



Reasoning About Sharing County Water Funds in Kenya

Assessing the Quality of Justifications For Distribution

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CONTENTS

1.	Introduction	2
1.1	Methodology	3
1.2	Importance of Public Reasons	3
1.3	Research Questions	3
2.	Conceptual Framework	4
2.1	Transparency and Accountability	4
2.2	Public Justification	5
2.3	Public Participation.....	5
2.4	Equity.....	6
3.	Summary Findings	6
4.	Detailed Findings.....	10
4.1	Can we tell from the Budget Documents Where (ward/subcounty) Projects will be?	10
4.2	Where Documents Provide Information on Distribution, Is there any Explanation for the Criteria Used in Distribution?	15
5.	Matters Arising, Recommendations and Analysis.....	23
5.1	Need for Updated Data and Statistics on the Development Status of County Sub-units ...	23
5.2	Good Practices.....	26
5.3	Questionable Practices	29
5.4	The Influence of Projects by Other Stakeholders.....	31
5.5	The Role of the County Assembly.....	31
6.	Conclusion	32
Annex 1		33

1. INTRODUCTION

One of the principal drivers of constitutional reform in Kenya, leading up to the approval of the 2010 constitution, has been a desire to ensure that every Kenyan has access to basic services such as provision of clean and safe water, health care, and access to education.¹ The law is clear that public resources/revenues should be distributed equitably across the country.² While the national government uses a formula in its distribution of revenue to counties, there are no national regulations on the criteria that counties should take into consideration when distributing revenues across their wards. With a few exceptions, county budgets have been distributing resources without reference to any principles or policies on distribution. This undermines deliberation and accountability in the budgeting process.

Most county budgets do not indicate the location (whether ward or subcounty) of development projects within the county. For some county development projects, the budget documents indicate that they are county wide projects, making it hard for the average citizen to follow up on their implementation and hold the government accountable. This is especially the case where these projects are actually divisible among wards and the mode of distribution is not specified. Even where county budgets give a breakdown in monetary terms of both the location and allocation of some or all development projects, these budgets fail to indicate how projects were chosen. In other words, no public reasons are given for the location or type of projects selected.

While there is no one right way of distributing resources equitably within counties, the criteria adopted should be expressly indicated in the key budget documents. These criteria should be accessible to the members of the public so that they can be debated. County budgets should indicate whether the selection of projects was influenced by public participation or derived from other documents, such as the County Integrated Development Plans (CIDPs), Annual Development Plans (ADPs), or sector plans, or whether it originated with Members of County Assembly (MCAs). This will ensure that the constitutional principles of transparency and public participation in public expenditure are upheld.

There are provisions within the legal framework that may assist county governments in the process of distribution of resources. For example, the County Government Act provides that no public funds shall be appropriated outside a planning framework developed by the county executive committee and approved by the county assembly.³ Given this requirement, budget documents should explicitly show the connection between identified projects and various county plans.

The focus of this report is to look at the distribution of county revenues to the water (sub) sector across the 47 counties. We look at ward and subcounty distribution of development expenditure. We

¹ Constitution of Kenya, 2010, Article 6

² Under the constitution Article 201 the PFM Act and the CGA Act

³ Section 104

begin by asking whether we can tell how much is allocated to each ward or subcounty by looking at the various budget documents in the formulation stage of the budget cycle. We focus on the CIDPs, ADPs and Budget Estimates prepared between 2013 and 2016. We then seek to isolate reasons or criteria for spatial distribution that are expressly given in these key budget documents. We do not look at actual spending. Appendix A below presents summarized findings for all the counties referred to in the report.

1.1 METHODOLOGY

This report is based on desk-based examination of key budgetary documents. The research was conducted between the months of August and December 2015. Both qualitative and quantitative analysis was conducted. We look at publicly available documents that are part of the official budget process, focusing on the planning documents and the budget estimates over the past three years (2013-2016). As mentioned above, the research was conducted across all 47 counties in Kenya. The findings and recommendations are augmented by primary and secondary data collected from three counties namely Kisumu, Nakuru and Elgeyo Marakwet.⁴ We focus on the water sector to make the analysis manageable and because this is a key county function that most counties have invested in.

1.2 IMPORTANCE OF PUBLIC REASONS

We believe that major decisions and their justifications should be included in key budget documents. This is our interpretation of the meaning of transparency and public participation in public finance as protected by the constitution. It is possible that spending decisions that are not discussed in these documents are based on perfectly reasonable justifications that take equity into account. However, we assume people access such information about the decision-making process through key budget documents. The availability of reasons in internal documents or oral agreements not readily available to the public indicates a transparency and participation gap, just as does the lack of such reasons altogether. There may be reasons for decisions, but the presence or absence of *public reasons* (reasons given to the public and subject to debate) or *public justifications* is what we are interested in.

1.3 RESEARCH QUESTIONS

1. Do publicly available budget documents provide information about the regional/spatial (ward/subcounty) distribution of county development expenditure?
2. Do publicly available budget documents provide justifications for regional/spatial (ward/subcounty) distribution of county development expenditure?

⁴ See the full paper on the three counties: Mokeira Nyagaka , Assessing the Availability and Quality of Public Reasons for Ward and Subcounty Distribution of County Revenues in Kisumu, Elgeyo Marakwet and Nakuru counties (2016)

2. CONCEPTUAL FRAMEWORK

In distribution of resources across the counties, county governments should uphold certain principles. These principles are not only critical for sound public finance management, but also ensure that budget choices are acceptable to the public. This report is anchored on a set of concepts that support the central assertion that county governments should not only reveal the geographical locations of development projects within the county, i.e., the ward/subcounty, but also give the rationale behind the mode of distribution adopted. This is intended to uphold the following public finance principles:

2.1 TRANSPARENCY AND ACCOUNTABILITY

According to article 201 of the Constitution of Kenya, all aspects of public finance shall be guided by the principles of openness and accountability. Transparency and accountability work as catalysts for better governance.⁵ One way of promoting transparency in states is through decentralization of governance.^{6,7} Decentralization, and in Kenya's case devolution, allows "monitoring of policy and tracing financial flows" so that expenditures become more visible and tangible for citizens.⁸

County governments must disclose budgetary information to the public and other stakeholders. This information should be accessible and appropriate in order for the public to hold leaders accountable. Appropriate information should be characterized by its usefulness and completeness. County governments should be able to show conclusively how they make decisions to distribute county revenues across the county.

It is not enough for county budgets to indicate that the development projects locations and respective allocations therein were identified through consultative forums. There should be sufficient supporting evidence of proceedings of the forums and public participation reports should be available to the public for reference. However, information released to the public must also be structured and synthesized to avoid data overload that leads to greater opacity, rather than transparency.⁹ Information should be disaggregated only to the level needed to assist citizens to effectively participate and track the implementation of public expenditure.

⁵Hardt, L. (2012). The Idea of Good (Enough) Governance. A Look from Complexity Economics .

⁶USAID (2005). *Democracy and Governance*. Retrieved from http://www.usaid.gov/our_work/democracy_and_governance/

⁷ Under Article 174 of the constitution of Kenya; the objects of the devolution of government include promoting democratic and accountable exercise of power; giving powers of self-governance to the people and enhancing the participation of the people in the exercise of the powers of the State and in making decisions affecting them.

Devolution is aimed at recognizing the right of communities to manage their own affairs and to further their development

⁸Kroth, V. (2012, January). Subnational Budget Transparency: An analysis of Ten Pilot Studies. *Measuring Subnational budget Transparency, Participation and Accountability*, p. 5.

⁹Fölscher, A. (2010). *Budget transparency: New frontiers in transparency and accountability*. Open Society Foundation. Transparency & Accountability Initiative.

2.2 PUBLIC JUSTIFICATION

The concept of public justification associated with political liberalism requires that policies adopted by the state must be justified to all members of the public.¹⁰ There ought to be reasons acceptable to all reasonable citizens on how decisions are made by the government.¹¹ Budget estimates prepared and approved by the executive and legislative arms of the government may appear as an imposition, rather than an expression of the public good, when the reasons behind the distribution of revenue are not revealed.¹² Reasons given should be sincere, verifiable, and based on shared values.

There are numerous possible reasons that could drive ward or subcounty distribution of public revenue. These reasons may be political, technical, or normative. These reasons may not be convincing to everyone, but governments should strive to provide justifications that are widely viewed as reasonable, even when some members of the public disagree with them. While it may be impossible to reach a point of unanimous agreement regarding the criteria that county governments should employ in distribution of revenues to wards, the distribution and reasons for it should be subject to public scrutiny and deliberation.

2.3 PUBLIC PARTICIPATION

Article 201 of the constitution dictates that public participation should be central to public finance in Kenya. This principle has been elaborated in both national and county legislation.¹³ The courts have upheld the importance of broad public participation in public finance in several judgements forcing county governments to begin afresh the preparation and approval of public finance legislation.¹⁴ Courts have insisted that public participation is particularly important in the preliminary stages of budget policy making. While the definition of adequate public participation is widely disputed, participation throughout the budget cycle is mandatory. County governments should strive to ensure that there is citizen participation from all decentralized county units and not just from the areas closest to the county headquarters.¹⁵ While the public may not be the initiator of all projects, the criteria to be used should be subject to public participation. If the government is relying on data and research to justify projects, this can only be consistent with public participation when the public is aware of the supporting data and what it tells us about society at a given point in time.

¹⁰Rawls, J. (1993). *Political Liberalism*. New York: Columbia University Press.

¹¹Lister, A. (2010). Public justification and the limits of state action. *Politics, philosophy & economics*, 9 (2), 151-175.

¹²Larmore, C. (2006). Public Reason. In S. R. Freeman (Ed.), *the Cambridge Companion to Rawls*. (pp. 368-369). Cambridge Companions Online © Cambridge University Press.

¹³Part VIII and IX of the County Government Act requires that members of the public should have reasonable access to the process of formulating laws, and regulations, including the approval of development proposals, projects and budgets(section 74). Most counties have enacted or are in the process of enacting public participation acts.

¹⁴Tyson Ng'etich & another versus Governor, Bomet County Government & 5 others [2014]eKLR and Institute of Social Accountability & another v National Assembly & 4 others[2015] eKLR

¹⁵Section 92 of the County Government Act indicates that citizen participation applies to all decentralized units of the counties. Section 48 of the same Act indicates that decentralized units include urban areas, cities, sub counties wards, villages and any further units.

2.4 EQUITY

Equitable development is also a constitutional principle. Equity can be looked at in many ways, but among the most important is regional or spatial equity. This implies that counties must look at inequalities across wards or villages and strive to distribute resources in ways that ensure basic access to services and that reduce gaps in access between poorer and better-off regions.

The County Government Act requires county governments to come up with spatial plans that ensure equity in resource allocation within the county. These plans should provide a framework that ensures underdeveloped and marginalized areas are integrated and brought to the level generally enjoyed by the rest of the county.¹⁶ Spatial plans identify areas where there should be priority spending, influencing the budget allocations by the counties to county sub-units such as wards and subcounties.

3. SUMMARY FINDINGS

In general, 21 out of 47 counties are producing most of the key budget documents, i.e., CIDPs ADPs and annual budgets (both proposed and approved budget estimates). However, many are not publicly available or easily accessible. Only a few counties have uploaded these key budget documents on their websites. 21 out of the 47 counties (45 percent) had not uploaded any of these three budgetary documents to their websites as of December 2015.

For all available CIDPs, there is at least one project that is labelled “countywide” or one that should be undertaken in “all wards” or “all subcounties”, making it difficult to derive the total amount allocated to each decentralized unit.

The following was observed concerning the ward/subcounty distribution of revenue in the county CIDPs:

- 25 counties have given both the location (ward/subcounty) and cost estimates for every water development project (excluding those that are countywide).
- 11 counties have given the location of most water projects without attaching the cost estimates to those projects making it impossible to tell how much will go to each ward/subcounty.
- Eight counties have not given the location and allocation to any water development project/programs whatsoever.

¹⁶ Section 102,103 and 110.

- Three CIDPs were unavailable

For the ADPs, approximately two-thirds of the counties (30 counties) do not have an ADP from any year that is publicly available. Of the 17 counties with at least one publicly available ADP:

- Seven counties give the locations and allocation of projects to specific wards in at least one of the publicly available ADPs.
- Four counties give the location of projects but fail to attach the cost estimates to these projects in any of the publicly available ADPs.
- Six counties do not give the locations or allocation to any particular ward or subcounty in any of the publicly available ADPs

For most counties the approved budgets or revised estimates were unavailable. We wanted to look at approved budgets; however, these were often not available. Given that the structure of the budget does not change significantly at the approval stage of budget estimates, we looked at budget proposals where we could not obtain the approved budget. The overwhelming finding is that 68 percent of county budget estimates (either proposed or approved) available between 2013 and 2016 do not give details concerning specific projects, their location, or cost estimates, making it impossible to tell how much is going to each ward or subcounty.

- In FY 2013/14: Only 19 percent of county budgets (9 counties) indicate the distribution of water projects or programs giving the location and allocation for the water development projects in specific wards and subcounties. About 68 percent (32 counties) do not indicate the specific projects and lack allocations to wards/subcounties. About 13 percent (6 counties) of county budgets were not available
- In FY 2014/15: Only 26 percent of county budgets (12 counties) indicate the distribution (location and allocation) of water projects or programs. About 6 percent (3 counties) give the location of the project names omitting the allocations/cost estimates to these projects. 53 percent of counties (25 counties) do not give any information on distribution of revenue under the water sector. 15 percent (7 counties) of county budgets were not available.
- In FY 2015/16: Only 21 percent of county budgets (10 counties) indicate the distribution (location and allocation) of water projects or programs. About 4 percent (2 counties) give the location of the projects or simply names of projects omitting the allocations/cost estimates to these projects. About 38 percent (18 counties) do not give any information on resource distribution under the water sector. 36 percent (17 counties) of county budgets were not available.

All CIDPs available indicate that the projects therein were identified through public participation and consultations. Generally the public participation reports are unavailable, except for a few cases such as Migori and Kisumu CIDP, where the public participation proposals are attached to it as an annex. Even for Kisumu and Migori county, it is difficult for the readers to make the link between the public participation report and how public inputs influenced the CIDP. This is because the report and the main text of the CIDP are structurally different. While some of the projects in the CIDPs are a product of public participation, there are almost certainly other projects proposed by the public that were not included and other projects included in the CIDP that are not proposed by the public. It is important for the CIDPs to indicate the reasons behind decisions made on what and what not to include.

Of the ADPs available that provide information about ward/subcounty distribution, only six counties explain how the projects therein were identified. They all indicate that the projects in the ADPs were identified through public participation and reference the CIDPs, though no specifics are given. Notably, Elgeyo Marakwet ADP 2016/17 identifies the Equitable Distribution Act as the policy behind all sector allocations.

Of county budgets that do provide information about distribution, few give the criteria for distribution of development expenditure.

- None of the counties provide any explanation for the choices made in the FY 2013/14 budgets.
- Only four counties provide any sort of explanation for the choices made in the FY 2014/15 budgets. These are Baringo, Busia, Nyandarua, and West Pokot county. For all 4 counties, it is indicated that the projects in the budgets are derived from the CIDPs and public participation. For Busia, the budget indicated that the criteria for distribution (deciding the location for projects) should be the demand and distribution pattern for projects as assessed by the department, leaving this open.
- Only 6 counties in FY 2015/16 provide an explanation for the choices they are making in at least one of the budget documents. These are Baringo, Siaya, West Pokot, Busia, Lamu and Nandi County. Similarly, the projects therein are indicated to have been derived from the CIDPs, ADPs, public participation forums as well as ongoing projects. Public participation reports for Kirinyaga and Nyandarua Counties are available online. The Nyandarua county budget proposal does not give any specifics on water projects and thus it is impossible to link the public proposals to allocations in the budget. The Kirinyaga county budget (both the proposed and approved) was unavailable to make any linkages with the proposals in public participation report.

There are counties where the criteria for distribution is given even though the information in the budget documents is not disaggregated to indicate the location and allocation to specific water development projects to wards/subcounties. The criteria are general, making it difficult to understand how specific choices are made. For example:

- Budget Estimates FY 2014/15: Busia gives the criteria to be used for distribution as “demand; Community involvement; Participation and Distribution pattern of already developed systems.”¹⁷ This criteria applies to those projects that do not have specific locations and allocations and gives wide discretionary powers to the water department. It also appears to be repetitive; what is the difference between demand, community involvement, and participation?
- Budget Estimates FY 2015/16: Nandi indicates that the projects identified were chosen through public participation. However, there is no public participation report.

The explanations/criteria can be classified into the following categories:

- The influence of CIDPs and ADPs
- Public participation and consultative forums
- Completion of ongoing projects
- Location of natural resources
- Strategic plans/sector plans
- Special attention to urban centers
- Lists from MCAs and Ward Development Fund projects
- Allocation in accordance with a formula
- Prescribed set of criteria for distribution in the budget circular/budgets or CFSPs

Generally, the quality of data and explanations of distribution is low. Particularly, the degree to which we can link specific public inputs to specific decisions is very low.

¹⁷ Programme Based Budget Estimates(Budget proposal), County Government of Busia, FY 2014/15, page 68

4. DETAILED FINDINGS

4.1 CAN WE TELL FROM THE BUDGET DOCUMENTS WHERE (WARD/SUBCOUNTY) PROJECTS WILL BE?

CIDPS

The CIDP is a five year development plan that counties must prepare as required under section 108 of the County Governments Act, 2012. The CIDP provides development objectives and implementation plans, as well as mechanisms for monitoring and evaluation of county programs and priorities. The plans should identify the institutional frameworks for implementation and clear reporting mechanisms. CIDPs must provide for all known projects, plans, and programs to be implemented within the county by any organ of state and the key performance indicators set by the county. In addition, these plans must have data on the level of development in the county.

CIDPs are meant to be the key input into decisions about the spending of public funds in the county. There is inconsistency in the manner information on distribution of county revenues is presented in the CIDPs. Most counties have no specific (ward/subcounty) projects at all. The few with any specific projects have many projects. Although these are divisible (meaning they will be undertaken in specific locations), allocation to each subcounty unit is unclear. This makes it difficult to conclude the amount proposed to be allocated to each ward/subcounty. The following was observed.

There are a few instances where the exact locations of the projects are indicated. For example:

- Kwale CIDP: specific projects are mentioned for each subcounty (pp. 56&57).
- Kilifi CIDP gives the exact location of every water project.
- Kisii CIDP indicates that there will be establishment of new water projects “in Nyabinyinyi, Riorina and others.” The indication “and others” implies that there are other locations left out of the CIDP.¹⁸
- Mombasa CIDP has a few projects where the exact location of projects is given including construction of Mwache multipurpose dam and rehabilitation of Mzima pipeline.

For most counties, the CIDPs provide for general priorities and projects to be undertaken in the period 2013-2017 without necessarily indicating the location of these projects. It is also common to see

¹⁸ Kisii CIDP page

phrases like "countywide," "all wards," "all sub- counties" and so on but it is not clear whether this means an equal distribution of projects in every ward or location.

- Baringo (popular version CIDP): there is no mention of where certain projects will be or the allocation that is going to go to the individual wards or subcounties. For example, blanket allocation towards drilling and equipping 171 boreholes across the county and constructing four masonry tank "per subcounty" (p.18).
- Murang'a County CIDP has no indication of projects to be prioritized in each subcounty. However, the chapter on implementation monitoring and evaluation indicates that projects will be implemented countywide.

There are instances where the wording of the CIDP is too vague to trace the geographical location of projects. For example, Mombasa CIDP indicates that the subsector priorities include rehabilitation/replacement of 10 percent of the old infrastructure by 2017. The CIDP provides that the County will provide for additional water supply services to Mombasa by construction of 4 wells. The locations of these projects are not indicated.

There are also instances where it is possible to identify the general locations of focus even though exact locations are not given .For example, in Mombasa's CIDP the top ranking in the list of priorities is the provision of water to the urban poor with no mention of specifically which urban areas will be prioritized. It is not clear exactly which urban poor are targeted, but with scrutiny of the poverty index of the urban areas one could speculate about the locations of focus.

There are instances in which part of the plan is to identify priority areas at a later date. In the Mombasa CIDP some projects require identification of areas and survey and design of the work. For example, the CIDP indicates that the county will carry out a comprehensive review of all areas for spaghetti lines and estimated cost of repairs.

For some CIDPs, there is no distribution (ward/subcounty distribution) of projects. This is because all projects are "countywide" and the cost estimates are not broken down to indicate how much will be going to each ward. The CIDPs for Migori and Machakos have this property for all the new projects. For Wajir, Nyandarua, and Murang'a counties, more than two-thirds of the projects are countywide.

ADPS

Section 126 of the Public Finance Management (PFM) Act requires every county government to prepare an annual development plan. While the law does not expressly require ADPs to distinguish allocations to each ward or subcounty, the law requires a detailed description of capital projects. It would be reasonable to expect some level of geographical detail in these descriptions. Most counties

do not have ADPs available. The majority of the ADPs available give the location and allocation to specific projects, allowing us to see the distribution to county sub-units by the water sector/department. Out of the 16 counties with at least one ADP available, six counties do not give any location or allocation to specific projects. ADPs in four counties give the location leaving out the cost estimates for water projects. For those that have at least one ADP available the following was observed.

There are ADPs that mention where (ward and subcounty) all the county projects will be together with the allocations to each project:

- Kwale ADP FY 2015/16
- Baringo ADPs 2015/16 and 2016/17
- Elgeyo Marakwet ADPs 2014/15, 2015/16 and Draft 2016/17
- Nandi both ADP FY 2015/16 and 2016/17
- Meru ADP FY 2015/16
- Lamu ADP FY 2014/15

There are also counties where although all of the projects relate to particular wards and sub counties, the cost estimates/allocations for some projects are not given. This makes it difficult to tell the aggregate amount going to each county sub unit (ward/subcounty). The following ADPs have this characteristic:

- Kisumu ADP 2015/16
- Kwale ADP 2015/16 and ADP 2016/17
- Kitui ADP 2014/15
- Uasin Gishu ADP 2015/16

For other counties, the allocations to wards and subcounties is not given at all, making it difficult to tell the aggregate amount to each ward or subcounty. In some counties the ADPs give the location of only one or two water projects resulting in the same difficulty. For example, Mombasa county ADP

2015/16 does not indicate the location of projects except in one instance.¹⁹ Other county ADPs lacking any mention of distribution include:

- Makueni ADP 2016/17
- Machakos ADP 2016/17
- Siaya ADP FY 2016/17
- Taita Taveta ADP 2015/16 & 16/17
- Nakuru ADP 2015/16 & 2016/17

CFSPS

County fiscal strategy papers (CFSPs) are prepared annually by county governments to provide for broad strategic priorities at sector level to guide the county in the preparation of the budget.²⁰

Generally CFSPs are not designed to provide information on ward or subcounty distribution of resources. However, in some counties, CFSPs mention previous year projects identifying where projects have been implemented. For example, the Kwale CFSP 2015 states that the county government in the last two financial years has initiated various projects to rehabilitate water supply systems, such as the Kibaoni-Kinango pipeline and Mkanda-Kiconeni-Dzombo pipeline.

BUDGET ESTIMATES

With the exception of the Nyandarua, Kisumu, Busia, Kirinyaga, Tharaka Nithi, Embu, Meru, and Taita Taveta county budgets, the 2013/2014 budgets had no mention of ward or subcounty allocation of funds. The following was observed in the 2014/15 and 2015/16 budgets estimates:

Some budget estimates over the past three years mention all the projects and their locations (subcounty and ward):

- Kilifi: in the Programme Based Budget (PBB) 2015/16 the water sector projects are specified in 13 wards and the rest only indicate the subcounty. This gives the impression that they are projects with an impact across the subcounty, but this is not stated explicitly.

¹⁹Social Support Water Systems to District Water Metering Areas 5km of 40-90mmØ HDPE Pipeline laid 1 DMA in Kisauni Subcounty.

²⁰Section 117 of the PFM Act.

- Taita Taveta: the last three budget estimates indicate how much goes to each ward in the water sector.
- Baringo: in FY 2014/15 and 2016/17 there is indication of cost per ward/subcounty as well as countywide projects. The countywide projects include projects that should occur when need arises; for example FY 2015/16 “operation and maintenance for existing water projects-emergency breakdowns.”²¹ For the countywide projects it is impossible to tell how much will be going to each ward/ subcounty.
- Kisumu: all budgets have annexes or lists of ward distribution (2015/16) and subcounties (2013/14 and 2015/16)
- Migori: Budget estimates FY 2014/15 indicates allocation per ward and subcounty. Some projects benefit two to four wards/subcounties and others are distributed equally so that one project (e.g., borehole drilling) will be built in every subcounty.
- Laikipia: Budget estimate FY 2014/15 indicates the projects to be undertaken in each ward under the water sector in the appendix.
- Siaya: approved budget FY 2014/15 and PBB 2015/16 provides for specific projects as and the subcounty, ward and sub-location is given for water sector projects.

Some county budget estimates give the location of only some projects. For these budgets there is no deliberate effort to identify the location of projects; however, one can guess the location of some projects from their names.

- Lamu: the PBB 2015/16 gives specific projects and allocations to each of them. It is possible to discern the relevant wards from the name of the projects.
- Laikipia: the PBB 2015/16 gives an indication of projects to be undertaken in Annex 8. While it is possible to identify in which ward the projects will be undertaken from the names of the project, there is no deliberate effort to reveal how much is going to each ward/subcounty and why.

The majority of the budget estimates are either unavailable or do not mention the ward or subcounty distribution of development projects at all:

²¹ Programme Based Budget (budget proposal), Baringo County Government, FY 2015/16 (April 2015), page 243

- For FY 2014/15, there are 25 counties that lack these details. Twelve counties gave the location and allocation of projects in the water sector. They are: Laikipia, West Pokot, Kisumu, Makueni, Kajiado, Tharaka Nithi, Siaya, Migori, Nakuru, Busia, Taita Taveta and Baringo. Two counties, Embu and Kwale, give either the location or the allocation (mentioning the name of the project) to the projects. Seven county budgets were unavailable.
- For FY 2015/16, there are 18 counties that lack these details. Nine counties gave the location and allocation of projects in the water sector: Laikipia, West Pokot, Kisumu, Makueni, Siaya, Nakuru, Baringo, Taita Taveta and Kilifi. Three counties, Kiambu, Lamu, and Busia, give either the location or the allocation (mentioning the name of the project and not necessarily the location) to the projects. Seventeen county budgets were unavailable.

Even when the budgets do mention projects as location-specific, they often use vague terms, making it difficult to accurately tell how much is going to each ward or subcounty. For example, in the Kiambu PBB 2015/16, it is indicated that in order to increase access to portable water there will be 50 kilometers of assorted pipes for water projects in all sub- counties. But it is impossible to tell exactly where these pipes will be laid. The PBB also indicates that there will be 50 water tanks bought for “various” schools within the county.²² The Kisii Budget Estimates 2013/14 indicates that 0.8M will go towards fixing pipes to “various points.”²³

4.2 WHERE DOCUMENTS PROVIDE INFORMATION ON DISTRIBUTION, IS THERE ANY EXPLANATION FOR THE CRITERIA USED IN DISTRIBUTION?

In this section we look at the distribution criteria indicated in budget documents. We interrogate whether the justifications given are reasonable, complete, and verifiable. Generally, most of the budget documents do not indicate the criteria used in the distribution of revenue across the county. For some, there is a casual (inconclusive) mention of what informed the preparation of these documents. These reasons lack supporting evidence, making it difficult for the readers of budget documents to verify whether the county government actually made budget choices based on the processes they claim to have undertaken. A significant number of county budget documents do not mention any reasons for allocations made to different wards or subcounties.

²² Approved Budget Estimates, County Government of Kiambu, FY 2015/16, page 36.

²³ Approved Line Item Budget, County Government of Kisii, FY 2013/14, Annex II page 24 and 25

Given that most of the 2013/14 budget estimates had no narrative, it is impossible to tell from these budgets the process leading to the spending decisions. In cases where there is such information, the following are some of the criteria used in distribution of revenue across the county:

INFLUENCE OF CIDP AND ADPS

Section 107 of the CGA indicates that the county plans shall be the basis of all budgeting and spending in a county. Section 113 of the same statute indicates that the CIDP shall inform the county's budget and the performance targets of the county. Ideally, budget allocations should therefore be derived from the ADPs or CIDPs. In practice, this has not always happened. For example, in Elgeyo Marakwet, the 2015/16 budget was approved before the ADP 2015/16.

Some county budget estimates and ADPs make reference to the CIDP as the source of the projects and programs identified therein.²⁴ For most county budgets and ADPs there is a general reference to the CIDPs in the foreword or introduction sections. In one case (Baringo), the 2014/15 budget makes reference to the specific pages of the CIDP that include the budgeted projects in the water sector. The following was observed regarding the linkages among all budget documents.

- In Mombasa, projects in the budget estimates FY 2014/15 are similar to the CIDP projects, though they are not detailed enough to be certain.
- Kwale County ADP 2016/17 clearly indicates the link between the CIDP and the proposed projects (p. 40-42). The linkages given relate to general programs such as rehabilitation and expansion of water supply systems. However, in some cases, such as in construction of water dams, the locations in the CIDP are omitted in the ADP.
- Baringo County ADPs for both FY 2015/16 and 2016/17 have columns indicating the source of projects. All projects for the water sector are derived from the CIDP and the Medium Term Expenditure Framework (MTEF). The projects in the ADPs match those in the popular version of the CIDP (for example, construction of the Chemsusu dam).
- Baringo Budget FY 2014/15 indicates that most projects in the water sector are derived from the CIDP. However, there are cases in which the budget fails to indicate the source of the project, implying that they have no linkage to the CIDP.
- Baringo Budget FY 2015/16 indicates that all the projects in the water sector are based on the CIDP.

²⁴Most CIDPs indicate that they are in line with the Kenya's national development strategy Vision 2030 and its Medium Term Plan (2013-2017).

- In West Pokot County, the projects in the PBB 2014/15 resemble those in the CIDP. However, the PBB itself does not make reference to the CIDP.
- In Kirinyaga, some of the projects in the budget estimates resemble those in the CIDP.²⁵ Nyandarua Approved PBB FY 2014/15 indicates that the water implementation program will be as per the Ward-level Public Consultative Report for Nyandarua County Integrated Development Plan 2013-2017 as approved by the County Assembly (p.19). This report is however not available online.
- Lamu County PBB 2015/16 and ADP 2015/16 have similar projects with similar allocations (PBB p. 81, ADP p.19-22).

While most of the budgets and ADPs indicate that the projects therein are derived from the CIDP, it is not always clear to what extent this is actually correct. Often, the structure of the CIDP is different from the budget estimates. For example, there are cases where the CIDP gives the specific projects to be undertaken in the course of five years, but the budget statements only give the programs to be undertaken by the water sector omitting any information on distribution. It is not possible to verify a direct link between the CIDP and the budget. Indicating casually in the foreword sections of the budget that projects were borrowed from the ADP or CIDP is not sufficient justification for the choices made by county governments.

PUBLIC PARTICIPATION AND BUDGET DECISIONS

For most budget documents there is a casual mention in the foreword or introduction sections that the priorities in the documents are based on public participation or wide stakeholder consultations. Consultation forums include electronic media sessions through local radio programs, Second Medium Term Plan consultations as well as those on the county Medium Term Expenditure Framework. While there is some evidence that these consultations took place, there is almost no explanation of how the inputs from these consultations were actually used and why some were incorporated into the budget while others were discarded.

The details to support the claim of wide participation vary across counties. For some counties, no details of the participation meetings are given (for example, CIDPs from Bomet, Mombasa and Homabay). The Elgeyo Marakwet budget estimates FY 2014/15 and 2015/16 and Kwale ADP 2016/17 give dates on which consultations were held. Other county budget documents give the date and venue of the consultations as in Nyandarua CIDP.

²⁵Budget Estimates 2013/14 lists Gatu, Gathigiriri Nyamindi water projects (page 201-229) and Budget Estimates 2014/15 Kaguyu irrigation are all found in the CIDP (CIDP p. 221).

In a few cases documents provide the date, venue, and the public participation reports. For example, the public participation report is provided as an annexure to the CIDP in Kisumu and Migori. Notably, the Tharaka Nithi PBB 2015/16 has an annexure indicating the public proposals for each ward and sub county. However, with both the CIDPs and the budget estimates mentioned from the counties above, the main texts do not clarify whether all projects were adopted or just some of them. If the latter, it is not clear how the county prioritized the projects across the county.

Few public participation reports are available online, and those that are cannot easily be compared to the budget. Nyandarua is one of the few counties that has a FY 2015/16 public participation report available. The report is labelled “Annex 3: summary of priorities identified during public participation”.²⁶ It is impossible to link these proposals to the PBB because the PBB only allocates a lump sum amount to water supply and sanitation projects. For Kirinyaga FY 2015/16, a public participation report is available online giving a breakdown of all projects proposed by all wards within the county.²⁷ Since the Kirinyaga county PBB FY 2015/16 is unavailable, a comparison of the participation reports to the budget was not done.

Even though the counties insist that there was public participation we were unable to link specific decisions to actual participation in any of the counties. This is because some of the public participation reports were missing, and those available had different structures than the budget document making it difficult to compare them. For example, while some of the participation reports give the specifics of proposed county projects, budget estimates and CIDPs list programs and sub programs or general projects to be undertaken in the county without indicating the location and allocation to each project.

ONGOING PROJECTS

One rationale for investing in specific projects is that they are inherited from previous local authority projects or are ongoing county projects (started in the county in 2013/14 and 2014/15 FYs). Many counties have explained that at least some of their allocations to specific projects are for these reasons:

- Nyeri Budget Estimates FY 2013/14 has two projects adopted from the municipal and county council of Nyeri, namely the Wangi Kanuna Water project at Kes.1.5 million and water projects in Tetu and Mukaro at Kes.3 million.
- Nyandarua CFSP 2015 indicates that the projects which were ongoing at the time the County Government came into office, and those funded under the Local Authority

²⁶<http://www.nyandarua.go.ke/downloads/>

²⁷<http://www.kirinyaga.go.ke/public-notice-announcement.html>

Transfer Fund (LATF) will receive first priority in allocation of funds in the FY 2015/2016 budget. This applies to all sectors.

- Laikipia Budget Estimates 2013/14 gives allocations to ongoing projects in Segera and Marmanet at Kes. 5 million and Kes. 3.5 million respectively (p. 5).
- Trans Nzoia Approved Budget Estimates 2015/16 allocates completion of ongoing projects Kes. 28 million. It is not specified what the ongoing projects are, nor the distribution these projects the wards/subcounties.
- Busia Approved PBB 2015/16 indicates that three of the four projects under the water supply and services program are ongoing projects i.e., drilling of ward boreholes, equipping of boreholes, and maintenance of water supplies. The PBB also indicates that for the FY 2014/15 the budget focused on completion of projects initiated in 2013/14 which included “drilling of 35 ward boreholes.” (p. 46).
- In Lamu PBB FY 2015/16 the budget indicates that the water sector will focus on completing ongoing projects (p. 71).

LOCATION OF NATURAL RESOURCES

One simple criterion used in allocation of revenue is the location of natural resources. For example, the Kwale CIDP mentions that project locations are determined by location of river basins such as Mwache Dam project that is located at Kasemeni along Mwache River (p. 56). Other water projects are determined by location of ground water reserves such as the main river drainage systems in the county.

STRATEGIC PLANS/SECTOR PLANS

Some projects are lifted from the sector plans. For example, for Baringo county there is an indication in the ADP FY 2015/16 that the projects therein are from sector plans. However, there is no specific reference to the sector plan for the water sector as the relevant column is left blank and as such we cannot tell the source of the water projects in the ADP. It is unclear why this is so. The Kisumu ADP FY 2015/16 indicates that the ADP was prepared in consideration of sector plans for different sectors in the county. These sector plans are however not available online. The Kisumu water sector plan was obtained from the county water department and there is no specific reference to the ward distribution of resources (although there is a general recognition of the need for equity in distribution).

Though it is not always expressly indicated in the budget documents, it appears from our interaction with officials in Nakuru, Elgeyo Marakwet, and Kisumu county that there are certain projects that are

proposed by the sectors themselves without public input. These departmental projects, though vital, are rarely a concern of the public because of their technical nature or because they do not directly benefit individual citizens or areas. Some budget documents refer to these projects or the influence of departments in the distribution process explicitly. For example:

- Kitui county ADP 2014/15 indicates that the projects proposed for the FY were derived from various sources including “line department”. There is no attachment/annex of the forums’ reports. The plan doesn’t identify which particular projects were proposed by specific stakeholders.
- Nyandarua County PBB FY 2015/16 (as tabled in the assembly) includes two separate annexes separating projects proposed by water sector; Annex 1: Summary of key priority areas by ministries and county assembly requiring funding for FY 2015/16 and Annex 3: summary of priorities identified during public participation.²⁸

SPECIAL ATTENTION TO URBAN CENTERS

Section 173 of the PFM Act provides criteria that may be used in allocation of funds to urban areas or cities. According to the act, county governments are supposed to adopt objective criteria ‘reflecting the service demand and responsibilities of any urban area within their counties.’²⁹ The criteria given in the PFM act are not mandatory. According to the PFM act the following set of parameters criteria may be used:

1. The proportional population, calculated as the population of the urban area or city divided by the total population of the county;
2. The relative area, calculated as the area of the urban area or city divided by the total county area;
3. The relative poverty levels based on objective measures of relative poverty;
4. The relative per capita revenue collection estimated as urban area or city per capita revenue collection divided by the county per capita revenue collection;
5. An objective measure to account for price differentials in providing similar services in an urban area or city relative to the rural areas of the county;

²⁸ For example the water department proposed the development of the county water master plan.

²⁹ The Public Finance Management Act, 2012, section 173(1)

6. A minimum amount to ensure effective delivery of essential services and responsibilities assigned to the urban area or city; and
7. Incentives to encourage urban areas and cities to exercise prudent financial management as well as transparency and accountability in public financial management.

An observation made across county budgetary documents was that the water sector has special allocations to urban areas. For example, the Lamu CIDP provides for water recycling in Lamu town at Kes.10 million and in Garissa, the CIDP provides for special allocations to urban water supply. However, it is not clear what criteria were adopted by counties in allocating funds to these particular urban areas as opposed to other urban areas or rural areas.

LISTS FROM MCAS AND WARD DEVELOPMENT FUNDS (WDFS) PROJECTS

Another criterion used in allocating funds to various ward are list of projects provided by MCAs to the executive on how to utilize certain funds, such as WDFs. In the Taita Taveta budget estimates for the FY 2014/15 the budget provides a list of projects presented by MCAs to be implemented. These are indicated as WDF projects in the revised Budget Estimates FY 2014/15. In Kisumu county, the MCAs are required to approve the list submitted to the executive for the utilization of the WDF by appending their signatures on those lists of projects. These lists are presented to the budget office and the reason for requiring MCAs to personally consent to the list is to ensure that they do not change their mind later on in the budget process on the projects to be implemented using the WDF.

ALLOCATION IN ACCORDANCE WITH A FORMULA

Elgeyo Marakwet County has enacted the Equitable Development Act (EDA) 2015 that prescribes a formula on the distribution of resources by different sectors. The water sector is required to distribute development revenue in using the following criteria: 60 percent of funds appropriated for development be equally shared among all wards; and 40 percent of the funds allocated for development purposes are equitably shared among all wards based on a predetermined formula as detailed below:

- 38 percent in accordance with the population
- 23 percent in accordance with county flagship projects³⁰
- 22 percent according to poverty index in the wards

³⁰ These are county projects as provided for in the CIDP approved by the County Assembly.

- 8 percent in accordance with the land area
- 5 percent be allocated for emergencies³¹
- 2 percent in accordance with the fiscal responsibility³² and
- 2 percent be allocated to arid and semi-arid lands

The focus of the EDA is to ensure that the departments distribute funds equitably. It is also to ensure that marginalized wards with special features such as arid and semi-arid areas are taken into consideration in distribution of resources. The needs of the wards are evaluated by taking into consideration the population, land area, and poverty indices of all the wards. The formula seeks to takes into consideration the effort by wards in collection of revenues and compliance to fiscal regulations. However since wards do not manage finances, the fiscal responsibility and emergency funds were lumped up together and allocated to flagship projects in the budget for FY 2015/16.³³

Even with the use of the formula, the water sector in the year 2015/16 allocated approximately Kes. 8.4 million equally to all the wards (PBB 2015/16). While the ADPs 2015/16 and 2016/17 make reference to the EDA, the PBB 2015/16 does not expressly indicate that the allocations therein were in line with the EDA, 2015. However, it appears that the use of the formula still results in fairly equal allocations across wards.

PRESCRIBED SET OF CRITERIA FOR DISTRIBUTION

In some budget documents, a set of criteria to be utilized in the ward/subcounty distribution of county revenues by county departments or sectors is provided. This is to guide the sector/departments to make decisions on distribution during the preparation or after the approval of the budget estimates. Budget circulars and County Fiscal Strategic Papers (CFSPs) provide for guidelines to be used by sectors/departments in the preparation of annual budgets. The set of criteria may also be provided in the approved or proposed budget to guide the departments in distribution. The set of criteria used is particularly useful in the case of countywide projects.

In Busia county, for example, the Budget Estimates FY 2014/15 fail to give the location and allocation to wards or subcounties for water projects. However, the budget does provide a set of criteria to be

³¹Though not indicated in the Act, the county assembly envisioned that the departments will pool the amount set apart at the governor's office (county headquarters) so that it may be allocated to specific wards where emergencies such as landslides may occur.

³²Because wards do not have financial management responsibilities the departments have sought to distribute this equally among the wards.

³³Interview with the planning office in Elgeyo Marakwet.

taken into consideration in deciding the location of projects. It indicates that the water sector will take into consideration the following in deciding the location of projects (p. 38):

- the demand;
- the community involvement;
- participation; and
- the distribution pattern of already developed systems.

These broad criteria provide minimal direction. It is also not entirely clear what the difference is between the first three of them.

One good practice required by section 128 of the PFM Act is communication from the county treasury on what should guide the accounting officers in preparation of budgets. This information should normally be contained in a budget circular prepared by August each year. These circulars should be shared widely with the public to reveal the criteria that ought to be used in the distribution of resources across the county. We obtained circulars from three counties online that have general guidance on prioritization of projects, though they do not provide a solid basis for geographical distribution. These are for Machakos county FY 2014/15 and 2015/16; Kilifi county FY 2016/17 and Lamu County FY 2016/17. The Machakos County Treasury Circulars FY 2014/15 and 2015/16 indicate that the water sector should be guided by the following criteria when prioritizing and allocating resources: programs prioritized by the CIDP; and ongoing capital projects.³⁴

Generally, these circulars could be far more robust in the guidance they provide on principles or criteria for geographical distribution than what we found.

5. MATTERS ARISING, RECOMMENDATIONS AND ANALYSIS

5.1 NEED FOR UPDATED DATA AND STATISTICS ON THE DEVELOPMENT STATUS OF COUNTY SUB-UNITS

Budget documents, particularly planning documents, should provide information related to the diversity within the county. None of the budget estimates consulted for this research contain reference to data or statistics relied on in the process of their preparation. Some did mention the need for such

³⁴The other factors to be taken into consideration is (c) Budget ceilings allocated by Commission of Revenue Allocation; and (d) Equitable share of revenue allocation of the national government. These last two factors have no relationship to the ward or subcounty distribution.

data to be collected, however. For example, the Migori Budget Estimates FY 2013/14 indicates that the development funds were not distributed and would only be distributed after feasibility studies are completed by the county executive committee members.

All CIDPs have fact sheets attached as annexures or appendices. However, for most CIDPs the data relates to the county generally, or as compared to other counties. It does not provide a breakdown to the subcounty level or below. The Makueni CIDP indicates “the inadequacy of actionable data and information makes it increasingly difficult to make informed and transparent decisions on development and sustainable management of water resources in the country” (p. 35).

The only distinction made in most CIDPs is the difference between urban and rural areas. For example, in Embu the CIDP states: “The proportion of urban and rural households obtaining their water from clean sources in 2008/9 is 90.8 per cent and 53.8 per cent respectively;” (p. 103); Garissa CIDP indicates that “the average distance to the nearest water point is 25 Km. However, for residents of Garissa Town, this distance has reduced considerably;” (p. 23); Kwale CIDP indicates that “existing water systems are centred around urban/commercial centres which creates disproportionately low access and water portability in sparsely populated rural areas” (p. 40); Samburu CIDP indicates that the average distance to the nearest watering point is approximately five kilometers in rural areas but it becomes much shorter in most urban and market centers to about 0.5 km (p. 34).

In order to justify dissimilar allocations to different county sub-units there should be an analysis of the development level across the county. For example, when giving data on the households which have access to piped water or potable water, it is important to indicate which wards/subcounties are worse or better than others. There are a few counties that have provided more detailed information at this level in their CIDPs:

- The Bomet CIDP indicates that the residents have to travel on average a distance of 2 km to access water but Chepalungu and Bomet East subcounty residents travel a distance of 5 km. (p. 31)
- Isiolo CIDP indicates that some villages in Modogashe area are about 25 km from the nearest safe water source. Merti, Garbatulla, and Sericho areas are poorly served with water sources, particularly during the dry season.(p. 22)
- Kitui CIDP indicates that the average distance to the nearest water source is 7 km with Kitui Central having the shortest distance at 4 km and Kitui South having the longest distance at 29.9 km. (p. 38)
- Kilifi CIDP indicates that certain areas have a more acute problem. “Most of the underground water in the hinterland is saline and unfit for both livestock and domestic use

in areas such as Chonyi, Roka, Mtondia, Ngerenya and some parts of Ganze” (p. 29). Ideally the wards concerned such as Tezo, Matsangoni and Ganze should be areas of focus in the water sector allocations either by setting up projects in those wards or neighboring wards that would best alleviate their problem.

- Kericho CIDP indicates that “areas in the lower zones of the county covering part of Soin division in Ainamoi constituency, Sigowet in Belgut constituency and Chilchila in Kipkelion constituency experience water shortages especially during dry seasons” (p.33).
- Siaya CIDP indicates that Ugenya and Ugunja subcounties have higher rainfall and abundant sub surface water resources.(p. 3, p. 25)
- Nyandarua CIDP indicates that “With the exception of Kipipiri and Kinangop the rest of the Sub - Counties have inadequate water sources” (p. 60).
- Baringo ADP 2015/16 indicates that the county is a water scarce county, the most affected subcounties being Marigat East, Pokot Mogoitio, and Baringo North (p.17).

It is one thing to identify the disparities across each county and another to address these disparities. Readers of budget documents should be able to connect these facts to the actual allocations in the budget documents. Ideally, under the water sector, readers should be able to find that the reason behind more allocation or less allocation to one ward as opposed to another is due to acute deficiency in water supply in those areas receiving allocations. Alternatively, it should be indicated how the projects proposed in the current financial year will reduce the acuteness of water scarcity in certain wards or subcounties, namely, the output targets. The distinction however may not be useful in counties that have almost similar development challenges across all wards. For example, arid and semi-arid counties have an acute water scarcity almost everywhere.

While it may have been difficult to have a breakdown in this first term of devolution due to data constraints, it is expected that this challenge will be addressed before the second CIDP is produced (2018-2023). Most CIDPs prescribe that the water sector should come up with a master plan in the medium term (e.g., Taita Taveta and Meru). In addition, counties have been investing substantial amounts of money over the past three years on research, feasibility studies, and developing water master plans. This has been observed in Kiambu, Taita Taveta, Mombasa, Kwale, Lamu, Isiolo, and Laikipia county.³⁵

³⁵(a)Kiambu approved budget FY 2015/16 indicates that under the sub program on water provision and management the county will come up with a county water master plan 2035(p.36) (b)TaitaTaveta PBB FY 2014/15 provides that county will develop a water master plan.(c)Mombasa budget estimates FY 2014/15 estimates provide Kes. 5.5M towards Research, Feasibility Studies, Project Preparation and Design, Project Supervision and the PBB for the FY 2015 /2016 provides for Research, Feasibility Studies, Project Preparation & Design affecting all wards and sub counties at the cost of Kes. 3.5M.

5.2 GOOD PRACTICES

LARGE SCALE/REGIONAL PROJECTS

Counties ought not to think of distribution of resources as relevant only at the ward or subcounty level. Larger projects may often benefit multiple parts of the county even if they are located in specific wards or subcounties. These larger projects may have a higher impact than simply dividing up resources by ward. Such projects require clear public justifications, however. And these justifications should be explicit in planning and budget documents to help the public to understand why investing in projects in particular locations and not in others may still be equitable. Access to clean water is one area where cross-cutting projects are crucial. Indeed, such projects may even require agreements that cross county borders, as water is a regional resource. Cross-cutting projects of this type have been observed in various counties' budget documents.

Ward -- ward projects: In Baringo Budget FY 2014/15 provides for Endao/Loberer Water supply at Kes. 400,000 shared between Marigat/Ilchamus wards; West Pokot PBB 2014/15 indicates that a project worth Kes. 14 million will be located in two wards: Kapenguria and Mnagei wards (p. 150). Elgeyo Marakwet CIDP indicates Torok Falls Multipurpose Dam for irrigation and water supply in Soy North will supply water to Tambach, Endo, Emsoo and Kapchemutwa wards (p. 213).

Subcounty – Subcounty/ward projects: Lamu CIDP provides for a desalination plant, which though predominantly implemented in Lamu East will benefit parts of Bargoni; Elgeyo Marakwet CIDP indicates that the Arror Multipurpose Dam will supply all wards in Marakwet east and west subcounties (p. 213); Kilifi PBB 2015/16 indicates that the Lower and Upper Ribe-Kaloleni water project (Gensets) will be shared by two subcounties, Kaloleni and Rabai. (p. 242)

County -- county projects: For example, Mombasa with Taita Taveta and Kilifi counties. Water supply for Mombasa county is from Mzima Springs in Taita Taveta County, Marere, Sabaki/Baricho in Kilifi County, and Tiwi Boreholes in Kwale County (ADP 2015). Taita Taveta CIDP indicates a major spring in the county is Mzima springs, which is the major water supplier to Voi town and Mombasa City. Another example would be Kwale and Kilifi; the Kwale PBB 2014/15 provides an allocation for 10 km Marere- Mwaluphamba pipeline. Additionally, Embu CIDP indicates that the county shares Masinga, Kamburu, Gitaru, and Kindaruma dams with Machakos County and Kiambere dam with Kitui County.

(d) Kwale PBB 2015/16 has an allocation of Kes. 7,363,184 toward feasibility studies for the water sector (p. 248) (e) Lamu PBB 2015/16 proposes a feasibility study in Lake Moa Kes. 1,000,000 (f) TaitaTaveta Budget estimates (revised) 2014/15 have an allocation of 6,700,000 towards Research, Feasibility Studies, Project Preparation and Design, Project Supervision and Kes.600, 000 towards development of County Water Master Plan (g) Isiolo Budget 2013/14 allocates Kes. 7,500,000 to Research, Feasibility Studies, Project Preparation and Design, Project Supervision and Kes. 9,200,000 and Kes. 9,660,000 FYs2014/15 and 2015/16 respectively for the same item. (h) Laikipia Budget FY 2014/15 allocation of Kes. 6.6 million to research, feasibility studies (p. 69) Master plan at Kes. 15 million(p. 195)

ATTACHMENT OF PUBLIC PARTICIPATION REPORTS AND CONSULTATION FORUM REPORTS

While all the counties' CIDPs and some of their budget estimates indicate that the projects and priorities were derived from consultation forums, the public participation reports are generally not available online or attached to the budget documents. This makes it difficult to verify whether indeed the proposals from these forums were taken into consideration. In cases where only some of the proposals were included, it is also impossible to know how these choices were made. There are however a few counties whose budget documents have attached these reports, such as the Migori and Kisumu CIDP and the Tharaka Nithi PBB FY 2015/16. For some counties such as Kirinyaga county, the public participation report for the FY 2014/15 budget can be downloaded from the county website, which helps to track the influence of these public proposals.³⁶

WARD AND SUBCOUNTY PROJECTS LIST ATTACHED TO THE PROGRAMS BASED BUDGETS

While the PFM Act requires that the county governments move towards programmed based budgeting, there is no requirement that county budget estimates confine themselves to the programs and sub programs, omitting specific development projects, their location, and allocations. Some counties have omitted the geographical distribution of resources in their PBBs entirely (e.g., Elgeyo Marakwet county). If this information is omitted in the main text of the budget estimates, it is prudent to have a list of all the projects per sector as an appendix or annexure to the budget estimates. For example:

- Kisumu county PBB for the FY 2015/16 has indicated the projects that are undertaken by each sector. The back pages give a list of all projects by sector and ward.
- Nakuru county PBB 2015/16 incorporates the location for ward projects in the water sector.

LINKING BUDGETARY DOCUMENTS

There should be clear linkages made between budget documents and policy documents. All CIDPs make linkages with other policy documents such as the Vision 2030, MDGs, and the Constitution 2010. County planning documents should relate to each other and the budget estimates. As mentioned above (see section 1), the CGA requires all budgets to be derived from planning documents such as the CIDP, the Spatial Plans, and sectoral plans.

³⁶<http://www.kirinyaga.go.ke/public-notice-announcement.html> accessed December 2015

While most county governments casually indicate in the foreword or executive summary sections of the documents that the projects are derived from the CIDP, only Baringo county ADPs and PBBs have a column indicating the source of projects . The Baringo ADP 2016/17 indicates that the source of projects for the water sector is the CIDP and the second MTEF plan.³⁷ The column header row gives strategic plan and sector plans as an alternative. Counties can adopt such a column allowing several options for the source and ensuring that it is easy for readers to confirm the origin of projects in other documents.

ALLOCATION USING A FORMULA

County distributions of resources should be based on sound and transparent criteria. Elgeyo Marakwet is the only county with a formula that determines how each sector including the water sector should distribute revenues allocated to the sector. The Equitable Distribution Act indicates that each department shall distribute resources following a formula that requires 60 percent of development funds to be distributed equally among the wards and 40 percent as per parameters prescribed under the law.³⁸ Using a formula does introduce rigidity into decision making, and this may not always be ideal. For example, regardless of whether the funds are sufficient to ensure completion of projects, the water department must follow the formula. If it takes Kes.30 million to complete a water project in one ward, the department may be hesitant to take up such a project because in accordance with the formula that ward can only get Kes. 25 million. In some cases, this might be the right decision, whereas in others some flexibility might be useful. In addition, the particular formula chosen may not be as equitable as it could be; in spite of the county's efforts to put resource sharing on an equitable basis, the formula results in almost equal allocation to all wards in the water sector.

LEGAL INSTRUMENT FOR THE ALLOCATION OF RESOURCES

One way of ensuring that each sector takes into consideration a predetermined set of criteria is by providing for the same in the law. As we have seen, the Elgeyo Marakwet law provides a formula for distribution taking into consideration different parameters. While few other counties have gone this far, some have at least given equity a legal backing. The Machakos County Water and Sanitation Act 2014 indicates that the county executive member has the duty among other duties to formulate a water and sanitation policy, undertake water sector planning, and establish water data base and information system. Under section 14 of the act, the Machakos county water board is tasked with the duty of progressively ensuring that there is equitable distribution of water between consumers in urban and rural areas.

³⁷ The ADP 2015/16 has a column indicating the source of projects for the water sector is blank but for other sectors such health sector it is filled identifying the sector plan as the source of the preventive ad promotive health program :18 dispensaries at the cost of Kes.104 million (p. 46)

³⁸ Elgeyo/Marakwet County Government, Elgeyo/Marakwet County Equitable Distribution Act, 2015, Section 5.

5.3 QUESTIONABLE PRACTICES

EQUAL V EQUALITY

It was observed that in many budgetary documents (with no justification) the water sectors makes equal allocations to diverse county sub-units. This implies that these sub-units are at a similar level of development, which is rarely the case. The key challenge in adopting this easy way of distribution is: 1) marginalized wards and subcounties will always lag behind, and 2) the county may fail to take advantage of high impact projects that may require concentration of resources in a particular project in a particular place (see section **Error! Reference source not found.**). Counties seem to be unaware of the different needs of various county sub-units. For example:

- In Elgeyo Marakwet the ADP 2014/15 expressly indicates that the priorities in the plan were based on an equal distribution (though the plan also mentions that the county took "balanced developments" into consideration) (p.8). The EDA Act, which dictates the distribution of resources from the FY 2015/16 onward, allocates a large percentage (60 percent) of the sectors' development funds to be equally distributed. This has resulted in almost equal allocation to all wards. The ADP 2015/16 proposed allocation using the formula results in all wards getting approximately Kes. 8.4 million each (with a range of Kes. 1.1 million between the highest and lowest allocation) defeating the principle of equitable distribution of resources.
- In Kwale line item budget FY 2014/15 provides for enhanced water storage, rainwater harvesting, and pans and protection of water sources for the four subcounties. Rainwater harvesting pilot projects will also be done in each subcounty and eight water pans will be protected (two per subcounty).
- Garissa CIDP proposes construction of dams in every subcounty and construction of roof catchment water tanks for each of the seven subcounties. This implies that the subcounties have similar need for tanks and dams (p. 97).
- Baringo Budget estimates FY 2013/14 give an equal allocation to each subcounty to develop irrigation schemes (Kes. 19 million per subcounty) and rehabilitation of water supplies for six subcounty water projects at Kes. 10 million each (p. 50).
- Meru county line item Budget FY 2013/14 for supply and development of water at the ward level gives equal shares (Kes. 3 million per ward).
- Uasin Gishu budget FY 2015/16 allocates Kes. 6 million per ward for new and expansion of water projects countywide.

- Kisii CIDP states borehole construction to be done countywide, 18 boreholes per subcounty in selected areas by 2017 (p. 172).
- Kakamega CIDP indicates that the water sector will develop two small dams and pans per ward (p. 228).
- Busia county budget notes attached to the approved PBB 2015/16 suggest that projects (excepting the Abura Water Project) are similar for each ward or subcounty (e.g., drilling, developing and equipping of boreholes).

NO ALLOCATION TO CERTAIN COUNTY SUB-UNITS

One of the risks of not considering distribution from the geographical standpoint is that some wards or subcounties may end up receiving no allocations. No allocation to certain wards and subcounties could mean a number of things. It could be that the ward is benefitting from a neighboring ward water project. Alternatively, water access in that ward may be satisfactory or above average already. It is also possible that there are political factors at work with certain wards disfavored due to their political leanings. Whatever the reason for omission, it should be explained. Here are examples of cases in which the water sector has failed to allocate funds in the budget documents reviewed to certain wards/subcounties without offering an explanation:

- Bomet CIDP has no explicit allocation to Mogogosiek ward. Does this indicate that there is no need to allocate any revenue to this ward for the next five years?
- In the Baringo budget FY 2014/15 the water sector made no allocation to Loiyamorok and Ewalel Chapchap wards.³⁹
- Tharaka Nithi budget 2013/14 indicates development projects specifying the wards concerned. Three wards Ganga, Karingani, and Chogoria⁴⁰ have no water projects. There is no narrative explaining the disparities in the allocation or an explanation as to why there is no allocation to other wards/subcounties in the budget. In the PBB 2015/16 it is indicated that Gatuga has more water access challenges than other wards; however, it not clear how this is addressed.
- Kisumu budget 2015/16 has no allocation to Nyalenda “A” ward. From the Kisumu Water and Urban Sanitation County Strategy Plan 2015-2019 this ward has the highest

³⁹There are however countywide projects including planting for new irrigation and rainwater harvesting in every ward.

⁴⁰There is a project on sewage System Chogoria Town. The water sub-sector falls under Agriculture, Livestock and Water Services

percentage of residents with access to improved water sources. This could be the reason for it having no allocations. However, there is no express indication that this is the reason.

5.4 THE INFLUENCE OF PROJECTS BY OTHER STAKEHOLDERS

Counties should take into consideration the resources to wards or subcounties from other stakeholders such as NGO funded projects. Projects undertaken by other stakeholders impact the development level of each ward. This should influence the distribution of county resources to different wards and subcounties. Counties should maintain a database of all development projects being undertaken in the county. This information should be publically available to assist not only the public but also other stakeholders in decision making. Consider the case of the three counties below:

- The Tana River CIDP provides that the county government is in the process of expanding the water supply through World Bank. The new Water Supply and Sanitation Improvement Program (WASSIP) project is an expansion and rehabilitation of the Hola water supply. It is a World Bank funded project through the Coast Water Services Board to increase daily water production by 1200m³.
- From the Baringo county website it has been indicated that the county government signed a contract with the Japanese government to build 70 boreholes. This must form an extra allocation to certain wards and there should be a record of the extra allocation and the impact it has on the county government's distribution of resources.
- In West Pokot, the PBB 2015/16 indicates that in 2013-14 the Water Environment and Natural Resources Sector Budget Estimates included Kes. 96.89 million in donor funds that was not received, consequently reducing the department's project plan.

5.5 THE ROLE OF THE COUNTY ASSEMBLY

County assemblies play an oversight role in the budget-making process. Assemblies are best placed to ensure that there is equitable distribution of resources across the county. This is because they are representative of definitive geographical areas, and because they approve key budgetary documents. County assemblies should demand public participation reports be prepared by the executive and made public, ensuring it is clear from every budget document tabled how the projects therein were identified. The Kisumu county assembly insisted that the CIDP should have an annex indicating all public proposals.⁴¹

⁴¹ County Assembly of Kisumu, Hansard Wednesday 18th June, 2014 second session No. 53

County assemblies should not only play a rubber stamp role in the budget making process. By demanding that budget documents tabled for approval contain supporting evidence (data, statistics, and public participation reports), the assemblies will enhance transparency and curtail excessive executive discretion.

In addition, taking the example of Elgeyo Marakwet county, county assemblies should come up with legislation that provides guidance to the executive on how resources can be distributed equitably across the county taking into consideration marginalized areas and the general development disparities in their respective counties.

6. CONCLUSION

Generally, across the country, key budget documents lack explicit criteria for equitable distribution of resources across the county. While the requirement of transparency in legislation in Kenya has improved tremendously since the promulgation of the constitution, there should be regulations requiring the county governments to indicate in their annual budgets how development projects were identified and the criteria used in the allocation of resources. County governments should be required to indicate in their budget how spatial equity is being achieved.

County governments may begin this process by putting more emphasis on public participation during the planning stage of the budget cycle. This should allow for participation of all county sub-units (villages, wards and subcounties) so that all projects from across the county are part of the county's plans. Public participation reports should be attached to all budgetary documents. Counties should also present direct verifiable linkages of the budget estimates to planning documents such as CIDPs, ADPs, and spatial plans.

In addition, data, statistics, and research reports relied upon during the process should be easily accessible. This information should be incorporated in the budget estimates with links to the location of full datasets. Such documentation includes: data and statistics showing disparities across the wards at a sector level, county master plans, and reports on surveys conducted by each sector. County governments should provide concrete public justifications for the criteria adopted in distribution of resources in all key budget documents.

ANNEX 1: SUMMARY OF WHETHER COUNTIES HAVE INDICATED THE WARD/SUBCOUNTY DISTRIBUTION AND WHETHER THE CRITERIA OF DISTRIBUTION IS GIVEN IN KEY DOCUMENTS FOR FY 2013-2018

County	Distribution*	Criteria	Distribution*	Criteria	Distribution*	Criteria	Distribution*	Criteria	Distribution*	Criteria	Availability of Documents (county websites)
	<i>CIDPs</i>	<i>CIDPs</i>	<i>ADPs</i>	<i>ADPs</i>	<i>Budget Estimates 2013/14</i>		<i>Budget Estimates 2014/15</i>		<i>Budget estimate 2015/16</i>		
Baringo	unavailable	unavailable	not given (ADP 2015/16 & ADP 2016/17)	given CIDP (ADP 2016/17 including page numbers)	not given	not given	given	given CIDP	given	CIDP	Budget 2015/16, Budget circular , CFSPs, CBROP 2016/17
Bomet	given	public participation and consultative forums	unavailable	unavailable	not given	not given	not given	not given	not given	not given	none
Bungoma	partly given	public participation and consultative forums, need and importance, evidence based policy making,	unavailable	unavailable	Partly given	Given (Demand; Community involvement; Participation and Distribution pattern of already developed systems)	partly given	not given	not given	not given	none(no website)
Busia	given	public participation and consultative forums	unavailable	unavailable	given	not given	given	given CIDP and public participation	partly given(similar projects per ward/sub county)	CIDP, Public Participation an ongoing projects	CFSPs CBROPS CIDP
Elgeyo Marakwet	given	public participation ward level	given (ADPs 2015/16 and 2016/17)	given (public participation, CIDP and Equitable distribution Act (ADPs	not given	not given	not given	not given	not given	not given	all documents available online

				2015/16 and 2016/17)							
Embu	partly given	public participation and consultative forums	unavailable	unavailable	given	not given	project names given	not given	unavailable	unavailable	none
Garissa	given	not given	unavailable	unavailable	not given	not given	unavailable	unavailable	unavailable	unavailable	none
Homabay	given	public participation and consultative forums	unavailable	unavailable	unavailable	unavailable	not given	not given	unavailable	unavailable	none
Isiolo	given	public participation and consultative forums	unavailable	unavailable	not given	not given	not given	not given	unavailable	unavailable	none
Kajiado	Given	public participation and consultative forums	unavailable	unavailable	not given	not given	Given	not given	unavailable	unavailable	none
Kakamega	given	public participation and consultative forums	unavailable	unavailable	unavailable	unavailable	not given	not given	unavailable	unavailable	none
Kericho	given	public participation and consultative forums	unavailable	unavailable	not given	not given	not given	not given	unavailable	unavailable	none
Kiambu	given	public participation and consultative forums	unavailable	unavailable	unavailable	not given	not given	not given	partly given	not given	CIDP and PBB 2015/16
Kilifi	given	public participation and consultative forums	unavailable	unavailable	not given	not given	unavailable	unavailable	given(ward and sub county)	not given	CIDP PBB 2015/16 and Budget Circular

Kirinyaga	given	public participation and consultative forums	unavailable	unavailable	given	not given	partly given	not given	unavailable	unavailable	Budget 2014/15, CIDP, public participation reports and CFSP 2015
Kisii	not given (countywide/ all sub counties)	public participation and consultative forums	unavailable	unavailable	not given	not given	not given	not given	not given	not given	none
Kisumu	given	public participation and consultative forums	partly given 2015/16	public participation, CIDP, The departmental strategic plans, The development implementation status for 2013/4 and 2014	given	not given	Given	not given	given	not given	CIDP, CFSPs, Budget Estimates and
Kitui	partly given	public participation and consultative forums	not given	given(2014/15); not given 2015/16 & 2016/17CIDP, public participation, operating manuals , statistical databases and information (2014/15); statistical databases and information for monitoring and analysis(2015	not given	not given	not given	not given	not given	not given	CIDP, budget estimates CBROPs CFSPs

				/16 & 2016/17							
Kwale	partly given (location given but allocation not given for all projects)	public participation and natural resources location	partly given ADP 2016/17(location but not allocation to each ward)	partly given Public participation and sectoral proposals ADP 2015/16	not given	not given	partly given	not given	not given	not given	CIDP and ADP 2016/17
Laikipia	given	public participation and consultative forums	unavailable	unavailable	not given(except from ongoing projects)	not given	Given	not given	given	not given	Budget Estimates 2015/16(county assembly website)
Lamu	not given (countywide/ all sub counties)	public participation and consultative forums	given(ADP 2015/16)	not given	unavailable	unavailable	unavailable	unavailable	given(borrowed from project names)	given ongoing projects (all projects resemble allocation and location in the ADP(2015/16))	CIDP , CFSP 2014, budget circulars, ADP 2015/16Budget 2015/16
Machakos	not given(most projects county wide)	not given (CIDP a product of public participation)	not given (ADP 2016/17)	not given (ADP a product of public participation)	not given	not given	not given	not given	not given	not given	Budget circular, CBROPs Budget Estimates
Makueni	given	public participation and consultative forums	not given	not given (ADP 2016/17)	not given	not given	Given	not given	given	not given	none
Mandera	partly given(most projects are shared across sub counties or countywide)	public participation and consultative forums	unavailable	unavailable	not given(except for one project in Elwark)	not given	not given	not given	unavailable	unavailable	none
Marsabit	given	public participation and consultative forums	unavailable	unavailable	not given	not given	not given	unavailable	unavailable	unavailable	CIDP, budget estimates 2014/15 and CBROPs
Meru	partly given (most projects	public participation and	given for both FY 2015/16 and 16/17	public participation for FY	given (equal allocation)	not given	unavailable	unavailable	not given	not given	none

	are county wide)	consultative forums		2015/16 and 16/17							
Migori	not given(county wide)	public participation; consultative forums , other plans (DDPs), Population census	unavailable	unavailable	not given	not given	Given	not given	not given	not given	none
Mombasa	partly given	public participation and consultative forums	partly given 2015/16 and not	given FY 2016/17	not given	not given	unavailable	unavailable	not given	not given	
Murang'a	not given(most projects are countywide)	not given (CIDP a product of public participation)	unavailable	unavailable	not given	not given	not given	not given	not given	not given	CIDP,CFSP
Nairobi	partly given(location for projects borrowed from projects' names)	public participation and consultative forums	unavailable	unavailable	unavailable	not given	not given	not given	not given	not given	none
Nakuru	partly given	public participation and consultative forums	not given(ADP 2015/16 & 2016/17)	not given	not given	not given	Given	not given	given	not given	CIDP , Budget Estimates and ADPs
Nandi	given	public participation and consultative forums(list of ward projects proposed annexed)	given (ADP 2015/16	not given	not given	not given	not given	not given	not given	given public participation	ADP budget proposals
Narok	unavailable	unavailable	unavailable	unavailable	not given	not given	not given	not given	unavailable	unavailable	none
Nyamira	given	public participation and	unavailable	unavailable	not given	not given	unavailable	unavailable	unavailable	unavailable	CIDP strategic plans

		consultative forums									
Nyandarua	not given (most projects county wide)	not given (CIDP a product of public participation)	given (equal allocation 2014/15)	not given	given	not given	not given	given CIDP and public participation ⁴²	not given	not given	Budget circular public participation reports
Nyeri	given	public participation and consultative forums	given ADPs 2015/16 and 2016/17)	public participation and consultative forums (ADPs 2015/16 and 2016/17)	given (only two projects)	given ongoing projects	not given	not given	not given	not given	none
Samburu	given	public participation and consultative forums	unavailable	unavailable	not given	not given	not given	unavailable	unavailable	not given	CIDP
Siaya	not given	public participation and consultative forums	not given (FY 2016/17)	not given	unavailable	unavailable	Given	not given	given	CIDP , Public participation & ongoing projects (balance from 2014/15)	PBB 2015/16 CFSPs ADPs CBROPS and CIDP
Taita Taveta	given	public participation and consultative forums	not given FY 2015/16 & 16/17	not given	given (subcounty level)	not given	given	not given	given (subcounty and ward level)	not given	CIDP, PBB 2015/16 CFSPs and ADPs 2016/17
Tana River	given	public participation and consultative forums	unavailable	unavailable	not given	not given	unavailable	unavailable	unavailable	unavailable	none
Tharaka Nithi	given	public participation and consultative forums	unavailable	unavailable	given	not given	Given	not given	not given	Not given but a public participation report is attached.	

⁴² Here apart from the influence of the CIDP & Public participation for projects with specified location in the budget, it is indicated that for those projects with unspecified location: the criteria to be used is 'demand, public participation, and community involvement and distribution pattern.'

Trans Nzoia	partly given	public participation and consultative forums	unavailable	unavailable	not given	not given	not given	not given	not given	not given	CIDP
Turkana	unavailable	unavailable	unavailable	unavailable	not given	not given	not given	not given	unavailable	unavailable	none
Uasin Gishu	partly given	not given	not given (ADP 2015/16)	not given (ADP 2015/16)	not given	not given	not given	not given	not given	not given	CIDP, CFSPs CBROPS
Vihiga	given	public participation and consultative forums	unavailable	unavailable	not given	not given	not given	not given	unavailable	unavailable	none
Wajir	not given	public participation and consultative forums	unavailable	unavailable	not given	not given	not given (but the PBB has many projects similar to those in the CIDP) ⁴³	not given	unavailable	unavailable	none
West Pokot	given	public participation and consultative forums	unavailable	unavailable	not given	not given	given	given public participation and consultative forums(ward and subcounty level)	given	CIDP, ADP and Public participation	CIDP Budget Estimates CBPROPs and CFSPs

Note: Distribution is “partly given” where the budgetary document omits either the location or cost estimates (allocation) for some of the county projects/programs. Where the distribution is not given we indicate the criteria is not given. In the few instances where the criteria is given in absence of the actual distribution we indicate in brackets the criteria indicated in the key budget document.

⁴³ Notably in the some budget estimates the projects therein seem to be lifted from the CIDP though there it is not expressly indicated whether these were lifted the CIDP or they were pushed for by the public in the relevant years.