strengthening subnational government own-source revenue mobilisation in Kenya

progress, challenges and opportunities
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Introduction

A sound revenue system for subnational governments is a critical prerequisite for the success of fiscal decentralisation in Kenya. Each of the 47 subnational governments (county governments) has executive and legislative authority to budget for and perform devolved functions.\(^1\) In order to fulfil their constitutional mandates, county governments draw their resources from five funding streams:

1. Equitable share equivalent to at least 15% of the most recent audited revenue raised nationally\(^2\)
2. Conditional and unconditional grants from the national government’s share of revenue\(^3\)
3. Equalisation Fund\(^4\)
4. Loans and grants\(^5\)
5. Own-source revenue (OSR)

Own-source revenue – the focus of this report – refers to the revenue generated by county governments from local sources in the form of taxes, charges and fees. Adequate mobilisation of OSR is the key to counties’ improved ability to provide various public goods and services to eradicate poverty and achieve development goals. In the face of rising public debt\(^6\) and increasing expenditure needs\(^7\), enhancing OSR mobilisation is expected to enable counties to bridge funding gaps occasioned by inadequate disbursements from the national government.\(^8\) Moreover, strengthening OSR mobilisation can improve fiscal autonomy through more predictable access to revenue, thereby allowing counties to have greater ownership and control over their development agenda.\(^9\) OSR also has the potential to foster political and administrative accountability of county officials to their constituents.\(^10\)

In this paper, we look at the progress that has been made in strengthening OSR mobilisation in Kenya in the first five years of fiscal decentralisation, covering the period 2013/14 to 2017/18. In doing so, we identify the counties that have made significant progress in enhancing OSR mobilisation and those that are left behind, the challenges associated with OSR mobilisation and opportunities for improvement.

The report begins with analysis of the progress in establishing an effective legal and policy framework for OSR mobilisation. Next, we analyse OSR mobilisation trends – highlighting the share of OSR in total county resources, percentage changes in volumes over time and the extent to which OSR targets were achieved. The next section looks at the challenges that hinder effective OSR mobilisation, as well as existing opportunities for improvement based on a literature review. Finally, we conclude with recommendations.
Legal and policy framework for OSR mobilisation in Kenya

OSR mobilisation in Kenya is underpinned by the Constitution of Kenya (CoK) 2010, the Public Finance Management (PFM) Act 2012, the County Government Act 2012 and the Urban Areas and Cities Act 2011. Article 209(3) of the CoK allows counties to impose property tax, entertainment taxes and any other tax authorised by an Act of Parliament, as well as charges for the services they provide. The PFM Act provides guidelines for management of county revenues including banking arrangements and appointment of revenue receivers and collectors. To give effect to Article 209(3) of the CoK, counties enact specific laws such as the annual county finance acts that authorise tax collection and receipt of other revenues. Counties also enact sector or source specific legislation such as trade licensing, liquor control and property rating/valuation laws that allow them to regulate various sectors through licensing and permits that are acquired at a fee. However, not all county governments have enacted these laws. For instance, only eight counties had enacted rating and valuation laws to facilitate collection of property rates as at May 2017.

Counties also impose an indirect agricultural tax on domestic agricultural trade referred to as cess. Before devolution, the Agriculture Act 1967 allowed the defunct local authorities (LAs) to collect cess and use it as a revenue stream earmarked for improvement of the production of the taxed commodities. However, cess is not clearly defined in the CoK 2010 as one of the taxes that can be imposed by counties. In addition, the enactment of Agriculture, Fisheries and Food Authority Act 2013 means that the Agriculture Act which provided the legal basis for imposing cess before devolution is repealed. To address this legal lacuna, most counties impose cess through their annual finance acts, whereas a few such as Busia and Nyeri have enacted Cess Acts. Nonetheless, there is no clear criteria for determining the applicable cess rate and the products for which cess is levied.

Currently, most counties levy cess not only on agricultural products but also on non-agricultural commodities including natural resources such as sand and timber. What is more, most counties treat cess as a revenue stream that can be used for any expenditure rather than revenue earmarked for improvement of agricultural production as was envisaged under the repealed Agriculture Act. However, in Busia cess is earmarked for road maintenance, whereas in Nyeri cess is earmarked for maintenance of infrastructure in tea-growing areas.

Article 209(5) of the CoK requires counties to impose taxes, levies and charges in a way that does not prejudice national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital and labour. However, in a bid to increase their OSR, county governments have created several regulations to enable them...
to collect more revenue through multiple licenses and permits. For instance, transporters of agricultural produce are often required to pay multiple cess charges as they cross county boundaries to reach various markets. This leads to high distribution costs that are often passed to consumers and undermine the efforts by the national government to create an environment that is conducive for business and investment. In addition, double taxation resulting from weak coordination of tax measures that affect cross county trade discourage private investment.

The proposed County Governments (Revenue Raising Regulations Process) Bill 2017 is expected to address some of these challenges by providing a legal framework for regulating the process to be followed by counties to impose, vary or waiver taxes, fees, levies and other charges. However, the bill will require political goodwill at the executive and parliament level, as well as the support of county governors to fast track its enactment and operationalisation.

According to section 120(1) of the County Governments Act 2012, counties are required to develop a tariffs and pricing policy to guide imposition of fees and charges for public services. In addition, county governments may enact laws and regulations to facilitate implementation of tariff policies.

Tariff and pricing policies are expected to promote equity in application of fees and charges, enhance access to basic services among vulnerable groups through measures such as special tariffs and ensure financial sustainability of public services and use of resources. However, counties are yet to develop and operationalise tariff and pricing policies to provide an objective basis for setting fees and charges for the services they provide. In the absence of effective policies, county fees and charges may be raised in ways that penalise the poor or raise inadequate revenue, thereby constraining provision of quality services.

Citizens have a right to participate in county management and decision-making processes under section 88(1) of the County Government Act. And counties are required to develop legislation to give effect to this provision. Furthermore, section 87 of the County Government Act outlines the principles to be observed in engaging the public in county decision-making processes. The PFM Act also provides for public participation in the management of county resources including establishment of a forum for public consultation. The rationale of public consultation is to ensure that taxpayers have adequate information and ownership of county revenue-raising measures to improve compliance or willingness to pay. However, not all county governments have public participation laws, policies or guidelines, leading to poor consultations on matters relating to OSR mobilisation. The proposed Public Participation Bill 2018 is expected to promote effective public engagement as envisioned under the CoK. Apart from this legislation, it is important to build trust between county governments and citizens to ensure effective public participation.

Overall, several legislation and policies have been developed at national and county level to strengthen OSR mobilisation. Nevertheless, the gaps in the legal and policy framework highlighted above may result in counties being off-track in meeting their OSR mobilisation targets.
OSR mobilisation trends, 2013/14 to 2017/18

OSR volume and as a percentage of GDP

OSR across counties is still little in volume and as a percentage of the national gross domestic product (GDP). OSR volume has been decreasing since 2016/17. In the first five years of fiscal decentralisation (2013/14 to 2017/18), OSR was less than 1% of national GDP. In 2014/15, the amount of OSR collected by the 47 counties increased by 29.1%. However, it increased by only 3.5% in 2015/16. In 2016/17 and 2017/18, OSR reduced by 7.1% and 0.1% respectively. The limited available literature attributes the decrease in OSR mobilisation to poor revenue collection practices and significant revenue leakages.

Figure 1: OSR volume and as a percentage of GDP, 2013/14 to 2017/18, for all 47 counties

OSR is concentrated in ten counties that have high levels of urbanisation and diverse economic activities. Specifically, Nairobi, Mombasa, Nakuru, Kiambu, Narok, Machakos, Kisumu, Uasin Gishu, Nyeri and Kajiado accounted for 72.8% of the total OSR raised by the 47 counties between 2013/14 and 2017/18. Tharaka Nithi, Elgeyo Marakwet, Nyamira, Marsabit, Garissa, West Pokot, Wajir, Mandera, Lamu and Tana River had the lowest OSR, with a combined share of 2.8% in total county OSR raised over the five years. Six of these counties – Marsabit, Garissa, West Pokot, Wajir, Mandera and Tana River also have high incidence of poverty, with over 50% of their populations living below the national poverty line.
Share of OSR in total county resources

The share of OSR in total county revenue is very small – it averaged 10.8% between 2013/14 and 2017/18 – and has been decreasing since 2015/16. In 2014/15, the share of OSR in total revenue for all the counties increased marginally to 12.8% from 10.7% in 2013/14. However, it reduced to 11.3% in 2015/16, 9.9% in 2016/17 and to 9.1% in 2017/18. This decline means that county governments are increasingly depending on disbursements from the national government as their main source of revenue.

Looking at individual counties, Nairobi has the lowest level of fiscal dependence given that 45.3% of its total revenue for the period 2013/14 and 2017/18 came from own sources (Figure 2). Among the top five counties – Nairobi, Mombasa, Narok, Nakuru and Kiambu – OSR accounted for at least 18% of total revenue for the five years reviewed. By contrast, OSR accounted for less than 1.5% of total revenue in the bottom five counties: Garissa, Turkana, Wajir, Mandera and Tana River. Overall, only 11 counties were able raise at least 10% of their total revenues from own sources.

Figure 2: Share of OSR in total county revenue for the period 2013/14 to 2017/18

High fiscal dependence means that counties have limited control over access to resources insofar as the amount of disbursements from the national government is determined by the National Assembly and Senate. This makes planning and implementation of programmes difficult because counties must cut their budgets when funding from the national government is reduced. Furthermore, delays in disbursements from the national government often affect implementation of programmes and provision of key services such as health – a challenge that could be addressed if counties had adequate OSR to fund their budgets. Heavy reliance on national government funding has negative implications for devolution which is expected to facilitate eradication of poverty and inequalities by bringing services and development decision-making processes closer to citizens.
Progress in increasing OSR volume

Looking at the progress of individual counties, three patterns of change in OSR volume can be seen between 2013/14 and 2017/18. Firstly, in at least three of the five fiscal years we reviewed, OSR increased in 17 counties (Figure 3). In these counties, OSR increased in 2014/15 by at least 20% except in Narok (9.3%), Kericho (11.5%), Makuenei (13.2%) and Nyamira (10.9%). In 2015/16, only Makuenei experienced a reduction of 1% in OSR. However, in 2016/17 the number of counties that experienced negative OSR growth increased to 10 but reduced to six in 2017/18. Overall, only Baringo and Nyandarua achieved an increase in OSR in four consecutive years (Figure 3).

Figure 3: 17 counties in which OSR increased in at least three fiscal years between 2013/14 and 2017/18

Secondly, in 21 counties OSR reduced in at least two fiscal years (Figure 4). In nine of these counties – Uasin Gishu, Kajiado, Kwale, Taita Taveta, Isiolo, Elgeyo Marakwet, Garissa, West Pokot and Tana River – OSR reduced in 2015/16 and 2016/17. However, there was recovery in 2017/18 with OSR growth rates ranging from a low of 5.8% in West Pokot to 106.5% in Tana River. As Figure 4 illustrates, OSR growth did not rebound in 2016/17 and 2017/18 in 10 of the 21 counties. Of concern is the continued decline in OSR mobilisation in Kakamega, Migori and Wajir for three consecutive years since 2015/16.
Finally, OSR growth was irregular/fluctuated in nine counties with an increase or decrease in one fiscal year being followed by a decrease or increase in the subsequent fiscal year (Figure 5). And this fluctuation was more pronounced in some counties. For instance, in Lamu an increase in OSR by 73.2% in 2014/15 was followed by a 7% reduction in 2015/16, an increase of 34% in 2016/17 and a decrease of 28% in 2017/18.

Significant fluctuation in OSR creates uncertainties that have negative implications for implementation of programmes and development plans. Given the limited capacity of county governments to borrow, a reduction in OSR can lead to significant expenditure cuts which may adversely affect implementation of development programmes that are central to poverty eradication. Thus, OSR mobilisation should be stable and predictable to facilitate effective planning and budgeting.
Figure 5: Nine counties that experienced irregular OSR growth between 2013/14 and 2017/18

Source: DI based on Controller of Budget data for various years
Progress in achieving OSR collection targets

Annual OSR collection targets were largely missed in the first five years of fiscal decentralisation. In 2013/14 the 47 counties achieved 48.5% of their annual OSR target (actual OSR collected as a percentage of annual target) and this increased to 67.2% in 2014/15 and 69.3% in 2015/16. However, achievement of annual OSR targets reduced to 56.4% in 2016/17. Although achievement increased to 66% in 2017/18, a lot remains to be done to attain the best practice of 95% to 100%.25

Overall, only five counties – Kericho, Homa Bay, Baringo, Bomet and Nyandarua – achieved at least 70% of their annual OSR targets in each of the five years under review. Although Marsabit is one of the counties with the lowest OSR volume, it was the only county that surpassed its annual OSR targets in three out of the five years under review, achieving 104.5% in 2013/14, 204.8% in 2014/15 and 107.3% in 2016/17.26 However, in 2015/16 and 2017/18 achievement of OSR targets in Marsabit reduced to 86.1% and 64.1% respectively.

Bungoma and Tana River realised significant improvements in target achievement. In Bungoma, target achievement increased consistently from 6.6% in 2013/14 to 90.4% in 2016/17 though it reduced to 75.9% in 2017/18. In Tana River, target achievement initially reduced from 36.7% in 2013/14 to 23.7% in 2015/16 but increased to 45.7% in 2016/17 and to 188.8% in 2017/18.

Among the counties that were left behind, Kisii, Mandera and Garissa were not able to achieve even half of their OSR targets in any of the five years under review. In Machakos and Taita Taveta, target achievement was less than 50% in all the years except 2017/18 when Machakos reached 66.7% of its target and 2013/14 when Taita Taveta achieved 51.6% of its target. In Isiolo, target achievement was below 40% in all years except 2017/18 when it met 62.6% of its target.

The significant reversal of the initial gains made by Busia and Nyamira to realise their OSR targets are of concern. In Busia, target achievement reduced consistently from 97% in 2014/15 to 42.8% in 2017/18, whereas in Nyamira target achievement reduced from 94% in 2013/14 to 38.2% in 2017/18.

Low achievement of annual OSR targets is explained in part by poor revenue forecast and analysis that lead to unrealistic targets27, as well as leakages attributed to manual collection of revenue28, weak internal control systems and poor coordination of OSR collection. In addition, delays in passing county finance bills and low capacity of county governments to enforce tax payment affect target achievement. Failure to achieve annual OSR targets leads to financing gaps or budget deficits that constrain the ability of county governments to finance their annual development plans or provide adequate services.
Challenges to OSR mobilisation

Predominance of manual and semi-automated revenue collection constrains OSR mobilisation by creating loopholes for significant revenue leakages. Automation is hampered by unstable power supply and internet connectivity, especially in rural areas, as well as the initial high cost of developing effective revenue collection and management infrastructure. This is exacerbated by the incomplete rollout of the national government’s Integrated Financial Management Information System (IFMIS) to counties to facilitate revenue collection.

Low willingness to pay leads to intentional tax evasion and resistance from taxpayers. This contributes to low achievement of annual OSR collection targets. Low willingness to pay is explained in part by dissatisfaction with public administration and quality of service provision at the county level. Oppressive revenue collection approaches coupled with multiplicity of taxes, charges and fees levied by county governments also contribute to low willingness to pay.

Inadequate skills and expertise in performing key OSR mobilisation tasks such as revenue forecasting, collection, management and assessment of revenue collection costs is a challenge in most counties. This is compounded by equipment that’s inadequate for effective OSR mobilisation. Counties have responded to their human capacity constraints in different ways. For instance, Nairobi and Narok have opted to outsource some aspects of revenue collection to private firms (JamboPay and KAPS Ltd respectively), whereas some counties have benefited from both internal and external capacity building programmes. Additionally, some counties have recruited additional staff to support OSR collection.

However, these initiatives are still inadequate, leading to poor revenue collection practices that have negative implications for achievement of annual OSR targets.

There is limited understanding of the cost of revenue administration at the county level, making it difficult for counties to ensure efficiency in tax collection and formulate appropriate revenue mobilisation strategies. This is attributed to lack of research and data on the efficiency of revenue administration in various counties.

Finally, slow progress in enacting or operationalising effective legal and policy frameworks to underpin revenue administration is a barrier to OSR mobilisation. As mentioned earlier, some counties lack key legislation such as rating and valuation laws that are needed to collect taxes. Establishing an effective policy and legal framework is expected to facilitate OSR mobilisation through clear guidelines and strategies for tax administration and management.
Opportunities for strengthening OSR mobilisation

Prioritising expansion of revenue base by mapping and tapping into unexploited revenue streams is an opportunity for enhancing OSR. Currently, most county governments are facing difficulties in increasing OSR mobilisation because they use outdated valuation rolls to impose property taxes, lack comprehensive databases of businesses that can be taxed and have inadequate understanding of the potential of the various OSR streams at their disposal. This calls for investment in research and assessment of the viability of untapped OSR streams and regular mapping and registration of businesses within counties for taxation. In addition, technical and financial support to county governments could help in updating valuation rolls to increase revenue from property taxes. For instance, a few counties such as Nairobi have initiated the process of updating their valuation rolls but are facing difficulties due to high cost and shortage of qualified valuers.

However, as counties expand their revenue bases, they should avoid regressive taxes that have negative implications for the progress of the poor. This includes taxes that are applied at a flat rate irrespective of ability to pay. Adopting a simple system of graduated tax rate and exceptions for the poorest households could enhance the progressivity of county taxation.

Investing in full automation of revenue collection and management is an opportunity to increase OSR by improving transparency, minimising leakages and ensuring efficiency. Automation can improve willingness to pay by making the process of paying taxes simpler and faster through, for instance, different e-payment options. In addition, automation facilitates effective keeping of tax related data/information which is necessary for effective formulation and implementation of OSR mobilisation strategies.

Most county governments are adopting information and communication technology-enabled revenue collection systems such as mobile money-based payment systems but are yet to fully automate their systems. Kiambu, Kisumu, Bungoma, Mombasa and Taita Taveta are good examples of counties that have automated their revenue collection systems. In Kiambu, OSR collection doubled between 2013/14 and 2015/16 in part due to automation of revenue collection and management. Similarly, automation contributed to increased OSR collection in Bungoma Mombasa and Kisumu.

Creating a favourable business and investment environment through adequate infrastructure development, as well as improving service delivery and regulatory reforms can enhance trade, thereby creating more taxation opportunities for counties. This calls for adequate reinvestment of resources in urban areas where most businesses are located.
addition, counties should fast track establishment of municipal boards and town committees as required by the Urban Areas and Cities Act to facilitate better provision of services and infrastructure.

However, rural areas should not be left behind in development of infrastructure since they are the centres of agricultural production that support taxable trade activities in counties. Improving the quality and availability of services such as health, water and sanitation is expected to enhance citizens’ satisfaction and willingness to pay. This can enhance voluntary compliance, thereby increasing OSR mobilisation.
Conclusion

Kenya adopted fiscal decentralisation to facilitate provision of basic services such as water, sanitation and health at the subnational level to eradicate poverty and improve the wellbeing of its citizens. Progress towards achievement of this aspiration depends in part on the extent to which county governments can raise their own revenue to supplement disbursements from the national government to finance their development plans.

Slow progress in enhancing OSR mobilisation is concerning, leading to high dependence on disbursements from the national government that itself faces significant liquidity constraints due to rising public debt repayment pressures and expenditure needs. OSR accounts for less than 1% of national GDP and volumes have been reducing since 2016/17. This reflects the inability of most county governments to achieve their annual OSR collection targets – a challenge that has negative implications for implementation of annual county budgets. Overall, OSR accounts for at least 10% of total county revenue in only 11 counties.

OSR mobilisation is constrained by various legal, policy, institutional and technological challenges as discussed above. These challenges notwithstanding, there are opportunities for enhancing OSR mobilisation through automation, tapping into unexploited OSR streams and investing in infrastructure and services aimed at attracting businesses or investment opportunities in counties.
Recommendations for strengthening OSR mobilisation

- The national government should provide technical assistance and financial support such as conditional grants to county governments to facilitate full automation of revenue collection. For instance, with financial support from the World Bank and DANIDA, Tanzania’s national government developed the Local Government Revenue Collection Information System (LGRCIS) to automate revenue collection in local governments. Although the LGRCIS has its challenges, it is a major step towards improving OSR mobilisation.

- Finalisation and operationalisation of the Draft National Policy to Support Enhancement of County Governments’ Own-Source Revenue, as well as the County Governments (Revenue Raising Regulations Process) Bill 2017 should be prioritised and fast tracked. This should be accompanied by adequate budgetary allocations during policy implementation to support OSR mobilisation.

- Human capacity constraints in county revenue departments should be addressed through automation, recruitment of adequate technical or skilled staff, as well as training through existing channels such as the Kenya School of Revenue Administration.

- County governments should ensure value for money for taxpayers by providing quality services to enhance willingness to pay taxes. Counties should also sensitise taxpayers on the importance of OSR and demonstrate its positive impacts to enhance voluntary tax compliance.

- Finally, county governments should prioritise improvement of tax compliance by providing transparent and accountable programmes of incentives for early payment and penalties for non-compliance. This should be implemented together with a transparent and fair appeal system to ensure effective resolution of tax related disputes.
Appendix

Figure 6: Percentage change in OSR by county, 2014/15 to 2017/18

Source: DI based on Controller of Budget data for various years
Notes

2 Article 202(1) and 203(2) of the Constitution of Kenya, 2010 (see note 1)
3 Article 202(2) of the Constitution of Kenya, 2010 (see note 1)
4 Article 204 of the Constitution of Kenya, 2010 (see note 1)
5 Article 212 of the Constitution of Kenya, 2010 (see note 1)
7 Pro-poor analysis of Kenya’s 2018/19 budget estimates: what do the numbers tell us? Available at: www.devinit.org/post/pro-poor-analysis-kenyas-201819-budget-estimates/
9 Slack, E., 2017. How much local fiscal autonomy do cities have? A comparison of eight cities around the world Available at: https://munkschool.utoronto.ca/imfg/research/doc/?doc_id=432
12 Based on data from the Ministry of Lands and Physical Planning, Kenya.
16 At the time of writing this report, the bill had been finalised by the National Treasury and submitted to the Cabinet for approval before submission to the National Assembly for debate. At the executive level, the bill is being championed by the Cabinet Secretary for the National Treasury.
17 County Government Act, 2012. Available at: www.kenyalaw.org/lex/actview.xql?actid=No.%2017%20of%202012
18 The bill was due for the Senate’s Committee of the Whole as at the time of writing this report.
19 Based on County Fiscal Strategy Papers (CFSPs) for various counties for various fiscal years. www.treasury.go.ke/media-centre/general-press-releases.html
20 Based on the 2015/16 Kenya Integrated Household Budget Survey data.
21 See Figure 6 in the appendix for detailed analysis of percentage change in OSR volumes.
22 See Figure 6 in the appendix for detailed analysis of percentage change in OSR volumes.
24 www.treasury.go.ke/tax/acts.html
25 With the limited data and literature available, it is difficult to explain the cause of this high achievement.
27 www.samburu.go.ke/downloads/
28 www.treasury.go.ke/tax/acts.html
29 www.treasury.go.ke/tax/acts.html
31 CRA, 2017. CRA trains county revenue officers on enhancement of revenue collection. Available at: www.crakenya.org/cra-trains-county-revenue-officers-on-enhancement-of-revenue-collection/
35 http://nua.unhabitat.org/details1.asp?ProjectId=33&ln=1
36 Controller of Budget Report 2016/17
37 Controller of Budget Report 2015/16
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