

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

Steps in scrutinising and critiquing the 2020/2021 County Budget Review and Outlook Paper (CBROP) and 2020/2021 first quarter reports

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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.

Contextually, during preparation of this report, the country continues to report increased cases of the pandemic with over 1,000 new infections being reported daily. This continues to impact on how county assemblies are constrained in performing their legislative roles. Politically, the Building Bridges Initiative campaigns for a possible constitutional referendum have taken centre – stage of the country’s politics. County assemblies are expected to be largely involved in the unfolding events; this will also have significant impacts on their operations. Funding of counties through release of resources by the National Treasury remain challenging. This means that the executive is not spending on budget execution as anticipated thereby impacting negatively on the assemblies’ roles of overseeing the 2021/2021 implementation processes.

This report provides steps that will guide the county assembly committees responsible for fiscal affairs to perform their legislative roles in scrutinising and critiquing the 2020/2021 CBROP and first quarter reports. Discussions with county assemblies confirmed that fiscal analysts supporting the county assembly committees were capable of summarising both the CBROP and quarterly reports, they however require assistance on developing concise steps on how members can approach the actual critiquing and scrutinising of the documents. This technical assistance is delivered in form of an advisory that will be shared across county assemblies through CAF.

2. The 2020/2021 County Budget Review and Outlook Paper (CBROP)

2.1 Legal framework

2.1.1 Section 118 of the Public Finance Management Act (PFMA) requires county treasuries to prepare the CBROP annually for submission to the county executive committee by 30 September. The executive committee is required to consider and approve the CBROP not later than fourteen days (for this case approximately by 14 October 2020 of the same year)

2.1.2 The CBROP must contain the following information:

- i. Actual fiscal performance of the previous year (in this case 2019/2020) compared to the appropriation for that year.
- ii. Updated economic forecast including changes from forecasts in the most recent Fiscal Strategy Paper (FSP, approved in February 2019 for 2019/2020 fiscal year).
- iii. How actual performance of 2019/2020 deviated from fiscal framework contained in the FSP approved in February 2019 for 2019/2020 fiscal year.
- iv. Reasons for deviation from financial objectives in the 2019/2020 FSP and proposals to address the deviations within specific time frame.

2.1.3 The CBROP must be presented to the county assembly for its consideration not later than seven days (approximately by 21 October 2020) following adoption by the county executive committee. The law does not specify when the county assembly is required to adopt the CBROP. The county treasury is also supposed to publish and publicise the CBROP.

2.2 Linkage of CBROP within the MTEF budget process

2.2.1 It should be recalled that provisions of Sections 118 and 126 of the PFMA do not specify when the county assembly is supposed to consider and adopt both the CBROP and Annual Development Plan (ADP).

2.2.2 This does not mean that the county assembly has limitless time to consider and adopt the two documents specifically because they are linked, and they will be helpful during the assembly's approval of the 2021/2022 FSP in February 2021. They should not be scrutinised and critiqued in isolation but alongside each other.

2.2.3 The 2021/2022 ADP presents broad development priorities as one – year extracts of the County Integrated Development Plan (CIDP). For this case, the executive already presented the ADP on 1 September 2020 with one – year development priorities as extracted from the 2017 – 2022 CIDP.

2.2.4 The development priorities in the 2021/2022 ADP are supported by budgets that are not ceiled in any specific fiscal framework and thus remain for indicative purposes only.

- 2.2.5 Other than providing a comparison between the actual fiscal performance of 2019/2020 fiscal year and that year's appropriation, the CBROP sets the tentative sector fiscal ceilings for the next year (in this case 2021/2022) budget process.
- 2.2.6 The 2020/2021 CBROP projects tentative fiscal framework (sector ceilings) for 2021/2022 budget process. It is at this point that the county assembly has an opportunity to make comments on the indicative development budgets in the 2021/2022 ADP
- 2.2.7 The comments by the county assembly on the 2021/2022 ADP and the adopted tentative sector ceilings in the CBROP should be communicated to the county treasury for onward sharing with the sectors.
- 2.2.8 The sectors are required to prepare MTEF sector reports in January 2021 based on the development priorities in the 2021/2022 ADP while aligning the projected budgets in the sector reports to the tentative sector ceilings provided for in the CBROP. This is a requirement of Regulation 30 (1) (a) of the Public Finance Management (County Governments) Regulations, 2015 (PFMCGR) 2021/2022 MTEF sector reports that must include fiscal projections for 2022/2023 and 2023/2024.
- 2.2.9 The 2021/2022 fiscal framework that the county assembly will approve in February 2021 will contain the bidding sector ceilings that will form basis of the 2021/2022 budget estimates.
- 2.2.10 It is clear that the journey begins with annual extraction of 2021/2022 development priorities from the CIDP through the ADP. The CBROP updates the fiscal environment by providing tentative fiscal ceilings based on the actual performance of 2019/2020. The ceilings in the CBROP form basis of MTEF sector reports that align the indicative budgets in the ADP for presentation into 2021/2022 MTEF sector reports that must include fiscal projections for 2022/2023 and 2023/204.
- 2.2.11 Once the 2021/2022 FSP is adopted and approved by the county assembly, the executive should align the budgets in the MTEF sector reports with the approved ceilings in the ADP to prepare the 2021/2022 MTEF budget estimates that must include fiscal projections for projections for 2022/2023 and 2023/2024.

2.3 Documents that must be considered

- 2.3.1 2017 – 2022 CIDP
- 2.3.2 2021/2022 ADP
- 2.3.3 2020/2021 FSP
- 2.3.4 How the executive responded to the deviations from the fiscal framework approved by the county assembly (in February 2018) for 2018/2019 financial year during preparation of the CBROP that was done in October 2019 for the 2018/2019 year.

2.3.5 The county assembly is advised to engage the county treasury and respective sectors during the process of scrutinising and critiquing the ADP and CBROP. The proceedings should be documented because they will be helpful in approving the FSP in February 2021 and subsequent budget estimates in in June 2021 and to ensure linkages in the budget process are upheld.

3. The 2019/2020 annual and 2020/2021 first quarter reports

3.1 Legal framework on reporting

The Public Finance Management Act requires preparation of specific reports across the budget execution processes. The reports required include:

- i. Annual financial and non – financial reports (Sections 163 and 164)
- ii. Receivers of revenue reports on revenues collected (Section 165)
- iii. Quarterly financial and financial reports (Section 166)
- iv. Annual and quarterly reports by administrators of established Public Funds (Sections 167 and 168)
- v. Annual reporting on county corporations (Section 185)

The County Treasury is established in Section 103 of the Public Finance Management Act with specific responsibility to monitor, evaluate and oversee the management of public finances and economic affairs of the county government including financial and non – financial reporting.

Highlight

Article 228 of the Constitution establishes the independent office Controller of Budget and the county treasuries are obligated to submit reports of budget execution as required in the Public Finance Management Act.

Article 229 of the Constitution establishes the independent office of the Auditor General and county treasuries are required to prepare and submit financial reports for independent audit and expression of opinions by the Auditor General as to whether public funds in specific financial years have been utilised in accordance with the Constitution and applicable legislations and whether the financial statements are free from material misstatements.

3.2 Understanding the reporting framework

While much effort towards policy, planning and budgeting processes is evident through continued improvement in the quality of plans and budgets prepared by county governments, there still remains wanted attention on reporting of budget execution.

Both the Controller and Auditor General have expressed concerns on the quality of reports prepared by county governments as required by the Constitution and governing legislation. Most of the audit issues expressed by the Auditor General revolve around incompleteness, inaccuracy and invalidity in financial and non – financial reports leading to material misstatements and unfavourable audit opinions.

Publishing and publicising of financial and non – financial reports has not been complied with by county governments. This not only breaches Article 201 (a) of the Constitution but also undermines citizen's accessibility to performance information by county governments thus diminishing the whole purpose accountability and transparency.

3.3 The reports to be considered by county assemblies

3.3.1 Annual financial and non – financial reports (Sections 163 and 164 of the PFMA).

- i. The County Treasury is responsible for consolidating the annual financial and non – financial reports for the county government.
- ii. Non – financial reports provide information on the programme outputs and outcomes and performance analysis regarding achievements against targets.
- iii. The County Treasury must ensure that the accounting standards issued by the Public Sector Accounting Standards Board (PSASB) are made available to the reporting unit with appropriate training on their usage.
- iv. Accounting officers for county government entities designated pursuant to Section 148 of the of the PFMA must be supported by accounting and reporting staff of the County Treasury to ensure the completeness, accuracy and validity of the annual financial and non – financial reports.
- v. The County Treasury is responsible for providing reporting guidelines, through a circular to all accounting officers, for annual financial and non – financial reporting. The guidelines must be accompanied with applicable templates specifying timelines for submission of annual reports to the County Treasury and requirements for compliance with all provisions in Section 164 of the PFMA in detail.
- vi. For the purpose of Sections 163 (4) and 164 (4) of the PFMA, the accounting officers must submit their respective entities' annual reports to the County Treasury by 30 September.
- vii. The County Treasury must consolidate the reports into one by 30 October for onward submission to the Auditor General with copies to the Controller of Budget and Commission on Revenue Allocation.
- viii. The CEC for finance must ensure that the consolidated annual financial and non – financial reports are considered and adopted by the Executive Committee prior to their submission to the Auditor General.
- ix. Annual financial and non – financial reports by county corporations follows the same process as other county entities. The additional provision in Section 164 (5) of the PFMA requires the county corporations' accounting officers to submit financial and non – financial reports for approval by respective CECs responsible for the corporations prior to submission to the County Treasury.

3.3.2 Annual reports by receivers of revenue (Section 165 of the PFMA)

- i. The CEC for finance is responsible for designating receivers of revenue in accordance with Section 157 of the PFMA.
- ii. The CEC for finance must provide reporting guidelines and templates for the receivers of revenue. The guidelines must promote compliance with each provision in Section 165 of the PFMA.
- iii. For the purposes of Section 165 (3) of the PFMA, the receivers of revenue must submit revenue reports to the Auditor General by 30 September with copies to the Controller of Budget and Commission on Revenue Allocation.
- iv. For the purpose of Section 165 (4) and (5), the receivers of revenue must also submit to the county assembly reports on waivers by 31 August
- v. The CEC for finance must arrange for the reports by receivers of revenue to be considered and adopted by the Executive Committee prior to submission to the

Auditor General. The reports by receivers of revenue on waivers must be considered and adopted by the Executive Committee prior to submission to the county assembly

3.3.3 Quarterly financial and non – financial reports (Section 166 of the PFMA)

- i. The County Treasury is responsible for consolidating the quarterly financial and non – financial reports for the county government.
- ii. Non – financial reports provide information on the programme outputs and outcomes and performance analysis regarding achievements against targets.
- iii. The County Treasury must ensure that the accounting standards issued by the Public Sector Accounting Standards Board (PSASB) are made available to the reporting unit with appropriate training on their usage.
- iv. Accounting officers for county government entities designated pursuant to Section 148 of the of the PFMA must be supported by accounting and reporting staff of the County Treasury to ensure the completeness, accuracy and validity of the quarterly financial and non – financial reports.
- v. The County Treasury is responsible for providing reporting guidelines, through a circular to all accounting officers, for quarterly financial and non – financial reporting. The guidelines must be accompanied with applicable templates specifying timelines for submission of quarterly reports to the County Treasury and requirements for compliance with all provisions in Section 166 of the PFMA in detail.
- vi. For the purpose of Section 166 (3) and (4) of the PFMA, the accounting officers must submit their respective entities' quarterly reports to the County Treasury not later than the 15th day following the end of quarter.
- vii. The County Treasury must consolidate the reports into one not later than the 30th day following end of quarter for onward submission to the county assembly with copies to the National Treasury, the Controller of Budget and Commission on Revenue Allocation.
- viii. The CEC for finance must ensure that the consolidated quarterly financial and non – financial reports are considered and adopted by the Executive Committee prior to their submission to the county assembly.
- ix. The county assembly should consider the quarterly reports by engaging respective accounting officers alongside the County Treasury. Article 226 of the Constitution specifies that an accounting officer of a county government entity is responsible to county assembly for the entity's financial management.
- x. The quarterly reports must be published and publicised. This should be through county website, administrative structures and targeted town – hall meetings led by the County Budget and Economic Forum (CBEF) as provided for in Section 137 (3) (b) of the PFMA on financial management roles of the forum.
- xi. Quarterly financial and non – financial reports by county corporations follows the same process as other county entities. The additional provision in Section 166 (5) of the PFMA requires the county corporations' accounting officers to submit financial and non – financial reports for approval by respective CECs responsible for the corporations prior to submission to the County Treasury.

3.3.4 Annual financial and non – financial reports by administrators of Public Funds (Section 167 of the PFMA)

- i. The CEC for finance can establish Public Funds pursuant to provisions and requirements of Section 116 of the PFMA. Operations of the Funds must be reported quarterly and annually in accordance with the requirements of Sections 167 and 168 of the PFMA.
- ii. Non – financial reports provide information on the management of the funds including a report of the Fund Administrator in compliance with the provisions of Section 116 of the PFMA. The non – financial reporting will also include information on winding – up of the Funds, as the case may be, in accordance with Sections 116 (6) and (9) of the PFMA.
- iii. The County Treasury must ensure that the accounting standards issued by the Public Sector Accounting Standards Board (PSASB) are made available to the Fund Administrator with appropriate training on their usage.
- iv. Fund Administrators appointed pursuant to Section 116 of the of the PFMA must be supported by accounting and reporting staff of the County Treasury to ensure the completeness, accuracy and validity of the Fund annual financial and non – financial reports.
- v. The County Treasury is responsible for providing reporting guidelines, through a circular to all Fund Administrators, for annual financial and non – financial reporting. The guidelines must be accompanied with applicable templates specifying timelines for submission of annual reports to the County Treasury and requirements for compliance with all provisions in Sections 116 and 167 of the PFMA in detail.
- vi. For the purpose of Section 167 (3) of the PFMA, the Administrators must submit Fund annual financial and non – financial reports to the Auditor General by 30 September
- vii. The CEC for finance must ensure that Fund annual financial and non – financial reports are considered and adopted by the Executive Committee prior to their submission to the Auditor General and presentation to the county assembly
- viii. The Administrators must present the annual financial and non – financial reports to the county assembly in accordance with Section 116 (7) (c) of the PFMA

3.3.5 Quarterly financial and non – financial reports by administrators of Public Funds (Section 168 of the PFMA)

- i. The County Treasury must ensure that the accounting standards issued by the Public Sector Accounting Standards Board (PSASB) are made available to the Fund Administrator with appropriate training on their usage.
- ii. Fund Administrators appointed pursuant to Section 116 of the of the PFMA must be supported by accounting and reporting staff of the County Treasury to ensure the completeness, accuracy and validity of the Fund quarterly financial and non – financial reports.
- iii. The County Treasury is responsible for providing reporting guidelines, through a circular to all Fund Administrators, for quarterly financial and non – financial reporting. The guidelines must be accompanied with applicable templates specifying timelines for submission of annual reports to the County Treasury and

requirements for compliance with all provisions in Sections 116 and 168 of the PFMA in detail.

- iv. For the purpose of Section 168 (3) of the PFMA, the Administrators must submit Fund quarterly financial and non – financial reports to the County Treasury by the 15th day following end of quarter with a copy to the Controller of Budget.
- v. The CEC for finance must ensure that Fund quarterly financial and non – financial reports are considered and adopted by the Executive Committee after submission to the County Treasury

3.3.6 Annual reporting on county corporations (Section 185 of the PFMA)

- i. Not later than four months after the end of each financial year, the County Treasury shall prepare and submit to the county assembly a consolidated report summarising the extent of county government involvement or investment in, or funding of, all county corporations and county government – inked corporations for the financial year. The consolidated report must be in compliance with all details provided for in Section 185 (2) (a – j) of the PFMA.
- ii. Once every three years, the County Executive Committee member responsible for matters relating to public investments shall prepare a report on the need for the county government continued involvement in, or funding of, the County Corporation or county government – linked company.
- iii. Copies of the reports prepared in Section 185 (1) and (3) of the PFMA shall be submitted to the Controller of Budget, the Commission on Revenue Allocation and the Auditor General.

3.3.7 Performance management reports (Section 47 of the County Governments Act)

- i. Performance management reports are a requirement of the County Governments Act. County Executive is required to design a performance management framework to manage the county public service and implementation of county policies and plans.
- ii. The governor is required to submit annual performance reports of the county executive committee and county public service to the county assembly
- iii. The annual performance management reports must be published and publicised

3.4 Summarised matrix of reporting requirements

Type of report	Applicable legislation	Responsibility	Submission		Requires publishing and publicising
			Due date	Recipient (s)	
Annual financial and non – financial reports	Sections 163 and 164 of the PFMA	Accounting officers for the county government entities	30 September	County Treasury	NO
		County Treasury	30 October	Auditor General, Controller of Budget and	

Type of report	Applicable legislation	Responsibility	Submission		Requires publishing and publicising
			Due date	Recipient (s)	
				Commission on Revenue Allocation	
Annual reports by receivers of revenue	Section 165 of the PFMA	County Treasury Receivers of revenue	30 September	Auditor General County Assembly (Annual report on waivers)	NO
Quarterly financial and non – financial reports	Section 166 of the PFMA	Accounting officers for the county government entities County Treasury	15 th day following end of quarter 30 th day following end of quarter	County Treasury County Assembly National Treasury Controller of Budget Commission on Revenue Allocation	YES
Annual financial and non – financial reports by administrators of Public Funds	Section 167 of the PFMA	Administrators of Public Funds established under Section 116 of the PFMA	30 September	Auditor General County Assemblies (for presentation required in Section 116 (7) (c) of the PFMA)	NO
Quarterly financial and non – financial reports by administrators of Public Funds	Section 168 of the PFMA	Administrators of Public Funds established under Section 116 of the PFMA	15 th day following end of quarter	County Treasury Controller of Budget	YES

Type of report	Applicable legislation	Responsibility	Submission		Requires publishing and publicising
			Due date	Recipient (s)	
Annual reporting on county corporations Report on need for continued involvement or funding of county corporations or county – linked corporations (every three years)	Section 185 of the PFMA	County Treasury County Department of Public Investments	30 October	County Assemblies Controller of Budget Commission on Revenue Allocation Auditor General	NO
Performance management reports	Section 47 of the County Governments Act	Governor	Annually	County Assemblies	YES