UNIVERSITY OF NAIROBI

FACULTY OF LAW

ASSESSING THE REALIZATION OF OWN SOURCE REVENUE UNDER THE CONSTITUTION OF KENYA 2010: A CASE STUDY OF BUNGOMA COUNTY

A Research Project Paper Submitted to the University of Nairobi Law School in Partial Fulfillment of the Requirements for the Award of the Degree of Master of Laws (LLM)

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(G62/41323/2021)

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Acknowledgments

I thank the Almighty God for the, favor, grace, good health and resources accorded to me to uninterruptedly undertake my studies.

In a special way, I am grateful to my supervisor Professor Collins Odote for his erudite guidance, availability, and immeasurable support throughout this journey. My academic journey has been augmented through your supervision. May God immensely bless you.

I also wish to acknowledge my Reader, Professor Ben Sihanya and the Chair of my Defence Panel, Dr Jackson Bett for their comments, support and encouragement. I also sincerely appreciate the staff at Sihanya Mentoring (SM) & Sihanya Advocates (SA) for their support throughout this supervision and defence process.

Dedication

I dedicate this work to my late mother Mary Kavulani Malenge, who was my greatest cheer leader in life and in my academic journey, but sadly never lived to see me graduate. I also dedicate this work to my two sisters Elmah Musimbi Kipchirchir and Violet Ondisa Ojwang. I am, because you are, God bless you.

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County Councils of Wajir and Mandera v. *Allabdulahi Ahemd and Kuso Dahir al*, [2014] eKLR

Senate v. *Council of County Governors and 6 Others* (2022) KESC 57 eKLR

Okiya Omtatah Okoiti v. *County Government of Kiambu* [2018] eKLR

List of Abbreviations

AIA	Appropriation in Aid
CIDP	County Intergraded Development Plan
CARA	County Allocation of Revenue Act
CDF	Constituencies Development Fund
CECM	County Executive Committee Member
CO	Chief Officer
COG	Council of Governors
COK	Constitution of Kenya
CRA	Commission for Revision Allocation
CRF	Consolidated Revenue Fund
DFRD	District Focus for Rural Development
EACC	Ethics and Anti-Corruption Commission
FED	Federal Reserve System
FY	Financial Year
IFMIS	Integrated Financial Management Information.
IRA	Intergovernmental Relations Act
KSHS	Kenya Shillings
LATF	Local Authority Transfer Fund
MCA	Member of County Assembly
NG	National Government
OSR	Own Source Revenue
POTUS	President of the United States
RSA	Republic of South Africa
SRDP	Special Rural Development Programme
SCOTUS	Supreme Court of the United States
US	United States
VAT	Value Added Tax

Abstract

The Constitution of Kenya 2010 envisages devolved Governments that are resourced through two main instruments; National government transfers, and County government own source revenue. This research underscores the centrality of own source revenue in the success and nature of devolution. The paper faults why the country's public debate on fiscal stress and fiscal stability has been centered majorly on the National Government transfers, overlooking county own source revenue, these despite previous studies revealing that the aggregate county own source revenue generation is inordinately low constituting to only approximately 9% of the total national revenue annually.

This study interrogates the realization of own source revenue under Kenya's supreme law giving attention to Bungoma County Government. The study aims to contribute to mechanisms of boosting own source revenue as an instrument of resourcing counties, successfully which, the project paper notes will maximize efficiency in County Governments operations. The contribution made through this research will also play a fundamental role in the elimination of fiscal stress in both levels of government augmenting a match between revenue and obligations at the devolved units, as envisaged by the Constitution.

To holistically establish the status of own source revenue mobilization in Kenya's devolution, this research will examine the trends on county own source revenue together with the legal and policy framework underpinning it. The main streams of county own source revenue will also be interrogated. The study exposes that currently, all county governments in Kenya including Bungoma County depend on National Government transfers for survival. The paper also notes that Bungoma County has not maximized the potential of the authorized instruments of own source revenue as envisaged by the Constitution.

After independence, Kenya had tried out regionalism which scholars argue was repudiated by the political class and eventually overruled majorly because the regions depended wholly on the central government for fiscal support. To protect the existence of devolution, and to maximize efficiency in county governments, this paper recommends that county governments should inter alia enact entertainment and property tax legislations as envisioned by the Constitution together with boosting execution of the available streams of revenue to maximize own source revenue collection.

CHAPTER 1
INTRODUCTION TO THE STUDY ON REALIZATION OF OWN SOURCE REVENUE UNDER THE CONSTITUTION OF KENYA

1.1 Background to County Own Source Revenue in Kenya

Developing and transitioning countries in Africa are increasingly embracing sub-national own source revenue as an essential component of decentralization.[1] This is argued guarantees decentralized units *inter alia* autonomy over both revenue collection and expenditure.[2]Fiscal decentralization entails the transfer of revenue collection and expenditure from the central or national government to sub-national governments.[3]

Fundamentally, the adoption of county own source revenue has been against the backdrop that seamless flow of services and administration in devolved governments can only be achieved if among other fundamentals, financial decentralization is effective.[4]

Fiscal can be translated to mean relating to the budget (fiscal). This includes both parts of the budget that is; the laws policies and rules which can inter alia be found in treaties, constitutions, statutes, regulations and even in policy concerned with the budget.[5] The revenue component on the other hand includes tax, debt, aid and government business, while the expenditure component encompasses all government expenditure including exceptions and incentives.

Fiscal decentralization takes various forms, encompassing equitable revenue sharing, grants and own source revenue.[6] After independence, Kenya has over the years attempted to implement fiscal decentralization through various programmes. Some of the notable ones in this regard include the Special Rural Development Programme (SRDP), the District Focus for Rural Development (DFRD), the Local Authority Transfer Fund (LATF), and the Constituencies Development Fund (CDF).

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[1] Elias Peter Mbau, *et al*, (2019) "An Assessment of the Effect of Fiscal Decentralization on Performance of County Governments in Kenya," 15 Europe*an Scientific Journal* 109.

[2] Richard Bird and Francois Vaillancourt (2008) *Fiscal Decentralization in Developing Countries*, Cambridge University Press.

[3] Cyrus Munyua Mwangi, Stephen Muchina, and Beatrice Ombaka (2020) "Fiscal Asymmetric Decentralization and the Influence of County Fiscal Autonomy on Household effects in Kenya," 1(4) *Integrated Journal of Business and Economics* 80.

[4] Elias Peter Mbau, *ibid*.

[5] Attiya Warris (2019) "Towards an African and Kenyan Philosophy of Fiscal Legitimacy," 1(1) *Financing for Development,* 23.

[6] Hezbon Ochuodho and Dominic Ngaba (2020) "Revenue Administration Strategies and Financial Performance of County Government of Kisumu, Kenya," 4(12) *International Journal of Economics, Business and Management Research* 230.

Arguably, the above programmes progressively attempted to ensure equitable division of revenue in the endeavor to attain balanced regional development. However, the programs were marred with myriad of challenges, including corruption, political interference and inequitable distribution of resources.[7]

At present, there are two avenues for resourcing revenue for counties in Kenya. The first avenue is the equitable share revenue, which the COK 2010 sets the floor at 15% of the national revenue.[8] The second stream is the county own source revenue which includes but is not limited to conditional and unconditional grants, donations, and taxes. 'Own source revenue' (OSR) refers to the revenues that a county government raises through the collection of various taxes, fees and users charges within the particular, legally demarcated area of the county government.[9] Essentially therefore, own source revenue constitutes all that revenue that a county may collect that falls forthrightly within the full disposal of the county government.

Focus in Kenya has always been on the equitable share revenue, less emphasis if any is given to the remarkable value that county own source revenue has. Conversely, the 2010 Constitution envisages county governments that are fiscally autonomous and also places value in counties own source revenue.[10] In Chapter eleven, the Constitution speaks on accountability when exercising power.[11] Further the Constitution emphasizes the need for self-governance.[12]

As an object of devolution, the Constitution seeks to recognize the rights of communities to manage their own affairs and to further their development.[13] The foregoing all speak to the fact that the Constitution anticipates sub national governments that are accountable, autonomous and independent and not ones that are fully dependent to the central government.

Narrowing down to fiscal autonomy, the COK 2010 on the principles of devolved government envisages county governments that have reliable sources of revenue. This reliability is to enable

[7] Hezbon Ochuodho and Dominic Ngaba (2020) "Revenue Administration Strategies and Financial Performance of County Government of Kisumu, Kenya," 4(12) *International Journal of Economics, Business and Management Research* 230.
[8] Constitution of Kenya, 2010, Article 203
[9] Peter Renson Mambaria, Maurice Ogada and Peter Shibairo (2018) "Perceived Constraints to Effective County Own Source Revenue Collection in Taita-Taveta County of Kenya," 7(11) *International Journal of Advanced Research in Management and Social Sciences* 1.
[10] See Constitution of Kenya, 2010, Article 6.
[11] *Ibid,* Article 174(a), Constitution of Kenya, 2010.
[12] *Ibid,* Article 174(b), Constitution of Kenya, 2010.
[13] Article 174(d), Constitution of Kenya 2010.

them to effectively discharge their obligations.[14] County own source revenue generally aims to improve the provision of public services. The presumption is that since they are in touch with their localities, devolved governments are best suited to deal with local needs.

Following the critical role devolved governments play in a nation's public service delivery, the importance of responsibility, accountability and transparency cannot be wished away, own source revenue mobilization in this study will thus not be divorced from responsibility, accountability and transparency of the revenue mobilized.

The hallmark for the provision of counties' own source revenue is Article 209 of the Constitution which outlines the powers of national and county governments respectively to impose taxes and charges.[15] Critical to the research study, Article 209(3) provides that;

> "A county may impose-
> (a) Property rates;
> (b) Entertainment taxes; and
> *(c)* Any other tax that is authorized to impose by an Act of Parliament."[16]

The implication of the preceding constitutional excerpt is that the main sources of revenue for counties under the devolved system of government in Kenya are limited mainly to property rates and entertainment rates, as well as any other tax and charges that may be provided for under other laws. Other tax sources of revenues such as income tax, value-added tax (VAT), custom duties and other charges on import and export goods are solely bestowed upon the National Government.[17]

Since the inception of fiscal decentralization in Kenya, property rates have constituted the main source of counties own source revenue. However, many counties have not fully exploited this avenue owing to various reasons. First, different levels of development in counties attributed to varying levels of urbanization have resulted in disparity in the average own source revenue collection.[18] Illustratively, between the FY 2013/14 and FY 2020/21 while Nairobi City

[14] Constitution of Kenya 2010, Article 175(a).
[15] Constitution of Kenya 2010, Article 209.
[16] *Ibid*, Article 209(3).
[17] WorldTradeOrganization,*WT/TPR/S/384/Rev.1•Kenya*,at https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/S384R1-03.pdf&Open=True (accessed November 23, 2023).
[18] Timothy Odinga (2023) "Only four counties meet own-source revenue target," *Business Daily*, September 21, 2023, at https://www.businessdailyafrica.com/bd/economy/only-four-counties-meet-own-source-revenue-target--4375656 (accessed November 23, 2023).

County[19] has contributed more than 30% to the overall own source revenue collected across all the 47 counties, other counties have recorded insignificant contributions, constituting less than 1% thereof.[20]

Furthermore, counties have been unable to meet their annul targets and only collect a maximum of 60% of their own source revenue targets averagely, as evidenced by the reports published by the Controller of Budget.[21] The above trend speaks to a lapse in among others the policy and legal framework on county Own Source Revenue (OSR) which this paper seeks to unravel. Further administrative drawbacks at the county levels also undermine efficient generation of own source revenue, this is exacerbated by misappropriation and mismanagement of county revenue sources through corruption. The net effect of the preceding view is that counties are unable to guarantee efficient service delivery to their constituents and imbalanced regional economic development is continuously evident ten years since the inception of fiscal decentralization in Kenya.[22]

Bungoma County was selected as a case study in this research project paper because it a rural and or urban County. In addition, it is a border town. It thus offers an opportunity to interrogate various streams of OSR including from the agriculture sectors and business enterprises. Illustratively for Bungoma County, in the FY 2013/14 the OSR collection was Kshs. 183 million, the same increased significantly over the years and in FY 2017/18 for instance, the County collected Ksh 657 million which is more than triple its first collection in the first year of devolution. While OSR collection in Bungoma County has grown over the years, the desired goal is yet to be attained.[23]

According to the reports by the Controller of Budgets (COB), while it was estimated that the County would collect about Ksh 1.4 billion in the FY 2018/19, only Ksh 651 million was collected, that represents less than 50% of the estimated potential. The preceding trend raises

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[19] Collins Omulo (2023) "Nairobi own source revenue grows 17pc," *Business Daily*, April 5, 2023, at https://www.businessdailyafrica.com/bd/economy/nairobi-own-source-revenue-grows-17pc--4185178 (accessed November 23, 2023).

[20] Charles Kamau Kibigo (2021) *Effects of Intergovernmental Fiscal Transfers on County Own Source Revenue Generation in Kenya*, Thesis, University of Nairobi.

[21] ICPAK (2020) "Counties fail to meet local revenue targets," October 28, 2020, at https://www.icpak.com/inthenews/counties-fail-to-meet-local-revenue-targets/ (accessed November 23, 2023).

[22] Charles Kamau Kibigo (2021), *ibid.*

[23] World Bank, *Final Report: Own-Source Revenue Potential and Tax Gap Study of Kenya's County Governments,* at https://documents1.worldbank.org/curated/en/280021585886703203/pdf/Own-Source-Revenue-Potential-and-Tax-Gap-Study-of-Kenya-s-County-Governments-Final-Report.pdf (accessed November 23, 2023).

serious concerns on the effectiveness of fiscal decentralization in Kenya, particularly the implications of own source revenue generation. Though created as independent cooperative governments, county governments do not have the otherwise desired fiscal independence as there are various tax limitations evidence in the performance of revenue collected by county governments.[24]

On a positive note however, both levels of governments have made tolerable efforts to boost OSR mobilization at the county level. At most county levels notably Nairobi, Uasin Gishu, Machakos, Mombasa and Kajiado, electronic collecting systems have been introduced which experts argue afford transparency, accountability and also save on time.[25] Other counties like Bungoma have opted for a blend of both electronic and manual revenue collection.

Another boost to the realization of own source revenue in county governments respondents noted that, effective 2021, as directed by the CRA and supervised by the COB all revenue collected at the counties are banked and thereafter swapped to the CRF account on the first working day of every week, this encourages transparency and accountability as opposed to when the revenues were banked at the county government's (Governors') pleasure. Increasingly counties have also reintroduced waivers which are used as an incentive to encourage defaulters to pay particularly in regards to property taxes.[26]

As far as OSR target setting and the county budget making process is concerned, considerable efforts have been made, for instance, respondents recognize that the county COB basing their judgment on historical trends of OSR collection may decline to have the budget uploaded to IFMIS until the respective county sets a realistic OSR target. According to a respondent to the study, "some county governments were notorious in using OSR targets solely as a check list to meeting the accounting requirement of balancing of the figures, as opposed to aiding the counties to actually attain fiscal independence through the OSR targets."[27]

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[24] Controller of Budgets, *County Governments Implementation Review Report*, (FY 2013/2014 to FY 2020/2021).

[25] Charles Kamau Kibigo (2021), *ibid.*

[26] OECD (2020) "Tax and fiscal policy in response to the Coronavirus crisis," May 19, 2020, at https://www.oecd.org/coronavirus/policy-responses/tax-and-fiscal-policy-in-response-to-the-coronavirus-crisis-strengthening-confidence-and-resilience-60f640a8/ (accessed November 23, 2023).

[27] Jacktone Lawi (2023) "Only three counties met own source revenue targets – Treasury," September 20, 2023, at https://www.the-star.co.ke/business/kenya/2023-09-20-only-three-counties-met-own-source-revenue-targets--treasury/ (accessed November 23, 2023).

1.2 Problem Statement on County Own Source Revenue in Kenya

For devolution to succeed, and for decentralized functions and expectations under the Constitution to be realized, it is imperative for county governments to have healthy resource envelopes. The Constitution envisages that county governments will be resourced by two major instruments namely; intergovernmental transfers and county own source revenue. The centrality of own source revenue has been underscored by Article 209(3) of the Constitution, which gives authority to County Governments to collect property taxes, entertainment taxes and any other taxes that may be prescribed by an Act of Parliament, in addition to charging user fees ,charges and licenses.[28]

However, it is worrisome that the aggregate county own source revenue generation is inordinately low constituting about only 9% of the total national revenue raised annually. According to previous studies, between the FY 2013/14 and FY 2020/21, all the 47 counties' total own source revenue collection has been about Kshs 270 billion, with other counties contributing less than 1% of the above figure.[29]

More alarming is study finding that the total counties own source revenue generation continues to dwindle over the years rendering them dependent on the national government. The foregoing leads to fiscal stress which minimizes efficiency in operations by county governments.[30]

At independence, Kenya had tried out devolution by embracing regionalism, however the second amendment to the independence Constitution among other amendments, repealed all the specially entrenched provisions on independent regional revenue collection. This left the nascent regional governments devoid of independent resources hence wholly dependent on the central government for grants.[31]

A leading scholar has argued that "despite earlier assurances on devolution of power before independence, the new ruling elites were determined not only to effect Constitutional

[28] Constitution of Kenya 2010, Article 209.

[29] Victor Odanga (2019) *Revenue Diversification in Counties with a Focus on Own Source Revenues*, Diss. Strathmore University.

[30] Controller of Budgets, *County Governments Implementation Review Report*, (FY 2013/2014 to FY 2020/2021).

[31] Constitution of Kenya Amendment (II No 2), (1964) Act No 38.

amendments to abolish decentralization, but to also repudiate it through non- implementation of the letter and spirit of the Constitution."[32]

The foregoing *inter alia* justify the fact that the ability by devolved governments to collect own source revenue which augments exchequer remittances, is a critical life line of county governments. Impeding such collections can significantly contribute to strangling county governments as it was the case at the dawn of independence in 1963.

This study thus interrogates policy, legal and administrative mechanisms that impact on effective own source revenue mobilization by identifying gaps which if addressed, will aid achieve efficiency in County Government operations and ultimately save the life of devolved governments as envisioned by the Constitution of Kenya 2010.

1.3 Objectives of the Study on Own Source Revenue in Kenya

The overall objective of the study is to assess the status of realization of counties own source revenue under the Constitution of Kenya 2010 particularly in so far as collection of property, entertainment and other taxes authorized by the Constitution are concerned.

The three (3) specific objectives of the study are. Firstly, to critically evaluate the existing legal and policy framework on counties' own source revenue in Kenya. Second, to interrogate the trends and streams of own source revenue in Bungoma County. Thirdly is to examine best practices on enhancing effective fiscal decentralization in Kenya through comparative analysis.

1.4 Research Questions of the Study on Own Source Revenue in Kenya

The study is centered among the following three (3) research questions:

First, what is the legal and regulatory framework on counties' own source revenue in Kenya and Bungoma County?

Second, what is the status of realization of own source revenue in Bungoma County?

Third, what are the best practices for effective own source revenue mobilization?

1.5 Hypothesis and Assumptions of the Study on Own Source Revenue in Kenya

The study hypothesizes that the existing mechanisms on own source revenue in Kenya, do not foster effective county own source revenue mobilization as envisioned by the Constitution of

[32] Githu Muigai (2022) *Power Politics and Law, Dynamics of Constitutional Change in Kenya 1887-2022*, Kabarak University Press, 197.

Kenya 2010. Presently, counties have not optimized the revenue sources that the Constitution has authorized them to explore, namely; property and entertainment taxes, and other taxes.

1.6 Significance of the Study on County Own Source Revenue in Kenya

The verdict of this study will be relevant to Bungoma county government, county governments nationally, the national government and all the players in revenue mobilization field in Kenya and beyond, since it shall offer guidance on the legal, policy administrative and other mechanisms that can guarantee effective county own source revenue collection. The paper shall also contribute to the body of literature on OSR revenue generation in Kenya in addition to forming a basis for further and subsequent studies in the future.

1.7 Theoretical and Conceptual Framework of the Study on Own Source Revenue in Kenya

This section provides a theoretical and conceptual framework of the study on own source revenue in Kenya.

1.7. 1 Theory of Fiscal Decentralization vis-à-vis Own Source Revenue in Kenya

There exists many theories that scholars have come up with to express their ideologies on own source revenue and generally fiscal decentralization. It is important to note that no particular theory is wrong or right. Conversely, the various scholars advance their theories depending on prevailing circumstances and biases among other reasons.[33]

This study will rely on the theory of fiscal decentralization.[34] The theory of fiscal decentralization refers to the transfer of authority of tax collection and expenditure from central government to the sub-national units with the aim of *inter alia* ensuring efficient service provision and accountability at the devolved units.[35] Effective County own source revenue is only attainable once certain fundamentals are realized. The first pillar according to the theory is political autonomy.

The pillar supposes that devolved units are autonomous, distinct and separate from the national government and are not a creation of the latter.[36] This aspect of fiscal decentralization is

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[33] Chistopher Dwiyer "Thoughts on Thinking," at https://www.psychologytoday.com/us/blog/thoughts-thinking/202007/what-is-theory-and-why-is-it-important-know <accessed on 10th August 2023>.

[34] Robert D. Ebel and Serdar Yilmaz (2002) *The Concept of Fiscal Decentralization and Worldwide Overview*, Washington DC, World Bank Group <http://document.worldbank.org/curated/en/716861468781761314/> Accessed on 13th August 2022>.

[35] Robert D. Ebel and Serdar Yilmaz (2002), *ibid.*

[36] Stephen Khadondi (2013) "Determinants of Own Source Revenue Mobilization by Counties in Kenya," 6 *International Journal of Science and Research* 155.

anchored under Article 6(2) of the Constitution of Kenya which envisages that the central government and devolved governments shall be distinct but inter-dependent and are to conduct their reciprocal relations on the premise of consultation and cooperation. As such, in the case involving the *Council of Governors & 47 others* v. *Attorney General & 3 others (*2020),[37] the Supreme Court emphasized the need for corporation noting that neither the county government nor the central government is subordinate or superior to the other.

The second pillar of effective county own source revenue mobilization is expenditure responsibility. In decentralization government functions, powers and responsibilities are usually assigned to the various levels of government. In this regard, there should be an elaborate framework for the distribution of faculties and obligations to national and county governments based on an elaborate and thought out formulae. Noteworthy, in Kenya, the functions of the central and devolved governments are outlined under the fourth schedule to the Constitution of Kenya, 2010.[38]

The third pillar of fiscal decentralization is revenue assignment that implies that sub-national units should have appropriate funds to enable them efficiently conduct their functions. Further, it is provides that revenue assignment should encompass giving the devolved units significant amount of revenue collection powers, autonomy over their budgets and expenditures.[39]

The other critical pillar of effective county own source revenue mobilization is intergovernmental transfers. Although the national government transfers are critical in resourcing county governments' envelopes, the said transfers should not impede local revenue mobilization initiatives of the devolved units.[40] The last determinant is sub-national borrowing wherein an elaborate framework should outline the borrowing and issuing of funds by the sub-national units. The borrowing framework aids in planning, checking and balancing an ensuring it does not impede OSR mobilization efforts.[41]

The preceding theoretical discussion indicates that if Kenya is to realize effective mobilization of county own source revenue, county governments should be accorded significant control over

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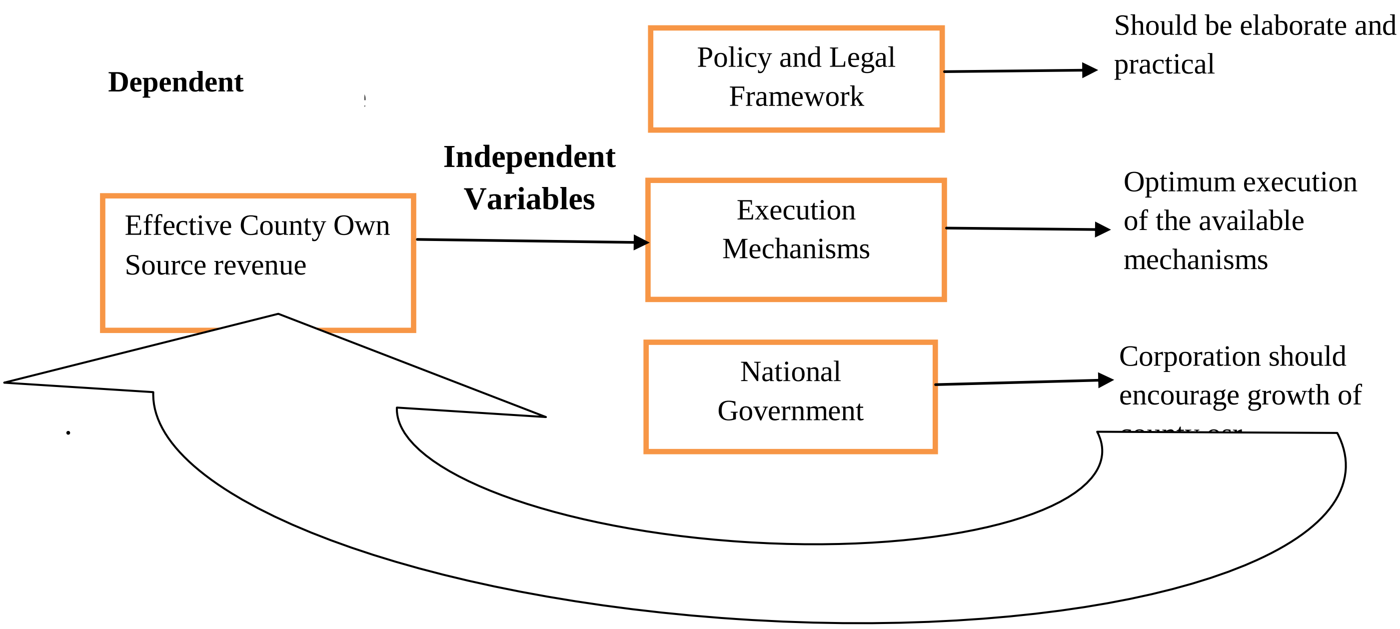
[37] *Governors & 47 Others* v. *Attorney General & 3 Others (Interested Parties); Katiba Institute & 2 Others (Amicus Curiae)* [2020] eKLR.
[38] Constitution of Kenya, 2010, Fourth Schedule.
[39] Stephen Khadondi, *ibid*.
[40] Stephen Khadondi, s*upr*a.
[41] *Ibid*.

revenue sources together with proper frameworks to facilitate the collection of revenue.[42] As indicated in the background to the study, the existing mechanisms on county own source revenue have impeded own source revenue and have thus rendered the subnational governments to rely on NG transfers occasioning inefficiency in the discharge of functions. To ensure effective realization of own source revenue under the devolved system of governance in Kenya, all the above pillars of the concept of fiscal decentralization should be fully implemented.[43]

1.7.2 The Conceptual Framework of the Study on Own Source Revenue in Kenya



1.8 Literature Review of the Study on Own Source Revenue in Kenya

This section provides a critical review of existing literature on the realization of effective own source revenue collection in Kenya.

1.8.1 Introduction to the Literature Review

In analyzing the literature in this section, the literature has been clustered in to several themes. The categorization includes literature that is concerned with; fiscal decentralization from an economic perspective, literature that dissects the advantages and disadvantages of effective county own source revenue, and literature that speaks to effective implementation of sub-

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42 Stephen Khadondi, *ibid* at 158.

43 Development Initiatives (2018) Strengthening Subnational Government Own-source Revenue Mobilisation in Kenya: Progress, Challenges and Opportunities," at https://devinit.org/wp-content/uploads/2018/12/Strengthening-subnational-government-OSR-mobilisation-in-Kenya.pdf (accessed November 23, 2023).

national own source revenue. In reviewing the literature, the study will single out gaps emerging from the literature, the gaps are what this project paper seeks to address.

1.8.2 Fiscal Decentralization as an Economic Agenda

James Edwin Kee, in his literature notices the renewed interest in the concept fiscal decentralization in the recent past, especially in developing countries. In the study, the author gives the reasons for the renewed interest in the concept and examines the theory behind fiscal decentralization.[44] He examines the underlying theory supporting and opposing fiscal decentralization from the context of two nations to wit Brazil and china.[45] He notes that fiscal decentralization has formed part of the global economic reform agenda. The reform agenda the paper argues is boosted by the support it draws from inter alia the World Bank, USAID, and Asian Development Bank.

Kee explains that impossibility of centralized governments to meet their constituencies' needs, quest for national economic strategies; autonomy and fiscal demand by political leaders from constituencies, and generally addressing the economic challenges in the 21st century are among the reasons for the renewed quest for fiscal decentralization. Citing a common public finance principle that 'finance should follow function,' the author echoes that if functions are assigned to a specific level of government, the government in question should have the necessary resources to satisfy the functions allocated to it.[46]

Speaking directly to own source revenue**,** the author posits that taxes are the main instruments of own source revenue at both the NG and devolved governments. The author argues that if the revenue collected by a particular level of government is below the revenue needed to fulfill the assigned responsibilities, the said government should be given more taxing powers, develop user fees and or rely on government transfers.[47]

Lee puts a case for and against fiscal decentralization. In support of fiscal decentralization, Lee states that the case was set as early as the 17th century with philosophers among them

[44] James Edwin Kee (2013) "Fiscal Decentralization Theory as Reform," at http://www.researchgate.net/publication/251886012_FISCAL_DECENTRALIZATION_THEORY_AS_REFORM < Accessed on 23rd January 2023>.

[45] James Edwin Kee (2013), *ibid.*

[46] *Ibid.*

[47] *Ibid.*

Montesquieu and Rousseau expressing their distrust on centralization.[48] Among the modern arguments for fiscal decentralization is that it promotes efficiency which the author views as an economic value enhancing social welfare.

On the economic aspect, the paper argues that for it works the devolved governments should have equal fiscal capacities. Governance value is also another case which this paper argues is an advantage that fiscal decentralization brings since services are brought closer to the electorate hence enhancing responsiveness and the fact that it encourages public participation.[49]

Against fiscal decentralization the study argues that fiscal decentralization may; have local beauracracies that are complicated than national ones, corruption, and faulty public expenditure management systems, and technological advancement among other factors may negate the actual decentralization according to Kee.

On the strength of his analysis he proposes a model for fiscal decentralization that provides for a fair balance between the fiscal responsibilities of national and devolved governments. The paper makes a conclusion that fiscal decentralization is a critical player in the reform agenda since it strengthens and arms regional and local governments of nations facing economic challenges of the 21st Century.[50] The study fails to address the centrality of own source revenue in the decentralization equation by turning to government transfers whenever there is a budget deficit. Further, Kee's study assumes that sub-national governments can have equal fiscal capacities overlooking geographical, natural and other factors that create the disparities in fiscal capacities.

Similar to Kee, Stephen Khadondi's study takes an economic angle. He posits that devolution has been at the heart of policy experiments undertaken by governments in developing countries and transitioning economies globally.[51] The transition to decentralization, as indeed the study posit, has been informed by the perception that centralized governments have failed to ensure efficient delivery of services.

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[48] *Ibid,* at 6.

[49] Sophia Atieno Opiyo (2017) *Role of Public Participation on Performance of Devolved Governance Systems in Kenya*. Diss. COHES-JKUAT, 2017; Eugene O. Owade (2021) *Reconceptualizing Nationhood in Kenya and Africa Vis-à-vis Citizen Wanjiku: The Norm Versus Practise of Popular Sovereignty* (December 17, 2021), at https://ssrn.com/abstract=4585146 (accessed November 23, 2023).

[50] James Edwin Kee, *ibid*.

[51] Stephen Khabondi, *supr*a.

However, Stephen Khadondi rightfully argues that devolution ought to be accompanied by adequate revenue to guarantee that the responsibilities of devolved governments are sufficiently financed.[52] Consequently, decisions are to be made on which revenue sources are to be left at the exclusive disposal of local governments, and those that should be subject to intergovernmental sharing.[53]

While revenue grants and intergovernmental transfers play a critical role in the financing of the activities of devolved units, Stephen Khadondi nonetheless opines that counties need more than the transfer to ensure effective service delivery and development. Precisely, he indicates that, to ensure the attainment of fiscal autonomy of the devolved units, it is necessary that an essential percentage of the total revenue collected should be regarded as "own revenue", that is mainly constituted of locally raised taxes. Relying on the provision of Article 209(3) of the Constitution of Kenya, 2010,[54] Khadondi notes that the constitution forthrightly assigns property and entertainment taxes to county level, in addition to other taxes provided under Acts of Parliament. However, it contends that it is unfortunate that all the major revenue instruments *interalia* the value added tax (VAT), income tax and excise tax are exclusively reserved to national level of government.[55]

Critical to the research study, Stephen Khadondi's paper further evaluates the causal factors of own source revenue collection by counties. The first factor considered in his paper is urbanization. Under this limb, he asserts that urbanization plays critical role in influencing the rate of own source revenue by counties in Kenya.[56] More urbanized counties are more likely to raise more own source revenue compared to rural counties. More urbanized counties like Nairobi City County collect more revenue compared to rural counties owing to the huge variance in property rates collected.[57]

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[52] *Ibid*, p, 155.

[53] Jamie Boex and Paul Smoke (2020) "Intergovernmental fiscal transfers in Kenya: the evolution of revenue sharing under new devolution in a quasi-federal system," *Intergovernmental Transfers in Federations* 296-322.

[54] See Constitution of Kenya, 2010, Article 209(3).

[55] See also the Constitution of Kenya, 2010, Article 209(1).

[56] Stephen Khabondi, *supra*.

[57] Correspondent (2023) "City Hall To Generate Sh19.9bn From Own-Source Revenue In 2023/2024 Financial Year," *Capital News*, September 24, 2023, at https://www.capitalfm.co.ke/news/2023/09/city-hall-to-generate-sh19-9bn-from-own-source-revenue-in-2023-2024-financial-year/#:~:text=The%20Nairobi%20City%20County%20Government%20aims%20to%20generate%20Kshs%2019.9,be%20funded%20by%20increased%20rent. (accessed November 23, 2023).

The study by Stephen Khadondi further discusses the implications of intergovernmental grants on own source revenue mobilization. He notes that intergovernmental grants have direct implications on the ability of counties to collect own source revenue. On one hand, intergovernmental grants enhance fiscal equalization provided there is a set minimum of the resources that counties can control. This is so because intergovernmental grants redistribute funds from relatively resourced jurisdictions to poorer devolved units.

On the other hand, however, Stephen Khadondi is a cautious that intergovernmental grants may produce undesired outcome. Along this line, he opines that when devolved units are responsible for revenue collection, the amount of revenue collection shall depend on the measures put in place by specific counties to ensure efficient revenue collection, which is nonetheless an expensive venture. On the contrary therefore, increased intergovernmental grants would inhibit the potential of counties to mobilize their own revenue.[58]

Despite the overwhelming significance of the enhanced capacity of county governments to collect their own revenue and ensure financial sustainability, Stephen Khadondi indicates that all counties in Kenya are presently facing challenges in raising adequate own source revenue.[59]

According to the Annual County Governments Budget Implementation Review Report in the FY 2014/15, the Controller of Budget indicated that while counties aimed to raise more than Ksh. 50 billion from local resources to supplement the exchequer transfers from the National Treasury, the counties only managed to raise Ksh. 33 billion that constituted only 67% of the target.[60]

The trend of inadequate osr collection by devolved governments’ poses a threat to the realization of effective service delivery and threatens to compromise the objectives of devolution as identified under Article 174 of the Constitution of Kenya, 2010. Among the recommendations suggested by Stephen Khadondi are that counties should place more emphasis on developing more urban areas since they have the highest return on investment; and that the

[58] Larry D. Schroeder and Banco Mundial (1988) *Intergovernmental grants in Developing Countries*. No. 38. Washington, DC, USA: Office of the Vice President, Development Economics, the World Bank.
[59] *Ibid.* at 157.
[60] *Ibid*, at 158.

national government institutions he opines should consider providing more grants to sub-national governments as measure to stimulate own revenue mobilization by counties.[61]

Although Khandondi's literature is comprehensive and elaborate, it lays more emphasis on urban counties and pays less attention to rural counties which this study argues can mobilize adequate OSR revenue if proper mechanisms are employed. Further the literature lays more emphasis on instruments already assigned to the national government including VAT. This project paper focuses on instruments assigned to devolved units.

Closely linked to the literature by Stephen Khadondi, a paper by Dulacha Barako and Adan Shibia evaluates the status of osr mobilization and the determinants of property tax realization in Kenya.[62] In their study, the duo hold the dominant view that the ability to generate adequate osr by the sub-national governments is a precondition for effective fiscal decentralization.[63]

However, contrary to the desired position, sub-national governments in Kenya are characterized with low own source revenue generation owing to their heavy reliance on transfers from the national government.[64]

Their literature goes further to illustrate that while property tax instruments constitutes the most certain and predictable osr available for sub-national governments, they are characterized with low productivity in developing countries thus invoking interesting policy implications. Presently, their study notes that property tax collection in Kenya by county governments is low with counties recording dwindling and varying productivity across the 47 counties.[65] Though they attribute urbanization and administrative capacity as impacting the potential of counties to raise own source revenue from property. Although touching directly on the sources of county osr in Kenya, their study nonetheless fails to discuss how the negating factors precisely affect revenue collection and any recommendations to address the very challenge.

[61] *Ibid*, at 159.
[62] Dulacha Barako and Adan Shibia (2015) "Fiscal Decentralization and Determinants of Property Tax Performance in Kenya: Cross-County Analysis," 6(14) *Research Journal of Finance and Accounting* 205.
[63] *Ibid*, at 205.
64 Helen H. Osiolo (2007) *Intergovernmental Fiscal Transfers and Fiscal Capacity in Kenya*. Diss.
[65] *Ibid*, at 206.

1.8.3 Benefits and Disadvantages of Fiscal Decentralization in Kenya

A study by Samuel Ngigi and Doreen Busolo analyze the good, the bad and the ugly status of devolution in Kenya.[66] According to the duo, the introduction of devolution in Kenya was informed by the desire of citizens who wanted to gain closer access to public resources. This was against the backdrop that the centralized system of governance was characterized with concentration of development at the national level while the people at the grass root levels became excluded from mainstream devolution.

In that regard, Ngigi and Busolo assert that Article 174 of the Constitution of Kenya elaborates the precise objects of devolution as encompassing *inter alia* promoting democracy and accountability in the exercise of power, fostering public participation, recognizing diversity, enhancing the ability of the communities to manage their own affairs, ensuring equitable allocation of resources, as well as protecting and promoting the rights of minorities and marginalized communities.[67]

Since the adoption of county governments, Ngigi and Busolo write that devolution has played significant role owing to its myriad advantages in governance efficacy. One of the critical advantages of devolution as pointed out by the two is, enhancing equitable distribution of national resources.[68] Under this limb, they posit that prior to devolution most resources were majorly concentrated in urban areas and cities. However, since the introduction of devolution, resources are allocated to counties based on a weighted formula, encompassing population, poverty levels, land area, fiscal responsibility, amongst others.[69]

Currently, they note that fifteen percent of the revenue collected is to be shared equally amongst the 47 counties of Kenya, in what has positively enhanced equal access to resources.[70] The preceding position advanced by Ngigi and Busolo is indeed expressly provided under the Constitution of Kenya in article 215 of the where the Commission on Revenue Allocation is created. The main mandate of the commission as stipulated under Article 216 of the Constitution is making recommendations as regards to the rationale for the equitable sharing of revenue raised by the NG between the NG and the county governments. More procedural and

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[66] Samuel Ngigi and Doreen Nekesa Busolo, *ibid.*
[67] Samuel Ngigi and Doreen Nekesa Busolo, *supra.*
[68] *Ibid*, at 10.
69 Job M. Moindi (2014) *Resource Allocation Strategies in Devolved System of Governance in Selected Counties in Kenya*. Diss. University of Nairob.
[70] Samuel Ngigi and Doreeen Nekesa Busolo, *supra.*

substantive safeguards on how to effect equitable allocation of resources are further provided under the Division of Revenue Act of 2013.

Despite the highlighted significance of devolution in so far as resource allocation is concerned, Ngigi and Busolo, point towards certain disadvantages and challenges facing devolution. One of the challenges discussed in their paper is insufficient allocation and delayed disbursement of funds to counties.[71] Since the roll out of devolution in Kenya, counties have experienced delays in funds disbursement from the national government.

Illustratively, in December 2017, the then chairperson of the Council of Governors (COG) Josephat Nanok indicated that disagreements between the national and county governments, in addition to non-cooperation between the National Assembly and Senate were major factors that contributed towards delayed reimbursement of funds to counties.[72]

In 2017/2018 financial year for instance, the national government declined to release Ksh. 50 billion in equitable share meant for the devolved units. Delayed and inadequate resource allocation to counties continues to sprawl notwithstanding express constitutional averment and the existence of other laws such as the County Allocation of Revenue Act (CARA), among other laws.[73]

Another challenge affecting equitable resource allocation to counties as discussed by Ngigi and Busolo is the interference of the running of institutions such as the Commission on Revenue Allocation (CRA) whose mandate is the issuance of recommendations regarding the division of revenue.[74] Further, the duo notes that corruption and mismanagement of funds at the county is a major challenge adversely impacting on revenue collection and resource allocation at the counties.[75] Relying on the reports by the Ethics and Anti-Corruption Commission (EACC), corruption is rampant at the counties through *inter alia* poor management of local resources and revenue, ghost workers, and ghost projects. The above position is also affirmed by the reports by Transparency International (TI) that indicated that service delivery in the counties have been negatively affected owing to misuse of the available resources.

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[71] *Ibid*, at 17.
[72] Kenya News (2019) "Formula On Distribution Of Resources Should Be Enshrined In The Constitution," June 21, 2019, at https://www.kenyanews.go.ke/formula-on-distribution-of-resources-should-be-enshrined-in-the-constitution/ (accessed November 22, 2023).
[73] Samuel Ngigi and Doreeen Nekesa Busolo, *supra.*
[74] *Ibid*, at 16.
[75] Samuel Ngigi and Doreeen Nekesa Busolo, *supra.*

Moving forward, to ensure effective resource allocation and more revenue to steer the devolved system of governance, Ngigi and Busolo proposes that cooperation between the national and county governments should be promoted.[76] Along this line, the existing intergovernmental relations as envisaged under the Intergovernmental Relations Act (IRA) should be strengthened to ensure timely resolution of any challenges regarding revenue collection and resource allocation.

To ensure that county governments can raise more revenue, Ngigi and Busolo further recommends the need for capacity building at the counties, as well as enhanced public participation in matters pertaining to revenue collection , and resource allocation to the counties.

Similar to the inceptive position adopted by Samuel Ngigi and Doreen Busolo, a study by Caroline Ntara also asserts that since the country gained independence, Kenyans have suffered from marginalization.[77] In response, Ntara observes that devolution was adopted to distribute administrative, political and fiscal operations from the NG to the devolved units. The paper furthers discusses some of the expectations that Kenyans had following the adoption of devolution.

At the very onset, she indicates that Kenyan's expected devolution to have a positive impact on social and economic development in Kenya.[78] More particularly, she indicates that Kenyans expected devolution to offer opportunity for devolved units to raise debt and equity capital. For instance, she asserts that devolved system of governance would offer counties the opportunity to exploit their natural and human resources. Moreover, she further asserts that it was expected that devolution would promote equitable distribution of resources in the manner provided for under Article 174(g) of the Constitution.[79]

Caroline Ntara's literature is, however, insufficient as it was authored prior to the roll out of decentralization and only addresses what Kenyans' were to expect. Nonetheless, the literature

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[76] *Ibid*. at 19.

[77] Caroline Ntara (2013) "Devolution and expected impact in Kenya," 4(1-2) *International Journal of Professional Practice* 7.

[78] Caroline Ntara, *ibid.*

[79] Parliament of Kenya (2020) *Report on county wards (Equitable Development Bill),* August 12, 2020 at http://www.parliament.go.ke/sites/default/files/2020-09/Report%20on%20county%20wards%20%28%20Equitable%20Development%20Bill%29.pdf (accessed November 23, 2023).

alludes to the expectation that devolution would enhance the capacity of counties to raise their revenue and foster economic development.

More insights into the prospects, challenges and future of devolution are also provided by Annette Omolo, Wallace Kantai and Wachira Kiragu, who analyse at length the implications of fiscal decentralization in Kenya.[80] According to the above authors, Kenya has over the years attempted to implement fiscal decentralization through various programs including; the Special Rural Development Programme (SRDP), the District Focus for Rural Development (DFRD), the Local Authority Transfer Fund (LATF), and the Constituencies Development Fund (CDF).[81]

Though progressive, they, however, note that their implementation has been faced with conceptual and execution challenges such as inadequate check and balances mechanisms, graft, poor planning, as well as lack of harmonization with other government development funds. In response to the above challenges, some of the recommendations proposed by the three authors include revenue assignment in which the sources of revenue to the local units are certain, adoption of comprehensive decentralization system, and intergovernmental fiscal transfers.

Though quite in-depth, the above literature is inadequate as it fails to address the status of fiscal decentralization post-2010 constitution, where most of their recommendations have been considered. As such, their literature is of little input to the research study.

1.8.4 Effective Implementation of Own Source Revenue Mobilization in Kenya

Hobdari et al's paper elaborates some of the lessons for effective fiscal decentralization in Sub-Saharan Africa. Introductorily, their paper provides that, in the recent time, fiscal decentralization has become a pressing issue in a number of countries in Sub-Saharan Africa. In their study, and more critical to the present research study, they opine that fiscal decentralization in Sub-Saharan African countries has the potential of recording higher success in light of the implementation of own resource.[82]

On the subject of own resource, it is their position that giving subnational governments revenue-raising powers has the potential of increasing their fiscal responsibility.[83] Further, they indicate

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[80] Annette Omolo, Wallace Kantai and Wachira Kiragu (2010) "Devolution in Kenya: Prospects, Challenges and Future," *Institute of Economic Affairs (IEA).*

[81] *Ibid*, at 75.

[82] Sandra Gomes (2012) "Fiscal Powers to Subnational Governments: Reassessing the Concept of Fiscal Autonomy," *Regional & Federal Studies* 22.4, 387-406.

[83] Annette Omolo, Wallace Kantai and Wachira Kiragu, *supra*, at 11.

that own-resource revenue for subnational governments would be preferable in more heterogeneous countries as they revenue allows for greater diversity in service provision as contrasted to standardization that is associated with reliance on transfers from the central government.[84]

The above position is informed by previous study findings that transfers from national governments often come along with certain expenditure conditions imposed on the local units. This may be contrary to the distinct challenges facing various counties in Kenya. Illustratively, requiring that Bungoma County and Turkana County put in place identical development projects may not address the challenges in either of the counties.

However, the literature by Hobdari et al indicates that allowing devolved units to freely tax as a means of revenue collection may lead to a proliferation of low-yielding taxes with higher compliance and administration costs.[85] Nonetheless, they recommend that countries should adopt national laws governing subnational revenues or that elaborate a 'closed list' of allowable revenue resources.[86] The literature however fails to appreciate the dynamics in some countries including Kenya where some taxes would best be administered when uniformly applied for example Cess tax in the lake region basis. The current study delves into the peculiarity of some of these taxes.

Charles Kamau Kibigo's analyses the implications of intergovernmental fiscal transfers on county own source revenue generation in Kenya.[87] Kibigo defines 'own source revenue' as referring to the revenues that a county government raises through the collection of taxes, fees and users charges within an identified, legal demarcated area within a county government. Essentially therefore, OSR constitutes all that revenue that a county may collect that falls within the full disposal of the county government. According to Charles Kibigo, intergovernmental fiscal transfers which he notes constitute the main source of revenue for devolved units in

[84] Annette Omolo, Wallace Kantai and Wachira Kiragu (2010) "Devolution in Kenya: Prospects, Challenges and Future," *Institute of Economic Affairs (IEA)*.
[85] *Ibid*, p.12.
[86] *Ibid.*
[87] Charles Kamau Kibigo (2021) *Effects of Intergovernmental Fiscal Transfers on County Own Source Revenue Generation in Kenya*, Thesis, University of Nairobi.

transitioning governments have adverse implications on the capacity of devolved units to raise their own revenue.[88]

In his study, Kibigo notes that intergovernmental transfers take the form of either conditional or unconditional equitable transfers. Under the former, the central governments outline some conditions subject to which the funds transferred to the local units are to be used, while under the unconditional equitable transfer, county governments exercise complete discretion on how to spend the funds transferred to Kenya.[89]

Relying on previous study findings, Charles Kibigo holds that conditional intergovernmental transfers are perceived to overrun local osr by discouraging the efforts of county governments to enhance their fiscal potential.[90] Similarly, unconditional intergovernmental transfers he posits erode the responsibility of county governments to strengthen their fiscal discipline through encouraging lack of accountability in expenditure, as well as lowering their tax efforts.

In view of the preceding shortcomings of intergovernmental transfers, Charles Kibigo supposes that own source revenue (OSR) generation by county governments is necessary to improve their fiscal capacity to deliver goods and services efficiently and also close the financing gaps that are associated with delayed and inadequate disbursement of funds by the national government to the county governments. Moreover, he further asserts that fostering OSR by county governments would enhance their authority and discretion in revenue collection and expenditure in a manner cognizant with the development needs of each county.[91]

However, despite the preceding significance of own source revenue in fostering devolution in Kenya, Charles Kibigo indicates that, the proportion of locally generated OSR only comprises an insignificant portion of the county government's revenue owing to the limitation on their taxing rights.[92]

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[88] Charles Kamau Kibigo (2021), at 1.
[89] Charles Kamau Kibigo (2021), at 1.
[90] *Ibid*, at 2.
[91] See John Mutua and Noah Wamalwa (2017) "Enhancing Mobilization of Own Source Revenue in Nairobi City County: Issues and Opportunities."
[92] Cf. Angela T. Ambetsa (2014) *County Governments' Sources of Revenue: A Legal Perspective on How The County Governments are Funded*. Diss. University of Nairobi.

In consequence, county governments have and continue to grapple with revenue collection and service delivery notwithstanding fiscal decentralization under the Constitution of Kenya, 2010.[93] Statistically, Kibigo illustrate that generation of own source revenue has been very low since the inception of devolution in Kenya, averagely comprising of 9% of the total county government revenue since the FY 2013/14. His study further indicates that over the period between 2013 and 2021, the highest accumulated OSR generated in Kenya across all the 47 counties in a single financial year have only been Ksh. 40 billion, and that was in FY2018/19.[94]

However, the contributions of specific counties vary over the years. While other counties have significantly contributed to the total OSR generation since the inception of fiscal decentralization, contributions from other counties have been very dismal. Illustratively, Kibigo notes that while Nairobi City County has contributed more than 31% of the own source revenue across the 47 counties between the FY 2013/14 and FY 2020/21, other counties such as Tana River County have contributed less than 1% of the own source revenue.[95] The above variance in the generation of own source revenue almost ten years after the implementation of fiscal decentralization in Kenya indicates why balanced regional development still remains mythical in Kenyan notwithstanding express constitutional provision for devolution.

Charles Kibigo makes very critical policy recommendations to ensure the realization of own source revenue in Kenya. Following his study findings, he suggests that; the conditional grants by the National Treasury to county governments should be preferred as effective instrument of fiscal decentralization to enhance own source revenue generation in Kenya.[96] The policy recommendation is informed by study findings that increase in conditional grant would stimulate own source revenue generation at the counties.

However, he further recommends that effective utilization of conditional grants transfers in should entail channeling the same to county development programs to foster productive activities that would generate more own source revenue. Although Kibigos literature acknowledges the unhealthy dependency of county government on NG transfers, he proposes a solution through conditional grants by the same NG. This project paper, posits that fiscal

[93] *Ibid*.
[94] Charles Kamau Kibigo (2021), at 5.
[95] Charles Kamau Kibigo (2021), at 6.
[96] *Ibid*, at 37.

dependency by county governments could lead to collapse of devolution and thus champions for effective county own source revenue collection.

Still on implementation of effective fiscal decentralization**,** Bahl and Martinez in their paper **"**Sequencing Fiscal Decentralization", posit that there exists vast knowledge and information as regards designing and formulating fiscal decentralization policies. Although the information and knowledge is available, the authors argue that not many actors understand how to design the order of the programs to support fiscal decentralization together with their execution design. They observe that countries that have opted for fiscal decentralization, experience challenges on critical ingredients of decentralization among them sequencing of foundational decentralization policies.[97]

The minimum and the maximum period taken to bring into effect a full decentralization program and the form of the transition strategy are some of the critical components of decentralization that the authors argue countries that have embraced fiscal decentralization grapple with. Bahl and Martinez assert that getting the order of implementing the decentralization policies right is as good as getting optimum results in fiscal decentralization. They observe that the repercussion of incompetently executed fiscal decentralization programs are categorized by minor delays and difficulties in witnessing decentralization, to fruitless and the very worst a complete failure to achieve decentralization attempts.[98]

Macroeconomic instability and foundational collapse in the public sector could also be experienced as a result of improper sequencing of fiscal decentralization programs and policies according to the authors. The authors discourage inventing programs and reinventing policies to seal loopholes. Conversely, they advocate for implementation of fiscal decentralization policies and programs that have been strategically planned and sequenced. The article argues that there is an optimal sequencing order for implementing decentralization policies and that following the

[97] Roy Bahl and Jorge Martinez-Vasquez (2006) "Sequencing Fiscal Decentralization," *Policy Research Working Paper No. 391*4, Public Sector Governance Group, Poverty Reduction and Economic Management Network, World Bank, Washington, DC.
[98] *Ibid.*

existing rules has an advantage of reducing costs and risk experienced in fiscal decentralization.[99]

Unfortunately the authors observe that fiscal planners in countries that are embracing fiscal decentralization especially those in the developing world do not adhere to the said rules and order. This the authors argue is due to political interference in addition to the high level of discipline and vision required if the said rules were to be followed. [100] However, the literature failed to appreciate that countries embracing fiscal decentralization for example Kenya had partial decentralization in the form of local governments which had systems in place. The implementation strategies thus cannot in such cases be deemed to be originating from a vacuum.

In support of optimum implementation of fiscal decentralization, Bahl Roy and Bird Richardson in an article titled "Subnational Taxes in Developing Countries: The Way Forward" argue that if fiscal decentralization if effectively executed, will not only improve the welfare of the populace but will also have a net effect in eradicating several critical challenges bedeviling most developing countries. The positive impact the duo note will be manifested in the country's economy, innovation in public service functioning, transparency of elected officials, capacity development at the devolved units, and local inclusion in governance.[101]

The research also highlights the pros and cons of local government taxation in the context of the theory of fiscal decentralization. This is seen by a proper distinction of taxes that can be levied by local governments and those that can be collected by the national government.

Noteworthy, the authors argue that intergovernmental fiscal relations are essential in attaining effective fiscal decentralization. They propose that the relations must be looked at as a system and that all the pieces in the system must align together if decentralization is to be effective. For successful fiscal decentralization to be realized, they argue that a clear and logical expenditure an assignment to the different levels of government has to be put in place. Similarly, before decentralizing significant revenues to subnational governments. The authors advocate for intergovernmental transfers systems as they observe that the same is imperative to offset some

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[99] Paul Smoke and Kathy Whimp (2011) "The Evolution of Fiscal Decentralization under Kenya's New Constitution: Opportunities and Challenges," *Proceedings. Annual Conference on Taxation and Minutes of the Annual Meeting of the National Tax Association*. Vol. 104. National Tax Association.

[100] *Ibid*.

[101] Roy Bahl and Richard Bird "Subnational Taxes in Developing Countries," at https://onlinelibrary.wiley.com/doi/full/10.111/j.1540-5850.2008.00914.x (Accessed on 25th January 2023).

of the inequalities effects.[102] Once more Bahl and Bird fail to elevate own source revenue as an integral part of fiscal decentralization which this paper argues is the lifeline to devolution.

1.8.5 Literature Gaps on the Study on Own Source Revenue in Kenya

The preceding literature review is an affirmation that effective fiscal decentralization is yet to be attained in Kenya. The realization of own source revenue in Kenya is curtailed by the legal limitation of the sources from which the county governments can raise their revenue. Further, county governments display low ability and capacity to enhance their own source revenue collection. This is further exacerbated by challenges such as mismanagement of county resources, among others.[103]

This project paper acknowledges that county own source revenue is the lifeline of devolution. Although the reviewed literature concede that sub nationals governments should be funded to perform the functions assigned to them, they are concerned with county governments having well-resourced envelops but not necessarily from county own source revenue. Acknowledging the centrality of own source revenue in operations of devolved government, this research's main focus will be on how effective county own source revenue mobilized can be realized in Kenya thus filling the existing void.[104]

1.9 Research Methodology of the Study on Own Source Revenue in Kenya

The study uses both primary and secondary data collection techniques. The primary data collected however remains supplemental as the same is not scientifically proven. The primary data collection includes questionnaires and interviews. The secondary sources of data include books, statutes, legal texts, journal articles, and internet sources on own source revenue. In developing the questionnaires, the researcher was informed by secondary data available on Bungoma county governments including; budget statements, county fiscal strategy papers, CIDP'S, annual development plans, legislations enacted by Bungoma county government, and county annual reports by the controller of budgets.

The questionnaires administered contain both structured and unstructured questions, and both open ended and close ended questions. Combinations of both sets of questions in the questionnaires was informed by the fact that firstly, structured/close ended questions can easily

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[102] *Ibid.*

[103] Eugene Owade (2021) *Reconceptualizing Nationhood in Kenya and Africa vis-à-vis Citizen Wanjiku: The Norm Versus Practise of Popular Sovereignty*, Diss. University of Nairobi Law School.

[104] See Chapters 2 and 3 of this LLM Research Project Paper.

be administered and are also simple to analyze.[105] The unstructured and open ended questions on the other hand were informed by the need to get comprehensive responses from respondents.[106]

On administration, some of the questionnaires were self-administered while others were administered by the researcher. The choice of administration was informed by the fact that the target respondents included both learned and those who needed guidance before responding to the questions on one hand. County controller of budgets, County executive committee members, county directors, governance experts, chairpersons of civil society organizations and tax experts could read and comprehend the questionnaires and thus self-administration was preferred. On the other hand, the researcher administered the questionnaires to those who needed guidance and explanation including; boda boda riders, business persons and small scale farmers.[107]

Quantitative methods of data collection were preferred in this study. This was informed by the fact that this is a social science study and the said instruments have been tested to be the leading collection methods in such a study.[108] For ethical purposes, consent was first obtained from the study participants. To meet the specific objectives of the study, a target respondent interview was employed as opposed to a random sample, which would have occasioned collection of irrelevant data.

The study interviewed a total of 12 respondents with an aiming only relevant data. Four sets of questionnaires were administered. The questionnaires were clustered into; firstly questionnaire administered on officers implementing own source revenue laws, policies and regulations at the county level in this case CECM finance and Director of planning, questionnaires administered on persons serving at the office of the controller of budgets, thirdly questionnaires administered on tax payers in Bungoma county in this case, business persons and farmers and lastly questionnaires administered on governance experts in this case, governance experts, tax experts, and the executive directors of child rights network.

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[105] Olive M. Mugenda and Abel Gitau Mugenda (1999) *Research Methods: Quantitative and Qualitative Approaches*, ACTS Press Publishers Limited, 73-80.
[106] *Ibid*.
[107] Olive M. Mugenda and Abel Gitau Mugenda (1999), *ibid.*
[108] *Ibid*, at 71.

After collection of the primary data, the researcher collated the data and classified the responses on the basis of the three research questions. The researcher then analyzed the data juxtaposing it to the hypothesis and the available secondary data.

CHAPTER TWO

LEGAL FRAMEWORK ON COUNTY OWN SOURCE REVENUE IN KENYA

2.1 Introduction to the Legal Framework on County Own Source Revenue

Devolved own source revenue in Kenya is governed by various laws the Constitution 2010, Acts of parliament and various subnational legislations enacted by the county assemblies. The analysis in this chapter incorporates the salient provisions of the Constitution of Kenya on own source revenue, applicable statutes such as the County Government Act 2012 among others.

In regards to Bungoma County, this Chapter 2 interrogates *inter alia* the Bungoma County; Alcoholic Drinks Control Act, 2015, Revenue Administration Act, Agricultural Produce Cess Act, Trade Licensing Act, Parking Management Act and Public Market Act. The discussion under this chapter shall seek to critically evaluate any gaps in the legal framework.

2.2 Constitution of Kenya-2010 vis-à-vis Own Source Revenue in Kenya

The pronouncement of the 2010 Constitution was a paradigm shift in the governance of the country.[1] As aptly illustrated by the Highest Court of Kenya *In the Matter of the Speaker of the Senate & Another*,[2] The shift is evidenced, at the very onset of August 2010, as Article 1 provides that the supreme power of Kenyans is to be exercised at the central and devolved levels of government.[3]

Further, and more precisely, Article 6 of the Constitution is explicit that the Kenyan space is divided into county governments and the same are detailed in the First Schedule.[4] Reference to the First Schedule indicates that the Kenya is alienated into forty-seven peculiar counties. Important to note, is that the two governments being the NG and counties are envisaged to be distinctive and inter-dependent and are thus to conduct their reciprocal relations on the basis of discussion and collaboration.

Alongside the preceding provisions, devolution of government is also enshrined in other Constitutional provisions. Article 10 that outlines the national beliefs and principles of governance provides for distribution and devolution of power as one of the key values of

[1] Joel Kimutai Bosek (2014) "Implementing Environmental Rights in Kenya's New Constitutional Order: Prospects and Potential Challenges," 14(2) *African Human Rights Law Journal* 489.
[2] *In the Matter of the Speaker of the Senate & Another* [2013] eKLR.
[3] Constitution of Kenya, 2010, Article 1.
[4] *Ibid*, Article 6, Constitution of Kenya, 2010.

governance of the Republic.[5] At the very heart of devolution is Chapter Eleven of the Constitution 2010.[6] Therein, in pursuance of the provision of Article 174 notable objects of the devolution include the promotion of autonomous and answerable exercise of influence, accountable leadership, promotion of all round development and the establishment of accessible and efficient services that guarantee impartial sharing of central and localised resources throughout Kenya.[7]

From the foregoing, it was envisaged that among the aims of devolving government was enhancing fiscal decentralization thus ensuring that resources are equitably shared as a measure towards fostering balanced and harmonized regional development in the country.[8] In similar vein, Article 175 of the Constitution of Kenya outlines the principles of devolved government by stipulating *inter alia* that;

> "175. County governments' establishment under this Constitution shall reflect the following principles-
> (b) County governments shall have reliable sources of revenue to enable them govern and deliver services effectively"[9]

The above constitutional provision envisages a situation wherein county governments have access to adequate sources of revenues to discharge their mandate. In this regard, it should be appreciated that Article 186 as read alongside the Fourth Schedule to the Constitution of Kenya, 2010 outlines the powers of county governments.[10] Thus, to perform the functions, it is required of county governments to have dependable bases of revenue. Otherwise, county governments would be incapable of performing their functions in the manner envisaged under the Constitution of Kenya, 2010.

Regarding streams of revenue for devolved units, reference is to be made to Chapter Twelve which provides for public finance.[11] Article 202 advocates unbiased distribution of national revenue wherein revenue raised nationally shall be shared equitably among the two levels of governments in accordance with a pre-set formula.[12] The Article goes further to provide that devolved units may be given added distributions from the central government's share either

[5] Constitution of Kenya 2010, Article 10.
[6] See Constitution of Kenya, 2010, Chapter Eleven.
[7] *Ibid*, Article 174, Constitution of Kenya, 2010.
[8] Caroline Ntara, *supra*.
[9] Constitution of Kenya, 2010, Article 175(b).
[10] Article 186 and the Fourth Schedule, Constitution of Kenya, 2010.
[11] Chapter 12 of the Constitution of Kenya, 2010.
[12] Constitution of Kenya 2010, Article 202.

unreservedly or conditionally. Article 203(2) instructs that for every financial year, the impartial share of the revenue mobilized centrally when allocated to counties shall not be less that fifteen (15) per cent of the total revenue mobilized by the NG.[13]

The above percentage has attracted criticisms challenging its adequacy in meeting the various functions and obligations required of county governments. Constitutional amendments proposed by the Building Bridges Initiative, (BBI) in October 2019, had a raft of amendments, including one which sought to increase the national revenue apportionment to county governments from 15% that is presently provided in the Constitution to 35% that had been proposed.[14]

However, the BBI initiative was annulled by the Supreme Court for various breaches of the Constitution of Kenya, in so far as introducing the constitutional amendments was concerned.[15] This paper however proposes that functions, funding and obligations should not be discussed without elaborating how the various results anticipated will be achieved. The study thus suggests that for any future increment from the 15% floor set by the constitution should only be adopted following tightening the checks and balances to guarantee results for the fruits of devolution to be realized.

For timeliness of allocation of unbiased share, it is a directive of Article 219 that a county's share of revenue collected by the national government is to be disbursed promptly and without deduction.[16] Alongside the deadlocks related to the formula of partition of revenue, it is notable that the impartial share revenue has been grudgingly transferred to county governments.[17]

Previous chairs of the Council of Governors starting with Governor Isaac Ruto (previous Governor Kericho County), Josephat Nanok former Governor Turkana County, Wycliffe Ambetsa Oparanya former governor Kakamega County to the COG Chairperson in 2023, Anne Mumbi Waiguru Governor Kirinyaga county all agitated and even held pressers to express their

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[13] In the case of *Council of County Governors* v. *Attorney General & 4 Others; Controller of Budget (Interested Party)* [2020] eKLR, the High Court held that the funds should be netted from the national government's share of revenue and not from the overall revenues raised nationally.

[14] Allan Kisia (2019) "Counties to get 35% of national revenue in BBI proposal," *Star,* November 27, 2019, at https://www.the-star.co.ke/news/2019-11-26-counties-to-get-35percent-of-national-revenue-in-bbi-proposal/ (accessed November 24, 2023).

[15] See *David Ndii & Others* v. *Attorney General & Others* [2022] eKLR.

[16] Article 219, Constitution of Kenya 2010.

[17] KIPPRA (2019) "Revenue Sharing Stalemate between National Government and County Governments," December 22, 2019, at https://kippra.or.ke/revenue-sharing-stalemate-between-national-government-and-county-governments/ (accessed November 23, 2023).

displeasure in delays in disbursing the equitable revenue share to the counties.[18] County Governments also threatened to shut down operations as a way of pushing the National Government to release funds due to them. County employees in various occasions have been forced to go for months without salaries while service providers have languished in misery because of non-payment attributable to such delays.[19]

As far as the funds disbursed to counties is concerned, Article 207 requires the instituting of a County Revenue Fund for each devolved unit. It is in the said fund that all money mobilized or received on behalf of the county government shall be paid.[20] The establishment of a CRF for each county was necessary to ensure that each county has proper account of all the funds it raises or receives.[21]

Moreover, it a constitutional provision that money cannot be removed from the Revenue Fund except where the Controller of Budget has approved the withdrawal. Previously, the funds raised by the counties could be deposited to the revenue fund at the county executive's pleasure; respondents however note new directives from the CRA where the funds effective, January 2021 are banked every first day of the week. This is argued promotes efficiency and transparency in county revenue.[22]

Besides the foregoing, Article 209 of the Constitution is explicit as to the revenue raising powers by the NG and county governments.[23] In the above provision, only the central government may enforce; income tax, value-added tax (VAT), customs duties and other duties on import, export goods, and exercise tax. On the other, Clause 3 of the above cited Article provides that;

"(3) A county may impose-
- *(a) Property rates;*
- *(b) Entertainment taxes; and*

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[18] Council of Governors Press Statement dated 25th April 2023, at https://www.theelephant.info <accessed on 30th April 2023>.
[19] *Ibid*.
[20] Constitution of Kenya, 2010, Article 207.
[21] National Treasury (2022) *Annual Template for County Revenue Fund for FY 2021-2022*, at https://www.treasury.go.ke/wp-content/uploads/2022/07/Annual-Template-for-County-Revenue-Fund-for-FY-2021-2022-NEW-NT.docx#:~:text=Article%20207%20of%20the%20Constitution,behalf%20of%20the%20County%20Government.&text=The%20County%20Revenue%20Funds%20day,CECM%20Finance%20and%20Economic%20planning (accessed November 23, 2023).
[22] Office of the Controller of Budget, "How does a County receive these monies?" at https://cob.go.ke/ufaqs/how-does-a-county-receive-these-monies/ (accessed November 23, 2023).
[23] Article 209, Constitution of Kenya 2010.

(c) Any other tax that it is authorized to impose by an Act of Parliament"[24]

Further, pursuant to clause 4 of Article 209 of the Constitution of Kenya, 2010, the NG and county governments may levy charges for the services they avail.[25] As far as waivers are concerned the constitution provides that no waiver is applicable save as provided by legislation. To that end a civic record of the waiver and the reason for the waiver shall be maintained and subsequently reported to the Auditor General.[26]

As far as borrowing by county governments is concerned, Article 212 direct that county governments may only borrow if the said loan is secured by the NG and upon the borrowing being approved by the respective county assembly. Inside two months after the end of the financial year, the constitution directs the national government to publish a report detailing the securities it gave during the FY.[27]

The prerequisite for the NG to guarantee any loan that a county government seeks to secure depicts dependence rather than interdependence. Granted, the first phase of devolution 2013-2017 saw most county governments engage into borrowing that financial analysts termed irresponsible and in other instances unjustified. But just us the national government has autonomy over its borrowing in consultation with parliament, so should the county governments be in consultation with the county assembly devoid of any guarantee from the NG.[28]

Article 209(3) is the constitutional basis for own source revenue within counties. It is indicative however that Article 209(3) of the Constitution limits the scope of revenue collection for county governments. This implies that county own source revenue (OSR) may only be derived from the various avenues referenced in Article 209(3) of the Constitution. As illustrated in Chapter 1 of the research study, the above sources are limited. Besides, empirical studies indicate that most of the county governments do not have the requisite capacity to raise their own revenue hence the finding that OSR by some counties do not constitute to even 1% of the total revenue collected.[29]

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[24] Article 209(3), Constitution of Kenya 2010.
[25] Article 209(4), Constitution of Kenya 2010.
[26] Article 210, Constitution of Kenya 2010.
[27] Article 213, Constitution of Kenya 2010.
[28] International Budget Partnership (2018) *Kenya National and County Implementation of the Budget FY 2016/2017*, at https://internationalbudget.org/wp-content/uploads/.<Accessed on 25th November 2022.>
[29] Anthony Koskei, Peter Cheruiyot, and Isaac Naibei (2019) "Revenue Collection Efficiency in the County Government of Kericho, Kenya," 1(1) *East African Journal of Business and Economics* 9.

Moreover, the scope of levies that county governments can impose in order to raise their own revenue has been marred with various controversies. Various county governments have been subject to criticism for allegedly imposing unreasonable taxes and other service charges to raise funds. A case that illustrates such instance is *Base Titanium Limited* v. *County Government of Mombasa & Another* (2021).[30] The brief facts of the case may be summarized as follows: The case involved Base titanium limited against County government of Mombasa as the first Respondent and the Attorney General as the second Respondent.

The petition originated from the High Court and was appealed all the way to the Supreme Court. The case spoke directly to article 209 of the Constitution as it involved KES 3000 cess that was charged upon each of the petitioner's trucks transiting to Mombasa County. This imposition of cess persisted from the 7th July 2014 whenever the petitioner transported its minerals from Kwale County to Mombasa Port which is within the 1st Respondent (Mombasa County) jurisdiction.[31]

Base Titanium contented that the charge of cess by the 1st respondent was unconstitutional; the 1st respondent remained vehement and continued charging the cess which prompted the High Court petition where the former alleged that the said actions were unconstitutional and sort declaration *inter alia* that the action by Mombasa County to charge KES 3000 per truck and any attempt to restrict with movement of its goods is unconstitutional, and that Mombasa County had no mandate to enact any legislation that limits the petitioners movement by imposing taxes as a precondition for moving goods.[32]

Dismissing the petition, the High Court, held that imposition of the KES 3000 cess fell within the domain of article 209 of the constitution and that Mombasa County was in order to charge cess which in any event did not prejudice the national interests as alleged by Base Titanium. The High Court also determined that the Mombasa County Finance Act 2014 which provided that all vehicles transporting goods entering or unburdening in Mombasa County did not amount to a

[30] *Base Titanium Limited* v. *County Government of Mombasa & Another* [2021] eKLR.
[31] *Ibid*.
[32] James Anyanzwa (2021) "Base Titanium wins long-running levy battle against Mombasa County," July 24, 2021, *East African*, at https://www.theeastafrican.co.ke/tea/business/base-titanium-wins-levy-battle-against-mombasa-county-3484434 (accessed November 23, 2023).

tax on the mineral product of titanium and thus the charge did not offend Article 62 of the Constitution as alleged by the petitioners.[33]

Aggrieved with the decision the petitioners moved to the Court of Appeal which upheld the High Court decision further holding that the imposition of cess by Mombasa County fell under article 209(4) of the constitution. Aggrieved further with the COA decision, the appellant moved to the Supreme Court seek *inter alia* that the appeal be allowed and that the Supreme Court finds that the COA got it wrong in its explanation of article 209(4) of the Constitution.

The appellant contented that even though the County relies on article (209) 4 on the imposition of the cess, it cannot charge the said tax where no services have been rendered as no proof nor receipts had been tabled to justify that a service had been rendered. They also invoked article 209(5) of the Constitution which as alluded to earlier provides that;

> *"The taxation and other revenue raising powers of a county should not prejudice national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour".*[34]

The Respondent submitted that the superior courts had properly directed themselves in finding that the imposition of the cess was well within the ambit of article 209(4). They also posited that the County Government Act and the 4th Schedule of the Constitution charges the county government with the duty of handling transport including inter *alia* county roads, street lighting, ferries and harbors.

Allowing the appeal, the Supreme Court declared the imposition of cess on the appellant's unconstitutional and directed Mombasa County to refund any monies earlier charged. The Supreme Court noted that the wording of article 209(4) was to the effect that any charge made should be justified by a service provided by the county government. Mobility of goods the court noted is governed by the Kenya Roads Act and that it was illegal for Mombasa County to levy a charge on a road that fell under the realm of the NG and thus its maintenance and any service provision was also a preserve of the national government.[35]

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[33] Joseph Wangui & Philip Muyanga (2021) "Why Mombasa County will refund Base Titanium millions," *Daily Nation*, July 20, 2021, at https://nation.africa/kenya/counties/mombasa/why-mombasa-county-will-refund-base-titanium-millions--3479208 (accessed November 23, 2023).

[34] Constitution of Kenya, 2010, Article 209(5).

[35] Constitution of Kenya 2010, Article 209(4).

A similar position was held in the case of *Cereal Growers Association & Another* v. *County Government of Narok & 10 Others* (2014), where the petitioner argued that the action by eight (8) County Governments imposing agricultural produce cess and related tax without a subsidiary legal framework violated the provisions of Article 210(1) of the Constitution. Further, the Petitioner contended that the eight (8) County Governments were disrespectful of the Constitution to the extent that they charged agricultural produce cess in unrestricted and arbitrary manner in violation of Article 209(5) of the Constitution.[36]

This provision necessitates that taxation and other revenue-raising powers of any County shall not be exercised in a way that prejudgments the national economic policies and activities across County limitations or the national agility of goods, services, capital or labour. The Court agreed with the Petitioner that the levying of such taxes was arbitrary and without a legal basis and as such had to be stopped until the requisite legal framework was enacted.[37]

Noteworthy, matters as to division of revenue collection, division and allocation are quite contentious are most likely to trigger disputes between the central and county governments and between the devolved governments amongst themselves. Sensitive to such disputes, the framers of the Constitution provided for governing framework of relationships between governments. In this regard, Article 189 of the Constitution of Kenya, 2010 provides for collaboration between the central and county governments and requires that government at either level shall achieve its functions and exercise its powers, in a manner that is respectful of the functional and institutional integrity of government at the other level.[38]

In the unintended circumstance that dispute arises between the governments, they are required to make every rational effort to resolve the dispute. To this extent, the Constitution mandates Parliament to enact a legislation to govern the settling of inter-governmental disputes, whose scope shall be discussed at length in the following section of this Chapter 2.

Additionally, the Constitution of Kenya provides for the various mechanisms of checks and balances to ensure transparency and answerability in revenue collection and expenditure. At the national level, there is established the Senate whose mandate includes *inter alia* exercising of

[36] *Cereal Growers Association & Another* v. *County Government of Narok & 10 Others* [2014] eKLR
[37] Constitution of Kenya 2010, Article 209(4).
[38] Constitution of Kenya 2010, Article 189.

oversight over county governments.[39] This oversight has been questioned by critiques who have termed the senate as a hindrance to the growth and independence of devolution. On the Division of Revenue Bill 2022, for example, the Senate rejected an amendment that would have seen county governments get up to Ksh 407 billion as equitable share; this among others conducts critiques argue the senate is of less value to the growth of devolution notably fiscal growth.[40]

In a case involving the Senate, the Council of County Governors and 6 other respondents, it emanated from the Senate Committee on County Public Accounts and investment summoning fifteen county governors to appear for questioning regarding financial management. The audit queries had been flagged by the auditor general in his 2012/2013 Financial Year Report.[41]

Several governors appeared for questioning before the senate committee save for four governors who opposed the summoning contested the jurisdiction and consequently filed a case at Kerugoya High Court challenging the powers of the senate committee to summon them while overlooking the county assembly which they posited was the body vested with powers to oversight the CEC's.[42]

They observed that the senate by summoning county Governors amounted to *inter alia* usurping powers of independent offices including the office of the Auditor General and that of the Controller of Budgets and that the action was against the constitutional principle of separation of powers. The High Court and the Court of Appeal agreed with the senate public account committee hence upholding the summons.[43]

The Supreme Court in a 7th October 2022 decision affirmed the Court of Appeal decision noting that the 2010 constitution entrenched good and accountable governance. The apex court consequently declared that;

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[39] Job W. Wambulwa(2016) *A Critical Appraisal Of The Role Of Senate Under The Constitution Of Kenya, 2010*. Diss. University of Nairobi.

[40] Parliament of Kenya (2022) *County Government (equitable Share) Cash Disbursement Schedule for Financial Year 2022/23,* at http://www.parliament.go.ke/sites/default/files/2022-08/Report-%20county%20government%20%28equitable%20share%29%20cash%20disbursement%20schedule%202022-2023.pdf (accessed November 23, 2023).

[41] Petition No 24 of 2019 Consolidated with Petition No. 27 of 2019 between The Senate and the Council of Governors, Patrick Simiyu Khaemba, Ahmed Abdulahi Mohamed, Wycliffe Oparanya, James Omaribe Ongwae, Martin Nyaga Wambora, Alfred Mutua KESC 57 Eklr (2022).

[42] Petition No 24 of 2019 Consolidated with Petition No. 27 of 2019 between The Senate and the Council of Governors, Patrick Simiyu Khaemba, Ahmed Abdulahi Mohamed, Wycliffe Oparanya, James Omaribe Ongwae, Martin Nyaga Wambora, Alfred Mutua KESC 57 Eklr (2022).

[43] *Ibid*.

> "i) In the performance of its oversight role over the county revenue, the Senate has powers to summon County Governors to answer any questions or provide any requisite information.
>
> ii) The Senate's oversight authority is not limited to nationally allocated revenue but extends to locally generated revenue by counties.
>
> iii) County Assemblies have the power of first tier oversight over County Governments revenue, whether nationally allocated or locally generated."

This study holds that the determination by the Supreme Court leaves many questions answered. Questions as to what constitutes the first and second oversight tier? Did the Supreme Court attempt to formulate a hierarchy of tiers as regards to oversight? Since the County Assembly is constitutionally the first tier when then does Parliament intervene? Does Parliament act as a second body to entertain audit queries only after the CoA has given its outcome? Who then oversights the county assembly? What implications do these declarations pose as regards to the 6 months constitutional timelines after reports are tabled in Parliament? These are among the questions that the Supreme Court judgment should have determined.

The oversight mandate is also vested in the county assemblies who are to oversee how the county executive committee manages funds on behalf of county governments. Just like their counterparts in the national level, most respondents argue that the MCA's engage more in politics and furthering their interests and forget the critical role of oversight that the constitution bestows upon them. Some respondents noted that most MCA's rarely go through the contents of the details on the bills, the budget documents nor the implications they have on their constituents but rather participate in their passage as a mere academic exercise.

Other institutions also playing critical role oversight of county government revenue include the Controller of Budget, Office of the Auditor General, among others.[44]

Regarding the Controller of Budget (COB), the office is established under Article 228 of the Constitution.[45] The COB oversees the execution of the budgets of the national and county governments. The COB authorizes drawing from public funds under the equalization fund, the fused fund and other public funds and the revenue fund for county governments. The COB is directed to surrender to each house of parliament a report on the execution of the budgets. The question that one then asks is why there is blatant misappropriation of funds by county

[44] John Mutua (2022) "Budget Controller takes fight with Central Bank to Senate," *Business Daily,* September 1, 2022, at https://www.businessdailyafrica.com/bd/economy/budget-controller-takes-fight-with-cbk-to-new-senate-3933048 (accessed November 23, 2023).

[45] Constitution of Kenya 2010, Article 228.

governments even though the withdrawal of the funds is controlled by the controller of budget. These respondents not can be attributed *inter alia* to lack of independence of the COB and low political good will to ensure complete compliance among other factors.

2.3 County Government Act-2012 vis-à-vis Own Source Revenue in Kenya

The County Government Act (CGA) was endorsed in 2012 to provide the governing statutory framework for devolved governance in Kenya as envisaged in Chapter Eleven of the Constitution of Kenya, 2010.[46] Part II of the Act is indicative that county governments are to achieve the functions assigned to them under the Constitution and any Act of Parliament.[47] In particular, the mandates of county governments include *inter alia* performing functions provided for in Article 186 and assigned in the Fourth Schedule of the Constitution. The CGA goes further to outline the roles of County Assemblies such as the passing of county legislations.[48]

To this extent, county governments can pass legislations on revenue collection as evidenced in practice by various counties across the country. At present, various counties have passed legislations on revenue collection and imposition of various levies as mechanisms of raising funds. Critiques have however argued that county assemblies have taken the legislative and oversight role lightly.[49]

The runaway corruption and most challenges faced by county governments including incompetent personnel are what the constitution envisaged the CA would solve. On financial provision, Section 131 of the County Government Act 2012 provides that the funds and financial management of county governments shall be as provided under the law relating to public finance,[50] that is the Public Finance Management Act, 2012. As such, the County Government Act, 2012 does not address itself as to the source of revenue for county governments.

[46] County Government Act, 2012.
[47] Part II, County Government Act, 2012.
[48] Section 8, County Government Act, 2012.
[49] Onyango, Gedion, Legislative Oversight Amid Implementation of Structural-Devolution Reforms in Local Governance in Kenya (July 7, 2018), at SSRN: https://ssrn.com/abstract=3209701 or http://dx.doi.org/10.2139/ssrn.3209701 (accessed November 23, 2023).
[50] County Government Act, 2012, section 131.

2.4 Public Finance Management Act-2012 vis-à-vis Own Source Revenue in Kenya

The (PFMA) was enacted to provide for actual management of public finances by the national and county governments.[51] Section 8 of the PFMA outlines the duties of the Senate budget committee in matters public finance.[52] The mandate of the Committee includes presenting to the Senate the proposal for the foundation of revenue allocation among the counties, reviewing the County Allocation of Revenue Bills and Division of Revenue Bills and also monitoring obedience to principles of public finance. However, in discharging the above mandate, the Committee is also guided by the recommendations from the Commission on Revenue Allocation (CRA).[53]

The Act gives guidance on the distribution of development and recurrent expenditures with section 15 (2)(a) and (b), which provides that a minimum of thirty percent (30%) of both the national and county governments budget be assigned to the development expenditure. Granted, this provision is largely honored in breach than actual implementation. County governments have treated this requirement as a checklist and would do everything possible to make sure that the figures meet the 30-70 requirements. Respondents however noted that even with the 30% budgetary allocation requirement for development, they are yet to witness a paradigm shift in development from devolution.[54]

Part IV of the PFMA is very elaborate on the duties of devolved governments with regards to the management and control of public finance.[55] On a general premise, section 102 of the PFMA reiterates the fiscal responsibilities of county governments in consonance with the doctrines of public finance outlined in Chapter Twelve of the Constitution.[56] Critically, the PFMA establishes a County Treasury for each county government whose responsibilities are four-pronged. First, developing and implementing economic and financial policies in the county governments. Second, preparation of an annual budget for the county. Third, preparing a

[51] Public Finance Management Act, 2012.
[52] Section 8, Public Finance Management Act, 2012.
[53] Commission for Revenue Allocation (2021) "CRA Releases Recommendation for Sharing of Revenue Between National and County Governments for FY2022/2023," November 10, 2021, at https://cra.go.ke/2021/11/10/cra-releases-recommendation-for-sharing-of-revenue-between-national-and-county-governments-for-fy2022-2023/ (accessed November 23, 2023).
[54] PWC "Devolution: Are we making progress?," at https://www.pwc.com/ke/en/assets/pdf/devolved-function.pdf (accessed November 23, 2023).
[55] Part IV, Public Finance Management Act, 2012.
[56] Section 102, Public Finance Management Act, 2012.

revenue and expenditure estimates of the devolved units. Fourth, rallying resources for financing of the budgetary requirements of devolved government which is the crux of this study.

Further and akin to the constitutional requirement section 109 of the PFMA reiterates the establishment of a County Revenue Fund wherein all money raised or received by or on behalf of the devolved government is paid.[57] The County Treasury has the responsibility to oversee the County Revenue Fund and ensure compliance with the fiscal principles.

The PMFA further enables the County Executive Committee (CEC) finance to assign personnel responsible for assembling, accepting and accounting for county revenue. The receiver of revenue is responsible for quarterly accounts statements to the county treasury. A copy of the statement should also be provided to the national treasury and the CRA. The CEC Finance following the Act is at liberty to authorize KRA, or to commission a collection agent to collect revenue in place of the county government as per the PMFA regulations.

The Act thus seems to have adopted the 3 of the 4 recommendations of the taskforce on revenue collection by county governments. The 4th recommendation on setting up a distinct county tax revenue authority was not considered in the PMFA. The PFMA also provides for the management of sub-national government loans where the public debt management office should assist county governments on debt management upon the county treasury request.[58]

Section 132 of the Act requires County Governments to make proposals on revenue generation measures through the instrumentality of Finance Bills. The County Assembly is mandated to consider and allow the proposals which are contained in the Finance Bill and the policy statement expounding on the proposed measures. The Act also requires the proposed revenue sharing measures to be guided by a number of factors.[59] It is instructive to note that some

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[57] Section 109, Public Finance Management Act, 2012.

[58] Office of the Auditor-General (2017) "Effectiveness in Management of Public Debt in Kenya," at https://www.oagkenya.go.ke/wp-content/uploads/2023/01/Effectiveness-in-Management-of-Public-Debt-in-Kenya.pdf (accessed November 23, 2023).

[59] See Section 132(3) of the he Public Finance Management Act 2012 which requires the proposed taxes to be consistent with the approved fiscal framework and the County Allocation of Revenue Act, principles of equity, certainty and ease of collection, the impact of the proposed changes , domestic, regional and international tax trends and impact on development, investment, employment and economic growth among others

counties in the country have failed to enact the critical legislation despite the centrality of the legislation on own source revenue collection.[60]

Section 133 of the Act provides that "not later than ninety days after passing the Appropriation Bill, the county assembly shall consider and approve the Finance Bill with or without amendments" granted the legislation expects County Assemblies to authorize the Finance Bill after the Appropriation Bill. Arguably the Bill should be prepared at the onset of the budget making process.

The Act also gives conditions and directions on receiving grants and donations by county governments. The Act interprets a grant to mean a gift or contribution to the county government while a grant means provision of monetary support or assistance in kind which is not repayable.[61]A grant according to the Act has an agreement and the grant recipient (county government) is expected to actualize any terms and conditions outlined in the grant agreement where the intended beneficiaries are deemed to be residents of the particular county.[62]

As soon as practicable the recipient shall inform the CEC finance of the grant, which grant is supposed to be utilized as per the constitution.[63] The Act however, fails to give guidelines and implications as regard disbursements of revenue by the national government to county government, which is a very critical provision as regards to the execution of devolved functions are concerned. This study recommends that an amendment proposing clear disbursement guidelines should be tabled in parliament.

2.5 Commission on Revenue Allocation Act-2011 vis-à-vis Own Source Revenue in Kenya

Article 215 of the Constitution establishes the Commission on Revenue Allocation (CRA).[64] The key function of the commission is to make recommendations on justifying the equitable allocation of funds collected by the national government and is shared between the two levels of government and amongst the devolved units.[65] The CRA is also tasked to *inter alia* recommend on issues regarding the financing and management of sub-national governments, while

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[60] Business Daily (2013) "Counties face paralysis after failure to pass Finance Bills," *Business Daily*, October 2, 2013, at https://www.businessdailyafrica.com/bd/economy/counties-face-paralysis-after-failure-to-pass-finance-bills-2042668 (accessed November 18, 2023).
[61] Section 138, Public Finance Management Act, 2012.
[62] Julius Otieno (2023) "Counties get Sh44bn grants for 2023-24," *Star*, February 20, 2023, at https://www.the-star.co.ke/news/2023-02-20-counties-get-sh44bn-grants-for-2023-24/ (accessed November 23, 2023).
[63] Section 138(5), Public Finance Management Act, 2012.
[64] Article 215, Constitution of Kenya, 2010.
[65] Commission on Revenue Allocation Act, 2011.

promoting equitable sharing of revenue and when required, defining revenue streams of both the national and county governments.

Directly linked to this study the CRA should encourage fiscal responsibility which is a key element in enhancing own source revenue mobilization.[66]The Commission should present recommendations to the National Assembly, Senate, national executive, county assemblies and county executives. Some Respondents noted that whereas the CRA should form center stage in educating the County government on fiscal matters the commission has not participated optimally in equipping and building capacity for the county governments on fiscal matters. The respondents particularly noted the critical role in setting annual revenue targets where the Commission would be instrumental in giving

Article 217 of the Constitution stipulates that once in every five years, the Senate is required to delimit the basis for allocation amid the counties the share of national revenue that is annually allocated.[67] When passing such resolution, the Senate is required to take into account various factors such as the criteria established in Article 203, endorsements by the CRA on Revenue Allocation, consultations between the county governors and CS responsible for matters devolution, and also invite the public, including professional organizations to make their proposals.

Subsequently, after passing resolution, there is to be presented in Parliament a Division of Revenue Bill, and a County Allocation of Revenue Bill, which is to distribute among the counties the funds allocated to the county government. The process has however elicited mixed reactions with critiques arguing that it is all but an academic exercise since parliament only serves to rubber stamp the executive's interests downplaying the needs of the citizens and the spirit of the constitution.[68]

However, the County governments have witnessed a deadlock in the Senate as to the criteria for determining the basis for distribution among the counties the portion of national revenue.[69] For instance, in mid-2020, senators could not agree on the method for allocation of revenue among the 47 counties. The then proposed formulae by the Senate Committee on Finance and Budget

[66] Article 216(3) Constitution of Kenya 2010.
[67] Article 217, Constitution of Kenya 2010.
[68] George Kegoro (2020) "Senate should enjoy more powers in legislative process," *Daily Nation,* July 4, 2020, at https://nation.africa/kenya/blogs-opinion/opinion/senate-should-enjoy-more-powers-in-legislative-process-1100782 (accessed November 23, 2023).
[69] Oxford Analytica (2020) "Shutdown will sour Kenya county funds standoff," *Emerald Expert Briefings oxan-es*.

informed by the proposal by the Commission on Revenue Allocation (CRA) provided that counties with higher populations such as Nairobi and Kiambu counties were to be allocated more funds compared to lowly populated counties such as Lamu county.[70]

Under the arrangement, at least 29 counties would gain more revenue while 18 counties would lose at least Ksh 1 billion each. The impasse that continued for several weeks saw various services shut by county governments. However, the deadlock was broken in September 2020 as retired President Uhuru Kenyatta offered to increase budgetary allocation to the counties by about Kshs 50 billion and thus no county was to witness actual reduction in funds allocated.[71]

2.6 Intergovernmental Relations Act-2012

The Intergovernmental Relations Act (IRA) was enacted to institute a framework for integration and enabling dispute settlement between the county and national governments and amongst county governments.[72] Thus, the overarching purpose for its enactment was to establish dispute resolution mechanisms, in tandem with Article 6 on decentralization and access to services and Article 189 on corporation between county and national governments respectively of the Constitution of Kenya, 2010. The Act establishes the county and national government coordination summit which is the apex body for intergovernmental relations.[73]

The summits comprises of; the president or the vice president as chairperson, all county governors, and the chairperson of the council of governors who serves as the vice chairperson of the summit. The summit is tasked to provide a forum for *inter alia* deliberation of reports from other intergovernmental mediums and bodies relating to national interest, assessing performance of the two levels of government and making necessary recommendations, monitoring and executing national and county government's plans.[74] Section 9 of the Act provides the summit shall meet twice a year.[75] The summit is also directed to provide annual reports to both houses of parliament and the county assembly inside three months after end of financial year.

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[70] Peter Mburu (2023) "Why revenue formula irks rich-populous counties," *Daily Nation*, October 7, 2023, at https://nation.africa/kenya/counties/why-revenue-formula-irks-rich-populous-counties-4392314 (accessed November 23, 2023).

[71] Duncan Miriri (2020) "Kenya's senate breaks deadlock on revenue-sharing, averts shutdown of services," *Reuters*, September 18, 2020 at https://www.reuters.com/article/ozatp-uk-kenya-politics-idAFKBN269183-OZATP (accessed November 21, 2023).

[72] Intergovernmental Relations Act 2012.

[73] Section 8, Intergovernmental Relations Act 2012.

[74] *Ibid*.

[75] Section 9, Intergovernmental Relations Act 2012.

The Act also establishes the intergovernmental technical relations committee whose chairperson is recruited and selected by the summit. The committee is responsible for the daily administration of the summit. Section 19 of the Act establishes the Council of County Governors, (COG) consisting of the forty seven governors to be chaired by a chairperson and a vice chairperson elected amongst the forty seven.[76] The Council shall among others facilitate consultation and spearhead dispute resolution among counties.

The Council is tasked to present annual reports to the summit, the senate and the national assembly. Joint committees of the two levels of government with an aim of achieving the objects and principles of devolution including ensuring equitable sharing of national resources maybe established under the act. As far as dispute resolution is concerned, the act directs that all disputes in county governments should first be resolved amicably through alternative dispute resolution mechanisms before invoking judicial processes. In the realm of source of revenue for county governments, the framework established in the Act as discussed above is relevant in dispute resolution, especially taking into account who protracted issues of revenue collection, division of revenue and allocation thereof to counties may be.

Although the interrelations committee has aided in the reduction of tensions and work flow between the two levels of government, the coordination summit has encountered non-congruent views including on the county government revenue raising bill.[77] Representatives of the national government thus seem to be advancing interests of the national government, while those from the county government addressing interests of the county government which defeats the Constitutional requirement on corporation by the two levels of governments.

2.7 The Land Act 2012 vis-à-vis Own Source Revenue in Kenya

The Land Act 2012 is one the primary Statutes post 2010 that addresses itself to issues to do with land in Kenya. The Land Act provides for sustainable administration and organization of land and land centered resources. In so far as imposition of taxes by sub national units is concerned, there was a legal infrastructure in place before 2010.

The Valuation of Rating Act of 1956 for instance, empowered defunct local authorities, which are successors to value land for purposes of deciding on applicable rates. Local authorities were required by the legislation to prepare valuation rolls in accordance with the laid down

[76] Section 19, Intergovernmental Relations Act 2012.

[77] Council of Governors Press Statement, 25th April 2023, at https://www.theelephant.info> (accessed on 30th April 2023).

procedures. The valuation roll is supposed to be equipped at least once in every decade or a period longer approved by the Minister in charge of local authorities.[78]

As far as land rent is concerned, Section 28(1) of the Land Act obligates the National Land Commission to collect land rent on behalf of the County Governments. This is a departure from the practice where County Governments were collecting the same. Land rent is charged annually from land owned by the various County Governments in various markets and trading centers.

2.8 Land Registration Act 2012 vis-à-vis Own Source Revenue in Kenya

The other primary Land Legislation is the Land Registration Act which makes provision for registration of titles to land. The Act gives effect to the objects of devolution in regards to land registration. The County governments together with other players have a duty to administer land in Kenya. All matters that touch on organization and administration of land in Kenya are done in consultation with the County Government.[79] The Act also affords for registration of land held by county governments in trust for the community.[80]

2.9 County Outdoor County Outdoor Advertising No 19 of 2020 vis-à-vis Own Source Revenue in Kenya

The Senate passed the County Outdoor Advertising Control Act 2020, which commenced operations on 13th November 2020. Section 21 of the legislation requires County Governments to enact County specific laws to address at least four (4) functions.

First, the service of any notice required under this Act. The second function addressed by the Act is to do with the rate card where the act directs that review of the same should be every seven years. In the review fees and charges to be paid in respect of any matter required for the purpose of the said Act should be stated.

The third function that the legislation speaks on is the forms of application for outdoor advertising; the various classes and interval of an outdoor license, the acceptable size and physical location of the displays. Fourthly is the execution of the functions stipulated. The e exercise of the powers and discharge of the committee, which is the main institutional framework to operationalize the legislation are provided for.

[78] The Valuation of Rating Act of 1956 section 10.
[79] Land Registration Act 2012 section 6(1).
[80] Section 8, Land Registration Act, 2012.

A number of counties have finalized the development including Mombasa and Nakuru. The developed frameworks should take in account the role of the private sector in outdoor advertisement besides defining the relationship between Counties and entities like the Kenya National Highways Authority (KeNHA) to forestall disagreements over revenue collection from the stream. While others laud the legislation as giving guidelines to developing their respective outdoor legislation and also fostering uniformity, others deem the Senate move as limiting innovation and also usurping county governments' legislative role.[81]

2.10 The County Governments (Revenue Raising Regulation Process) Bill, 2023

The above 2023 Bill which was first tabled in Parliament in 2017 seeks to among other things systematize the process to be taken by sub-national governments in exercising the taxing authority bestowed to them by article 209 of the Constitution.[82] In exercising the said powers, the bill provides that the said should comply with state economic policies together with economic activities across the country and its boundaries. They should also not prejudice state mobility of goods and services.

The bill in section 2 provides inter alia that before a county imposes a fee or a levy, the said county must ensure that the principles of cooperation set out in Article 63 of the constitution are adhered to together with ensuring that the compliance policy set out in section 120 of the County Government Act is followed. To ensure cost effectiveness, the section also provides that the cost of providing a fee should not supersede that of the fee charged.

Before introduction of a levy, fee or charge, CEC finance is required to ten months before the commencement of a financial year to table the details of the proposal to the national treasury and the commission of revenue allocation.[83] The particulars to be submitted include inter alia, the reason for the imposition of the tax, the persons liable for the tax, the collecting authority, the compliance burden on the tax payers and details of any deliberations undertaken by the county including those affecting other counties. The National Treasury is expected to send its response three months after receiving the proposal and it's a liberty to any stakeholder in reviewing the same.

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[81] John Kahera (2015) "What is the actual role of Senate of Kenya?" *Standard,* at https://www.standardmedia.co.ke/article/2000160146/what-is-the-actual-role-of-senate-of-kenya (accessed November 23, 2023).

[82] County Governments (Revenue Raising Regulation Process) Bill, 2023, Section 1.

[83] Section 4, County Governments (Revenue Raising Regulation Process) Bill, 2023.

As far as waivers and variations are concerned, section 5 of the bill provides that no tax, licensing fee or penalty shall be waived except where it has been allowed by legislation. The bill also lays emphasis on transparency and administration of waivers where it is permitted including maintaining a public record and reporting the same to the auditor general. Section 6 permits any county government to engage the KRA in collection of revenue.

Section 8 of the bill establishes the Inter- Agency Transitional Committee whose functions inter alia include reviewing levies, dues and charges and makes recommendations to the CS in charge of treasury. The committee shall consist of the National Treasury, CRA, Intergovernmental Relations Technical Committee, Council of Governors, and KRA.

Needless to mention the bill has faced sharp criticism and is yet to be enacted into law since the year 2017. Both the former and current governors have termed it an attempt to arrogate the authority bestowed upon devolved governments by the Constitution.[84] In several press statements issued by the current chair of governors, she has termed the push to have the bill enacted into law as a ploy by the central government to micro manage and intimidate the operations of county governments which offends the requirements of the constitution.[85]

Although the bill has some stringent requirements including instructing county governments to give particulars before introducing new fees, charges and levies which arguably hinders innovation in so far coming up with tax streams is concerned, the bill if enacted and well implemented offers an opportunity for transparency, corporation especially with key bodies like treasury and KRA which are some of the issues that critiques and this paper alike argue will streamline fiscal decentralization in Kenya.

2.11 Bungoma County Legislations vis-à-vis Own Source Revenue in Kenya

Since the roll out of devolution, respondents reported that Bungoma County government has enacted over 19 county legislations. Although most legislations would affect county revenue, this paper will focus on county legislations that directly touch on own source revenue realization. These Acts include inter alia, Bungoma County; Alcoholic Drinks Control Act 2015, Trade Licensing Act 2017, Parking Management Act 2017, Property Hire and Lease Act 2017, Agriculture Produce Cess Act, 2017, Revenue Administration Act, 2019 and Public Markets Act 2019.

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[84] *Okiya Omtatah Okoiti* v. *County Government of Kiambu* [2018] eKLR.

[85] Council of Governors Press Statement, *ibid.*

The Bungoma County Trade Licensing Act 2017 was enacted to establish a framework and to provide a mechanism for the imposing of certain taxes, charges, fees and for the granting of trade and related licenses. The Act gives a way forward as to the Administration of the various trade licenses,[86] together with the licensing procedures to be followed during their administration.[87] The Act creates the office of the county licensing officer whose functions inter alia is to be responsible for granting business and trade licenses.[88]

The Act also creates offences and prescribes the penalties the offences attract in Part IV. Some of the offences that it creates include; those by public officers who abet and aid offences that are against the licensing procedure outlined in chapter III of the Act[89] and providing of false or misleading information by tax payers in relation to trade license.[90] Licenses issued under the Act are premised on the calendar year and hence lapse on 31st December of the year they were issued. The license fee for each year is determined by the County Finance Act.

In 2010, Parliament enacted the Alcoholic Drinks Control Act popularly referred to as "Mututho law" to guard the health of persons by availing a legal framework to control sale, production and intake of alcoholic drinks. The Act repealed the Liquor Licensing Act and the Changaa Prohibition Act.[91] Initially, District Alcohol Regulation Committees were set up for regulation purposes, however, in light of the provisions of the 4th Schedule of the Constitution, which enlists liquor licensing as a County Government function, County Governments have since taken over the function.

Bungoma County enacted the Bungoma County Alcoholic Control Act 2015 which has very elaborate provisions on application, display and renewal of licenses.[92] It also regulates advertisements and promotion of alcoholic products within the county[93] as well proving for enforcement of the same.[94] The main objective of the Act interalia includes; providing for

[86] Part II, Bungoma County Trade and Licensing Act, 2017.
[87] Part III, Bungoma County Trade and Licensing Act, 2017.
[88] Section 5(1), Bungoma County Trade and Licensing Act, 2017.
[89] Section 21(1), Bungoma County Trade and Licensing Act, 2017.
[90] Section 20(2), Bungoma County Trade and Licensing Act, 2017.
[91] Alcoholic Drinks Control Act 2010.
[92] Alcoholic Drinks Control Act 2010 Part II.
[93] Part 6, Alcoholic Drinks Control Act 2010.
[94] Part 7, Alcoholic Drinks Control Act 2010.

licensing of alcoholic drinks by the county government.[95] The Act establishes a directorate in Section 4.

The functions of the directorate include *inter alia*; carrying out public participation on matters do with alcohol in the county, conducting research, facilitating collaboration with the national government, and recommending to the executive member the need for the relevant laws and regulations in the alcohol sector.[96] Part IV of the Act regulates the advertisement and promotion of alcoholic drinks. Section 9 creates a sub-county committee which is responsible for licensing among other duties.

Needless to say, the legislation evidently being informed by the National legislation focuses more on regulation and prohibition and gives less attention to mobilization of osr in Bungoma County. It is worth noting however that the Act is yet to be optimally executed. Respondents in the study noted that a significant amount of revenue is lost is so far liquor licensing is concerned in addition to the blatant corruption in the sector.

Section 120 of the County Government Act 2012 makes it obligatory for devolved governments or any agency conveying services in the county to accept and execute tariffs and pricing policies for the running of public services. The Act goes on to provide guidelines on how such policies should look like, emphasizing on the need for them to address issues of equity, cushion poor households by ensuring access to basic services and encourage the consideration of special tariffs that can accelerate local development.[97]

Counties are thus expected to develop policies and legislations that define the proposed streams of user charges, the mechanism of collecting the charges, the rates for such charges and the penalties for failing to pay for the charges. Since the fees or charges directly affect the common man or woman, efforts should be made to raise awareness on the charges including development of simple information materials. Bungoma County enacted the County Property Hire and Lease Act 2017 and the County Parking Management Act 2017. The Bungoma County Parking Management Act which provides for the general operation of parking within Bungoma County including prescribing fees to be charged for the said parking.

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[95] Section 2, Bungoma County Alcoholics Drinks Control Act (2015).
[96] Section 4(3), Bungoma County Alcoholics Drinks Control Act (2015).
[97] Section 120, County Governments Act (2012).

Whereas the County is yet to develop the tariffs and estimating policy for the provision of public services, the enactment of the two legislations and the listing of different services and parking rates in the successive Finance Acts have provided guidance on the charges imposed by the County Government.

The Bungoma County Agricultural Produce Cess Act was enacted in 2017. Cess derives its origin from Section 201 of the (now repealed) Local Government Act as read together with Section 192A of the Agricultural Act (Cap 318). The said provisions had authorized local authorities to effect by-laws authorizing charges on agricultural produce Cess. However, following the repeal of the Local Government Act and the repeal of the Agriculture Act by Section 41 of the Agriculture, Fisheries and Food Authority Act of 2013. The County Government Act and the Agriculture, Fisheries and Food Authority Act however did not have a similar provision and neither did they have a regulatory provision that saved the taxation establishment as was provided for in the Local Government Act and Agriculture Act (both repealed).

Courts have on many occasions asserted that County Governments lack the legal basis of levying the agricultural produce cess. Courts have invoked provisions of Article 210 of the Constitution which provision expressly prohibits levying of any tax unless it is provided for by legislation.[98] Under the repealed legislations, Cess could only be levied without the approval of *the relevant Minister, this was held in the County Councils of Wajir and Mandera v. Allabdulahi Ahemd and Kuso Dahir,* where the County Council of Wajir was allowed to continue collecting Cess on account of having the relevant approval, whereas Mandera County was stopped for lacking the approval***.***[99]

Part II of the Act is on tax chargeable on agricultural produce and provides that the CECM shall with the approval of the county assembly determine the cess chargeable on scheduled produce within the county.[100] Any unpaid cess the act provides shall be recovered following a court process as petitioned by the receiver of county revenue.[101] The Act also creates cess committee in section 7 and outlines its functions in section 8 key among them overseeing county agricultural programs, enhancing cess collection and enforcing agricultural cess legislation. The

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[98] *Cereal Growers Association & Another* v. *County Government of Narok & 10 Others* [2014] eKLR.
[99] *Supra*. *County Councils of Wajir and Mandera v. Allabdulahi Ahemd and Kuso Dahir* ***[***2014***]*** eKLR***.***
[100] Section 4(1), Bungoma County Agricultural Produce Cess Act, 2017.
[101] Section 6(1), Bungoma County Agricultural Produce Cess Act, 2017.

Act provides that unless one has a trade license in agricultural produce and products, it is and punishable offence to carry out such business.[102]

Although the Act in section 5(1) empowers the CECM Finance in consultation with the CECM agriculture to declare and subsequently exempt essential produce from cess tax, this study argues that the legislation should have for clarity and certainty sake restricted itself to non-essential and commercial produce. Casting the net too wide the study argues is impractical and could impede OSR mobilization in addition to the county incurring unnecessary administration costs.[103] On exit points, the legislation instructs an authorized officer to collect cess on agricultural produce on transit and for barriers to be placed at county exit points for that purpose.[104]

There is need for counties of origin and those of destinations to agree on the rates imposed. Respondents to the study further noted that there existed complaints on the indiscriminate rates imposed by various counties, with destination counties at times charging higher that counties of origin. The law on cess should also clarify on whether the tax should be based on volumes, values or a defined flat rate. The Bungoma County Agricultural Produce Cess Act of 2017 is clearly a step in the right direction in this regard as it sets the basing for imposing the aforementioned tax.

Part 2 of the 4th schedule to the Constitution requires the NG to regulate *national betting, casinos and other forms of gambling*. County Governments on the other hand are required by dint of Article 209 to regulate Traditional activities, *public entertainment and public facilities, including; betting, casinos and other forms of gambling; racing; liquor licensing; cinemas and video shows and hiring among others.*

On the face of it, there appears to be a duplication of roles, hence the need to isolate the functions meant for two level of Government. Broadly, NG has been taking charge of licensing activities, with County Governments licensing the premises.

Very few County Governments have enacted legislations to enable them collect entertainment taxes, Bungoma County is yet to enact a legislation that would enable it discharge the

[102] Section 9, Bungoma County Agricultural Produce Cess Act, 2017.
[103] Section 5(1), Bungoma County Agricultural Produce Cess Act, 2017.
[104] Section 11, Bungoma County Agricultural Produce Cess Act, 2017.

Constitutional function and enable the County to collect the entertainment tax. Respondents to this study however noted that Bungoma County Public Entertainment Amenities Bill 2023 is being processed. The County has thus been using the instrumentality of the Finance Bills to collect the taxes that relate to entertainment.

In the latest Finance Act 2022/2023, the County had a number of items listed in the taxation schedule including , casino premise application fee, transfer of casino premise license, funfair permit, local public lottery permit and application of amusement and pool table entertainment.[105]

2.12 Conclusion on the Study on Own Source Revenue in Kenya

The objective of the chapter was to critically evaluate the existing legal framework on county own source revenue in Kenya. The preceding analysis of the constitutional provisions is indicative that OSR by counties in Kenya is undergirded in the Constitution of Kenya 2010. The provisions of Article 174 as read along with Article 175 of the Constitution suggest that it is intended that county governments should have reliable sources of revenue to enable them effectively deliver services.[106]

Conversely, as evidenced by the analysis, heavy reliance is placed on intergovernmental transfers under the auspices of equitable revenue sharing at the expense of OSR. On the flip side, the intergovernmental transfers are marred with delays in disbursement of funds which cripple county operations. It therefore follows that OSR offers prospects for enhancing effective realization of fiscal decentralization. However, it is discernable that county own source revenue in Kenya is yet to be attained in the manner envisaged. Presently, the statutory framework is overly titled towards conditional transfers.

As far as Bungoma County is concerned, the analysis reveals that the county has enacted several legislations on OSR. The analysis also noted that some of the enacted legislations for example the Cess Act need amendments to make it more practical and to also incorporate relations with other neighboring counties. Respondents to the also noted that there exist challenges in full implementation of the said legislations notably the Bungoma County Alcoholic Drinks Control Act and the Bungoma County Agricultural Produce and Cess Act 2017.

[105] Bungoma County Finance Act Financial Year 2022/2023.
[106] Constitution of Kenya, 2010, Articles 174 & 175.

The county is however yet to develop key policies and is yet to enact critical legislations including those concerned with property taxes, outdoor advertisement, tariffs policy for provision of public services, and legislation concerned with entertainment which this paper observe could have a significant impact in increasing OSR in Bungoma County.

Fortunately respondents note that some of the critical policies and legislation on OSR are being processed. The next chapter will address trends in own source revenue together with the sources of revenue in Bungoma County.

CHAPTER 3

TRENDS AND CHALLENGES IN THE REALIZATION OF OWN SOURCE REVENUE IN BUNGOMA COUNTY IN KENYA

3.1 Introduction to the Study on Trends and Challenges on Own Source Revenue in Kenya

This chapter examines the realization of own source revenue in Bungoma County in Western Kenya. The chapter is premised on the objective of establishing trends and challenges in the realization of effective fiscal decentralization. The economic and expansion status of the Bungoma County is examined together with the various sources of OSR. Statistical discussion of the revenue collected in the County is also provided, alongside the challenges hampering effective fiscal decentralization in the county. In a bid to draw comparisons from other counties, the chapter also does blanket highlights of OSR trends in other county governments in Kenya.

3.2 Own Source Revenue Streams in Bungoma County

Sources of OSR in Bungoma County can be categorized as Tax revenue sources and Non-tax revenue sources. Some of the tax revenues include; entertainment tax, cess tax, and property tax. On the other hand non-tax OSR sources include *inter alia* user fees, and licenses including; single business permit, liquor licensing, user fees, and outdoor advertisement.[1]

3.3 Taxes as Own Source Revenue in Kenya

This section provides an analysis of some of the taxes that Bungoma County Government can adopt to generate its own source revenue.

3.3.1 Property Taxes

Property tax in the context of Kenya largely refers to taxes levied in respect to land.[2] To achieve an effective property tax regime, it is critical for the tax collecting agency to pay regard to the following aspects *inter alia,* firstly, the tax base should be explicitly identified, there is need to have an elaborate tax policy that clearly identifies what is to be taxed and what should not be taxed. The policy could for example make provision for only taxing land; other policies could make provision for taxing only buildings yet others could tax both land and buildings.[3]

Secondly, at a policy level, there is need to regulate how the tax weight will be shared or distributed amongst the tax payers through an elaborate tax base valuation, thirdly a tax

[1] Charles Kibigo (2021) *Effects of Intergovernmental Fiscal Transfers on County Own Source Revenue Generation in Kenya,* PhD Diss., University of Nairobi.

[2] Tom M. Konyimbih, (2000) *Land Value Taxation: Rating Principles and Guidelines for Kenya*. Lincoln Institute of Land Policy.

[3] Roy Kelly (2000) "Designing a Property Tax Reform Strategy for Sub-Saharan Africa: An Analytical Framework Applied to Kenya," Blackwell Publishers Inc, at 38.

assessment should be considered largely through a development of a functional valuation roll , fourthly the tax collectors should design a mechanism of collecting the property taxes, fifthly there should be a tax enforcement system for potential tax payers who default on payment and finally a dispute resolution mechanism should be established to ventilate any emerging issues.[4]

Bungoma county currently depends on national legislations among them the 1967 national rating Act to collect property taxes. Respondents however noted that majority of property owners within the County have not been paying the requisite rates, and the county has not been deliberate enough to enforce compliance as envisaged by section 17 National Rating Act which provides for the mechanism of enforcement. Suffice it to note that the enforcement mechanism is costly and largely involves a lengthy litigation process.

3.3.2 Cess Tax

Cess is a form of tax targeting agricultural produce that is in transit within the borders of a local authority (now county government). The tax is levied on all farm and agricultural produce, livestock and products. The tax derived its genesis in the Agriculture Act (Cap 318), which was enacted in 1955. Section 192A of the legislation empowered Local Authorities to collect the tax subject to the Minister's approval and development of appropriate by-laws.

Arguably, the tax was largely expected to support the maintenance of roads within local authorities where it was collected, with 80% of the revenue collected being required to be used for road maintenance, with the balance being credited to the general account of the local authority for other usage.[5]

The Agriculture Act 1955 was repealed in January 2013 and consequently replaced by the Agriculture, Fisheries and Food Authority (AFFA) Act (No.13 of 2013). Subsequently, County Governments continued imposing Cess tax under County specific legislations. Noteworthy, cess tax is favored because of its ability to generate significant amount of revenue and the fact that it is less expensive to administer it.[6]

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[4] Roy Kelly, *supra*.
[5] *Ibid*.
[6] Mahmood Hasan Khan (2001) "Agricultural Taxation in Developing Countries: A survey of Issues and Policy," 24(3) *Agricultural Economics Journal* , at 315-328.

3.3.3 Entertainment Taxes

The term entertainment in the context of taxation is defined by inclusion and exclusion by the Entertainments Tax Act Cap 475 laws of Kenya to mean *an exhibition, performance or amusement to which persons are admitted for payment, but does not include entertainment offered by persons registered for value added tax purposes, stage plays and performances* which *are conducted by educational institutions approved by the Minister for the time being responsible for Education as part of learning; or sports, games or cultural performances conducted under the auspices of the Ministry of Culture and Social Services*.

The Constitution authorizes county governments to levy entertainment taxes.[7] Very few County Governments have enacted legislations to enable them collect entertainment taxes, Bungoma County is yet to enact a legislation that would enable it discharge the Constitutional function and enable the County to collect the entertainment tax under the full backing of the law.[8]

The County has however been using the instrumentality of the Finance Bills to collect the taxes. In the latest Finance Act 2022/2023, the County had a number of items listed in the taxation schedule including , casino premise application fee, transfer of casino premise license, funfair permit, local public lottery permit and application of amusement and pool table entertainment.[9]

3.4 Licenses

County Governments impose charges to individuals or entities as a pre- condition for granting them the green light to undertake certain actions. Beyond generating revenue, County Governments also use licenses as a mechanism of regulation.

To address the challenge of lack of clarity in the licensing process, the Senate published a Bill in 2022 titled The County Licensing (Uniform Procedures) Bill, 2020 which is meant to establish canons even procedures for licensing by devolved governments. The Memorandum to the Bill noted that there existed varied processes in applying for licenses across the 47 counties, cumulatively having impacting negatively on the ease of doing business in the counties. This Bill therefore proposed to establish identical procedures for licensing to guarantee confidence in the process and ultimately inspire private sector actors invest in business in the counties.

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[7] Constitution of Kenya 2010, Article 209(3).
[8] See also Chapter 1 above.
[9] Bungoma County Finance Act F/Y 2022/20223.

3.4.1 Single Business Permit

Local Authorities largely used the Local Government Act as a basis for charging individuals and business entities the permits. This permit is very critical because it not only ensures that businesses comply with the essential procedures and guidelines for a specific business but also guaranteed certainty in carrying out business. The costs of the permit in county governments vary depending on the site, location and magnitude of the business.

A number of County Governments have since developed trade licensing laws to guarantee the imposition of the charges on businesses including Bungoma County which enacted the Trade and Licensing Act 2017. Respondents to the study decried the fact that in addition to the permit given, one has to incur other costs including addition trade and inspection licenses which they deemed too bureaucratic and impeding growth of Small and Medium-sized Enterprises in addition to it being costly to business owners.[10]

3.4.2 Liquor Licensing

Liquor licensing is a major county revenue stream, before the existence of County Governments; the NG was largely responsible for collection of the revenue, with authority from section 9 of the Alcoholic Drinks Act.[11] County Governments including Bungoma County have since enacted laws and set up their own institutional frameworks at the county level, whose mandate includes issuance of licenses to prospective distributors.

3.4.3 Outdoor Advertisement

Outdoor advertisements are yet another revenue stream that counties have inherited function from defunct Local Authorities. The Repealed Local Government Act under section 162 guaranteed this function. The Constitution further buttresses this expectation by expressly enlisting outdoor advertisement a County function.[12]

Respondents to this study noted the positive impact that the enactment of the Bungoma County Outdoor Advertising and Signage Control and Regulation Bill 2023will has on OSR mobilization. They also alluded to the fact that a number of counties have finalized the

[10] Bungoma County Finance Act F/Y 2022/20223

[11] Section 9 of the Alcoholics Drinks Act, 2010 provides that, A person intending to manufacture or otherwise produce any alcoholic drink in Kenya or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the District Committee in the district where the premises is to be situated and shall pay a prescribed fee.

[12] Constitution of Kenya (2010) Schedule 4.

development including Mombasa and Nakuru as informed by section 12 of the County outdoor Advertising Control Act.[13]

3.5 User Fees

Local Governments have traditionally provided services to residents of their areas. Such services include provision of water and sewerage, parking of motor vehicles, hire of grounds, house rents, markets fee, agricultural extension, registration of social welfare groups among others. County Parking Management Act, County Property Hire and Lease Act, county health services Act, and County public market Act are some of the legislations touching on user fees that Bungoma County has enacted.

Some of the OSR streams during FY 2020/2021 in Bungoma county included; Cess, Land rates, Alcohol drinks licenses, single business permits, Application fees, renewal fees, certificate of compliance, conservancy fees, firefighting, advertisement fees, food and drugs permit, change of user fees, parking fees, boda boda parking, burial fees, house rent, stadium hire, miscellaneous income, plan approval, inspection fees, ground rent, market fees, enclosed bus park fees, slaughter fees, plot transfer, change of business name, impound charges, tender document sale, other charges, sand harvest fee, market shops rent, stock sales, and other revenue sources.[14]

Figure 1: Figure Illustrating OSR collection from some of the revenue streams in Bungoma County for FY 2021/2022 as at 31st December 2021

Revenue Stream	Annual Target in Kshs	Actual collection in Kshs	% Collected
Land Rates	50,0000,000	6,660,857	13%
Alcoholic Drinks	93,908,828	12,518,650	13%
Cess	48,000,000	16,401,007	34%[15]
Single Business Permit (SBP)	7,500,000	1,042,000	14%
Car Parking Fees	14,809,344	4,523,240	31%
Bodaboda Parking	10,378,584	245,000	2%

[13] Section 21 of the County Outdoor Advertising Control Act requires county government to enact outdoor advertisement laws that are specific and that address among other things the licenses and the specification of the sizes of signages.

[14] County Government of Bungoma, *4th Quarter Budget Implementation Report FY* (2020/2021)(BIR) 7.

[15] Bungoma County *Fiscal Strategy Paper 2022*, page 27.

Fees			
Food Hygiene Licenses	7,711,493	593,505	8%
Market Fees	41,454,524	19,188,029	34%
Conservancy Fees	12, 247, 768	1, 967,130	16%
Stadium Hire	428,258	0	0%

Source Bungoma County Treasury 2022

According to the Bungoma County Fiscal Strategy As at 31st December 2021 during financial year 2021/2022, the sample reveals that all the revenue collected was below 50% of the annual set target. Granted the representation was before completion of the financial year but it was after the completion of the second quarter of the financial year 2020/2022. Some of the identified sources for example stadium hire were yet to generate any revenue as at 31st December 2021. Respondents suggested the need for county governments to be innovative and creative in OSR mobilization especially in so far as non-tax revenue sources are concerned.[16]

3.6 Bungoma County Revenue Collection

Bungoma County relies on several streams of revenue. Noteworthy, prior to the establishment of county governments, after the shift into the devolution in March 2013, the area known as Bungoma county comprised of a number of local authorities namely: Bungoma county council, Malakisi town council, Bungoma municipal council, Mount Elgon county council, Sirisia town council, Kimilili municipal council and Webuye municipal council projected to collect Kshs. 113,438,956**,** the amount reported however was Kshs. 178,377,517, exceeding the revenue projected by the defunct local authority by slightly over 57%.[17]

The County collected OSR amounting to approximately millions Ksh 505, in FY 2014/2015, 631, in FY 2015/2016, 662, in FY 2016/2017, 657, in FY 2017/2018 , 789, in FY 2018/2019, 777 in FY 2019/2020, Ksh 395 in FY 2020/2021 and 368 in FY 2021/2022.[18] The graph indicates a progression in OSR collection from FY 2014/2015 to 2017/2018.

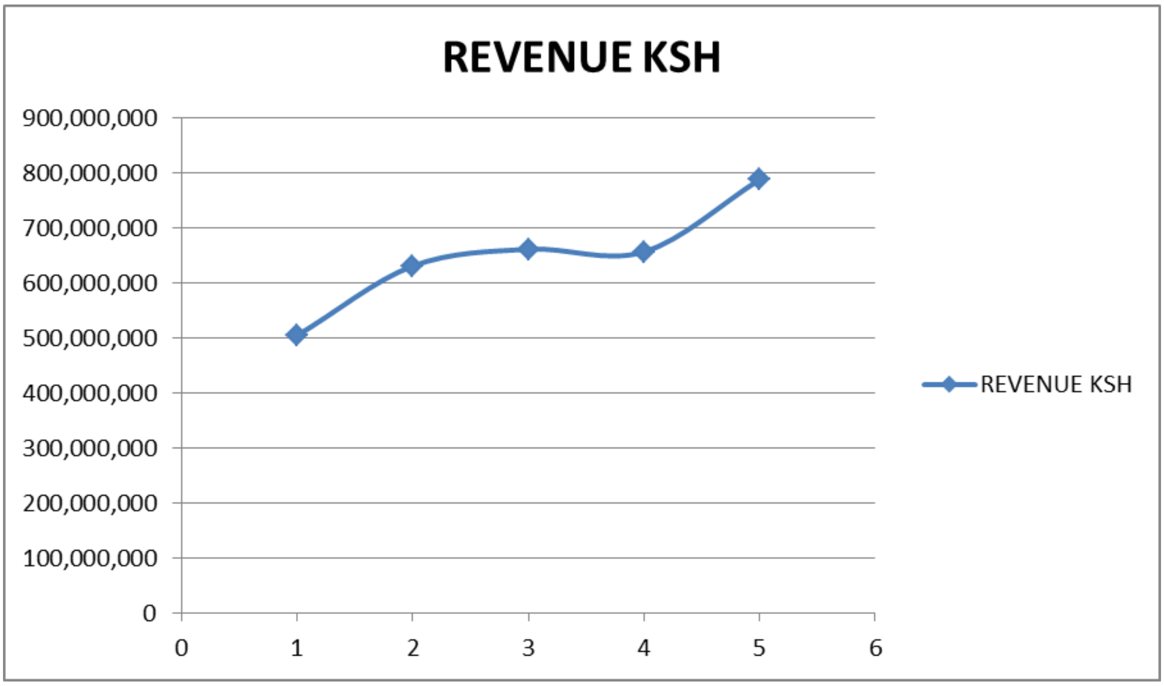
The county then experienced a slight decline in FY 2018/2019 and then a sharp decline from FY 2018/2019 to FY 2021/2022 which economists and leaders and respondents to this study

[16] Cynthia Wanjiru Mwaura (2018) *Modelling Own Source Revenue (OSR) of County Governments in Kenya*, PhD diss., Strathmore University, 2018.
[17] *Ibid*.
[18] Controller of Budget (2022) *County Governments Implementation Review Report*, September 2022.

attribute to the Covid 19 pandemic.[19] Granted Covid 19 had a global negative effect in development, even so, the increment witnessed in OSR collection from FY 2014/2015 to financial year 2018/2019 is still marginal and does not present a good case for OSR collection in Bungoma County.

Figure 2

Graph Demonstrating the OSR revenue in millions Kshs generated by Bungoma County Government from FY 2014/2015 to FY 2021/2022



Source Office of the Controller of Budget

3.6.1 Trends in the Realization of County Own Source Revenue Nationally

This section analyses the trends related to generation of Own Source Revenue in Bungoma County.

3.6.2 Financial Year 2018/2019

In FY 2018/2019, the total revenue for County governments was distributed as follows; the total revenue available was Ksh 445.36 billion. As far as own source revenue is concerned, the county generated a total of 40.30 billion against the OSR annual set target of Ksh 53.86 billion representing 78.4% of the target.

[19] Stephen Khadondi (2018) "Determinants of Own Source Revenue Mobilization by Counties in Kenya," *International Journal of Science and Research (IJSR)* 158.

On a positive note, Bungoma County was among the counties that surpassed the OSR annual target set. This was represented by mobilizing OSR amounting to Ksh 788,333,189 which represents 104.7% given that the target had been set at Ksh 753,185,810**.** Other counties that surpassed the targeted amount in FY 2018 include; Vihiga, Lamu, Taita Taveta, Kiambu, Kirinyaga, Nakuru, Isiolo, Elgeyo Marakwet, Laikipia, Kwale, Isiolo and Narok Counties.[20]

Conversely, other counties performed dismally with some recording lower than 50% of the annual OSR target set. Nandi and Meru Counties for example recorded 45.4% and 44.8% of the target respectively while Wajir and Migori Counties only managed 30.1% and 25.9% of the annual target respectively.

Nairobi City County generated the most income at Ksh.10.24 billion followed by Mombasa County at Ksh 3.71 Billion. The counties that generated the least income in FY/2018/2019 were Tana River and Wajir Counties at Ksh 62.65 Million and Ksh 60.12 Million respectively.

The irony of the foregoing is that Tana River County has been listed in two categories positively among those that surpassed revenue targets and negatively as one of the counties with the 2nd least in terms of the value in Kenya shilling garnered which raises a concern.[21]

3.6.3 Financial Year 2019/2020

In the FY 2019/2020, the total revenue available for counties was Kshs 411.9 Billion with the equitable share representing a lion share of the amounts at 286.8 billion, the opening balance was Kshs 51.2 billion, OSR Kshs 35.8 Billion, Conditional grants from national government and development partners Kshs 38.2 billion.As indicated above, In FY 2019/2020 county governments OSR mobilized was Kshs 35, 8billion out of the annual target set at Kshs 54, 901,027 billion which represented 65.2% of the target.

Bungoma county in the said financial year generated OSR of Kshs, 777,460, 000 million representing 84.6% of the targeted OSR. This was both a decline in revenue and percentage as compared to the OSR generated during financial year 2018/2019 where the county surpassed the annual OSR target set.

Notably most counties during this financial year recorded a decrease in the OSR generated. Nairobi City County still leading in the counties that mobilized the highest OSR recorded Kshs

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[20] County Governments *Budget Implementation Review Report* (FY 2018/2019) .

[21] Stephen Khadondi, *ibid.*

8.72 billion down from Kshs 10.24 billion. Mombasa County yet again came in second with Kshs 3.26 billion down from 3.71 billion. Five counties among them Homa bay, Taita Taveta, Machakos, Lamu and Bomet surpassed the OSR annual target set.[22]Five counties were still not able to achieve upto 50% the annual set target on OSR among them Busia, Kajiado, Wajir, Kissi , Nandi and Meru Counties.

The targets lost in county revenue translate to billions of shillings. For city counties like Nairobi or Mombasa, 50% lost could translate to billions of shillings which would significantly boost county OSR.

This then begs the question on the target setting formulae. Who sets the OSR annual targets? What are the parameters used in setting the said targets? Is the formula used scientific/how is it that some counties would surpass the set target and others fail to achieve 50% of the very targets set? Why the variance in the target set? Is the target set a true representation of the respective county's potential as far as OSR generation is concerned? Why would a county surpass the annual set target and still feature in the list of counties that generated the least OSR?[23]

Respondents admitted that the annual revenue target setting process is subjective and not scientific. They also noted that other county governments use the OSR targets to simply satisfy the budgetary figures other than interrogating respective counties potential in terms of OSR. Respondents explained that targets are set by the various departments within the county government executive wing, with the respective Chief Officer acting as conveners. Other members include county directors of departments who are the technocrats in the process. Representatives from the county finance department also sit in the target setting committee.[24]

The benefits of setting reliable OSR targets set are innumerable; key among them is that it can be a resourceful tool in regards to planning. This is one of the areas that this study suggests county governments will need support from the national government in so far as building ability in the budget creation process is concerned.

3.6.4 Financial Year 2020/2021

During the financial year 2020/2021 which should be noted is the period within which the Covid 19 pandemic was prevalent, the total revenue available for county governments nationally was

[22] County Governments *Budget Implementation Review Report* FY 2018/2019, September 2019.
[23] Roy Bahl and Jorge Martinez-Vasquez, *supra.*
[24] Charles Kibigo, *supra.*

Ksh 443.6 billion. Out of it, the opening cash balance was Kshs 52 billion, the conditional grants were valued at Kshs 33.7 billion while OSR was at Kshs 34.4 billion. The equitable share source of revenue yet again took the lead at Kshs 316.5 billion.[25] County governments collectively generated a total of Ksh 34.44 billion which represents 64.2% of the annual target set at Ksh 53.66 billion. This was a decline from the previous year where OSR generated was Ksh 35.77 billion.[26]

This financial year saw Bungoma County mobilize a total of Kshs 395, 118, 238, 79 in OSR out of the Ksh 500,000,000 million annual target set representing 79% of the target.

Still leading in the OSR mobilized was Nairobi City County at Kshs 9,958,038, 681 representatives of 61.4 percent of the target set. Despite the decline in activity attributable to the covid 19 pandemic, five counties surpassed the annual target set including; Turkana at 119.9%, Lamu at 108.4%**,** Uasin Gishu which mobilized Ksh 1,105, 679,540 billion representing 111.6% and Migori county's Ksh 288,535,155 representing 101.2% of the annual target. 42 out of the 47 counties did not meet the annual OSR target set. Five counties in FY 2020/2021 failed to attain upto 50% of the target namely; Narok, Wajir, Nyandarua, Embu, and Busia county.[27]

3.6.5 Financial Year 2021/2022

During financial year 2021/2022, the aftermath of the covid19 pandemic could still be felt with normalcy slowly returning. It should also be noted that it is during this financial period that the electioneering period was at its peak as the general elections in Kenya are held on the second Tuesday in August every fifth year which fell in August 2022.[28]

Available revenue during this financial year was Ksh 436.47 billion, which constituted of an opening balance of Ksh 48.14 billion, cash transfer of Ksh 340.40 billion, OSR Ksh 35.91 billion, and conditional grants of Ksh 12.01 billion.

Only four counties managed to meet the annual set target for OSR, with 43 counties failing to meet the set target. Kakamega County mobilized Ksh 1,226,076,737 billion which represented 76% of the annual target while Nairobi and Kisumu managed 47.1% and 49.5% respectively.

[25] Controller of Budget, *County Governments Budget Implementation Review Report* Financial Year 2020/2021. 2021 page xix.
[26] *Ibid*.
[27] Controller of Budget, *ibid* at 4.
[28] Article 101(1), Constitution of Kenya 2010.

Bungoma County was listed among the counties that failed to achieve upto 50% of the set target managing Ksh 368,035,878 million which was 49% of the Ksh 746,811,602 million target set. Several other counties failed to achieve upto **50%** the annual set target. Nairobi City County scored 47.1%, Kisumu 49.5% with Embu, Nyandarua, Garisa, Kitui, Kajiado, Murang'a, Busia, all failing to mobilize upto 50% of the set annual target.[29]

Bungoma County during financial year 2021/2022 had a total of Ksh 12, 021, 827,412 available revenue. The foregoing amount constituted an opening balance of Ksh 230, 673,629, cash transfer of Ksh10, 562,623, AIA Ksh 741, 524,089, OSR OF Ksh 368,035, 218, and other revenues of Ksh 8, 769, 449.[30]

Figure 3

County Governments Revenue Streams in Billions Kshs from FY2018/2019 - FY 2021/2022

F/Y	OPENING BALANCE	EQUITABLE SHARE	OSR	CONDITIONAL GRANTS	TOAL AVAILABLE REVENUE
2018/2019	55.08	314	40.30	22.37	445.36
2019/2020	51.2	286.8	35.8	38.2	411.9
2020/2021	34.4	316.5	34.4	33.7	436
2021/2022	48.14	340.40	35.91	12.01	436.47

Source office of the controller of budgets

Figure 4: National County OSR and Equitable Share Revenue Distribution in Percentage FY 2018/2019-FY 2021-2022

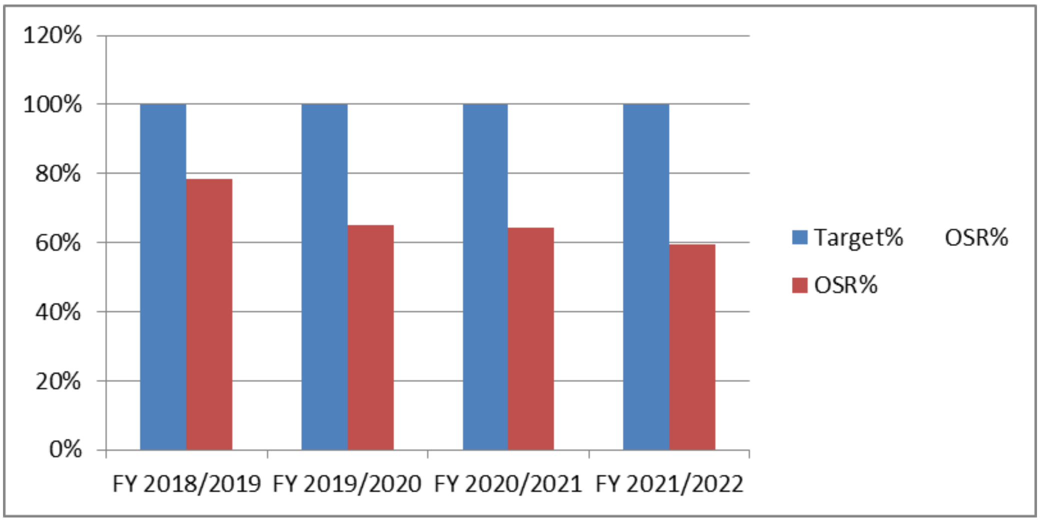
FY	**2018/2019**	**2019/2020**	**2020/2021**	**2021/2022**
OSR	9%	8.7%	7.9%	8.2%
EQUITABLE SHARE	70.6%	69.4%	72.6%	78%
TOTAL REVENUE	100%	100%	100%	100%

29 Controller of Budget, *supra* at 4.

30 *Ibid*.

Source Office of the Controller of Budget

Figure 5: National County OSR annual attainment versus the annual OSR target set in percentage %



Source Office of the Controller of Budget

3.7 The Role of County Own Source Revenue in Development

Among the strongest argument for devolution, is the efficiency in service delivery and the reduction in transaction costs. Devolution brings the expectation that service delivery and access to information at the sub national government will be optimum.[31] Devolution is also expected to resolve the mismatch and 'mismanagement' by the central government and instead adopt public policies in addition to the desires and the needs of residents of the respective county governments.[32]

According to the Bungoma Fiscal Strategy paper 2022, the county as far as development is concerned aims to;

a) Tap into the third economic stimulus program,
b) improve essential infrastructure such as energy, roads and water,
c) Intensify investment in critical economic sectors such as agriculture, manufacturing, tourism, and environmental conservation,
d) Enlarge access to quality social services including health and education,
e) Empower the youth, women and PWLD through county funded programs

[31] Commonwealth Secretariat and Commonwealth Local Government Forum 2001.

[32] World Bank Report (2023) *Devolution without disruption: A Pathway to a Successful New Kenya*, at https://openknowlegde.worlbank.org> (accessed on 15th January 2023)

f) Implement various policy and initiate reforms in institutions and law to afford citizens in the county effective service delivery.[33]

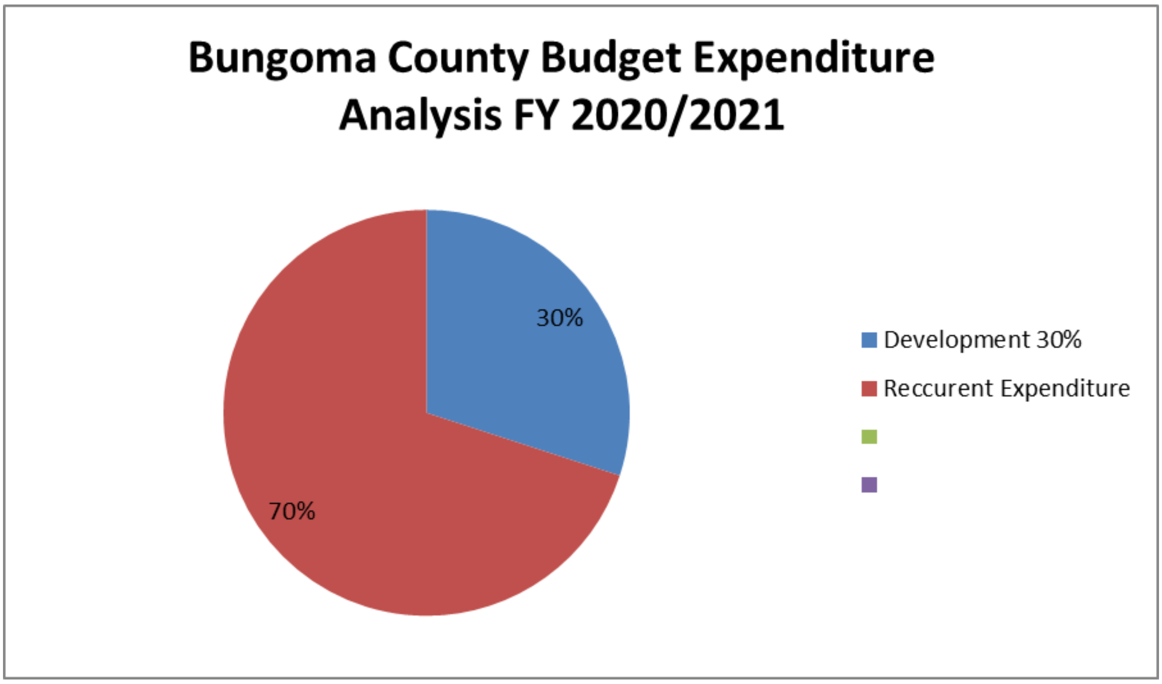
To achieve the foregoing aspirations together with all the functions assigned to county governments discussed in chapter two of this study, the county will require revenue. This calls for actors to ensure that available resources are cautiously utilized in addition to enlarging the fiscal space. In this regard effective OSR collection goes a long way in ensuring Bungoma County executes the development agenda.[34]

According to the expenditure analysis in Bungoma County FY 2020/201, the total development expenditure amounted to Ksh 3, 364, 982, 391 while the recurrent expenditure amounted to Ksh 8, 163,989, 429.[35] The analysis also indicates that the greatest contributor to the recurrent expenditure is the health and sanitation department whose expenditure is 35% of the total recurrent expenditure.[36]

In percentage the development and the recurrent expenditure in Bungoma County in FY 2020/2021 was 29.2% and 70.8% respectively.[37] The above speaks to the need for prudence in utilizing the county revenue together with following the laws and regulations to the latter. The data also demonstrates the need for Bungoma County to expand its fiscal space so that there is more revenue available for development

[33] Bungoma County Fiscal Strategy Paper 2022 pg. 31
[34] Charles Kibigo, *Ibid.*
[35] County Government of Bungoma, *4th Quarter Budget Implementation Report* (F/Y 2020/2021) pg 9.
[36] *Ibid.*
[37] Bungoma County Fiscal Strategy Paper 2022, *ibid.*

Figure 6: Pie Chart Illustrating the Bungoma County Budget Expenditure for FY 2020/2021



Source Bungoma County Treasury

3.8 Challenges in Mobilizing OSR in Bungoma County

In the process of realizing OSR, the actors experience a myriad of challenges. These challenges range from the availability of the necessary infrastructure, technological issues to challenges touching on the personnel entrusted in collecting OSR.

3.8.1 Inadequate Legal and Policy Framework on OSR

A number of challenges exist on the legal framework on local government taxation. As regards to land which this paper argues should be the biggest contributor of OSR in Bungoma County.

Two statutes are critical on land matters in the Kenya. The Land Act of 2012 which provides for sustainable administration and management of land and land based resources while the Land Registration Act 2012 makes provision on registration of titles to land in Kenya. Bungoma County has not enacted laws to align with the fundamental land laws in Kenya.

Firstly the county still relies on legislations that were in use even before the enactment of the 2010 Constitution. As far rating is concerned, the county still relies on the 1964 national rating Act which was enacted to primarily authorize collection of rates on land and buildings in the country. Important to note is that the National Rating Bill 2023 which was earlier introduced in

2021 and 2022 is being processed. Bungoma County failure to “domesticate” the principles contained in the legal frameworks presents a major challenge in collection of property taxes. The County substantially relies on the Rating Act to collect property taxes.

As far as valuation is concerned, the Valuation of Rating Act of 1956 empowered local authorities, which are successors to County Governments to value land for purposes of deciding on applicable rates. Local authorities were required by the legislation to prepare valuation rolls in accordance with the laid down procedure. The valuation roll is supposed to be prepared at least once in every ten years or a period longer approved by the Minister in charge of Lands. Needless to say Bungoma County has not enacted a valuation Act. Respondents note confusion and a missed opportunity in so far as property taxes are concerned occasioned by reliance on out-dated laws.

Still on inadequate laws, Bungoma County is yet to enact a legislation giving a way forward in so far as entertainment is concerned. Being one of the key areas that the constitution expressly authorizes county governments to impose taxes, it leads to loss of osr. Respondents however note that the county has been depending on the Finance Act to collect OSR from the entertainment sector. Although the respondents reported that the outdoor advertising legislation is being processed, it is also evident that the same has not been enacted.

As far as the policy framework on user fees is concerned, counties are expected to develop policies and legislations that define the proposed streams of user charges, the mechanism of collecting the charges, the rates for such charges and the penalties for failing to pay for the charges. As alluded to earlier on this paper Bungoma County enacted the County Property Hire and Lease Act 2017 and the County Parking Management Act. The county is yet to develop the tariffs and pricing policy for the provision of public services, the enactment of the two legislations and the listing of different services and parking rates in the successive Finance Acts have provided guidance on the charges imposed by the County Government respondents agree that the development of the policy will go a long way in so far as certainty and organization of tariffs which will positively boost OSR in Bungoma County.

3.8.2 Lapse in Implementation of OSR Laws and Policies

Granted lack of the necessary legal and policy framework is a huge set back to realization of OSR in county governments including Bungoma County. There are instances however where even though there exist the infrastructure, its implementation is wanting and thus impacting negatively on the end results.

Section 28(1) of the Land Act obligates the National Land Commission to collect land rent on behalf of the County Governments. This is a departure from the practice where County Governments have been collecting the same. Land rent is charged annually from land owned by the County Governments in various markets and trading centers. Bungoma County needs to re-consider optimizing its collection for land rent to boost their County revenues.[38]

The lapse is also evident in so far as contributions in lieu of rates is concerned (CILOR). County Governments, like Local Authorities which existed before them have the liberty to claim for payment from the National Government in respect to gazetted forests, un- alienated Government land and Government land that is valued and used by the National Government. This means that land occupied by National Government offices, Kenya Railways, Kenya Airways, and Kenya Ports Authority etc. would fall under this category.

However, Cap 267 exempts museums, botanical gardens, railway tracks, roads and other public utility lands from this category. For instance, in FY 2008/2009, Bungoma County collectively successfully put in a claim of Kshs. 5,234,739 constituting 2% of the entire revenue mobilized. The stream of income has since dried up as the County is yet to make attempts to claim for the monies.[39]

Respondents confirmed that many property owners within the County have not been paying the requisite rates, and Bungoma County has not made attempts to enforce compliance as envisaged by section 17 of the National Rating Act which provides for the mechanism of enforcement. Suffice it to note that the enforcement mechanism is costly and largely involves a lengthy litigation process.

3.8.3 Revenue Leakage

Revenue leakage is the revenue that is lost in an organization unintended, unnoticed, and preventable. The unnoticeable element is a key indicator to revenue leakage because it comprises of small ‘leaks’ that go unnoticed.[40] Following this leakage, in this case the county

[38] Land Act 2012, section 28(1).
[39] Land Act 2012, section 28(1).
[40] Alex Oguso (2022) “Constraints to Optimizing Revenue Potential in Subnational Governments in Kenya: Lessons from Nairobi City County,” *African Multidisciplinary Tax Journal* 1, 155-178.

government loss is unintentional. The loss could be attributable to system inefficiency or even poor supervision, but the bottom line remains that the lost revenue was not deliberately planned by the county government. The last key indicator of revenue leakage is that the loss is preventable. Link with the first two indicators, the revenue leakage no matter how it occurs, there is always a way to fix the loss in future.[41]

Some of the most common causes of revenue leakage include; billing errors, which are often as a result of a concrete solid management system leading to incorrect, unsent, shabby or even wrong invoices. Time tracking errors which are characterized by inaccurate time schedules keyed on tasks to be completed. Data entry errors cut across board and often cause revenue loss that goes unnoticed. The other common types of errors that occasion revenue loss are discount (waivers) discrepancies and contract renewal errors.[42]

Respondents to the study noted that revenue leakage is evident in virtually all county governments departments. The respondents revealed that millions in Kshs that could otherwise boost the revenue mobilized at the county level is unintentionally lost. On a positive note, the respondents note that if necessary steps including proper systems are implemented, the revenue leakage can be reduced notably through automation of services.

3.8.4 Corruption and Governance in County Governments

Closely linked with the issue of revenue leakage is graft. Corruption just like in the national government has been transplanted to the county government. This affects virtually all components of devolution including the fiscal component. As far as OSR is concerned, corruption claws backs on efforts to effective own source revenue not only in Bungoma County but undoubtedly in all the 47 county governments.[43]

According to the auditor general report, billions of shillings in county governments are lost to corruption. As far as the FY 2021/2022 auditor general's report is concerned, a lot of questions were raised ranging from pending bills, to budgetary control and performance to the huge wage bills incurred by county governments.[44] As far as Bungoma County is concerned, questions of non-compliance with the law on fiscal responsibility were raised.

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[41] PSOhub (2022) "Revenue Leakage: How to Calculate it and 6 ways to Stop it," at https://www.psohub.com> <Accessed on 4th May 2023>.
[42] *Ibid*.
[43] Alex Oguso, *ibid* .
[44] *Auditor General Report for the County Governments for the Financial Year 2020/2021 Vol. 1* county executives

The A-G observed that the wage bill surpassed the 42% requirement anticipated by regulation 25(1) (b) of the Public Financial Management of County Governments 2015. The report also noted a variance between financial statements and IFMIS records.[45] The variance according to the report was equivalent to Ksh 179, 236. 053**.** Miscalculation of expenditure, closely related to the study is unsupported expenditure on rental or produced assets. Some of the respondents in this regard noted that the runaway corruption is one of the reasons why the imposition of taxes is not justified.[46]

This corruption is not just limited to the executive. Respondents noted that the role of the county assembly in legislation and oversight is comprised by graft as legislators and other actors fail to execute their mandate in other instances because of being compromised. As far Bungoma County Assembly is concerned, the auditor general report FY/2021/202 revealed cases of overpayment of expenditure in fuel and oil , unauthorized expenditure contrary to the PFMA and PFM county government regulations, Inadequate ICT governance and security management among others.[47]

Respondents also noted that some of the county stuff are corrupt and in some instances defeat and comprise process and available systems for their selfish gains.

3.8.5 Non–Compliance by Taxpayers in County Governments in Kenya

Respondents noted that OSR sourced at the county level could increase significantly if the compliance level increased. Non- compliance on matters tax can be pegged on many factors including lack of systems. As discussed elsewhere in this study and as corroborated by majority of respondents, fiscal legitimacy is key to the realization of compliance in tax. The concept that a fiscal system should respond to the components of good governance cannot be wished away. Factors like transparency, effectiveness, efficiency, and fairness could aid in determining an effective policy.[48]

In addition, the subnational government that levies taxes should live up to the public's expectations that the taxes that are being imposed will not be misappropriated but will be put to good use and ensure effective delivery of public services. Blatant misuse of public funds and

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[45] *Auditor General Report for the County Governments for the Financial Year 2020/2021 Vol. 1* county executives page 367.
[46] Stephen Khadondi, *ibid.*
[47] *Auditor General Report for the County Governments for the Financial Year 2020/2021 Vol. 1,* supra.
[48] Attiya Waris, *supra.*

lack of and incompetent service delivery *inter alia* could result to widespread non-compliance which effectively translates to less OSR mobilization.

3.8.6 Inadequate Public Participation in Kenya

Public involvement can be summarized as a course that directly engages the members of the public in decision making by giving full attention to the public's idea in the said decision. The According to Omollo and Annette, participation by citizens in governance and making decisions in matters that affect them gives them a sense of ownership. They also observe that participation aids in curbing misuse of power by public officers. When citizens are given power to make decisions and share control over progress initiatives and resources that affect them, they automatically buy into and own the agenda being championed.[49]

Tangible public participation will be characterized by an encyclopedic public disclosure and access to fiscal information. Fiscal policies should also be informed by deliberations by the public on their implementation. Although the constitution is clear on both public participation and access to information, respondents noted that county governments have a long way to go.

Some respondents to the study notably business persons and small scale farmers were not aware that they are allowed to be party to decisions that affected them and believed that governance in the CG was a preserve of the executive and CA.[50] The import of the foregoing is that citizens are detached from the governance of subnational governments and thus miss out on being agents of responsible and sustainable governance.

3.8.7 Lack of Publicly Accessible Data on Own Source Revenue in Kenya

As discussed in the introductory part of this chapter, Bungoma county economy is predominantly dependent on agriculture. The data on how much this industry contributes to taxes to both the NG and the county government remains unclear. The foregoing points to the possibility of untapped source of revenue that there could be aid realize effective OSR mobilization.

3.8.8 Political Interference vis-à-vis Own Source Revenue in Kenya

The county government is a political creation. The CEO of the county who is the governor holds apolitical office. The CECM's are political appointees given that they leave office once

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[49] Annette Omolo (2011) "Policy Proposals on Citizen Participation in Devolved Governance in Kenya," *The Institute for Social Accountability* (TISA), at https://tisa.or.ke/images/uploads/Policy-Recomendations-on-Citizen-Participation-TISA-2011.pdf (accessed November 21, 2023).

[50] Articles 10 and 35 of the Constitution of Kenya 2010.

the governor who appointed them leaves office. The ones who oversight the operations of the county governments are MCA's who are also politicians. Respondents observed that effective OSR mobilization is defeated by politics.

Politicians interfere with the running of the programs and would want to be politically correct even in proposals that would see the county government position itself towards revenue collection. Respondents noted that the confusion and political interference is worse during the electioneering period and during regime change.

3.9 Conclusion of the Study on Trends and Challenges on OSR in Kenya

Granted, a large portion of revenue is mobilized by the national government through the mandate given to it by the constitution. This portion constitutes *inter alia* import/export tax, income tax, VAT among other taxes that the county government is not authorized to impose. It therefore goes without saying that county governments are entitled to part of that money constitutionally in the form of equitable share revenue.

This however should not be translated to the county governments sitting on their potential to mobilize their OSR. Even as they expect the cash transfers from the national government, which they have consistently through other forums and officially through their chair of governors noted is unreliable, county governments should endeavor to maximize their OSR mobilization potential for the fulfillment of devolution as envisioned in the constitution and for the better service delivery to their citizen.[51]

Figure 7: Bungoma County Equitable share and OSR Revenue Projections FROM FY 2021/2022-FY 2025/2026

REVENUE SOURCE IN KSH	F/Y 2021/2022 BASE YEAR	F/Y 2023/2024	F/Y 2024/2025	FY 2025/2026
EQUITABLE SHARE	10,659,435,192	10,659,435,192	11,192,406,952	11,752,027,299
OSR	368,035,218	700,000,000	735,000,000	771,750,000

Source Bungoma County Treasury

As outlined in the Bungoma County Government Review and Outlook Paper October 2022, it is evident that Bungoma County projects to predominantly depend on the cash transfers from the

[51] Stephen Khadondi, *supra*.

national government presently and in the foreseeable future. From the above figures the county OSR projections for FY/2025/2026 are less than 10% of the equitable revenue that the county projects to receive from the ex chequer.

This could well mean that Bungoma county government is not ambitious and does not appreciate the positive impact that effective OSR Mobilization will have in the county. Granted the equitable share revenue should be increased past the 15% floor set by the Constitution. The undeniable need for county government to have more revenue has been the center of attention in an array of debates both in and outside parliament and in governance initiatives including the Building Bridges Initiative that had proposed a 35% increment from the current 15% equitable share transferred to counties. The division of revenue Bill, 2023 introduced an amendment that sought to have county governments get 407 billion as equitable share in the FY 2023/2024 but was voted down by Senate.[52]

The foregoing is yet another conversation pointing to the undeniable need that counties need more revenue to fund their constitutional functions.[53] This need, this study proposes should not only be centered and/or limited to the equitable share revenue but rather county governments should innovate and maximize on other ways of rising own source revenue which this paper argues are a lifeline to devolution.

In view of the analysis of the trends of own source revenue in Bungoma county and Kenya at large together with the various streams of own source revenue, the fourth chapter of the study looks at the best practices in own source revenue in South Africa and United States of America.

[52] The Division of revenue Bill, 2023.

[53] Press Statement following a full Council of Governors meeting on 24th April 2023.

CHAPTER 4

COMPARATIVE STUDY ON BEST PRACTICES OF EFFECTIVE FISCAL DECENTRALIZATION

4.1 Introduction to the Comparative Study on Effective Fiscal Decentralization

This Chapter 4 provides a comparative study on the best practices of effective fiscal decentralization. The best practices examined in this Chapter 4 constitute the basis for policy reforms in Kenya. As such, the chapter undertakes a comparative study of the status of fiscal decentralization in Kenya and South Africa (SA) as wells as the United States of America (USA).

USA is chosen for the study since it has a rich history and more elaborate framework of fiscal decentralization. Moreover, the US fiscal decentralization framework is relatively stable compared to other countries. South Africa on the other hand is selected since it is an African country thus could have relatable experiences including their colonial masters, and ethnic dynamics moreover, the Constitution of Kenya 2010 was significantly borrowed from their South African counterpart.[1]

While South African provincial system is distinct from the Kenyan devolution model, Kenya has had a history of provincial governments, albeit without fiscal decentralization. Hence, South Africa generally provides a good model for the assessment of whether devolved governance is effective or not.

4.2 Comparative Study on Effective Fiscal Decentralization in the United States of America (USA)

This section analyses the comparative practice on fiscal decentralization in Kenya vis-à-vis United States of America (USA).

4.2.1 An Overview of the US Government Fiscal Administration

Founded in 1787, the US government resides in three arms of government; the judiciary executive, the and legislature. The US constitution creates a government that is anchored in federalism. The foregoing includes allotment of command between the centralized government, the states as well as the local government. Following the 10th amendment to the US Constitution, the government powers can be classified into three (3).

[1] Jill Ghai and Yash Ghai (2018) *The Contribution of the South African Constitution to Kenya's Constitution*, Cambridge University Press, at https://www.cambridge.org.books < retrieved on 19th August 2023>.

Firstly, those powers exclusively established to the US congress, secondly controls reserved to the respective states, and lastly authorities shared by both the federal government and the states. Functions *interalia* declaring war and printing money are conducted by the federal government.[2] On the other hand, functions touching on elections and issuance of marriage licenses are conducted by individual states. As far as shared responsibilities are concerned, both levels can collect taxes and even establish courts.[3] The 10th amendment to the US constitution reserves all powers not granted to the federal government.

Figure 8: Table Outlining the Various Levels of Governments in the USA

Federal Government	1
States	50
County	3,034
Municipal(City, Town, Village)	19,429
Township (called Town in some states)	16,504
School District	13,506
Special purpose (fire, police)	35,052
Total	85,576

Source US Census Bureau

Most US states consist of at least 2 tier of local government in form of counties and municipalities. States remain at liberty to create special purpose governments based on their needs. States also have the autonomy in how the local governments are governed. The local governments may function under; the general law, their respective charter or a blend of the two.[4]

4.2.2. Revenue Spending in the US Government

The purpose of the federal government is to:

> "Establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare and to secure the blessings of liberty to ourselves and posterity."[5]

[2] According to Robert Cameron (1995) "The History of Devolution of Powers to Local Authorities in the US: The Shifting Sands of State Control," 21(3) *Local Government Studies,* 396-417. The 10th Amendment to the US constitution provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the State, are reserved respectively or to the people.

[3] Robert Longley (2021) "Government 101: The United States Federal Government," at thoughtco.com/federal-government-structure-4140369 (accessed November 21, 2023).

[4] Christoph Möllers (2013) *The Three Branches: A Comparative l of Separation of Powers,* Oxford University.

[5] Preamble to the US Constitution of the United States.

The foregoing purpose as envisioned in the US constitution is achieved through government spending. The fiscal year in the US commences on 1^{st} of October and ends on the 30^{th} of September the subsequent calendar year. The US congress determines how the revenue collected is to be spent. In fiscal year 2020, the state and the local governments in the US mobilized revenue of US$3.7 Trillion and spent a total of US $ 3.6 Trillion.

In fiscal year 2022, the federal government spent $6.27 trillion; this was less than the revenue that federal government mobilized thus translating to a deficit. The amount spent was equal to 25% of the GDP. The major reason why federal spending is compared to the GDP/ economic activity in the US is to compare the spending with the economic activity of the country through the fiscal year.[6]

The State and local governments on the other hand unlike the Federal government must balance their budget to ensure that they only spend in accordance with the revenue received. Education and improving the standard of living for the disadvantaged by practice take more than a half of the State and local government budget.

Figure 9: Table Showing US States and Local Government Spending in US$ Fiscal year 2020

CATEGORY	AGENCY
Education	$1.16T
Standard of Living and Aid for the Disadvantaged	$876.0B
Obligation/debt	$383.3B
Crime and Disasters	$372.4 B
Economy and Infrastructure	$270.B
General Government	$201.5 B
Health Excluding Medical aid and Medicare	$154.9B
Child and Social Services	$123.7 B
Sustainability and Self Sufficiency	$72.25B
Consumer and Employee Safe Guards	$18.79B

[6] Budget of the United States Fiscal Year 2022, pg 41, at https://whitehouse.gov/omb/budget (accessed November 21, 2023).

Support for Veterans	$1.33 B
Total	$3.6 T

Source USA Facts Custom Analysis 2022

Spending in the US government can be categorized into;

4.2.3 Mandatory Spending vis-à-vis Fiscal Administration in USA

This category of spending is also known as direct spending. The spending is anchored on pre-existing laws.[7] Programs including social security and Medicare fall under this categorization. These programs are created by acts of congress which Acts dictate the amount of money to be allocated each fiscal year. In summary as far as mandatory spending is concerned, firstly there should be an existing law requiring that a certain amount of money will be spent every fiscal year pegged on the existing laws.

Secondly treasury then issues funds to the specific agencies spending accounts, lastly the entitlement programs are then paid from these accounts. In fiscal year 2022, some of the mandatory spending programs in the US budget included; social security, Medicare, Medicaid and other mandatory programs.[8]

4.2.4 Discretionary Spending vis-à-vis Fiscal Administration in USA

This category of spending is one whose expenditure is voted on by congress following the appropriation process. The process is formally approved by the President. In this category of spending, the President first submits recommendations for the subsequent fiscal year In the President's Budget, Congress then debates and votes on the budget during the appropriation each year, upon being voted for the President then signs the budget into law which okays the funding, disbursements and spending to be done during that fiscal year unless the law is amended.[9]

In practice approximately half of the discretionary spending is directed towards national defense, while the rest is planned towards the administration of other federal agencies, and sustenance programs including *inter alia* environmental organizations, housing, education, and social protection programs.

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[7] Bryan Jones et al. (2009) "A General Empirical Law of Public Budgets: A Comparative Analysis," 53(4) *American Journal of Political Science*, 855-873.
[8] Budget of the United States Fiscal Year 2022, pg 41, at https://whitehouse.gov/omb/budget (accessed November 21, 2023).
[9] *Ibid*.

4.2.5 Supplemental Spending vis-à-vis Fiscal Administration in USA

When the need for funds is dire, after the regular annual appropriations have long been approved both by congress and the president, supplemental appropriations may be enacted to meet the urgent need. In the year 2020 for example, congress approved four supplementary appropriations to aid the nation in recovery from the Covid-19 pandemic.[10]

4.3 Legislation on Fiscal Administration in USA

State and localities in the US are responsible for mobilizing revenue to fund their operations. Revenue in the US federal is sourced from among others transfers from the federal government, property, sales, charges, fees and other taxes. The legislations governing the collection of revenue in the US states and localities are numerous and complex.[11]

The said local governments are established and regulated by laws governing states .The authority of local governments in relation to the other units of the local government ultimately lies on the state law.[12] Save for the generic legislations touching on revenue mobilization in states and localities that will be discussed in this segment, there exist numerous acts and laws governing own source revenue in the US. Importantly given the autonomy to modify and legislate given to states and localities, the specific states have unique laws authorizing imposition of taxes. The said statues include but are not limited to laws, rules and regulations concerned with property tax assessment, sales tax exemptions, and income tax rates.

4.3.1 State Constitutions vis-à-vis Fiscal Administration in USA

In the USA, each state has a constitution. The respective constitutions outline the powers bestowed to the particular state. One of the most important powers outlined includes the power of the state to tax. These constitutions often include provisions that check the potential of states and localities to raise taxes and issue debts.[13]

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[10] How much has the us government spent this year? Fiscal data USAspending.gov.USAspending.gov.C:/Users/User/Documents/Federal%120Spending%20_%20U.S.A%TREASURY%20US%20SPENDING.pdf <accessed on 10th May 2023>.

[11] Ryan Nunn, Jana Parsons, and Jay Shambaugh (2019) "Nine Facts about State and Local Policy," January 31, 2019, at https://www.brookings.edu/articles/nine-facts-about-state-and-local-policy/ (accessed November 21, 2023).

[12] *Ibid*.

[13] Dale W. Jorgenson and Kun-Young Yun (1991) "The excess burden of taxation in the United States," 6.4 *Journal of Accounting, Auditing & Finance* , 487-508.

4.3.2 Internal Revenue Code (IRC) 1986 vis-à-vis Fiscal Administration in USA

This is a federal law that governs taxation in the United States. The code contains *interalia* provisions that impact on taxation in states and localities including rules and principles for tax exemptions, tax deductions and tax credits.[14]

This law codifies federal tax laws including Income, estate, excise, employment, gift, alcohol, and tobacco taxes. The code was originally compiled in 1939 and amended in the year 1954 and 1986.

Provisions detailing tax on self-employment taxes, withholding tax on non-residents, aliens and foreign corporations, unearned income medicare contribution, and enforcement and reporting on mechanisms including on certain foreign accounts, fused returns, and consolidated returns are among the provisions contained in the code.[15]

4.3.3 The Uniform Commercial Code (UCC) 2007 vis-à-vis Fiscal Administration in USA

As the name suggests, this is a set of laws that govern commercial transactions in the US Federal. The provisions include those affecting localities and States. The regulation guarding sales tax on goods sold across state lines. The code is not federally binding but has nonetheless been adopted by all the 50 states and the District of Columbia with some variations.[16]

The UCC provides a standardized legal framework across the various states in the US. This arguably creates uniformity which aids in easing the cost and time of doing business especially for businesses that are in multiple states. Additionally, the Code provides for default rules that can be used in commercial contracts which are essential in commercial contracts negotiation and drafting.

As far as dispute resolution is concerned the UCC provides a set of rules guiding dispute resolution which levels the playing field as far as commercial transactions are concerned. States are however at liberty to effect changes that align with the particular state in the UCC in case they elect to adopt it. Critiques of modifying the code however caution that if the modification is significant, the sole purpose of the code which is to guarantee uniformity in commercial transactions is lost in the process.

[14] United States International Revenue Code (1986).
[15] Title 26, Internal Revenue Code (1986).
[16] United States Uniform Commercial Code (2007).

4.3.4 The State and Local Fiscal Assistance Act (SLFAA) 1972 vis-à-vis Fiscal Administration in USA

This is a federal law that provides assistance to States and localities in regards to fiscal matters. The provisions in this Act include those that affect State and localities taxation rules for revenue sharing between the federal government and state and localities.[17]

The Act authorized the Federal Revenue Sharing to give financial assistance to states and localities. The grants were given for over 10 years and expired in 1986.Given that the grants were not directed to specific assignments but were left to the beneficiaries to assign the monies to the needs they had. This saw a significant improvement in the infrastructure and social security of the various states and localities and increasingly reduced states and localities dependence on federal transfers.[18] The Act is however no longer operational.

4.3.5 Federal Reserves Act 2013 vis-à-vis Fiscal Administration in USA

The Federal Reserves Act 2013 creates the Federal Reserve System as the central bank for the United States. In performing its functions the Fed works stiffly with the treasury department managing federal government finances to ensure effective working of the US government on fiscal matters. Issuing treasury securities and processing monetary transactions on behalf of treasury including issuing payments and other receivables are among the ways the fed facilitates fiscal operations to US government.

In addition to budgeting and spending on programs and service delivery for its citizens, US federal governments also allocate funds specifically for paying interest owing on the federal debt.

4.4 Revenue Sources for State and Local Governments in the US

In fiscal year 2019 which is the period between (October 2018 – September 30th 2019), the US federal government collected revenue amounting to $3.5 Trillion. During the fiscal year 2019, half of the revenue collected in the US by the federal government approximately $1.9 trillion was sourced from taxes. The taxes were mostly individual taxes with payroll taxes also contributing significantly to the amount. The other revenue sources in fiscal year 2019 in order of their performance included; Social Security and Medicare taxes, Unemployment insurance, corporate taxes, Estate taxes and Excise taxes. Other sources of federal revenue include non-tax sources which includes payments made to federal agencies. This payment could range from

[17] State Local Fiscal Assistance Act 1(972).

[18] *Ibid.*

Licensing fees, sale of natural resources to payments on admission to national parks.[19] In fiscal year 2020, just like in fiscal year 2019, tax sources contributed to the majority of the revenue mobilized by States and localities with Individual taxes leading at 41.1%, followed by social insurance taxes at 24.8% and consumption taxes at 16.9%.[20]

Corporate taxes contributed the least revenue coming in with 5.1% of the total State and localities revenue mobilized.[21] In fiscal year 2022, the States that mobilized the most revenue included California at 280.3 billion US dollars, New York at 117 .9 Billion US dollars, Texas at 82.2 Billion US dollars , Illinois at 62.5 billion US dollars and Florida coming in fifth at 59.2 billion US dollars.[22] The performance by the US States in so far as collection of revenue in fiscal year 2022 is concerned favors Khandondi's argument that urbanization is a critical factor in effective mobilization of revenue just like in Kenya where City Counties mobilize significant amount of revenue compared to rural counties, Urban States in the US also perform better than their rural counterparts.[23]

The states and local governments have various sources of revenue. Majority of these revenue sources however are tax sources.[24]

4.4.1 Property Taxes and Fiscal Administration in USA

Property taxes in the US are a remarkable source of revenue for States and localities' taxes combined. In fiscal year 2019 property taxes accounted for 31% of all tax across all States and local taxes. In 2020 it amounted to 32% of the local and State taxes.[25]

Property taxes may include; taxes on residential and commercial real estate, as well as tax levied on business equipment and taxes levied on palpable property like boats and cars. In the most part, real estate taxes are levied by the local governments. Person property taxes on the other hand may be levied by both the State and the local government. States and local governments in

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[19] State Local Fiscal Assistance Act 1(972).

[20] Daniel Bunn (2023) "State Government Revenue in the US," *Statistica Research Department*, at https://www.statistica.com/statistics/248932/US-State < Retrieved on 2nd October 2023.

[21] *Ibid*.

[22] Charles Kamau Kibigo, Effects of Intergovernmental Fiscal Transfers on County Own Source Revenue Generation in Kenya (Thesis, University of Nairobi, 2021).

[23] Stephen Khabondi, *supra*.

[24] Whitney B. Afonso (2013) "Diversification Toward Stability: The Effect of Local Sales Taxes on Own Source Revenue," *Journal of Public Budgeting, Accounting & Financial Management*.

[25] Jared Walczak, Katherine Loughead, Ulrik Boesen, and Janelle Cammenga, "Location Matters 2021: The State Tax Costs of Doing Business," May 5, 2021, 43, at https://www.taxfoundation.org/publications/location-matters/ . <accessed on 20th May 2023>.

the US impose property taxes in various ways; some enforce a rate for instance (the amount of tax per thousand dollars' value) on the fair market value of the property, others use the assessment ration where a percentage of the market value is imposed. Valuations are from time to time carried out on income prospective and other metrics.[26]

Some states employ equalization requirements to achieve uniformity, Other have a ceiling restricting rising of tax to a certain level usually within a fiscal year, to ensure uniformity and maintenance of revenue, some states apply rate adjustments.[27] Local governments often reduce property taxes to select groups and companies including; veterans and the elderly. At far as setting the property rates is concerned, the mandate is not only reserved to counties and cities but also to by school boards, fire departments and even utility commissions.[28] In financial year 2020, 14 States had zero collections in property states. All local governments however collected property tax in the same year.[29]

4.4.2 General Sales and Gross Receipt Taxes and Fiscal Administration in USA

Sales taxes are collected both by States and localities. These taxes are imposed on goods and services generally. This genre of taxes are generally paid by consumers but their remittance s made by retailers. In few instances where the retailer is not compliant is far as remitting sales tax is concerned, the consumer is obligated to remit the said taxes.[30] Though discouraged by localities, a number of states and local governments impose gross receipt taxes mostly falling at the production stage.[31] In Fiscal year 2020, these taxes amounted to 35% of the local and state taxes in the US.

In fiscal year 2020, local governments in four States namely; New Mexico, Louisiana, Alabama and Arkansas derived over 40% of their taxes from sales tax. When it comes to localities, seven states led by Texas relied on sales tax for over half of their total local revenue. In that regard, sales tax in Texas contributed to up to 63.0% of the revenue. In the same fiscal year, Texas

[26] Jared Walczak, Katherine Loughead, Ulrik Boesen, and Janelle Cammenga, "Location Matters 2021: The State Tax Costs of Doing Business," May 5, 2021, 43, at https://www.taxfoundation.org/publications/location-matters/ . <accessed on 20th May 2023>.

[27] Arnold Jens et al, (2011) "Tax Policy Economic Recovery and Growth," 121 Economic Journal F59-F580.

[28] Jared Walczak, Katherine Loughead, Ulrik Boesen, and Janelle Cammenga , *ibid.*

[29] Whitney B. Afonso (2013) "Diversificaiton toward stability: The Effect of Local Sales Taxes on Own Source Revenue," *Journal of Public Budgeting, Accounting & Financial Management*.

[30] Lounghed K, and Walczak etal "Unpacking the State and Local Tax Toolkit Sources of State and Local Tax Collection (F/Y 2020) (2022), Tax Foundation Fiscal Fact No.797 page 6.

[31] *Ibid,* page 7.

slowed down on imposition of individual and corporate income taxes but enforced both sales tax and margin tax.[32]

4.4.3 Individual Income Taxes and Fiscal Administration in USA

Individual income taxes are a signifant stream of revenue both for the federal and the States and localities in the USA. Forty three states enforce the individual income while only 41 states impose pay income. At the localities however, individual income taxes are seldom enforced with their presence being recorded in only 17 states and the District of Columbia.[33]

According to William McBride income taxes depress growth and dispirit savings and labor force partaking as opposed to consumption taxes.

4.4.4 Corporate Income Taxes and Fiscal Administration in USA

Although they tend to receive attention, corporate income taxes have an insignificant impact on the revenue basket of the state and local governments.[34] In Fiscal year 2020, their contributed to the local and state revenue was only 3.3%. Fourty six States tax corporate income tax. New Hampshire is the State that relies the most on corporate tax, contributing to its revenue at 27.3 percent; Alaska comes in second at 12.3 %. Localities in 9 States execute municipal corporate income taxes. The highest state in imposition of municipal corporate taxes is New York City State. William MC Bride yet again in analyzing taxation versus economic growth, posits that corporate income taxes are amongst the most detrimental as they work against activities which spur economic growth like investment in Capital.[35]

4.4.5 Other Taxes

Granted approximately**.** 80% of State and local revenue in the US are accounted for by property taxes, cooperate taxes, individual income taxes and sales taxes. The approximately 20% that is uncounted is filled up with a diversity of other taxes significant among the excise tax which take account upto more than ½ **o**f the 20% in Most States. Severance tax, transfer taxes, business licenses, inheritance taxes, estate taxes, recordation fees *inter alia* account for the other taxes.[36]

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[32] *Ibid,* page 8. Lounghed K, and Walczak etal "Unpacking the State and Local Tax Toolkit Sources of State and Local Tax Collection (F/Y 2020) (2022), Tax Foundation Fiscal Fact No.797 page 7.

[33] Jared Walczak (2019) "Local Income Taxes in 2019," *Tax Foundation*, at https://www.taxfoundation.org/local-income-taxes-2019/ (accessed November 21, 2023).

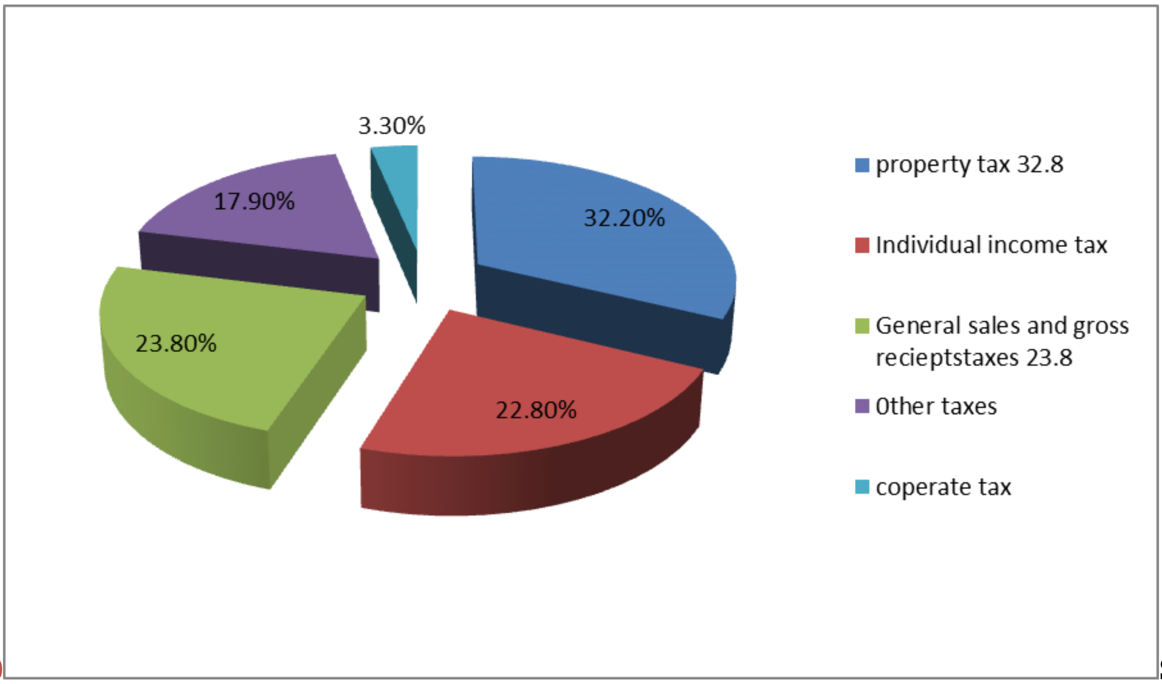
[34] Katherine Lounghed, Jared Walczak and Eddie Koranyi (2022) "Unpacking the State and Local Tax Toolkit: Sources of State and Local Tax Collection FY 2020," *Tax Foundation Fiscal Fact* No.79 pg 10.

[35] William MC Bride (2012) "What is the Evidence of Taxes and Growth," Tax Foundation, at https://taxfoundation.org> <accessed on 14th July 2023>.

[36] Katherine Lounghed, Jared Walczak and Eddie Koranyi, *ibid.*

Although modestly levied in States and localities, the imposition and significance of the 'other taxes diverge from state to state and from one local government to local government. 78.1% of State revenue and 37.4% of local government revenue in Alaska for example is sourced from the "other taxes". The key source of revenue in the aforementioned State is gas production tax and State's oil.[37]

Figure 10: Chart illustrating the sources of State and Local Revenue in the US Fiscal year 2020



Source: US center bureau: Tax Foundation Calculations

In fiscal year 2020 the sources of state and local government revenue included property taxes at 32.2%, individual income tax at 22.8%, gross receipts and general sales at 23.8%, corporate taxes at 3.3 percent and other taxes at 17.95%.

[37] Afonso, Whitney B. "Diversification toward stability? The effect of local sales taxes on own source revenue." (2013)Journal of Public Budgeting, Accounting & Financial Management.

Figure 11: Table Demonstrating Amount of Select State and Local Revenue in US Fiscal Year 2020

Revenue Source	Amount in US$
Non-Tax revenue including Federal transfer	$1.54 Trillion
Property Taxes	$690.2 B
Individual Income Taxes	$488.6B
Licenses	$95.711B
Corporate Taxes	$69.74B
Other Taxes	$42.31B
Severance Tax	$ 13.33B
Estate Tax	$6.12B

Source USA Facts Custom Analysis

Figure 12: Table demonstrating historical performance in % of State and local revenue sources in the US

Source of revenue	FISCAL YEAR 2016	FISCAL YEAR 2017	FISCAL YEAR 2018	FISCAL YEAR 2019	FISCAL YEAR 2020
Property Taxes	31.5%	31.7%	30.9%	31.0%	32.2%
Sales, Excise, and Gross Receipts Taxes	34.9%	35.1%	34.8%	34.5%	35.0%
Individual Income Tax	23.4%	23.2%	24.2%	24.0%	22.8%
Corporate Income Tax	3.3%	3.2%	3.2%	3.6%	3.3%
Other Taxes	6.8%	6.9%	6.8%	6.9%	6.7%

Source US. Census Bureau; Tax Foundation Calculations

4.5 Competition in State Tax Culture vis-à-vis Fiscal Administration in USA

The various states in the US have distinct state structures. While it is evident that States with the highest income depend more on property taxes while those with less income rely more on sales and gross receipt taxes, the same cannot be said with finality. Increasingly, income taxes have gained traction as a streams of revenue for States and localities, while property taxes though still leading as the major streams of revenue for States and local governments have decreased in value. Sales taxes on the other hand have remained flat. Cooperate taxes have been argued to be the most unpredictable source of State and local revenue.[38] While other states enforce all the chief taxes arguably with the aim of widening their revenue sources, others let go of other taxes with the aim of spurring greater economic activities.

4.6 Comparative Study of Fiscal Decentralization in the Republic of South Africa

South Africa is among the last countries in Africa to obtain a democratic government, considering that its first generation election was in April 1994.To attain a total transformation of government operations, the general voice was that decentralization of powers and functions to regional governments could be the solution.[39]

South Africa is divided in to nine provinces; Western Cape, North West, Eastern Cape, Northern Cape, Mpumalanga, Limpopo, Free State, Gauteng, and Kwazulu- Natal. Still on decentralization, 8 of the largest cities in RSA are governed in the form of Metropolitan Municipalities. The distinction in these municipalities is that they conduct all functions of municipalities as opposed to the District municipalities which carry out the roles specifically allocated to them.[40]

Matching regional obligations and expenditure, fiscal decentralization in South Africa aims to provide a legal framework that guarantees effectiveness in delivery of public services. The country has a robust policy and fiscal framework on fiscal decentralization and has successfully implemented the same.[41] There are two (2) major instruments for resourcing regional and local governments in South Africa; Own source revenue, which encompasses tax and non-tax sources from both localities and from Regional Service Councils, and secondly intergovernmental transfers.[42]

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[38]William E. Simeon (1977) "Blueprints for Basic Tax Reform," Department of the Treasury, at htttps://www.treasury.gov/resource-centre/tax-policy/Documents/Reports-Blueprints-1977< <accessed on 13th August 2023>

[39] TI Nzimakwe and P. Pillay (2014) "Enhancing Finance Delivery through Fiscal Decentralization, a South African Experience," 7(8) *African Journal of Public Affairs*, at https://repository.up.ac.za/bitstream/handle/2263/58108/Nzimakwe_Enhancing_2014.pdf?sequence=1 (accessed November 21, 2023)

[40] *Ibid*.

[41] *Ibid*.

[42] Roy Bahl et. al., *supra.*

Aside from the metropolitan municipalities, the remaining part is divided into 44 district municipalities. They are responsible for district units municipal functions which include; mass supply of utilities, high capacity urban roads, development planning and public transport.[43] The district municipalities are in turn divided into a total of 226 local municipalities. These localities perform functions that could be carried by district municipalities within which it lies.[44] Metropolitans and localities are also divided into 4,468 wards, where each ward elects one senator that sits as a representative at the municipal council.[45]

4.7 Revenue Sources in South African Provinces and Localities

In South Africa, the devolved governments have been given remarkable revenue raising powers. Compared to developing countries in Africa, RSA has the potential and foundation to mobilize sustainable own source revenue as opposed to most of the developing countries.[46] The major sources of revenue include; taxes and user charges, Regional Service Council levy, equitable share revenue and grants.

4.7.1 Property Taxes on Fiscal Administration in SA

Property taxes are a critical source of revenue in SA devolved units. The tax accounts to upto 20% of the local revenue collected.[47] Compared to developing countries globally, SA puts up a best case for maximization of property taxes. The autonomy the devolved units enjoy in so far as administration of property taxes is also admirable. The autonomy to choose the tax base, to set the tax rate and to grant exemptions in addition to the autonomy in developing the tax policy are among the developments that set SA apart from developing countries in so far as implementing fiscal decentralization is concerned.[48]

The property tax policy in South Africa is argued promotes equity as both the land owners and tenants get to pay taxes at different rates. The negative side of property tax in SA is that it is not neutral in regards to business decisions; it is politically unpopular together with it posing challenges to administer following the fact that property tax cannot be effectively administered

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[43] Constitution of the Republic of South Africa (1996) Chapter 6.
[44] Chapter 7, Constitution of the Republic of South Africa (1996).
[45]"Understanding Local Government," at http://www.salga.org.za/Municipalities%2520AM.html (accessed November 21, 2023).
45 *Ibid*.
[46] Roy Bahl et al, *supra*.
[47] *Ibid*.
[48] *Ibid.*

at a lower cost. Critiques however argue that if property taxes are too strict, investors shy away from such a jurisdiction.

4.7.2 Regional Service Council Levy and Fiscal Administration in SA

This tax constituting of gross receipts and payrolls of business is paid to category A metropolitan and category C municipalities respectively. The advantages of the above levy include inter alia the fact that it has a high turnover tax element together with its effective revenue adequacy.[49] The lack of nexus between where the tax is levied and where the benefits from the tax accrue however renders the above levy unfavorable. Secondly, since the rate and base in this levy are set at the national government, the local governments lacks the autonomy in its development and control and only serve as administrators of the tax.

4.7.3 Utility Excise Taxes on Fiscal Administration in SA

These are indirect levy's imposed on specific goods manufactured in South Africa and also on certain imported goods that are consumed in South Africa. The aim of such levies is twofold. From one point of view, the levies boost revenue collection and enrich osr collected on the other hand they discourage consumption of harmful goods. These taxes are levied on products such as cigarettes, petroleum, tobacco, cosmetics and even petroleum products.[50] The South African government for instance limits the excise to 40% of the most preferred cigarette while that of beer and wine is at 23% and 11% respectively.[51]

4.7.4 Motor Vehicle Taxes on Fiscal Administration in SA

Motor vehicle insurance is a source of provincial government revenue stream in RSA.

4.7.5 User Charges on Fiscal Administration in SA

This includes; sewerage and sanitation refuse removal, electricity and water among others. They are mostly viable in urban provinces and municipalities as compared to rural municipalities.

Figure 13: Republic South African Sources of Municipality Revenue 2018

Sources of Revenue	Amount in SA Rand	Percentage%
Grants and Subsidies	R29,2 Billion	28.4%
Sales of electricity	R 25,7 Billion	25.0%

[49] Understanding Local Government," at http://www.salga.org.za/Municipalities%2520AM.html (accessed November 21, 2023).
[50] South Africa Revenue Service htttps://www.sars.gov.za/customs-and-excise/excise/ < retrieved on 18th September 2023.
[51] *Ibid*.

Property Rates	R 18.0 Billion	17.5%
Other	R12.4 Billion	12.1%
Sales and Water	R 10.3Billion	10.3%
Sewerage $ Sanitation	R 1.4 Billion	4.0%
Refuse Removal	R 2.9 Billion	2.8%
Total	R 102,9	100%

Source: Quarterly Financial Statistics of municipalities, December 2018

According to statics and highlights in South Africa between FY 2015/2016, to FY 2019/2002, the three provinces that contribute to the most revenue include; Gauteng at 49.0%, Western Cape 15.5% and Kwazulu-Natal at 13.3 %. Conversely provinces that contributed to the least revenue include; Northern Cape at 1.3%, Free State 3.2%, and North West at 3.3%.[52]

4.8 Legal Framework in South Africa vis-à-vis Fiscal Decentralization

The accomplishment of fiscal subsidiarity is dependent on the consistency and coherent laws and policies, solid legislation and proper regulatory framework supporting the same. The South African fiscal devolved governance is grounded upon interalia; the Constitution, the Public Finance Management Act, and the Intergovernmental Fiscal Relations Act among other Acts which this paper interrogates.

4.8.1 South African Constitution 1996 and Fiscal Administration in SA

The SA constitution establishes three separate interdependent and interconnected heights of government namely; the NG, nine provincial governments and 283 (now 273) municipalities. The constitution assigns obligations, powers to each level of government.[53] Schedule 4 of the Constitution assigns the roles and responsibilities to the various governments in South Africa. The shared roles between the national and provincial governments include inter alia; health, housing, agriculture, education, public transport and gambling.[54] Local government expenditure responsibilities include inter alia; building regulations, child facilities and local health, local public transport and local airports.[55]

[52] "National Treasury and the South African Revenue Service" Tax Statistics (2020) South African Revenue Service https://www.sars.gov.za/wp-content/uploads/Docs/TaxsStats/ 2020/Tstats/Tstats-2020-Highlights-pdf.
[53] South African Constitution (1996)
[54] South African Constitution (1996) Part A schedule 4.
[55] *Ibid* Part B.

Unlike the Kenyan situation however, the South African Constitution assigns more expenditure responsibilities to the devolved units. The bulk of the education and health functions are born by the sub-national governments and not the NG.[56] The foregoing can act as an advantage or disadvantage depending on how the governments are structure. Following the principle that the responsibilities assigned to a government should go hand in hand with the obligations assigned, if there is a mismatch in the above then the gist of decentralization is unattainable.[57] The tax policy structure of the RSA has enabled the local government to mobilize commendable OSR and it continues to do so.

RSC revenues are collected by both metropolitan and district municipalities. Chapters 3 of the Constitution envisage that the three levels of government are distinctive, interrelated and cooperate with each other.[58]

4.8.2 Intergovernmental Fiscal Relations Act, 97 of 1997 and Fiscal Administration in SA

The Act organizes intergovernmental fiscal relations. It maps out the system of fiscal decentralization in SA. The Act sets up orthodox consultative stages that have to be fulfilled before tabling the budget to parliament. The Act sets a financial plan debate in which devolved government questions are discoursed building up to the national budget making development. The Act also sets out the process of apportioning the national revenue raised amid the three levels of government.

The Act directs that a division of revenue bill should be tabled yearly while setting out interalia the funds to be disbursed to every municipality. There also exists an Intergovernmental Relations Framework (2005**)**, which provides for a structure for the creation of intergovernmental assemblies and ways of facilitating the resolution of intergovernmental disputes.

4.8.3 Division of Revenue Act (2005) and Fiscal Administration in SA

The Act defines the equitable of division of revenue amongst the three heights of government. The Act is meant to contribute to transparency and in the allocation of national raised revenue which ensures seamless flow of activities and relations in the three levels of government.

[56] South African Constitution (1996) Part A schedule 4.
[57] Attiya Warris, *supra.*
[58] South African Constitution (1996) Chapter 3.

Needless to mention, there has been a debate around the issue of incongruity between the revenues allocated to the provinces and localities by extension do not match the responsibilities given to the said sub-national governments.

Sub-national governments decry more responsibilities including education and health and less cash transfers in that regard.[59] As repeatedly stated in this project paper, effective fiscal decentralization is evidenced by inter alia congruence between obligations assigned and resources available to fund them.

4.8.4 Public Finance Management Act (1999) and Fiscal Administration in SA

Last amended in 2014, the Act is a pillar to public finance management and aims to attain effective finance management and optimum service delivery through prudent use of the restricted public resources.[60] The Act describes merit for expenditure, accounting, and reporting in public entities.[61] Chapter 4 of the Act provides for the annual budget with section 34 disbanding unauthorized funding. Lack of transformative public service, in addition to rigidity by the public servant in South Africa has partially impeded the full optimization of the Public Finance Management Act according to a study by the University of Pretoria.[62]

4.8.5 Municipal Structures Act (1998) and Fiscal Administration in SA

The Act affords for the creation of various sets of municipalities and the allocation of controls and purposes between localities and district municipalities. The Act also synchronizes the inside systems, composition and functions of office holders at the municipalities.[63]

4.8.6 Municipal Systems Act (2000) and Fiscal Administration in SA

The Act outlines the requirements for community participation, unsegregated development planning, and performance running, administration, service delivery and debt collection. The Act regulates the obligation of functions from another level of government to a municipality. As far as by laws are concerned, the Act provides for publication of by-laws also regulating the role of national and provisional governments in setting standards and checking localities.

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[59] Afonso, Whitney B. (2013) "Diversification toward stability? The effect of local sales taxes on own source revenue," *Journal of Public Budgeting, Accounting & Financial Management*.

[60] Republic of South Africa Public Finance Management Act (1999) section 2.

[61] *Ibid*, section 6.

[62] Johan Jordan (2013) *Public Finance Management System in South Africa*, Thesis at the University of Pretoria, at https://repository.up.ac.za /bitstream/handle/2263/28035 accessed on 2[st] October 2023.

[63] Republic Of South Africa Municipal Systems Act (2000) section 2.

4.9 Lessons for Kenya from South African and the USA Experience

From the comparative study, on the best practices of effective fiscal decentralization in the United States, and the Republic of South Africa, the two countries both have a decentralized system of governance. While Kenya has two levels of governments namely; the national and county government, in the US, in addition to the federal government, most US states consist of at least 2 tier local government in form of counties and municipalities.

The States are modeled like the federal government and the executive arm is led by a Governor. As opposed to Kenyan counties, the US states enjoy autonomy and dependence each state having a constitution that creates and governs it. In the RSA, the Constitution creates three spheres of government namely; the national government, provinces and localities.

The divergence of facts from the comparative study expose that, fiscal decentralization in the US and in the RSA is more effective and advanced than that of Kenya. Further it emerged that fiscal decentralization in the US is in regards to the respective states and localities which are way over 85,000 as compared to the 47 counties in Kenya. The various States and localities in the US it emerged get federal government transfers but the percentage received competes favorably with revenue sourced from other sources.

It also emerged that the State and localities have a wide net in so far as own source revenue streams are concerned. The net includes most tax sources as opposed to Kenya where counties depend more on non-tax sources for OSR. In RSA it emerged that the Provinces and localities in RSA do not depend on the equitable share

Decentralized governments in the US are also authorized to levy some major taxes together with the federal government.[64] In this regard, some respondents suggested that the country should look towards a future where some tax sources imposed by the national government should be surrendered to county governments starting with stamp duty imposed on land transactions which respondents argue is property of the respective devolved governments.

In the US some of the significant taxes levied by both levels of government include *inter alia* individual income taxes and cooperate income taxes. In the RSA, the devolved units depend

[64] Whitney B. Afonso (2013) "Diversification toward Stability? The Effect of Local Sales taxes on Own Source Revenue*," Journal of Public Budgeting, Accounting & Financial Management*.

equally on both tax and non-tax streams of income. The divergence however is in the fact that they are allowed to levy fees and charges on essential commodities such as electricity which also boost their revenue collection. Unlike their counter parts in Kenya, the devolved governments in South Africa collect significant amount of revenue from tax sources including property taxes, revenue which competes favorably with the equitable transfer.

In terms of fiscal discipline and general adherence to the rule of law in fiscal matters, the comparative study revealed that States and localities adhere to the rule of law and practice fiscal discipline better than their Kenyan counter parts, and so do Provinces and localities. The study also revealed that some of the legislations on revenue collection and fiscal discipline in Kenya and RSA have similar provision and thus the puzzle could be on implementation and generally the adherence to the rule of law.

As far as expending the revenue mobilized is concerned, it emerged that in the US an upwards of 80% of the spending is dedicated to service delivery, support programs and infrastructure which in the most part is mandatory spending that is anchored on the law. Over 70% of spending in most county governments in Kenya including Bungoma County is annually dedicated to recurrent expenditure including unreasonable wage bills and allowances. It’s only approximately 30% that is dedicated to development.

As far as levying and administration of taxes is concerned, it also emerged that in the US, States and localities do not administer all available taxes and fees that they are authorized to tax, Some States forego some revenue sources and capitalize on other sources in a bid to maximize returns and also cutting on the administration of revenue sources that are not viable.

4.9.1 Best Practices for Kenya on Tax Sources and Regulation

The US localities and States depend more on tax sources as a source of revenue than their Kenyan counter parts that heavily rely on non-tax sources for OSR. In the US, the States and local governments can levy taxes in a myriad of goods and services. Some taxes including individual income taxes and corporate taxes can be levied both by the federal and the various states. In Kenya however, county governments may only impose property rates and entertainment taxes and the income tax, value added tax, customs tax, excise tax among others are a preserve of the national government.

The US states and localities have undoubtedly a wide net of tax sources including; Sales tax, excise tax, property tax, individual income tax, severance and corporate tax among others. In

South Africa, devolved units depend on both tax and non-tax sources competitively and none can be said to supersede the other. Although not as wide as in the US, the Provincial governments in South Africa are allowed to impose the 'significant' taxes.

They can impose taxes in any base except; customs, value added, general sale sales, and corporate income. The sub-national governments are also authorized to levy a flat rate charge on personal income.[65] Additionally as opposed to their Kenyan counterparts, and as far as utility charges are concerned, the devolved units in RSA boast of significant streams to charge fees from including provision of electricity unlike their Kenyan counterparts as evidenced elsewhere in this paper.[66]

4.9.2 Best Practices for Kenya on Government Transfers

The US States and localities, just like county governments in Kenya receive government transfers. While it is termed as equitable share in Kenya, in the US the equivalent is known as federal government transfers.[67]

The divergence however is that while the equitable share revenue is the main source of revenue since devolution was introduced and in the foreseeable future, in the US, the federal transfers contribute to a significant amount of revenue to the States and localities but is not the main revenue source. In Fiscal year 2020 for example, and as evidenced elsewhere on this chapter, federal transfers and non-tax revenue to the States and local governments was valued at US$ 1.54Trillion representing 41% of the revenue available for states and localities.[68]

In South Africa the equitable share revenue forms part of the sources of revenue of provinces and localities, the instrument however is low and does not threaten the existence of devolved governments as it is not the main source of revenue for them.

4.9.2 Best Practices for Kenya on Expenditure

As far as expenditure is concerned, both Kenya and the US are governed by laws and regulations on expenditure. The US however has an elaborate hierarchy of expenditure with

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[65] South African Constitution (1996) Article 228(1)

[66] "National Treasury and the South African Revenue Service" Tax Statistics (2020) South African Revenue Service
https://www.sars.gov.za/wp-content/uploads/Docs/TaxsStats/ 2020/Tstats/Tstats-2020-Highlights-pdf.

[67] Robert P. Inman (2003) "Transfers and bailouts: Enforcing Local Fiscal Discipline with Lessons from US Federalism," 35 *Fiscal Decentralization and the Challenge of Hard Budget Constraints*, 45-47.

[68] Simeon W (1977) "Blueprints for Basic Tax Reform," Department of the Treasury, at htttps://www.treasury.gov/resource-centre/tax-policy/Documents/Reports-Blueprints-1977< <accessed on 13th August 2023>

mandatory spending on programmers like Medicare which are anchored on pre-existing laws taking priority over programs that fall under discretionary spending.[69]

In Counties in Kenya including Bungoma County, critical programs such as health are annually subjected to the budget cycle where the finance Bill has to be enacted to reflect the various proposals. While Counties in Kenya evidently dedicated a significant percent of revenue to recurrent expenditure, there exist a divergence as the States and localities in the US dedicate more than half of their spending to education, standard of living and aid for the disadvantaged. In the US an upwards of 80% of the spending is dedicated to service delivery, support programs and infrastructure. 70% of spending in most county governments in Kenya is dedicated to recurrent expenditure including unreasonable wage bills and allowances. It's only approximately 30% that is dedicated to development.[70]

In the Republic of South Africa, just like in Kenya there exist laws promoting accountability and prudence in expending public revenue including the Constitution of South Africa of 1996 and the Public Financial Management Act of 199, the divergence however is that whilst the implementation of the said laws in South Africa is commendable the same cannot be said of their Kenyan counterparts as discussed earlier in these study.[71]

4.9.4 Best Practices for Kenya on Fiscal Discipline

Fiscal discipline requires that governments will embrace fiscal positions with macroeconomic stability and sustainable economic growth. It dictates that governments will avoid indiscipline ventures including excessive borrowing and accumulation of debt. To this end the States and localities in the US are tasked by law and Practice to ensure that they do not spend more revenue than what is mobilized the liberty to exceed whatever has been budgeted for is only allowed at the central government.

The same is not evident in Bungoma County and Counties in Kenya generally as the OSR revenue targets are seldom met and thus spending is done disregarding the projections set. In the RSA, there exist stringent provisions on borrowing both in the Constitution and legislations and the implementation cannot be said to be optimum. Needless to say most countries globally are

[69] Curto, Vilsa et al,. "Health care spending and utilization in public and private Medicare." (2019) American Economic Journal: Applied Economics 11, no. 302-332.
[70] Stephen Khadondi, *supra*.
[71] Roy Bahl, *supra.*

grappling with the issue of borrowing and debt generally and debates on internal, external and raising the debt ceiling are a common occurrence.[72]

4.9.5 Best Practices for Kenya on the Involvement of the Executive

In the US, the President and the executive are involved in the running of the States and localities through its various agencies. The agenda as enumerated in the President's budget informs the policies of the states and localities. Although they maintain their autonomy including how they wish to be governed and which taxes they wish to impose, the localities and States are expected to align with that of the President.

In the RSA, the cooperation and autonomy envisaged in the constitution and the various statutes is practiced in the operations of the devolved units. The corperation is witnessed in among other areas the Budget making processes and the forums on intergovernmental relations.[73]

The same case is expected in Kenya. The constitutions envisage that the two levels of governments shall be independent and work in cooperation. The county governments however cannot be said to be independent as its operations are pegged significantly on the national government especially as far as funding counties is concerned.[74]

4.9.6 Best Practices for Kenya on Autonomy in Operations

The States and localities in the US enjoy more autonomy and flexibility in so far as governance and imposition of taxes and fees are concerned. The UCC which was discussed elsewhere in this paper for example can be adopted and modified by states voluntarily. The autonomy and the independence is also evidenced by the fact that federal transfers compete favorably with the own source revenue sourced from other streams as opposed to Kenya where the national government transfers form the significant part of revenue available for county governments.

The autonomy is also evidenced with the liberty by states and localities In the US, there is also imposing taxes unique to specific localities and foregoing other sources that would ordinarily yield insignificant results. In the Kenyan context as seen elsewhere in this paper, Bungoma county for example engaged in imposition of taxes that yielded little to no revenue.[75]

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[72] Jennifer Scholtes and Caitlin Emma (2021) "Congress clears $2.5T debt limit increase, forestalling economic fallout," December 14, 2021, *Politico,* at https://www.politico.com/news/2021/12/14/democrats-raise-debt-ceiling-524204 <Retrieved on 19th September 2023>.
[73] Roy Bahl, *supra.*
[74] Charles Kibigo, *supra.*
[75] County Government of Bungoma, *4th Quarter Budget Implementation Report* (F/Y 2020/2021) 7

The autonomy in operation in Provinces and localities in South Africa cannot be gainsaid. This autonomy is clear as the devolved units are authorized to the impose significant levy's and charges including electricity and flat rates on personal income. The fact that the national government transfers are not the predominant stream of revenue to the devolved unit also speaks to the autonomy enjoyed. In as far as supervision is concerned; the major body supervising fiscal operations in sub-national governments in South Africa is the Financial and Fiscal Commission.[76]

In Kenya however, fiscal operations at the county level are supervised by the CRA, The OCOB, among others. Needless to say having several supervisory bodies can encourage or discourage accountability and ultimately effective own source revenue collection depending on how the institutions operate.

4.10 Conclusion on the Comparative Study in Kenya, South Africa and USA

This Chapter has interrogated fiscal decentralization in the United States and the RSA. It has also analyzed the sources of revenue in the various States and local governments in the US and in the Provinces and localities in the RSA. The chapter has also highlighted a few legislations touching on own source revenue in both countries.

From the statistics, it is evident that states and local governments in the US have managed to strike a balance between federal transfer and the revenue mobilized at the State and localities. These this paper observed that the above has been realized through among other, the decentralized governments focusing on both tax and non-tax revenue sources, cultivating a positive spending culture, having an elaborate legal and policy framework, and also having respective states and states and localities specializing in revenue sources that yield maximum results.

The RSA on the other hand the study has revealed has an elaborate tax structure. The structure promotes equity of the local tax and affords autonomy to decentralized units which has in turn continuously guaranteed significant revenue growth in the own source revenue mobilized. The implementation of the robust legal and policy infrastructure, together with the ability of sub-national governments to charge a wide range of taxes including personal income taxes in

[76] Francis N. Kaburu, *ibid.*

addition to the fees charged on provisions of essential services including electricity places South Africa's fiscal decentralization at higher pedestal than its Kenyan counterpart.[77]

The equitable national transfers in South Africa contribute insignificantly to the decentralized government revenue. Conversely, the responsibilities given to the devolved units are many and reports indicate that the government transfers should be increased to avoid fisc stress.[78]

The Provinces and localities in SA on the other hand have also managed to strike a balance between national government transfers and the revenue mobilized at the provinces and localities. The amount received competes with revenue taxed from streams such as property taxes. South Africa just like in Kenya has an ambitious Constitution and most legislation. In fact some of these legislation have similar provisions including the Public Financial Management Act and the Intergovernmental Relations among others. In this regard, this paper observes that the failure of Kenya to achieve effective fiscal decentralization is partially due to lack of political goodwill and implementation of the Constitution and the relevant laws on the same.

The Chapter has also interrogated issues do with fiscal discipline and revenue spending in view of the US, RSA and Kenya and therewith establishing a basis for legislative and policy reforms.

[77] Francis N. Kaburu (2013) "Fiscal Decentralization in Kenya and South Africa, A Comparative Analysis," *African Nazarene University Law Journal*, 104.
[78] Roy Bahl, *supra*.

CHAPTER 5
CONCLUSION AND RECOMMENDATIONS TO COUNTY OWN SOURCE REVENUE

5.1 Introduction to the Study

County own source revenue, this study contends is a lifeline to devolution. It is thus not a coincidence that developing countries in the region are increasingly leaning towards fiscal decentralization as a component of devolution.

Development based on the local needs of individual and the seamless flow of services can only be guaranteed if the fiscal component of devolution is effective. However, strethenghening and expanding the fiscal space for county governments should not be encouraged without emphasizing the need for financial prudence. Governments thus in formulating tax structures must factor in all competing interests while ensuring that the structure in place is neutral, equitable and economically sustainable.[1]

This chapter concludes the research study by providing a recap to the study background, and its objectives also highlighting how the hypothesis has been tested. This chapter summarizes the findings of the research study and makes policy recommendations to enhance county own source revenue in Kenya. Moreover, the chapter also single out gaps for future studies on the subject.

This project paper focused on assessing the realization of own source revenue under the constitution of Kenya 2010, with a bias on the County government of Bungoma. Acknowledging the centrality of own source revenue in the success of devolution, the aim of the study was to interrogate why county governments in Kenya, notably the County government of Bungoma heavily depend and project to keep relying on national government transfers for their survival, yet there exist express provisions in the constitution authorizing county governments to impose taxes.

The questions that the study sought to answer were; what is the legal and regulatory framework on counties' own source revenue in Kenya and Bungoma County? What is the status of realization of own source revenue in Bungoma County? What are the best practices for effective own source revenue mobilization?

[1] Lucie Gadenne and Monica Singhal (2014) "Decentralization in Developing Economies," 6(1) *Annual. Rev. Econ,* 581-604.

The study hypothesized that the existing mechanisms on own source revenue in Kenya, do not foster county's effective own source revenue mobilization as envisaged in the Constitution of Kenya, 2010.

The hypothesis has been affirmed since the study revealed that Bungoma County government is yet to enact critical legislations on county own source revenue as envisaged by the Constitution for example on laws governing property and the entertainment taxes. Where the laws have been developed the enforcement and administration the study unraveled is not optimum.

The study relied on the theory of fiscal decentralization. On methodology, the study incorporated both primary and secondary data collection methods. Given that most literature in secondary form is readily available in reports, books, and articles, on the internet and in journals *inter alia*, desktop study was mainly used. To obtain the opinion of key stakeholders in the area of study however, interviews were conducted on targeted respondents.

5.2 Conclusion of the Study on OSR in Bungoma County

The project paper critically evaluates the existing legal framework on county own source revenue in Kenya. The requirements of Article 174 as read along with Article 175 of the Constitution suggest that it is intended that devolved governments should have reliable sources of revenue to enable them effectively deliver services.[2]

Conversely, as evidenced by the analysis, heavy reliance is placed on intergovernmental transfers under the auspices of equitable revenue sharing at the expense of OSR. On the flip side, the intergovernmental transfers are marred with delays in disbursement of funds which cripple county operations. It therefore follows that OSR offers prospects for enhancing effective realization of fiscal decentralization.

As far as Bungoma County is concerned, the analysis revealed that the county has enacted several legislations on OSR. The analysis also noted that some of the enacted legislations for example the Cess Act needed amendments to make it more practical and to also incorporate relations with other neighboring counties. The study also unearthed gaps in implementation of existing taxes.

[2] See Constitution of Kenya, 2010, Articles 174 & 175.

In terms of developing the necessary framework, Bungoma County is yet to develop key policies for example tariffs policy for provision of public services and is yet to enact critical legislations including those concerned with property taxes, outdoor advertisement, services, and a legislation concerned with entertainment which this paper observes could have a significant impact in increasing OSR collection in Bungoma County. Fortunately respondents to the study note that some of the critical policies and legislation on OSR are being processed.

This study concedes that a significant portion of revenue in Kenya is collected by the national government through the mandate given to it by the Constitution. This portion constitutes *inter alia* of import/export tax, income tax, VAT among other taxes that the county government is not authorized to impose. Constitutionally, the NG transfers part of this revenue to county governments in the form of the equitable share revenue.

This however should not exempt county governments from utilizing their potential to mobilize OSR. Even as they anticipate for the cash transfers from the NG, transfers which they have consistently through other forums and officially through their chair of governors noted are unreliable and insufficient, county governments should endeavor to maximize their OSR mobilization potential for the fulfillment of devolution as envisaged in the constitution and for better service delivery to their citizen.[3]

As outlined in the Bungoma County Government Review and Outlook Paper October 2022, it is worrisome that Bungoma County projects to predominantly depend on the cash transfers from the national government presently and in the foreseeable future. The county OSR projections for FY/2025/2026 are less than 10% of the equitable revenue that the county projects to receive from the ex-chequer. This could well mean that Bungoma County Government is not putting in necessary measures and does not appreciate the positive impact that effective OSR Mobilization has in the life line of devolution.[4]

The comparative study from the United States and the Republic of South Africa reveal that the two countries have managed to strike a balance between central government transfers and the revenue mobilized at the Sub-national governments. This study notes that the balance was realized through among other mechanisms, the decentralized governments focusing on both tax

[3] Stephen Khadondi, *ibid*.
[4] County Government of *Bungoma Outlook Fiscal Strategy Paper* 2022.

and non-tax revenue sources, cultivating a positive spending culture, having an elaborate legal and policy framework, and having respective localities specializing in revenue sources that yield maximum results.

South Africa just like in Kenya has an ambitious Constitution and most legislations infact have similar provisions including the Public Financial Management Act and the Intergovernmental Relations among other legislations. In this regard, this paper observes that the failure of Kenya to achieve effective fiscal decentralization is partially due to lack of political goodwill and implementation of the Constitution and the relevant laws on the same.

Other scholars however observe that the 2010 Constitution set Kenyan County governments to fail on own source revenue collection, since the very taxes that the defunct local authority had been authorized to collect are the ones the County government have been authorized to impose.[5] Critiques observe that the defunct local government in Kenya relied on the (Local Authority Transfer Funds) for survival and that so long as significant taxes including VAT and excise tax have been reserved for the NG government, the situation was bound to remain the same if not worsen.[6]

This paper however contends that it is unheeding to compare defunct local authorities to county government. County governments' *inter alia* have legislative powers and clear oversight mandates.[7] The equitable share revenue floor set for county governments speaks to the seriousness accorded to county governments and is also another indicator that the two entities cannot be compared.[8] Further, the governors, CECM's, CO's, directors' *inter alia* possess academic qualifications and experiences that were not a requirement for the defunct local government officials. The distinct nature of county governments also renders it incomparable to defunct local authorities.

The Kenyan Constitution similar to the South African Constitution speaks to the principle of transparency and openness in public finance.[9] The AG reports together with records from the

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[5] Francis N. Kaburu (2013) "Fiscal Decentralization in Kenya and South Africa: A Comparative Analysis," *African Nazarene University Law Journal*.
[6] *Ibid*.
[7] Constitution of Kenya 2010, Article 174.
[8] County Governments Act 2012.
[9] Constitution of Kenya 2010, Article 229.

OCOB however portray a worrisome picture as regards to adherence to the rule of law and the principles and values entrenched in the constitution concerning own source revenue. The study thus suggests that execution and administration of the various levies and taxes is a major setback to achieving effective own source revenue mobilization in Kenya.[10]

This project paper acknowledging the paramountcy of own source revenue in devolution has established that Bungoma County and extensively the 47 county governments in Kenya depend significantly on the cash transfer by the national government and can be rendered functionless without the cash transfers, which this project paper posit poses a threat to the life of devolution. The study also establishes that Bungoma county government depends more on non-tax sources than tax sources.

The study also unearthed that the constitutional authority given to county governments has not been exhausted especially in so far property and entertainment taxes are concerned. On implementation of taxes and administration of fees generally, the study unmasked the lapse in implementation of the various laws and regulations contributing to effective own source revenue mobilization in Bungoma county and Kenyan county governments at large.

5.3 Recommendations of the Study on OSR in Bungoma County

This research reiterates that effective county own source revenue collection can be instrumental in saving the life of devolution in Kenya in addition to improving efficiency in Bungoma county government, and all the 47 county governments. The study thus proposes the following recommendations;

5.3.1 Perform an Extensive Revenue Mapping Exercise

Against what is customarily factored in the counties finance Acts, and what has been legislated upon on the over 8 legislations that directly impact on OSR, this study recommends that the Bungoma county and by extension all counties in Kenya conduct a thorough revenue mapping exercise. The mapping exercise should be centered on issues such as potential revenue sources. Missed opportunities in Bungoma County will include the tourism sector, the agriculture sector and companies such as Nzoia Sugar Company that have been in existence since 1975. The extensive mapping exercise should interalia come up with details of revenue opportunities not

[10] Office of the Auditor General County Government Audit Reports (F/Y 2020/2021), at https://www.oagkenya.go.ke> 2020 (Accessed on 15th September 2023).

factored in, the challenges bedeviling the underperforming sectors and propose reforms where necessary in a bid to boost OSR mobilization.

5.3.2 Enact Substantive Legislations

Whereas Bungoma County has enacted some legislations as the basis of collecting revenue, including *inter alia* Bungoma County trading and licensing Act, Bungoma County Agricultural Produce Cess Act, and Bungoma County Alcoholic Drinks Control Act, some critical legislations including those concerned with property and entertainment taxes have not been enacted. This paper argues that property taxes in Bungoma County have been underutilized and the starting point is having all the relevant laws and policies guiding their mobilization enacted.

In developing the requisite legislations, the County could take cue from some counties that have developed legislations on property. Busia County for example has enacted a Rating Act that creates the County Property Rates Committee as the main institutional framework to deal with rating issues in the County, The Kiambu Valuation and Rating Act 2016, similarly establishes a Directorate of Valuation and Rating.

The Marsabit County Rating Act creates a rating department, whereas the Kisii, Kajiado and the West Pokot Rating Acts 2015 have empowered the County Executive Committee Members responsible for Lands to appoint County Valuers. The above mentioned institutional mechanisms are empowered by the legislations to prepare valuation rolls which form the basis of valuation in the county governments.

Bungoma County should consider enacting a substantial legislation to expressly provide for the taxation of entertainment as opposed to using the listings provided for in the Finance Bills as the basis for imposing the taxes. Given that the county is a border town and also a trade center, such legislation will give the basis and the framework in revenue collection in the sector.

Being an agricultural in addition to being a border town, in regards to cess tax, the county should engage neighboring county governments to harmonize their laws and have a close to uniform charging rate at the origin and destination to avoid indiscriminate and unpredictable charges which respondents agree contribute to non-compliance ultimately impeding osr mobilization.

5.3.3 Boost Execution of Taxes in Bungoma County

OSR in Bungoma County will be greatly improved if enforcement of the already existing policy and legal infrastructure enhanced. As far as property taxes are concerned, Valuation rolls reviewed and the same should be periodically done. A lot of revenue is lost by the county because the valuation rolls currently being used in Bungoma County are outdated but even with the outdated laws execution is still wanting.

Land that remains unregistered should be promptly registered to enhance enforcement of taxes and reduce chances of land grabbing. Rate collection should also be enhanced including having a clear path of bringing defaulters to book and reducing non-compliance. As far as land rent is concerned, Bungoma County needs to re-consider optimizing its collection for land rent to boost their County revenues.

As regards to black market trade which respondents admitted is rampant, this execution should involve ensuring that most of these businesses and traders are registered and licensed by the county government. This will in most instances include civic education, public engagement and incentives to convince the said traders why it is important to have their businesses registered.

This paper also proposes that automation should be enhanced in as far as administration of taxes and related laws including those on curbing wastage are concerned. Automation reduces human error and interference and will also cut on the revenue leaks from the county. Still on administration and optimum execution, this study suggests that Bungoma County government and other counties at large should aspire to have a unified business permit as opposed to multiple business permits which discourage compliance due to double taxation and are also heavy on cost in so far as implementation is concerned.

However, it should be noted that effective enforcement of taxes will involve collaboration with the national government considering that some of the processes involved especially in property taxes are extensive and costly. Also, in most cases enforcement will be effectively done by the already established institutions for example the ministry of lands, the EACC and KRA which this paper proposes should role out intensive capacity development programs that will focus on building capacity and helping county governments improve their revenue systems.

5.3.4 Enhance Service Delivery in Bungoma County

As elucidated in chapter one and four of this study, fiscal legitimacy is realized when tax payers have confidence that the tax levied will be used for the benefit of all and not just to benefit a few individuals. The study recommends that county governments and Bungoma County in particular strives towards improving service delivery in the county.

The service delivery should also extend to economic empowerment where SME’s are targeted. When the services are enhanced, then the tax payer will tie the nexus between the taxes levied and the services offered and thus boost confidence and also improve on tax compliance thus raising the OSR mobilized. In the same breath, county governments should prioritize spending on development as opposed to spending on recurrent expenditure as has been the case.

5.3.5 Forego Administration of Revenue Sources that are not Viable in Bungoma County

Tied with the comprehensive mapping exercise that the research has suggested above, the study recommends that Bungoma County together with other County governments capitalize on revenue sources that are viable. As outlined in chapter three of this paper, revenue performance from some sources for example hiring of stadiums in Bungoma County indicated that the sources especially fees to be levied had attracted up to nil Kshs in terms of revenue collection. It is costly to administer fees in addition to the fact that all counties are grappling with unmanageable wage bill as corroborated both by reports from the OCOB and Auditor general. Bungoma County should thus only concentrate on revenue sources that attract revenue and go slow on administration of revenue streams that are not viable.

5.3.6 Enlarge Public Participation and Access to Information

As discussed elsewhere in this paper, involvement of the public in matters governance makes them to own both the process and the outcome. This study recommends that members of the public should be deliberately involved in all decisions regarding revenue mobilization in Bungoma County. On access to fiscal information, the county should make readily available documents that contain the county’s revenue information.

Documents such as the Finance Acts, the county fiscal strategy papers and the county fiscal outlook papers *inter alia* should be readily available to residents of Bungoma County in a simple format and simple language. In addition, all taxes to be levied, licenses required, and the relevant rates of charges should be easily accessed and written in simple language for ease of referencing and planning by tax payers. The county government should also roll up an interactive solution where tax payers should freely give feedback on fiscal matters to the county. The platform should be desirably digital for efficiency purposes.

5.4 Research Gaps on the Study on Own Source Revenue in Bungoma County

From the foregoing, researchers need to interrogate the role of public participation in optimizing own source revenue. This is paramount considering that revenue collection must be informed by a legal and policy framework. The law does not exist in a vacuum and thus those that are targeted for taxation should be actively involved in the formulation and development of the necessary framework.

BIBLIOGRAPHY

Books and Book Chapters

Bahl, Roy and Richard Bird *Subnational Taxes in Developing Countries*, at https://onlinelibrary.wiley.com/doi/full/10.111/j.1540-5850.2008.00914.x (Accessed on 25th January 2023).

Bird, Richard and Francois Vaillancourt (2008) *Fiscal Decentralization in Developing Countries*, Cambridge University Press.

Ghai, Jill and Yash Ghai (2018) *The Contribution of the South African Constitution to Kenya's Constitution*, Cambridge University Press, at https://www.cambridge.org.books < retrieved on 19th August 2023>.

Möllers, Christoph (2013) *The Three Branches: A Comparative l of Separation of Powers*, Oxford University.

Muigai, Githu (2022) *Power Politics and Law, Dynamics of Constitutional Change in Kenya 1887-2022*, Kabarak University Press, 197.

Journal Articles

Afonso, Whitney B. (2013) "Diversification toward Stability? The Effect of Local Sales taxes on Own Source Revenue*," Journal of Public Budgeting, Accounting & Financial Management*.

Bahl, Roy and Jorge Martinez-Vasquez (2006) "Sequencing Fiscal Decentralization," *Policy Research Working Paper No. 3914*, Public Sector Governance Group, Poverty Reduction and Economic Management Network, World Bank, Washington, DC.

Bunn, Daniel (2023) "State Government Revenue in the US," *Statistica Research Department*, at https://www.statistica.com/statistics/248932/US-State < Retrieved on 2nd October 2023.

Cameron, Robert (1995) "The History of Devolution of Powers to Local Authorities in the US: The Shifting Sands of State Control," 21(3) *Local Government Studies,* 396-417.

Curto, Vilsa et al,. "Health care spending and utilization in public and private Medicare." (2019) *American Economic Journal: Applied Economics* 11, no. 302-332.

Dulacha Barako and Adan Shibia (2015) "Fiscal Decentralization and Determinants of Property Tax Performance in Kenya: Cross-County Analysis," 6(14) *Research Journal of Finance and Accounting* 205.

Ebel, Robert D. and Serdar Yilmaz (2002) *The Concept of Fiscal Decentralization and Worldwide Overview,* Washington DC, World Bank Group <http://document.worldbank.org/curated/en/716861468781761314/> Accessed on 13th August 2022>.

Edwin Kee, James (2013) "Fiscal Decentralization Theory as Reform," at http://www.researchgate.net/publication/251886012_FISCAL_DECENTRALIZATION_THEORY_AS_REFORM < Accessed on 23rd January 2023>.

Elias Peter Mbau, *et al*, (2019) "An Assessment of the Effect of Fiscal Decentralization on Performance of County Governments in Kenya," 15 Europe*an Scientific Journal* 109.
Gadenne, Lucie and Monica Singhal (2014) "Decentralization in Developing Economies," 6(1) *Annual. Rev. Econ*, 581-604.

Inman, Robert P. (2003) "Transfers and bailouts: Enforcing Local Fiscal Discipline with Lessons from US Federalism," 35 *Fiscal Decentralization and the Challenge of Hard Budget Constraints*, 45-47.

Jens, Arnold et al, (2011) "Tax Policy Economic Recovery and Growth," 121 *Economic Journal* F59-F580.

Jones, Bryan et al. (2009) "A General Empirical Law of Public Budgets: A Comparative Analysis," 53(4) *American Journal of Political Science*, 855-873.

Kaburu, Francis N. (2013) "Fiscal Decentralization in Kenya and South Africa: A Comparative Analysis," *African Nazarene University Law Journal*.

Kelly, Roy (2000) "Designing a Property Tax Reform Strategy for Sub-Saharan Africa: An Analytical Framework Applied to Kenya," Blackwell Publishers Inc, at 38.

Khadondi, Stephen (2018) "Determinants of Own Source Revenue Mobilization by Counties in Kenya," *International Journal of Science and Research (IJSR)* 158.

Khan, Mahmood Hassan (2001) "Agricultural Taxation in Developing Countries: A survey of Issues and Policy," 24(3) *Agricultural Economics Journal* , at 315-328.

Kimutai Bosek, Joel (2014) "Implementing Environmental Rights in Kenya's New Constitutional Order: Prospects and Potential Challenges," 14(2) *African Human Rights Law Journal* 489.

Koskei, Anthony, Peter Cheruiyot, and Isaac Naibei (2019) "Revenue Collection Efficiency in the County Government of Kericho, Kenya," 1(1) *East African Journal of Business and Economics* 9.

Lounghed K, and Walczak etal "Unpacking the State and Local Tax Toolkit Sources of State and Local Tax Collection (F/Y 2020) (2022), *Tax Foundation Fiscal Fact No.797* page 6.

Mugenda, Olive M. and Abel Gitau Mugenda (1999) *Research Methods: Quantitative and Qualitative Approaches*, ACTS Press Publishers Limited, 73-80.

Munyua Mwangi, Cyrus, Stephen Muchina, and Beatrice Ombaka (2020) "Fiscal Asymmetric Decentralization and the Influence of County Fiscal Autonomy on Household effects in Kenya," 1(4) *Integrated Journal of Business and Economics* 80.

Ntara, Caroline (2013) "Devolution and expected impact in Kenya," 4(1-2) *International Journal of Professional Practice* 7.

Nzimakwe, TI and P. Pillay (2014) "Enhancing Finance Delivery through Fiscal Decentralization, a South African Experience," 7(8) *African Journal of Public Affairs*, at https://repository.up.ac.za/bitstream/handle/2263/58108/Nzimakwe_Enhancing_2014.pdf?sequence=1 (accessed November 21, 2023)

Ochuodho, Hezbon and Dominic Ngaba (2020) "Revenue Administration Strategies and Financial Performance of County Government of Kisumu, Kenya," 4(12) *International Journal of Economics, Business and Management Research* 230.

Oguso, Alex (2022) "Constraints to Optimizing Revenue Potential in Subnational Governments in Kenya: Lessons from Nairobi City County," *African Multidisciplinary Tax Journal* 1, 155-178.

Omolo, Annette, Wallace Kantai and Wachira Kiragu (2010) "Devolution in Kenya: Prospects, Challenges and Future," *Institute of Economic Affairs (IEA)*.

Eugene O. Owade (2021) *Reconceptualizing Nationhood in Kenya and Africa Vis-à-vis Citizen Wanjiku: the Norm Versus Practise of Popular Sovereignty* (December 17, 2021), at SSRN: https://ssrn.com/abstract=4585146.

Oxford Analytica (2020) "Shutdown will sour Kenya county funds standoff," *Emerald Expert Briefings oxan-es*.

Renson Mambaria, Peter, Maurice Ogada and Peter Shibairo (2018) "Perceived Constraints to Effective County Own Source Revenue Collection in Taita-Taveta County of Kenya," 7(11) *International Journal of Advanced Research in Management and Social Sciences* 1.

Warris, Attiya (2019) "Towards an African and Kenyan Philosophy of Fiscal Legitimacy," 1(1) *Financing for Development*, 23.

Whitney B., Afonso (2013) "Diversification Toward Stability: The Effect of Local Sales Taxes on Own Source Revenue," *Journal of Public Budgeting, Accounting & Financial Management*.

Reports

Auditor General Report for the County Governments for the Financial Year 2020/2021 Vol. 1 county executives

Bank Report (2023) *Devolution without disruption: A Pathway to a Successful New Kenya*, at https://openknowlegde.worlbank.org> (accessed on 15th January 2023)

Budget of the United States fiscal year 2022 available on https://whitehouse.gov/omb/budget

Budget of the United States Fiscal Year 2022, pg 41, at https://whitehouse.gov/omb/budget (accessed November 21, 2023).

Bungoma County Fiscal Strategy Paper 2022

Controller of Budget (2022) *County Governments Implementation Review Report*, September 2022.

Controller of Budgets, *County Governments Implementation Review Report*, (FY 2013/2014 to FY 2020/2021).

County Government of *Bungoma Outlook Fiscal Strategy Paper* 2022.

County Government of Bungoma Review and Outlook Paper 2022

County Government of Bungoma, *4th Quarter Budget Implementation Report* (F/Y 2020/2021) 7

County Governments *Budget Implementation Review Report* FY 2018/2019, September 2019.

International Budget Partnership (2018) *Kenya National and County Implementation of the Budget FY 2016/2017*, at https://internationalbudget.org/wp-content/uploads/.<Accessed on 25th November 2022.>

Office of the Auditor General County Government Audit Reports (F/Y 2020/2021), at https://www.oagkenya.go.ke> 2020 (Accessed on 15th September 2023).

Office of the Controller of Budgets County Governments Budget Implementation Review Report FY 2018/2019

Office of the Controller of Budgets County Governments Budget Implementation Review Report FY 2019/2020

Office of the Controller of Budgets County Governments Budget Implementation Review Report FY 2020/2021

Office of the Controller of Budgets County Governments Budget Implementation Review Report FY 2021/2022

World Bank report on 'Devolution without disruption' a pathway to a successful new Kenya. Page v available on https://openknowlegde.worlbank .org> accessed on 15th January 2023

World Controller of Budget, *County Governments Budget Implementation Review Report* Financial Year 2020/2021. 2021 page xix.

Dissertations and Theses

Kibigo, Charles Kamau (2021) *Effects of Intergovernmental Fiscal Transfers on County Own Source Revenue Generation in Kenya*, Thesis, University of Nairobi.

Mwaura, Cynthia Wanjiru (2018) *Modelling Own Source Revenue (OSR) of County Governments in Kenya*, PhD diss., Strathmore University, 2018.

Johan Jordan (2013) *Public Finance Management System in South Africa*, Thesis at the University of Pretoria, at https://repository.up.ac.za /bitstream/handle/2263/28035 accessed on 2st October 2023.

Online Publications & Newspapers

Business Daily (2013) "Counties face paralysis after failure to pass Finance Bills," *Business Daily*, October 2, 2013, at https://www.businessdailyafrica.com/bd/economy/counties-face-paralysis-after-failure-to-pass-finance-bills-2042668 (accessed November 18, 2023).

Dwiyer, Christopher "Thoughts on Thinking," at https://www.psychologytoday.com/us/blog/thoughts-thinking/202007/what-is-theory-and-why-is-it-important-know <accessed on 10th August 2023>.

Katherine Lounghed, Jared Walczak and Eddie Koranyi (2022) “Unpacking the State and Local Tax Toolkit: Sources of State and Local Tax Collection FY 2020,” *Tax Foundation Fiscal Fact* No.79 pg 10.

Longley, Robert (2021) “Government 101: The United States Federal Government,” at thoughtco.com/federal-government-structure-4140369 (accessed November 21, 2023).

MC Bride, William (2012) “What is the Evidence of Taxes and Growth,” Tax Foundation, at https://taxfoundation.org> <accessed on 14th July 2023>.

Miriri, Duncan (2020) “Kenya’s senate breaks deadlock on revenue-sharing, averts shutdown of services,” *Reuters*, September 18, 2020 at https://www.reuters.com/article/ozatp-uk-kenya-politics-idAFKBN269183-OZATP (accessed November 21, 2023).

Nunn, Ryan, Jana Parsons, and Jay Shambaugh (2019) “Nine Facts about State and Local Policy,” January 31, 2019, at https://www.brookings.edu/articles/nine-facts-about-state-and-local-policy/ (accessed November 21, 2023).

Omolo, Annette (2011) “Policy Proposals on Citizen Participation in Devolved Governance in Kenya,” *The Institute for Social Accountability* (TISA), at https://tisa.or.ke/images/uploads/Policy-Recomendations-on-Citizen-Participation-TISA-2011.pdf (accessed November 21, 2023).

Owade, Eugene (2022) “To end corruption in the country, top leadership must be in driving seat,” *Daily Nation*, Nairobi, October 24, 2022, at https://nation.africa/kenya/blogs-opinion/blogs/to-end-corruption-in-the-country-top-leadership-must-be-in-driving-seat-3995394 (accessed September 29, 2023)

PSOhub (2022) “Revenue Leakage: How to Calculate it and 6 ways to Stop it,” at https://www.psohub.com> <Accessed on 4th May 2023>.

Scholtes, Jennifer and Caitlin Emma (2021) “Congress clears $2.5T debt limit increase, forestalling economic fallout,” December 14, 2021, *Politico*, at https://www.politico.com/news/2021/12/14/democrats-raise-debt-ceiling-524204 <Retrieved on 19th September 2023>.

South Africa Revenue Service htttps://www.sars.gov.za/customs-and-excise/excise/ < retrieved on 18th September 2023.

Walczak, Jared (2019) “Local Income Taxes in 2019,” *Tax Foundation*, at https://www.taxfoundation.org/local-income-taxes-2019/ (accessed November 21, 2023).

Walczak, Jared, Katherine Loughead, Ulrik Boesen, and Janelle Cammenga, “Location Matters 2021: The State Tax Costs of Doing Business,” May 5, 2021, 43, at https://www.taxfoundation.org/publications/location-matters/ . <accessed on 20th May 2023>.

William E. Simeon (1977) “Blueprints for Basic Tax Reform,” Department of the Treasury, at https://www.treasury.gov/resource-centre/tax-policy/Documents/Reports-Blueprints-1977< <accessed on 13th August 2023>

APPENDIX 1- LETTER OF INTRODUCTION

Dear Respondent,

My name is Harriet Kanaiza Akibaya, a Master of Laws candidate at the University of Nairobi carrying out a study on "**Assessing the Realization of Own Source Revenue under the Constitution of Kenya 2010: A Case Study of Bungoma County."**

The project is a partial requirement for the award of a Masters of Law degree. The research aims among other things to critically evaluate the existing legal framework on own source revenue in addition to examining best practices in enhancing effective fiscal decentralization.

Through your participation, I hope to appreciate the dynamics in county own source revenue mobilization, and subsequently make practical recommendations to aid in achieving effective county own source revenue.

The sample respondents to these questionnaires have been singled out as those who have interacted with decentralized own source revenue as either an implementer and or a tax payer.

Enclosed in this introductory letter is a questionnaire which aims to answer the objectives of the study.

Your participation is highly appreciated.

Sincerely,

Harriet Kanaiza Akibaya

Master of Laws Student

APPENDIX 11-LIST OF RESPONDENTS

List of Respondents

1. Mathews Tsuma -Director Planning Bungoma County
2. Alfred Indeche Former -CEC Finance
3. Roberts Mayodi – Office Controller of Budgets
4. Nickson Oyalo -Office of the Controller of Budgets
5. Ibrahim Alubala- Advocacy and Governance Expert
6. Cuna Wairimu -Tax consultant
7. David Lupao -Executive Director Child rights network Bungoma
8. Brenda Wakoli - Business lady Bungoma County
9. Issabela Muteshi - farmer Bungoma County
10. David Njoroge- Business man Bungoma County
11. David Tande Boda boda rider Bungoma County
12. Shem Wanjala- Boda boda rider Bungoma County

APPENDIX 111- QUESTIONQRES ADMINISTERED

QUESTIONARE Administered on Officers Implementing OSR Laws and Regulations at the County Level

INTRODUCTION

1. NAME:………………………………………………………………………………

2. DESIGNATION……………………………………………………………………..

3. CONTACTS (Optional) Email Address and /or Cell Phone Number

……………………………………………………………………………………………..

4. How many Years Served in your Position

A (0-3) B (3-5) C (Above 5)

QUESTIONS

5. In a scale of 1-10 how would you term the realization of OSR mobilization in your county station?

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6. What are the sources of revenue in your county station?

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7. What is the policy and legal framework informing own source in your county station.

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8. How much OSR did you mobilize in the last financial year in Ksh?

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9**.** What would you say was the reason for the decline/ increment in 6 above?

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10. Did you achieve the set target? (In your answer kindly include the percentage %achieved)

A (YES)   B (NO) (OTHER)

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11. Who sets OSR targets?

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12. What are the parameters for setting the targets in 9 above?

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13. Is revenue collection automated?

A (YES) B (NO) C (OTHER)

12. If the answer in 11 above if yes, has it increased/ reduced / maintained the same OSR collected? Explain your answer.

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14 A) What steps have you taken to build the capacity of revenue collectors in the county government?

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B) Are the said officers given targets? Explain your answer in B above giving the implication of the same.

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15. What are the major challenges experienced in revenue collection?

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16. Which mechanisms can be put in place to mitigate the challenges discussed in 15 above?

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Thank you for your participation.

QUESTIONARE Administered on persons serving in the Office of the Controller of Budgets

<u>INTRODUCTION</u>

1. NAME:……………………………………………………………………………..

2. County……………………………………………………………………………

3. Designation ………………………………………………………………………

3. CONTACTS (Optional) Email Address and /or Cell Phone Number

…………………………………………………………………………………………….

4. How many Years Have you served in your capacity?

A (0-3) B (3-5) C (Above 5)

5. How many years have you served in the current County Station?

A (0-3) B (3-5) C (Above 5)

QUESTIONS

6. What is the role of the OCOB as far as OSR is concerned?

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7. What is your view on overreliance on national government transfers by county governments?

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8**.** What efforts has your office made to necessitate growth of own source revenue?

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9. What are your views on revenue leakage?

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10. How do you strike the balance between usurping the operations of county government operations and controlling budgets of County governments?

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11. What challenges have you faced in your office towards effective OSR?

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12. In your view could the challenges faced in 9 above, which mechanisms could be used to address the challenges? If yes propose the possible amendments

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Thank you for your participation.

QUESTIONARE Administered on tax payers in Bungoma County

INTRODUCTION

1. NAME:……………………………………………………………………………….

2. OCCUPATION………………………………………………………………………

3. CONTACTS (Optional) Email Address and /or Cell Phone Number

…………………………………………………………………………………………………

4. How many Years Have you Carried out the occupation?

A (0-3) B (3-5) C (Above 5)

QUESTIONS

5. What is your view about the county imposing tax, licenses and user fees?

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6. Are you familiar with the budget making exercise and generally funding of counties? Explain your answer?

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7. In what ways has the county government involved you in formulating laws and regulations dealing with own source revenue?

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8. What reforms would you recommend?

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Thank you for your participation.

QUESTIONARE Administered on Governance and Tax experts

INTRODUCTION

1. NAME**:…………………………………………………………………………………….**

2. OCCUPATION**……………………………………………………………………………..**

3. CONTACTS (Optional) Email Address and /or Cell Phone Number

…………………………………………………………………………………………………

4. How many Years Have you Carried out the occupation?

A (0-3) B (3-5) C (Above 5)

QUESTIONS

5. What is your view about the constitutional authority bestowed on county governments to impose tax?

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6. What is your take on the county government's reliance on the government transfers?

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7. What constitutes an effective tax system?

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8. What is your take on tax compliance at the county level?

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9. Explain the advantages and disadvantages of double taxation at the county level?

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10. What is the relationship between taxation and development in the county government context?

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11. What reforms would you recommend on the current county tax regime?

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Thank you for your participation.

APPENDIX 1V- ACTS OF BUNGOMA COUNTY PROCESSED AND APPROVED BY THE COUNTY ASSEMBLY

1. Bungoma County Alcoholic Drinks Control Act, 2015
2. Bungoma County Trade Licensing Act, 2017
3. Bungoma County Parking Management Act, 2017
4. The Bungoma County Property Hire and Lease Act, 2017
5. Bungoma County Agricultural Produce Cess Act, 2017
6. Bungoma County Health Services Act, 2019
7. Bungoma County Disaster Management Act 2019
8. Bungoma County Revenue Administration Act, 2019
9. Bungoma County Public Market Act 2019
10. Bungoma County Health Services Act, 2019
11. Bungoma County Public Investment Act 2019
12. Bungoma County Youth Polytechnic 2015
13. Bungoma County Flags, Emblems and Names Protection Act, 2015.
14. Bungoma County Transport Act 2017
15. Bungoma County (Decentralized Units) Administration Act 2015
16. Bungoma County Cultural and Heritage Act, 2023
17. Bungoma County State of the County Address Act, 2023

19 The Bungoma County Climate Change Act, 2023

The following Bills are being processed: -

1. Bungoma County Public Markets (Amendment) Bill, 2023
2. Bungoma County Cooperatives Bill, 2023
3. Bungoma County Revenue Administration (Amendment) Bill, 2023
4. Bungoma County Weights and Measures Bill, 2023
4. Bungoma County Outdoor Advertising and Signage Control and Regulations Bill 2023
5. Bungoma County Inspectorate, Compliance and Enforcement Bill, 2023
6. Bungoma County Public Entertainment Amenities Bill, 2023
7. Bungoma County Early Childhood Education 2015