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HOW DOES PUBLIC MONEY GET SPENT IN MY WARD UNDER THE DEVOLVED SYSTEM?

November 2015

A PRIMER ON THE FLOW OF RESOURCES UNDER THE 2010 CONSTITUTION

The 2010 constitution changed the way that public money moves from the national to the ward level and below in Kenya. In this review, we explain in simple language the main ways in which public money moves through the system.

WHAT ARE THE MAIN WAYS IN WHICH MONEY MOVES FROM THE NATIONAL TO THE COUNTY LEVEL?

Most public money in Kenya comes from tax revenue. Some money also comes from loans and grants from donors or investors. Almost all major taxes are collected by the national government, except for property tax and entertainment tax, which are collected by counties. Some fees for the use of services, such as hospitals, or charges for licenses, such as business permits, are also collected by counties.

The revenue that is collected by the national government is divided up each year between the national and county governments. This division is done by Parliament through the approval of the Division of Revenue Act (DORA). The DORA determines the total amount of money that will stay at national level and the total amount that will go to counties. This does not include money raised by national government from loans and grants, or money for debt payment, all of which currently stays with the national government and is not part of what is shared with counties.

Counties as a whole receive the funds from the DORA, which are then divided up among all the counties on the basis of a formula (sometimes known as the Commission on Revenue Allocation formula, since they recommend it), also approved by Parliament. That formula is only revised every five years (but the constitution required that the first formula be revised after three years).

Every year, Parliament also passes the County Allocation of Revenue Act, which determines exactly how much money goes to each county. Most of the money going to counties is known as the “equitable share” and passes through the CRA formula. As mentioned, this formula does not change from year to year. Counties receive a different amount from this formula only because the total amount for counties as a whole, which then passes through the formula, changes every year.

However, some money for counties is given as what are known as conditional grants. A conditional grant is money given to counties from the national share for specific items. For example, counties may receive a special grant for hospitals, or a special grant for road maintenance. Unlike the money that passes through the CRA formula, this money can only be used for those specific items and is determined through the annual revenue sharing process. The money passing through the formula can be spent as the county determines, after it has been budgeted for. One example of a conditional grant that is created by the constitution is the Equalization Fund, which is supposed to be spent to enhance specific services in marginalized areas of the country. So far, however, no money has been spent from this fund as Parliament has not approved any guidelines for managing the fund.

Counties also collect their own revenues from property and entertainment tax, and user fees, and these become part of the county budgets as well. In most counties, most funding comes from the national transfers, including the money from the CRA formula and conditional grants. However, in counties like Nairobi, a significant amount of money is raised from local taxes and fees.

HOW DOES MONEY FLOW FROM THE COUNTY TO THE WARDS AND BELOW?

In the Kenyan system, there is no unit below the county that can receive funds. Money is spent at ward and village level by the county governments themselves through their annual budgets. Currently, there are also other funds spent at the sub-county level, such as the Constituency Development Fund (though this has been found unconstitutional in its current form). It is possible for the national government to create other conditional grants that would spend money at the ward level, but this money, like CDF, would be managed by a special entity operating on behalf of the national government, and not by the ward or village itself, which is not a government entity capable of handling funds.

All money that is spent at any level must be budgeted for. County budgets are prepared by the county executive and approved by the county assembly. When the assembly approves a budget, it "appropriates" money for a specific purpose. This may include projects that are meant to happen at the ward or village level, or projects which cut across several wards or villages. Thus for any project to be implemented at the ward level, it must be included in the county budget and approved by the assembly. The same is true for the operating costs of all health facilities, educational facilities, agricultural services and so on.

CAN COUNTIES RECEIVE OTHER FUNDS BEYOND NATIONAL TRANSFERS AND LOCAL TAXES/FEES?

Counties can receive two other types of funds. They can receive grants from donors, which they should then report in their budgets. It is good practice to report all revenue and all spending together and all of this should be approved by the assembly. Counties can also receive loans from donors or investors. However, all loans received by a county must be guaranteed by the national government. It is illegal for a county to accept a loan without a national guarantee of that loan. A national guarantee is a contract that says that if for any reason the county cannot pay back the loan, the national government will step in and pay it back.

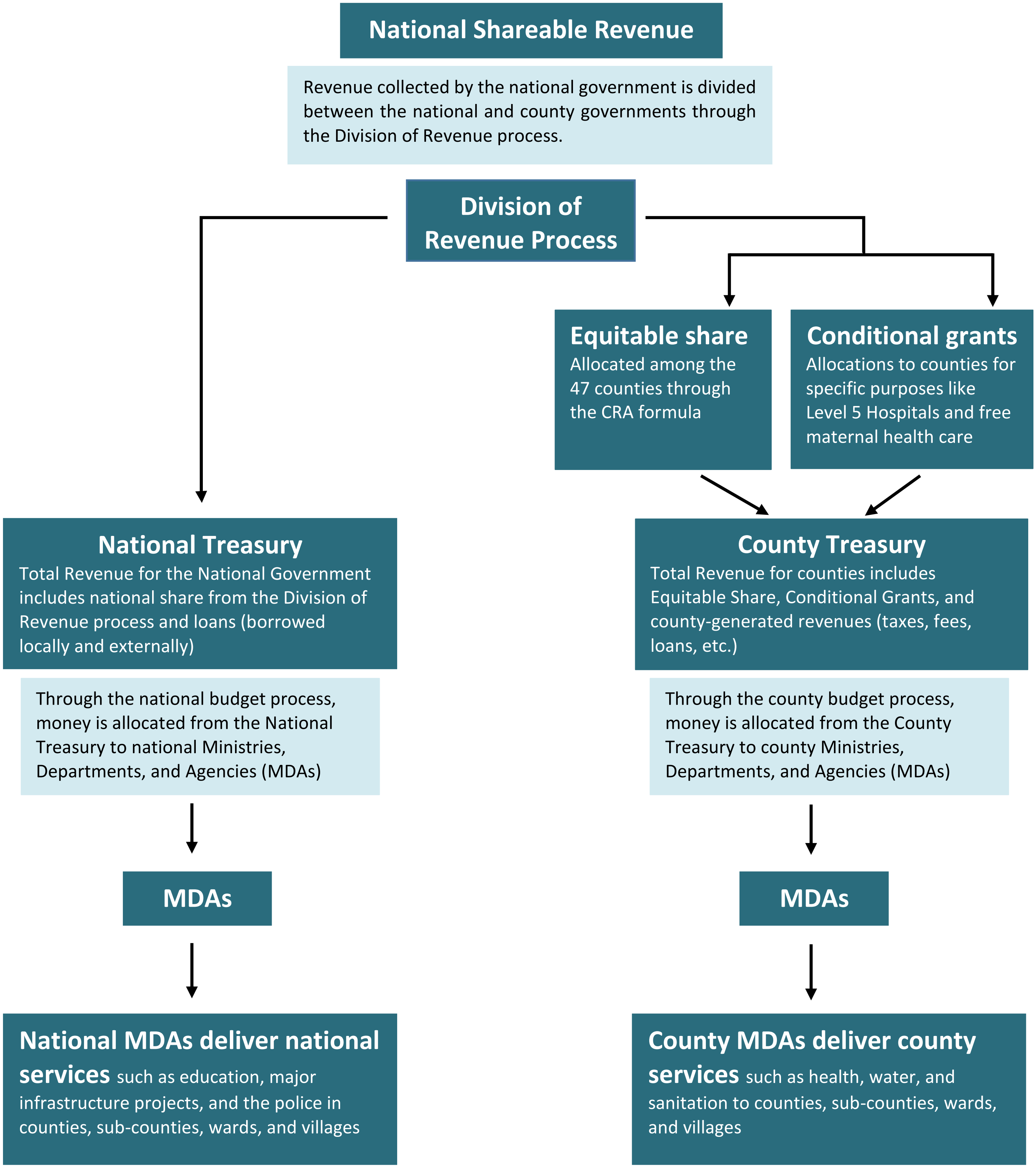
WHAT ABOUT THE WARD DEVELOPMENT FUNDS? DON'T WARDS RECEIVE MONEY FROM THEM?

Ward Development Funds are intended to function like the Constituency Development Fund, but to be managed at county level with supervision by members of the county assembly as opposed to members of Parliament. Ward Development Funds, if and when enacted, will still require funds to be spent by the county government on ward projects. No money can pass to the ward itself, which does not exist as a financial entity. However, Ward Development Funds are likely to face similar constitutional questions as those that have been raised about the CDF, so it is not clear that they will be viable.

SO HOW DO I GET FUNDS FOR MY WARD OR VILLAGE IN THE NATIONAL OR COUNTY BUDGET?

Remember that the national government spends money on national functions in counties and wards, and counties spend money on county functions within the same counties and wards. So, for example, the national government may fund a primary school in a particular ward, while the county funds a health facility in the same ward. In order to impact these decisions, the public should try to participate directly in the budget process at specific times, but also discuss their demands with their members of Parliament and members of the county assembly. The law requires the executive to consult with the public in producing the annual Budget Policy Statement at national level and the County Fiscal Strategy Paper at county level (both of these are produced in February every year). These documents determine how much will go to specific sectors and the priorities within the sector. The law also requires the National Assembly and the county assemblies to consult with the public once the budget is tabled (by April 30 every year) in the respective houses as they consider detailed spending decisions, such as the specific projects that will be funded. Public hearings should therefore be held by executives and assemblies and these are an opportunity to give feedback. Written feedback is usually also accepted.

The accompanying figure shows the flow of funds from both levels of government to the point of service delivery. Note that funds do not go to wards or villages as units, but are spent at that level by national or county governments.


National Shareable Revenue
Revenue collected by the national government is divided between the national and county governments through the Division of Revenue process.
Division of Revenue Process
Equitable share
Allocated among the 47 counties through the CRA formula
Conditional grants
Allocations to counties for specific purposes like Level 5 Hospitals and free maternal health care
National Treasury
Total Revenue for the National Government includes national share from the Division of Revenue process and loans (borrowed locally and externally)
Through the national budget process, money is allocated from the National Treasury to national Ministries, Departments, and Agencies (MDAs)
MDAs
National MDAs deliver national services such as education, major infrastructure projects, and the police in counties, sub-counties, wards, and villages
County Treasury
Total Revenue for counties includes Equitable Share, Conditional Grants, and county-generated revenues (taxes, fees, loans, etc.)
Through the county budget process, money is allocated from the County Treasury to county Ministries, Departments, and Agencies (MDAs)
MDAs
County MDAs deliver county services such as health, water, and sanitation to counties, sub-counties, wards, and villages