REPORT FOR CBEF STAKEHOLDERS MEETING HELD ON 16TH AND 17TH MARCH 2017

COUNTY FISCAL COMPLIANCE: WAGE BILL, INHERITED DEBTS/LIABILITIES AND REVENUE PERFORMANCE

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INTRODUCTION

The County Budget and Economic Forum (CBEF) is a multi-stakeholder body established under the Public Finance Management Act, 2012 section 137(1) with the mandate to provide a means for consultation by the County Government on matters relating to budgeting, the economy and financial management at the County.

CBEF members have continuously raised concerns with respect to the County's low development expenditure performance and the causal factors. A CBEF intervention in September of 2016 raised the issues and made several resolutions.

In recognizing the imperative role played by the CBEF in the County's budgeting, economic and financial management, CBEF sought to engage stakeholders and resource persons in charting a path towards the resolution of long standing budgetary challenges.

CBEF organized a stakeholders meeting at Maanzoni Lodge on 16th and 17th of March 2017 to discuss three main issues affecting the county which are: the wage bill, county revenue and county public debt.

The stakeholders meeting would entail presentations by the Nairobi City County on the three areas, presentation from the CBEF consultant, presentations from major government institutions and discussions from the stakeholders in the meeting.

OPENING REMARKS

Wanjiru Gikonyo –National Cordinator TISA

CBEF County Budget and Economic Forum in Nairobi was established in 2014. The city County of Nairobi was among the very first counties to create the CBEF and this has been very fundamental for budget accountability at the county government and also giving opportunity to the non-government actors to get involved in the budget cycle. Despite the continued engagement of CBEF with the Nairobi City County, there have been several challenges that have been evident and CBEF has been very keen on bringing out this challenges. One of the challenges being the level of recurrent expenditure which continues to be way higher than the development expenditure. This is one of the pressing concerns that the County continues to face and CBEF has been very keen on raising this as a concern to the county in the bid to look for a lasting solution.

In the last CBEF stakeholder consultation meeting in September two main resolutions were reached:

- The County of Nairobi was to engage the intergovernmental relations mechanism in regard to the statutory debt at the county.

- The county was also to publish the list of liabilities to begin a discussion on how to deal with the inherited liabilities.

The meeting is about discussion of how far the county is in implementation of the recommendations, an evaluation of the progress and also forging the way forward in regard to the wage bill, inherited debts/liabilities and revenue performance.

In regard to the wage bill the county has been struggling due to the new guidelines by the SRC which resulted to the sky rocketing of the wage bill. The county government revised the salaries of its employees and this had a significant effect on the wage bill.

GABRIEL KAVUTI – Representative of Religious Groups CBEF

Nairobi City County has made considerable steps and is way ahead of other counties in regard to accountability especially with the creation of County Budget Economic Forum (CBEF). Counties that have not established CBEF have challenges in accountability especially in the budget cycle. It is therefore important to note that Nairobi City County (NCC) by establishing CBEF improved the level of confidence in the county government and also inclusion of the county residents in the budget making process.

Every budget maker and advocate needs to know that people have different needs. There are competing elements in the demand side of the budget and thus there is need to prioritize to ensure that at the end of the day "Wanjiku" feels there is progress in development. So long as "Wanjiku" does not feel like there is progress then the efforts of the counties are in vain. The fundamental question which needs to be addressed is what will be done to ensure "Wanjiku" is satisfied with the outcomes of the budget allocation?

The discussions in the past have been trying to deal with the increase in the human resource or creating an alternative that would improve the delivery of the services to the people. What has lacked in the previous discussion even as there is prioritization is the link to the priorities and efficiency in the delivery of services.

Services are being delivered but at what cost? Is the country using the most necessary road to achieve the results or the success that has been realized? What is the cost of success?

It is fundamental that the Nairobi City County considers creating an efficiency monitoring unit. There is also need for the county government to focus on capacity building in respect to budgeting. It is important for the technocrats to understand the budget in its elements and to understand how this is implemented. For example, when we talk of infrastructural projects that may take more than a year is the technical person well equipped to explain that and also plan for it? What is the level of understanding of how government commits funds to the various functions that it has?

Gregory Mwakanongo-Cec Finance Nairobi City County

The most important and fundamental lessons that should be drawn from the meeting is the discussion of the challenges and the opportunities in the budget making process.

At the beginning there was a budget but this budget had not anticipated the challenges that the county government would encounter through the budget cycle. The county has however improved in its budget making process with time.

The two main issues the county government of Nairobi has been struggling with is the collection of revenue and the wage bill. The wage bill of the county is 66% of the total county expenditure and 70% of the recurrent expenditure. It is clear this is not sustainable and the county ought to come up with solutions to reduce the wage bill.

The absorption of funds in the county governments is high and this is high under the recurrent expenditure and not the development expenditure. The recurrent expenditure has remained very high is Nairobi County and this has raised concerns with the CBEF which has been very keen to point out that something needs to be done about the level of recurrent expenditure.

Despite that, the internal revenue Nairobi county raises is non comparable with any other county, Nairobi raises the highest level of internal revenue.

Farther discussion will show the issues on wage bill, revenue and debt affecting Nairobi County.

TOWARDS A SUSTAINABLE WAGE BILL

Status of the Nairobi City County Wage Bill, Challenges and Opportunities, Daniel Kibet (PSM)

From the year 2003 to date the wage bill for Nairobi County has been increasing even with a decrease in the workforce. One of the challenges the former City Council faced was the workers of the city council had a very strong union and every time they would have an industrial action the Collective Bargaining Agreement (CBA) would leave the city with a higher wage bill. The award of the CBA was not and in most times is not a rational process. The CBA is awarded and the city council would be left to figure out where the money needed to increase the wage bill would come from. It is therefore important to note the problem of the wage bill in Nairobi started way before devolution was adopted and therefore the wage bill challenge is a transition challenge.

CBAs were signed without a technical analysis of the Cost Benefit Analysis which would have brought out the real implications of pay increments.

The table below shows the changes of the wage bill between 2003 and 2017. It is however important to note that this does not include some of the expenses by the workforce and some allowances, meaning that if this was included the figures could be higher.

Year	**Work Force**	**Wage Bill**	**Average Salary**
2003	17,835	Kshs. 275,447,444	Kshs 15,544
2007	12,893	Kshs 345,665,948	Kshs 26,810
2011	11,521	Kshs 527,361,347	Kshs 45,773
2017	12,793	Kshs 13,344,878,475	Kshs. 86,928

Recently the nurse and also the doctors were awarded a CBA where both have very far reaching effects on the wage bill of the county. The nurses CBA will have an implication of about 300M increase in the wage bill annually while the doctors recent CBA will have a 200M annual implication on the wage bill for the county.

<u>Challenges relating to the wage bill in NCC</u>

- The County is grappling with huge wage bill which does not correspond with the resources at its disposal. The wage bill of the county is over 50% of the total expenditure of the county. Yet the county does not raise even half of its potential revenue.
- The County has an aging population whereby 60% of its population are of over 50years of age. This only means the county has staff it does not need and staff they cannot maximize on to maximize on returns. The county also having such a huge population towards retirement will run into problems of succession and also management of the pension requirement will be impossible.
- Huge debts brought about by unregulated wage increase which does not correspond with revenue growth. CBAs are awarded without the rational consideration of the availability of the revenue needed to raise the money to implement the CBA.
- 60% of County staff are support staff consuming approximately 50% of the entire wage bill compared to 40% technical and management staff.

- There is a huge disparity in salaries and allowances for devolved staff and former city council staff hence resulting in friction and demotivation since staff with similar qualifications and performing similar functions yet are paid different salaries
- There are heightened industrial actions by unions whereby unions are agitating for increased salaries hence putting a strain on existing resources and results in missed revenue targets in revenue collections.
- Slow change in adoption of new technologies by staff leading to sabotage especially in revenue collection.
- Due to strong unions it is difficult to negotiate and agree on a staff rationalization process that may result in wage bill reduction through staff redundancies.
- Lack of funds to finance staff redundancies especially considering that most of the staff are members of a contributory pensions schemes of which the County has not been consistently remitting pension contributions.
- Lack of unified recognition agreement with the various Unions hence leading to uncoordinated wage demands. For instance, the recent industrial strikes in health has resulted in increased wage bill which initially had not been budgeted for. This has a ripple effect on the other sectors since they use these increases as a bench mark in demanding for salary increments.

Recommendations

- The County should explore the possibility of financing voluntary early staff retirement considering that over 60% its work force is already over 50 years and perform routine functions which can be outsourced instead. For this the county government would require the support of the Commission on Revenue Allocation to be able to set aside funds for the exercise.
- The county can also encourage a voluntary early retirement and replace the same staff at lower wages as those recommended by SRC.
- Invest in staff training to build capacity to improve productivity, Nairobi City County has a high number of staff that are underutilized.
- Invest in technology in the revenue collection for instance procurement of an Enterprise Resource Programme (ERP) system which will maximize revenue collection hence reducing the personnel/revenue ratios.
- County to re-organize its structure in order to promote efficiency and reduce wastage and duplication especially under the decentralized units.

Review of the intergovernmental framework for wage bill management- status of transition and imperative for success- Dr. Mutakha Kangu

The real problem that is affecting the county governments is not challenges of the county governments themselves but a question of transition that has remained unresolved. How then is the transition problem dealt with?

The challenges of the county wage bill did not emanate from the county as has been indicated earlier, the challenges emanated from the local authority and have been inherited by the county government. This then leaves the question of how transition was managed and handled. How will the wage bill challenge be handled and also putting in mind that it’s not unique to Nairobi County but is a challenge that most counties are facing.

The wage bill challenge has to be dealt with as an intergovernmental challenge because the decisions whether policy or otherwise that the National Government is taking are having far reaching effects on the county governments and the wage bill is just one of the problems the National Government ought to have worked with the counties to resolve.

The National Government has been developing fiscal policy that should be implemented by the County Governments yet the National Government is not ready to support the counties to implement this fiscal policy at the county. The National Government must be willing and ready to support the counties in the implementation of policy they develop not only developing policy and throwing it at the counties for implementation yet the implications of this policies on the counties more often than not has not been thought through. This has especially been so in the policies that have affected the staffing of the county governments and also related to the wage bill.

It seems like the National Government has not understood its role to the County Governments as indicated in Article 235.

The National Government has failed in the implementation of recommendations by the Transition Authority (TA) on staffing at the national and the county government. The CARPS report gave major recommendations on the rationalization of the staff which would be important in the reduction of the wage bill but this report has never been adopted by Summit and thus there are no recommendations that have been implemented.

The CARPS report has far reaching recommendations that will be important in the rationalization of staff and reduction of the wage bill. This is one of the reports whose recommendations should be pushed for implementation.

The wage bill issue has not enjoyed any political good will and the politicians are not ready and willing to make the difficult decisions that would be fundamental in tackling the wage bill problem in the county and the national governments. The Summit has shied away from implementing the CARPS report which leaves the development of the report as an effort in futility.

Some of the strategies that the government should consider is setting aside a fund for staff rationalization. The government can also work towards creating of systems where as they retrench the staff they outsource some of the services from the same staff through building capacity of this employees to have their companies where they can provide services to the government.

There is need to have recognition that IGRTC is not a transitional body but a permanent body by created by an Act of Parliament. IGRTC was created to take over from the Transitional Authority and more importantly to be the body that deals with intergovernmental related issues in the devolved system. Most important the IGRTC acts as the secretariat to the summit which is the highest body for devolution management.

The IGRTC has struggled to implement its mandate partly because of budgetary issues and also the lack of clarity of roles especially where they would lack good will from the two levels of government. IGRTC is tasked with the role of implementation of recommendations of the summit and thus plays a very critical role in devolution.

Under the Kenya Gazette notice 858 on the institutional structures for the verification and transfer of the assets and liabilities of the defunct local authorities two institutions have been created the Interagency Technical Team and the County Assets and Liabilities Committees. One thing that is noted is CBEF has not been considered as representatives in the two institutions despite the inclusion of CBEF being fundamental. There is need for a recommendation to amend the gazette notice to include CBEF in the two institutions.

It is also noted that the two institutions have not exclusively handled the issue of human resource which leaves the question of whether the human resource is implied as a liability or there is need to amend the gazette notice to that effect.

There has to be an understanding of a cooperative government and there has to be recognition that the wage bill problem will be dealt with through collaboration. The wage bill problem cannot be dealt with like a problem of either governments but has to be a collaborative process where all the efforts count.

The county governments and the national government has to be willing to create a formula that deals with the mess that the devolved units inherited. The County Assemblies Forum and the County Attorneys Forum are not under any law but the counties have managed to device a way that works for them and helps them develop a working mechanism of coordination in the county assemblies and amongst the County Attorneys.

There is need to consider having sectoral forums of coordination of the devolved units.

The summit has not been making the hard decisions they are supposed to be making to shape the policy direction of the country.

Can the CRA make a decision by making recommendations that in the proposed division of revenue there be a fund to handle the implementation of CARPS.

Presentation by Prof Judith Miguda from the Intergovernmental Relations Technical Committee

There has to be a recognition that the issues on the wage bill is an intergovernmental relations issue and especially one that should be handled by the summit. The summit is the highest/apex body of intergovernmental relations.

IGRTC is the secretariat for the summit it implements the decisions of the Summit. The issues that have to be taken to the governors at the summit are issues that have already been discussed and what is there are recommendations to be considered by the summit, the issues before the summit should be issues that require policy decision.

The IGRTC was also supposed to take up the residual role of the Transition Authority. The 3years that TA had been given was not enough for them to undertake the transition that they were tasked to do.

The TA had tried to prepare to undertake the audit of the assets and liabilities but they were not able to undertake the full audit. TA had done an inventory of the assets and liabilities in all the counties and they were to do a verification and transfer of the liabilities but they were not able to thus the TA did not finish the audit process. The IGRTC is now supposed to undertake a verification and transfer of assets. An asset transfer of as is where is basis and verification and audit will be done later. Then a report or recommendation will be undertaken.

The liabilities are what has not been handled yet there is no formula for handling liabilities yet and thus this may call for stakeholder consultation to develop a national strategy on how the liabilities will be handled.

The liabilities have become a political issue and thus no amicable solution has been reached. The political class has shied away from making the substantial decisions on the liabilities of the devolved units and thus there is a vacuum and lack of a proper direction on what needs to be done. But this subject cannot remain unresolved and thus need for a solution through a stakeholder to be reached.

The Framework of the IGRTC is simply:

- Coordinating agency for the auditing of the assets and liabilities. The exercise should have ended by 30th of June this year and the report submitted to IBEC and the Summit.
- Interagency technical team- preparation of workshop materials, evaluation, capacity building. The guidelines for the exercise are being developed.
- County assets committee, chairperson, county commissioner, Composition of the committee was disputed by COG especially national treasury rep being the secretary.

PLENARY

- The public service management (PSM) department has not touched on the skills match. Like the cleaning services of the county services? How much of a challenge is this and the county residence have complained that they are not feeling the services what do you think could be the problem?
- Why is the county not working towards full utilization of staff even when they know the staff are underutilized?
- The county has been disabled by poor technical capacity. Who is responsible in the county for the process of liabilities and assets committee. Have the counties mainstreamed the assets registers which is part of the annual requirement reporting to the auditor general? What is the difference between this and what the county IGRTC wants to do?
- Could it be that the process of the wage bill, the assets and liabilities is a political question that we are trying to answer using an economic process? Or an economic question that is being answered using a political process?
- What is the equity consideration in writing off the debts of the county governments? There are counties that have borrowed less while others have borrowed more how do you ensure fairness in writing off the debts?
- There is need for the county governments to shift to an evidence based recruitment of staff. Let there be a needs analysis that is undertaken so the staff counties get are what the need and require. Responding to the needs of the county governments and not having a process that dumps a work force at the counties without thinking of what the counties need. That don’t we need to go to an evidence based employment of staff.

- There are political commitments that have also become a problem in the bulging of the wage bill. Politicians make decisions without thinking about the implications of this decisions to the counties and also without consideration as earlier mentioned of the needs of the counties. For example, employment of specialized doctors to all the counties? One would wonder if each county would need cardiologist and how realistic and sustainable that would be? The question of what counties need versus the political decisions needs to be properly interrogated.
- What is the balance between the service delivery and county revenue? The services that the counties offer to the people largely do not generate enough revenue how do we balance the services delivered and the revenue that is collected?
- Where does public participation come in under the assets and liabilities audit process? There has been no clear mention of public participation and this would be fundamental.

RESPONSES AND DISCUSSION FROM THE PANEL
Daniel Kibet- Psm

There was no mention of the skills match but this has been covered comprehensively under the CARPS report which has given an analysis of the challenges, gaps, opportunities and also recommendations. However, the report has not been adopted and that remains the dilemma.
What the county government of Nairobi needs is proper distribution and supervision of its staff. 60% staff who are enforcement officers and sub county administrators need to be rationally distributed across the county to ensure that there is maximum output from the staff that the county have.
The structures of the county have also not been fully utilized which also means that the full utilization of staff would be compromised. The county also has structural challenges.
The county government may need to employ qualified technical staff after rationalization but it will only have value if there is a structure to fully utilize the staff that are brought on board.

Prof Judith Miguda

There is a statutory requirement for the counties to report assets through the auditor general annually. The difference with what the TA was doing was that the process was an accountability process of the assets that were being inherited from the local authorities. The process that the IGRTC has taken over is a one off process for ensuring that the assets that were to be inherited by the counties from the local authorities actually exist as said. The auditor general process is an annual audit process and thus different from what the TA was doing and is being finalized by the IGRTC.

Public participation in the assets and liabilities audit process has been considered and this will be outlined in the guidelines for the process that the committee is in the process of developing. The IGRTC believes that the public has more information than even the government may not have on public resources and thus have emphasized on the involvement of the people in the process.

Prof Mutahka Kangu

There is a big challenge when it comes to the debt versus the revenue that the counties have. The national government for example owes the Nairobi City County about 64Billion.

The challenge then becomes the lack of political good will to resolve the issue of the huge debt between the two levels of government. The National Government is not cooperative in settling the debt it has with the county government and feels like it should not be paying the county government.

Thus this is an issue that needs to be tabled as an intergovernmental relations issue. What has become evident is that the biggest problem and obstacle to dealing with the issue of debt and the wage bill is political good will yet most of this issues need to be dealt with under good governance.

One of the things that the country has been shy to admit is that transition into the devolved system of governance was mismanaged. One of the key issues that remains unresolved is the parastatals that are still holding on to functions that are now devolved functions and yet there have been no structures to rationalize the parastatals to transfer the functions to the devolved units. The rationalization of the roles that the parastatals play may be another solution to the bulging wage bill of the counties. Some of this parastatals could be collapsed and staff redeployed to the county governments to offer their services there where the functions belong. This means that the counties receive the staff and the staff move with the resources that they were utilizing at the parastatals and thus avoid passing over the burden to the counties.

To be able to realize the full gains of devolution we have to be ready to undertake a change of the entire system and have fundamental changes in the country. What needs to be thought about is how we reduce the pain of those that will be negatively affected by a complete change of the system.

COUNTY REVENUE

Presentation By Gregory Mwakanongo Status of Revenue Performance in Nairobi County

The County Revenue has continued to grow with an increase of 22% from 7.6M collected in FY 2012/2013 to 9.3M recorded in 2013/2014. In the FY 2013/2014 the county collected 77% of its target, 2014/2015 it collected 85% of its target while in 2015/2016 it collected 77% of its targets.

It is important to note Nairobi county has been targeting to collect half (50%) of its potential meaning that what they have collected is already less that 50% of the potential revenue that the county can raise.

Some of the challenges that the county faces in revenue collection include:

- Inaccurate and/or lack of Data: Most of the county records have been in manual form dating back from colonial times thus accuracy is not guaranteed and complete lack of data for other sources. It is impossible to collect revenue without data and this can be looked at as in the case of KRA which has been able to collect large amounts of revenues due to the rich data that KRA holds.
- Logistics: Inadequate vehicles and working tools. There is no supporting infrastructure for the collection of revenue.
- Legal Framework: Lengthy and bureaucratic processes in enforcement and in some circumstances lack of it at all.
- Overlapping of roles: sectors performing tasks not under their mandates. An example is the confusion that has been there under the betting centres and who should be collecting their dues.
- Non-payment of debts by National Government & its Agencies: The National Government has not remitted CILOR & accumulated reserved parking fees.
- Resistance from traders: Hostile reception of collectors in volatile areas.
- Political interference: Politicians inciting residents not to pay to achieve political mileage.
- Inadequate personnel to cover all revenue streams and the entire city.
- Integrity issues: There are isolated cases where corruption and rogue officers have been reported to hamper collection and enforcement efforts.

Commission on Revenue Allocation – Linet Oyugi Director Research and Policy

In an ideal situation Nairobi should not be getting any money from the equitable share as the county has the ability to be self-sustaining. The question is what needs to be done to support and help Nairobi to collect revenues and maximize on its potential to collect revenue. Nairobi has the capacity to raise enough to even lend or grant the national government.

At the moment Nairobi is receiving about 14 to 15Billion in the equitable share. Nairobi finances between 43% to 47% of its budget and this is still commendable as there are counties that have not managed to raise even 1% of their budget although due to the different dynamics this cannot be compared to the situation of Nairobi.

One of the considerations that the County of Nairobi should be looking into is revising their evaluation role and also reviewing the rates that the county charges.

Nairobi raises most of its revenue through property rates, parking and the single business permits. This are all revenues that the county by now should have managed to have a proper analysis of what they expect and have projections on their expected revenue collection.

Again the question that is asked is where the issue of revenue is a political issue that we need to solve using a political answer rather than an economic issue.

One of the revenues that Nairobi County should be having almost exact figures on what they will raise is the parking fees yet the county has not been able to have concrete projections which raises the question of what the exact problem is. There is a loop hole in the collection of parking fees that is leading to lose of funds that should be addressed.

The urban areas and cities act indicates Nairobi County should be getting extra funds as the county taken advantage of this and asked this from the National Government. There is need to work with stakeholders to get additional resources in respect to the Urban areas and cities act.

How is Nairobi county tapping into public private partnerships? This could be one of the avenues for the county government to explore ways of partnering with the private sector in the collection of revenue. The national government already has a framework for the PPPs that the counties should be taking advantage of to create partnerships with the private sector.

One of the things that is clear is that the resident of Nairobi does not see the development or the changes that the county government has brought to the city.

The county also has the leeway to borrow up to 20% of its revenue has the county government of Nairobi taken advantage of this.

Another issue of concern is the model that the county government is using to collect revenue. How effective is the revenue collection model that the county is applying? Does it need to be revised.

Nairobi county has also been changing fees without consulting the residents yet there has been a complaint that the people are being taxed yet they feel the services they are being offered do not reflect the taxes and fees the county is charging.

This thus raises the question of public participation in the process of revenue collection which is very important especially for accountability and buy in.The people of Nairobi have felt that they are not involved in the decision making process for fees and taxes yet they are left to comply to policies they do not understand.

Article 203 is very clear on the equitable share and financial laws. Nairobi county collects the highest absolute revenue but is at about position 15 for the per capita income.

The per capita revenue has been indexed in regard to the population size and dynamics.

Mombasa county has been the biggest beneficiary of intensification of revenue collection.

Nairobi needs to be segmented so as to have the value in the different areas without having a blanket role.

Presentation by Prof Mutakha Kangu

We have to address the mechanisms of collecting revenue and also good governance in those mechanisms.

Efficiency and capacity of a county have to be discussed and looked at concurrently. You cannot say Nairobi has collected more without knowing the potential of county. It has to be more or high in relation to a measure that is scientific and evidence based.

The National Government cannot argue that they cannot pay the county Governments the rates that they owe them it is mischievous and this is a clear way of frustrating devolution. This is an agenda that should be boldly discussed at the summit and there be guidelines on how the National Government plans to pay what it owes the counties because it is not only Nairobi that is owed by the county. You cannot exempt the National Government when all other entities are paying.

The political aspects in rates must also be looked at. What is making it difficult for the rates to be paid. Is there a political motive or mischief that is behind this?

Property rates may look a very attractive source of revenue but it is highly political. A policy should be passed at the National Government on the enforcement of property rates and this may cure the problem that has surrounded property rates for decades. People do not pay property rates they only do so when they have a transaction that have to do with the land.

It is a political issue that has to be taken to the intergovernmental relations table as it is not only an economic or social issue but very political. There is need to answer the question and have the National Government develop a strategy for the County Governments to collect property rates.

Apart from resistance from the National Government there is question of exemptions. First is the diplomatic exemptions. They own very lucrative buildings in Nairobi and in the leafy suburbs that would attract very high rates thus revenue for the county but they have been exempt. How can the county of Nairobi then be compensated for provisions of this services that have been affected due to an international agreements like the Vienna treaty? There are exemptions on religious organizations also that need to be rethought as the organizations now own business that ideally should be paying rates and taxes and they are not this has led to the county also losing out on a substantial amount of revenue that they would have received from this.

The county government is also owed by agencies like the Judiciary and Parliament, this issue too is an intergovernmental relations issue that needs to be discussed at the summit to raise this concerns with the agencies and develop a mechanism to pay up to the county of Nairobi.

The money/ revenue raised nationally is raised by all and thus is not owned by the National Government.

There has been a revolution where the political leaders become “one” when there is revenue allocation. This is one thing that Kenyans need to be awake too and focus on solving the mischief behind the “Unity” of the political class when there is an agenda on revenue allocation.

Presentation by Kenya Revenue Authority

Nairobi City County needs a debt enforcement unit and the county can use the KRA legal framework under the KRA Act to enforce their debt collection.

The county has the mechanisms of collecting the revenue but one mechanism that the county as lacked and undermines their revenue collection is what happens to defaulters.

Another fundamental question that should be answered is whether there is a law that prohibits the County Governments to collect Revenue from the National Government as they have become one of the biggest obstacles to the county governments and not only Nairobi.

PLENARY

It is important to recognize there lacks a strategy to help the government collect the revenue and manage debt.

Compressive and coordinated legal and policy framework that responds to what the national government has, needs to be developed at the county governments. There is need to legislate to caution the county governments. Intergovernmental policy on debt and revenue management needs to be developed to respond to the challenges facing the county.

There is need for the counties to come up with innovative ways of dealing with the staffing challenge and the bulge of the wage bill.

The expenditure of Nairobi county has been growing at a higher rate than the revenue.

There is also need to develop a proper borrowing framework to guide the devolved units.

The revenues from the parastatals also need to be considered as there is revenue that is received by some parastatals that should be county governments revenue. A strategy or a formula needs to be devised on how to get the county revenues from the parastatals.

The county governments lack data and truth be told the county cannot maximize of revenue collection without the appropriate data. The expenditure has been growing at a higher rate than revenue.

When the national government does not pay to the County Government it disadvantages the county residents because it disables the ability of the County Government to provide services.

The county government probably needs to apply the unconventional ways to collect their debt from the National Government if the conventional methods have failed.

It is clear that the law on revenue collection is very weak and thus even the enforcement of the law has become a challenge.

What is the role of the senate especially in the cautioning and protecting the county governments? Does the Constitution need to be amended to give senate powers especially on having the final say on the laws that affect the devolved units?

The low revenue collected also means the county performance management system has not been effective to ensure that people collecting revenue are held accountable for failure to collect the revenues that they should be collecting.

It is important that even as the external issues are addressed the county government looks into the performance management system as one of the ways of maximizing the collection of revenue in the county.

The betting licensing and control is a function that appears on the functions of the National Government (Function 34 under schedule 4) and the County Governments as function 4. How does this work and what level of government should be collecting what for the betting and casinos?

What lessons can the county government learn from KRA which collects 95% of its revenue targets?

Behavior change at the county what is the county government doing because there is need to address the people at the county, it is no secret that there are integrity issues that are surrounding revenue collection.

The structure that Nairobi county is using is set to frustrate the people especially on the lack of information and the information flow. The people are not aware of the taxes they should be paying and who they should be paying to. If the county adopts a system where they involve the people, then it will become easy even in the accountability process as the people can easily raise question based on the taxes the pay and who they pay to. A collaborative process with the people may be one of the solutions to revenue collection.

For example the Unified licensing Bill – the members of the public have no idea what it is about. There was no understanding until there was clarity during a public participation forum where the public suggested changes to the bill.

There is need to democratize the system of revenue collection and this will ensure transparency and accountability.

Nairobi County is also top heavy. The top management of the county is well facilitated but the technical and administrative officers offering the actual services lack the facilitation.

The County Government of Nairobi needs to operationalize the village administration which has been proposed to be linked to the residence associations which Nairobi are the smallest units of decentralization.

There is also need to borrow best practices from counties like Makueni that has a Project Management Committee model that is being used for transparency and accountability through involvement of the people in all county projects through the PMCs.

The Nairobi City County also needs to update its subscriptions with the Council of Governors to allow for collaborations with through the COG.

There is need to look into other regulatory measure that may affect revenue mobilization in the counties.

Entertainment is one of the areas that could attract revenue for the county yet the Nairobi City County has not even developed a law on this. They could borrow from Nakuru county that has an operational law on entertainment.

There is also need to educate tax payers like KRA has been doing and this has contributed largely to the increase in the revenue KRA has collected.

Are there options of out sourcing the collection of revenue?

There is lack of a legal framework to support revenue collection, KRA is powerful because of the legislation that supports their enforcement.

The question that the county government is left to struggle with is how they enforce.

The debt collection unit cannot work alone. There is need to undertake a revenue potential analysis and also assess the cost of collecting the revenue.

The overlapping functions have to do with the intergovernmental relations. It is a residual function that IGRTC is dealing with and there will be clarity as time goes by.

The integrity of the debt and revenue collector is a very key issue that the county should not ignore. Money is being lost through officer of questionable integrity this must be addressed by the county.

Nairobi county has a borrowing framework but through the Budget Fiscal paper the county has indicated due to the debt sustainability they will not borrow.

When indexing of revenue is done it looks like Nairobi county is being punished, the county has different dynamics from other counties but this does not mean that the county has any major advantage.

There is even a proposal not to fund the county and this may be strategy to collapse the county and recentralize. There is need to have an intergovernmental relations discussion that will respond to the challenges of Nairobi County especially being the capital city.

There is need for a bench mark on what is meant when Nairobi county is said to be doing well. The county should be doing well relative to a measure.

A question that needs to be asked is who finances the intergovernmental framework we have and are they fair when the finance the intergovernmental framework.

Nairobi county is not doing well in revenue collection because their target is collecting 50% of its potential yet of this 50% of its potential it collects about 75% which means the county if collecting less than 50% of its potential revenues. There is need to interrogate how the targets for the county are being set and look at the ways to maximize the collection of revenue.

RESPONSE

Kenya Revenue Authority

Various counties have signed MOUs with KRA on revenue collection or even capacity development. Laikipia and Kiambu counties have active MOUs with KRA. KRA is open to working with the county governments and they believe that this will be an opportunity for both the counties and KRA to benefit from such partnership.

KRA is working on strategy/ framework that will allow the county governments to use the laws of KRA for collection of revenue.

Nairobi County needs to work with KRA on strategies to support the county in revenue collection.

KRA does a daily index and follow ups on the revenue that they expect to collect and what they actually collect. The targets are set through past projections.

There is need for an information data base for revenue collection that will help the county to collect revenue.

KRA has also been very keen on educating the tax payers. Whenever there is something new then they take it upon themselves as a duty to reach out to the people.

CEC Finance Gregory Mwakanongo

The finance bill has only been passed twice in Nairobi county in 2013 then reviewed it in 2015. Nairobi was among the first counties that reached out to KRA but however there were challenges and the county felt their needs would not be responded to by KRA at that point and thus did not go on to pursue the partnership. The county has however reopened negotiations with KRA for a partnership.

The county has partnered with government institutions like the Ethic and Anti-Corruption Commission to deal with the integrity issues that have arisen amongst the officers of the county.

Prof. Mutakha

Intergovernmental relations may not be end solutions to the challenges discussed but it is the right place to begin addressing this challenges.

When the devolved systems were adopted the National Government felt that they knew everything about devolution forgetting that devolution was a new system for all and there was need for everyone to learn on the systems and processes of the new governance system. The unwillingness of the national government to learn has been one of the recipe for the challenges being experienced.

We relied on the old institutions to deconstruct and construct themselves to adopt the system of devolution. What we are going through is the status quo at war, the resistance from the political leaders and others to devolution.

There is a measure of resistance and we have to know how to get there.

Do we need to give senate more powers? What is needed is commitment not amendment of the constitution. The problem is adequate commitment by the political class towards devolution and not the weakness of the law.

The senate has intergovernmental oversight role yet they have not played that role. The senate can summon any National Government officers for failure to pay rates to the County Governments yet they do not do it. There is need for "education" for the senate to understand its role in supporting devolution. The senate needs to develop a bill and if they fail to pass at National Assembly then they force a negotiation process with the National Asembly.

The senators have not exercised their oversight role on National Government on issues that affect devolution.

To amend the Constitution, it is a very long process and without educating the Senators and National Assembly a Constitutional amendment cannot go far.

There is no harm in looking back to mistakes that may have been made in the passing of the laws and making changes to ensure that this mistakes do not affect the future.

The people are the ones who know where the problem is and therefore involvement of the people is fundamental in all governance processes.

Where it is possible to partner with KRA let it be done but it is not possible for each county to create a "KRA".

The partnership with KRA can also be on capacity development of the county governments and not necessarily collection of revenue.

The international treaties are a function under the National Government but they need to know what is going on at the county because that is what they are reporting about at the international level. The treaties are binding obligations and therefore for every responsibility to the counties there is need for resources to accompany the responsibility.

Is the National Government committed to giving the county government the resources as they are committed to international treaties?

Linet Oyugi Commission on Revenue Allocation

After engagement between the National   and the County Governments, Casinos and betting licensing was left to the National Government because of the challenge of money laundering that comes with casinos and betting. The County Governments do not have the capacity to deal with money laundering.

Issue of indexing is not meant to punish any county it is based on the efforts to incentivize the maximization of raising revenue.

The formula for revenue allocation needs to be reviewed but this can only be done through a consultative process.

DAY TWO 17TH MARCH 2017

DEBTS AND LIABILITIES

Nairobi County Presentation on the Status of Nairobi City County Debts and Liabilities – Presentation by Alice

The challenges in debt that the county of Nairobi is facing are not unique. This have also related to the debt challenges that the National Government is facing.

The Nairobi City County has accumulated debt of about KES 209Billion which it is owed by the National Government and also other private sector entities.

The greatest challenge that Nairobi County has faced has been the recovery of this debt both from the private and the public debt where they have not been successful in collecting what they are owed.

The Challenges that the county has encountered that relate to debt include:

- Debts inherited from defunct Council - Statutory creditors, on-lent water loans and government guarantees that date back to the 1970's that were acquired to finance water infrastructure and Umoja II housing scheme.
- Non-payment of debts by National Government & its Agencies: The National Government has not remitted CILOR (Contribution in lieu of rates) & accumulated reserved parking.
- High interests charged by statutory creditors with Lap-trust charging 1.25% per month (15% per annum) compounded and Lap-fund charging 3% (36% per annum) compounded in conformity with the RBA Act.
- KRA charging high interest and penalties on accumulated debt.
- Slow growth in the revenue streams.
- Fluctuating revenues and failure to meet revenue targets during the year.
- Minimal amounts (3% of the budget) are set aside in the budget to finance debt.
- Service providers like KPLC have defaulted on way leave payments with the debt currently standing at Kshs.694.7M.
- Litigations and dicretal awards issued by the courts.

Presentation By Prof Mutakha- Review of the Intergovernmental Framework for the Resolution of Historical Debts and Debt Management of Debt by Counties

The Nairobi City County debt and also that of many other counties is transitional in nature and needs intergovernmental relations process to deal with it. The debt was largely inherited from the defunct local authorities and there is thus need for a discussion on hoe this debt that the counties inherited will be dealt with.

The IGRTC has postponed the decision on how the inherited debt will be liquidated. The issue on the assets was resolved but the liabilities/debts remains unresolved.

The County Government and the CBEF must pay a leading role in the assets and liabilities audit process. This is the process that should come up with the answer to how the liabilities will be handled and thus the County Government must ensure that their interests are well represented and taken care of in the audit process.

While the Gazette notice 858 establishes the role of the County Governments the role of the CBEFs has not been recognized. The CBEFs should lobby and ensure that they are included in the county committees in the audit process and this should specifically be the Non State Actors in the CBEF.

The time frame on the gazette notice is very ambitious and the timelines are not realistic and have not been achieved. It has however been indicated that there were delays in the signing of the gazette notice that led to a delay in the actualization of the activities anticipated by the gazette notice. The Inter-Governmental technical committee is however in the process of amending the gazette notice.

One thing on the debt that is very clear is that the National Government is playing a "direct supervisory" role to the county governments yet them no one is supervising them. The National Government owes Nairobi City County 64Billion and this is an amount that the National Government has not been paying to the county.

Presentation by Prof Judith Miguda

The County also needs be held accountable by showing the steps they have taken in recovering debt. For example, why is the County Government not going ahead to reposes the parking spaces that have been given to the National Government and is not being paid for?

There are some of this debt that the county must also be willing to take the harder route in compelling the National Government to pay its dues to the county.

The approach that the Intergovernmental Relations Committee has taken on the liabilities is having stakeholders come together and make a decision on how the liabilities will be handled. The County Government should propose to IGRTC on the relevant county bodies apart from CBEF they believe would be critical to be part of the assets and liabilities committee.

The Council of Governors is a very strong body and the gate keeping role of the Council of Governors needs to be looked into and the county take a deliberate decision to use the avenues at the COG to advance some of the issues affecting them.

IBEC and the Summit want the exercise of the audit of the assets and liabilities done before the elections, this is being considered a clean-up exercise and would be very critical to have it complete and have reports out before the elections in August.

PLENARY

The Constitution gives citizens right to picket. Would one of the solutions to the debt especially the one owed to the county by the National Government be to educate the people on the level of debt and how it is affecting the operations of the county. This then could be followed by mass action by the County Government and other county stakeholders compelling the National Government to pay its debt.

The collaboration with KRA should not only be on revenue collection but also on debt collection. How can KRA support the County Government n collecting its debt? The collaboration should be based on the expertise of KRA.

Within the county the debt collection department needs capacity building so as to increase its ability to collect debt.

The county should avoid the accumulation of the current debt. The old debt can be discussed if the current debt is not accumulated.

The County has the authority to block some of this buildings and also parking given to the National Government and they should not shy away from doing this if the negotiation process does not bare fruits.

One of the recommendations on dealing with the debt would be creation of a sinking fund where all the transitional liabilities are allocated. This will be a fund that will show what each of the county is owed by the national government.

From this the County Governments and the National Government can come into a negotiation on how this debt will be cleared progressively. Strategy can be drawn around the sinking fund showing how the debt will be cleared. There could even be suggestion to clear the debt through future revenue like what is likely to start coming in from the exploitation of oil.

Its either the county Government of Nairobi gets serious in recovering debts or write them off. There are so many options of debt recovery that the county has not explored in debt collection that they cannot claim to have been completely not able to collect what they are owed by the National Government and the non-government institutions.

How authentic are the outstanding creditors? How recoverable are the amounts that are owed to the county government? Are they book figures or realistic figures that can be recovered? This are also fundamental questions that the county needs to answer before they can be sure of the debt the County owes and what its owed.

The Nairobi City County needs to give the progress of implementation for the debt implementation strategy. This will be a starting point to see what the county has achieved and what challenges it is going through.
CBEF is a forum for consultation but it also brings in the aspect of public participation as the stakeholders that are in CBEF represents the people from different walks of life.
The idea that public participation is about the people giving their opinion is erroneous. Public participation is about involvement of the people in the process of governance.
There is an 8B that is collected for payment of statutory debt, yet 2.4B is what is being paid. There is need to have clarification on those figures.
The internal accountability of the county has been weak, the county has also not been able to have structures for internal accountability and thus it is difficult even for the to give an account of what they have. The county must be part of basic accountability mechanism.
Given the number of MDAs that owe the County Government, what if there is a recommendation to have the moneys that they do not absorb taken to debt repayment.
The National Government owes the county 64B out of the 209B that the county is owed. Why is the county not able to also collect the 145B that its owed by other institutions apart from the National Government?

There is a fundamental question that needs to be asked between the National and the County Governments and this is the reason why the National Government stopped paying its dues to the County Government?

RESPONSES

Alice – Nairobi City County

Implementation of the debt strategy paper. There has been no report on the progress. They have met the stakeholders but the process is intense but is on course. There are processes that are ongoing with stakeholders. They have met LAPTRUST. It will take time to implement the debt strategy paper but it is important there is a progress report to create awareness on the implementation of the strategy paper.

Authenticity of the creditors and the debtors has been done and the county has ensured that they are credible.

The county has not been able to collect its debt due to the weak policy and legal framework that has become an inhibitor to the county collecting its debts. The framework for KRA is strong and the county needs to think on legislation to have a solid framework for debt collection.

The spending at source was largely inherited from the defunct local authority.

Prof. Judith Miguda

Budget for the assets and liabilities exercise has been taken care of. This will be a collaborative process between the IGRTC and the county governments.

The IGRTC will verify all assets that will be in the report and the recommendations on what needs to be followed up and how it will be done.

There are historical and current liabilities. The county government needs to focus on the current debt as the historical debt will be discussed at the stakeholder forum that will be organized as indicated in the gazette notice.

Prof Mutakha

The COG has one rep interagency committee. There is need to increase the representation of the COG in the interagency committee.

CBEF is a statutory body that is part of the county government. The view of the of the people needs to be considered. The citizens as represented in the CBEF will be very important as supporters of the county government.

Members of the CBEF that are not county government representatives to be included in the county committees for assets and liabilities.

The issue of property rates is an intergovernmental issue that is highly political, this has to be handled as a political issue and not an economic issue.