including preparatory measures need to be taken now towards recovery and resilience; and
- Conduct analysis and advise county assemblies on how to put in measures to support MSMEs to stay afloat and quickly rebound in medium – term.

#### Indicative deliverables

- Summary reports of the key issues discussed from monthly technology hosted meetings between CAF, CRA, UNICEF and relevant county assembly institutions including speakers, clerks and committee chairs on relevant issued analysed;

**Recommendation:** These activities are ongoing, so far only two meetings were held. The meetings will be more successful when pegged to the budget calendar so that participants discuss issues relevant to respective stage of 2020/2021 expenditure oversight and 2021/2022 budget process. The summary reports should be based on the respective budget stage.

- Effective communication of the advisories to relevant stakeholders including CAF, CRA, CoG, UNICEF, UNDP, UN Women and other development partners. One communique after every 2 months published and circulated

**Recommendation:** CAF is in the process of consolidating the advisories submitted by the consultant for further dissemination. This activity is also supposed to be continuous and pegged on the 2020/2021 expenditure oversight and 2021/2022 budget process.

## 4. Emerging key issues from the September webinar

### 4.1 Budgeting and public participation

**Question:** To what extent should the supplementary budget vary from the original budget estimates? What is the main aim of public participation on the budget by county assemblies? Is it to confirm citizens views collected by the county executive or to get totally new views or both? How best do we oversight these programs?

**Advisory:** Supplementary budgets are supposed to be preprepared to take care of expenditure (already incurred) but not appropriated in the approved budget – the purpose is to seek approval for expenditure beyond the approved budget. Refer to Section 135 of the PFMA for the detailed process

Public participation process has to be legislated (as already provided for in the County Governments Act) – before this is done the conflicts will remain unaddressed. County assemblies are thus advised to ensure public participation laws are enacted to provide framework and roles of each arm towards this area.

Oversight of plans and budgets is enabled by the reports of expenditure and implementation. The reports that county assembly committees are expected to oversight are covered in section 2.3 of this report.

### 4.2 Future webinars

As already noted, webinars will be more appropriate if pegged on the timing of the activities along public expenditure management cycle. The following topics are recommended:

- i. September/October 2020 – Oversight of the 2020/2021 budget implementation
- ii. October/November 2020 – Importance of the County Budget Review and Outlook Paper and County Fiscal Strategy Paper in the budget process

The respective panellist topics should be aligned to the relevancy of the topic to avoid overlaps.