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Local Government Finance in Uganda: Reforming to Consolidate Gains and addressing the Challenges

By Mr. Adam Babale, Director of Revenue and Research, Local Government Finance Commission, Uganda

The Government of Uganda embraced a policy of Fiscal Decentralization with the adoption of the Constitution of 1995. It is stated clearly in the Constitution that functions, powers and responsibilities are devolved and transferred from Central Government to Local Government Units in a coordinated manner and that decentralization shall be a principle applying to all levels of Local Governments. The principle also applies to decentralization from Higher to Lower Local Government Units to ensure people’s participation and democratic control in decision making.

The Constitution also further provides that the fiscal system shall establish a sound financial base with reliable sources of income for each Local Government Unit and those appropriate measures shall be taken to enable Local Government Unit to plan, initiate and execute policies in respect of all matters affecting the people within their jurisdictions.

In order to put into effect, the mandate of fiscal decentralization the Constitution further provides for grants to be appropriated under the National Budget. These are unconditional, Conditional and Equalization Grants as sources of financing. This is in addition to Local Government’s own sources of revenues which are also provided in the Constitution. This is intended to enable Local Governments to fulfill their service delivery mandates. For avoidance of doubt, for the decentralized mandates, Central Government Ministries, Departments and Agencies are limited to providing policy guidance, supervision of service delivery quality and support.

With the implementation of fiscal decentralization, Government first promoted unconditional grant (Block Grant) which gave the Local Government greater autonomy and discretion in determining and funding local priorities. However, beginning in 1997 when the country benefited from debt relief for highly indebted poor countries, for the debt forgiven the country was conditioned to spend the funds on social services that had a direct positive impact on poverty eradication. That action formed the basis of greater Local Government funding in form of conditional grants. The conditioning of funding together with sector wide approach to planning and budgeting started posing challenges to the objectives of decentralization policy.
Initial Reforms

Two years into the funding from highly indebted poorly countries debt relief, spending on social services had grown tremendously and constituting about 85% of total grants transfers. Conditional Grants had started eroding the autonomy of Local Governments and the Central Government actors had started interfering with Local Government decision making powers of planning and budgeting. It had resulted into management challenges of fiscal decentralization. Key stakeholders including development partners led by the World Bank therefore supported a reform program to review fiscal decentralization in light of the emerging challenges.

In 2002 Government approved a Fiscal Decentralization strategy with an objective “To strengthen the process of decentralization in Uganda through increasing local governments’ autonomy, widening local participation in decision making and streamlining of fiscal transfer modalities to local governments in order to increase the efficiency and effectiveness of local governments to achieve Poverty Eradication Action Plan (PEAP) goals within a transparent and accountable framework”1.

Key progress was made in streamlining and harmonising the budgeting process for both the central government and local government, grants releases, reporting on performance and financial accountability. However, streamlining of grants system and flexibility in grants utilization remained the key concerns of funding domination by conditional grants continued to be worse. By 2008, conditional grants funding had increased to over 90% whilst the share of Local Government transfers in the national budget continued to decline.

Move from Poverty Eradication Action Plan (PEAP) to National Development Plan (NDP) Planning Frameworks

At the start of fiscal decentralization, Government was allocating its budget to implement Poverty Eradication Action Plan (PEAP). In 2008, Government changed its planning framework from PEAP to National Development Plan (NDP). The first NDP ran for a period of 5 years from 2009/10 to 2014/15. Unlike the PEAP which focused on basic service delivery, the NDP put a lot of priority on infrastructure for national transformation programs. This approach had profound implications on Local Government financing. The key priorities therefore changed from Education, Health, Feeder roads, Agriculture to major corridor roads, Electricity, oil and gas, ICT, security etc. While under the PEAP period, the country was relying more on the development partners, by the start of NDP, the country’s base for domestic revenue mobilization had grown significantly to support service delivery and expenditure on basic national infrastructure. The expanded domestic revenue and Gross Domestic Product (GDP) enabled Government increase its borrowing for infrastructure development.

By 2011, the Local Government Finance Commission noted that the performance of fiscal decentralization had continued to show that the obligations of Local Governments were increasing not matched with sufficient financial resources within the framework of increased domestic revenue capacity. The Commission therefore conducted a Review of Local Government Financing focusing on Adequacy, management and accountability for service delivery in 2012. The finding indicated that many flaws existed with respect to lack of protection and sustainability of Local Government financing and therefore the entire decentralization policy needed a review.

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1 Uganda’s Fiscal Decentralization Strategy - March 2002
The 2012 review also observed that whereas functional responsibilities between the Central and LGs were clearly outlined in the Local Government Act, over time grey areas had emerged requiring further review. The rules governing the grant mechanisms were not clear leading to arbitrary procedures in the creation, allocation criteria and management with adverse impact on equity and on their effectiveness to finance local services. Significant amounts of financing from the national budget for Local Government services were not flowing through direct grants transfers as expected. As a result it was undermining transparency and equity in allocation of resources across Local Governments and weakening local accountability.

The Constitutional definition for grants was also found inadequate in emphasizing growth and the protection of grants. The shift in national public expenditure priorities resulting from the implementation of the NDP had been key in the lack of growth in grants.

It was also observed that while grants have continued to grow in nominal terms, most of the growth has been in wages with no real growth in non-wage recurrent grants and development funding. Local Governments had not also shared in the growth in national resources in the same way as Central Government.

See Diagram below:

SSchema : TREND OF TOTAL LOCAL GOVERNMENT DIRECT TRANSFERS IN NATIONAL BUDGET
(Total Transfers to Local Governments / National Budget)
Expansion of local government administrative structures

At the start of Fiscal Decentralisation, the country was divided into 39 districts in 1993. However, the number of districts has been increasing overtime to the current 134 in 2019 (see graph below). This has compounded problems of fiscal inadequacy to deliver on core service delivery mandates in the country. As a result, the costs of administration in terms of wages accounts for 64% of the grants transfers. The dismal performance of local revenue collected, the falling portions received of conditional grants per district, and the fact that much of the conditional and unconditional grants are eaten up by local administrative functions means that little is actually left over for Local Governments to respond to local service delivery and development needs.

Diagram: TREND IN DISTRICT CREATION IN UGANDA
Reform to Revitalize Local Government financing

It is clear from the foregoing that since the first adoption of decentralized system, several strategies and reforms have attempted to modernize and improve the system to deliver on the promise of decentralization as a tool for democratic control, stronger accountability, better service delivery and local development. Progress has been registered in many cases but continuous commitment to improve and better the functioning of Government is indispensable as well as seeking to develop the country as a block. Based on the above commitment, Government developed an Integrated Fiscal Transfer Reform Program (IGFTR). The Reform program seeks to address adequacy in financing of service delivery by Local Governments, ensure equity in allocation of resources to Local Governments and achieve efficiency in Local Government service delivery and local development.

With support from the World Bank, Government is implementing the new phase/wave of reforms with the following objectives:

a) Increase discretion to enable LGs to deliver services in line with local needs whilst ensuring that national policies are implemented;
b) Promote adequacy and equity in allocation of funds for service delivery;
c) Institute orderliness and control in the management of fiscal decentralization;
d) Shift the focus away from fragmented input-based conditions towards accountability for allocation decisions, expenditures and results;
e) Use the transfer system to lever institutional and service delivery performance; and
f) Allow new national policies to be funded via the transfer system, whilst avoiding future fragmentation of transfers and reduction in discretion.

The above key policy objectives are intended to be achieved with the strict implementation of the revised Fiscal Decentralisation Architecture framework highlighted in the diagram below which was basically designed to address orderliness and coordination.
Fiscal Decentralisation Architecture

LFDA is the overarching general framework for the Inter-Governmental Fiscal Transfer Reform and if well implemented will provide a great foundation and better the working environment for all key stakeholders to operate and enhance a sustainable local government financing.

At the same time, Government is implementing a number of complementary reforms in public financial management and human resource management. The reforms in Public Financial Management include the following:

- **Improvement in Local Government own source revenue collection.**
- **Introduction of Program Based Planning and Budgeting**
- **Treasury Single Account.**
- **Budget Transparency and citizen feedback...**

One of the key reform objectives is improving fiscal management in Local Governments to manage an increase in resources. To actualize this, Government has introduced a new Local Government Performance Assessment System. Incentives are established linking grants allocation to the result of the Performance Assessment. In addition, targeted performance improvement programs are designed and budgeted for to help underperforming Local Governments improve their performance.
Explanatory Factors for the Collection of the Local Development Tax (LDT):

Case study of the Dangbo municipality
by Ms Georgette Djenontin Bada,
Local Economic Development and Resource Mobilization

Genesis of the LDT:

The Local Development Tax (LDT), based on the main resources of the municipality, was enshrined in the provisions of article 10 of Law No. 98-007 of January 15, 1999 on the financial regime of municipalities in the Republic of Benin. It is one of the innovations brought about by decentralization in the field of taxation. It was established by lawmakers to allow municipalities to mobilize more resources in order to respond to the numerous requests from the populations. Although it was clarified by the Finance Law of 2008, the LDT only became operational in 2010.

Shift of LDT from the direct tax to indirect tax status:

Initially collected as direct tax, it was subsequently transformed into indirect tax and collected by municipal collectors under the leadership of the decentralized services of the Directorate General of Taxes (DGI).

The implementation of the LDT encountered obstacles linked to the legislation relating to this tax and to the existence of competing levies, implemented by most of the municipalities to obtain financial resources.

Assessment of the implementation of the LDT:

In 2019, the municipalities of Benin have just completed a decade of the LDT management exercise but they face some difficulties in defining all the contours of its management. Despite the recommendations made during the multiple training or capacity building workshops that were held, and even the drafting of a tax collection guide for the LDT, the municipalities are struggling to collect the said tax. The question is more acute in certain municipalities in the Ouémé department area, notably Dangbo which had zero collection rates in 2013, 2016 and 2017.
Current challenges for municipalities:

The municipalities are currently operating in a context where the stakes are high and numerous. Here are some:

1. Achieving the SDGs requires greater mobilization of financial resources;
2. The obligation is made to the communes to draw up maintenance plans, a recommendation of the guidance letter of the Treasury (DGTC), which plans must be financed for the maintenance of the communal investments, especially those of the program of action of the government in the cities. These are all elements that lead each municipality today to maximize the collection of taxes, in particular the LDT.
3. In addition, one of the criteria for allocating FADeC is the improvement of the mobilization of own resources.

Justification of the theme «Explanatory Factors for the Collection of LDT: Case of the Municipality of Dangbo»

In view of these issues and faced with the persistent difficulties to collect the LDT, we decided to explore other avenues that could allow us to detect the factors blocking the proper collection of this tax. And this is what justifies the theme of our dissertation entitled «Explanatory factors for the collection of the LDT: case of the City of Dangbo». 
The objectives of our study:

The choice focused on this subject, given the prominent place occupied by the mobilization of taxes as a guarantee of development. This subject is very topical today which interests all the actors of the economic and financial life of the communes. It was a question of investigating on a more or less neutral ground in order to explore other plausible explanations for the weakness of the collection of the LDT.

In general, the aim of the study was to analyze the issue of the collection of the LDT in the Ouémé department area, in particular in the commune of Dangbo.

The specific goals of the study

Specifically, on the one hand it was a question of «analyzing the generating resources of LDT in the commune of Dangbo» and on the other hand of «identifying the constraints which affect the collection of the LDT in the commune of Dangbo».

Assumptions of the study

The assumptions on which the research was based are as follows:

Assumption 1: The main resources generating LDT are in insufficient quantity and do not allow for the collection of the LDT in the commune of Dangbo.

Assumption 2: The collection of the LDT in the commune of Dangbo is hampered by some constraints.

The methodology adopted, as part of the verification of the two assumptions made it possible to assess:

1- the gathering of information and
2- the analysis of such analysis

Regarding the gathering of information, for the two assumptions, the documentary review, the direct interviews, and the administration of a questionnaire to the main players in the LDT management chain constituting the population interviewed have been used. These include, at the level of the commune of Dangbo, the mayor, the head of the financial affairs department, the planner and the collecting agents; and at the level of the decentralized structures of the national Government, the Deputy Tax Collector, the Collector, and his collaborators.

Regarding the analysis of the information which should lead to the testing of assumptions, the following approach was adopted: the qualitative method was used for the verification of assumption 1 because it is more descriptive and focuses on the interpretations of the data. The latter come from the PDC 3, in particular the part devoted to Dangbo’s economy, and the information drawn from the exploitation of the questionnaires. The local economy has provided us with the various taxable events as well as the potentials subject to LDT.

The exercise consisted in comparing the existing taxable events in the municipality with those provided for by Article 1084 Quinter 2 of the General Tax Code (CGI) which draws up the list of taxable persons as well as the taxable events.
It is clear that many of the taxable persons provided for in article 1084 Quinter 2 are missing in Dangbo. Cotton alone brings an average of more than 200 million a year to the town of Banikoara. Mining revenues bring an average of around 140 million to the budget of the municipality of Lokossa. These figures show us the shortfall by the municipality due to the absence on its territory of these resources.

**LDT collection dynamics in Banikoara**

<table>
<thead>
<tr>
<th>Designations</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>Average / Average rate</th>
</tr>
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<tbody>
<tr>
<td>Tax revenues</td>
<td>282 900</td>
<td>339 760</td>
<td>319 511</td>
<td>412 529</td>
<td>406 406</td>
<td>352 221 267</td>
</tr>
<tr>
<td>Non-tax revenues</td>
<td>86 386</td>
<td>82 855</td>
<td>92 731</td>
<td>110 195</td>
<td>136 819</td>
<td>101 797 886</td>
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<tr>
<td>Total own revenues</td>
<td>369 286</td>
<td>422 616</td>
<td>424 243</td>
<td>522 724</td>
<td>543 226</td>
<td>454 015 514</td>
</tr>
<tr>
<td>LDT on seed cotton</td>
<td>123 259</td>
<td>174 450</td>
<td>181 572</td>
<td>230 608</td>
<td>297 490</td>
<td>261 476 386</td>
</tr>
<tr>
<td>LDT on food products</td>
<td>30 899</td>
<td>23 853</td>
<td>30 272</td>
<td>35 673</td>
<td>31 620</td>
<td>30 463 860</td>
</tr>
<tr>
<td>LDT on planks</td>
<td>11 925</td>
<td>2 610</td>
<td>1 490</td>
<td>145 000</td>
<td>100 000</td>
<td>3 254 000</td>
</tr>
<tr>
<td>LDT on ruminants in transit</td>
<td>6 725</td>
<td>7 325</td>
<td>3 626</td>
<td>4 150</td>
<td>3 000</td>
<td>4 965 200</td>
</tr>
<tr>
<td>LDT on small ruminants sold</td>
<td>2 926</td>
<td>2 769</td>
<td>2 746</td>
<td>3 203</td>
<td>2 166</td>
<td>2 762 280</td>
</tr>
<tr>
<td>LDT on large ruminants sold</td>
<td>16 318</td>
<td>12 963</td>
<td>14 119</td>
<td>14 342</td>
<td>15 657</td>
<td>14 680 132</td>
</tr>
<tr>
<td>LDT on pigs sold</td>
<td>119 000</td>
<td>768 500</td>
<td>421 500</td>
<td>503 000</td>
<td>336 000</td>
<td>429 600</td>
</tr>
<tr>
<td>LDT on transported mining products</td>
<td>20 000</td>
<td>25 000</td>
<td>10 000</td>
<td>121 000</td>
<td>146 000</td>
<td>64 400</td>
</tr>
<tr>
<td>LDT on the operation of national parks</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>LDT grand total</td>
<td>192 192</td>
<td>224 765</td>
<td>234 257</td>
<td>288 746</td>
<td>350 516</td>
<td>258 095 858</td>
</tr>
<tr>
<td>Cotton LDT rate / Own revenues</td>
<td>33.38%</td>
<td>41.28%</td>
<td>44.04%</td>
<td>44.12%</td>
<td>54.76%</td>
<td>43.52%</td>
</tr>
<tr>
<td>Overall LDT rate / Own revenues</td>
<td>52.04%</td>
<td>53.18%</td>
<td>56.83%</td>
<td>55.24%</td>
<td>64.52%</td>
<td>56.36%</td>
</tr>
<tr>
<td>Overall LDT rate / Tax revenues</td>
<td>67.94%</td>
<td>66.15%</td>
<td>73.32%</td>
<td>69.99%</td>
<td>86.25%</td>
<td>72.73%</td>
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</tbody>
</table>
LDT collection dynamics in Lokossa

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<tr>
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</thead>
<tbody>
<tr>
<td>Tax revenues</td>
<td>214 500 756</td>
<td>219 466 120</td>
<td>309 615 497</td>
<td>252 961 218</td>
<td>255 320 672</td>
<td>250 372 853</td>
</tr>
<tr>
<td>Non tax revenue</td>
<td>137 141 403</td>
<td>166 070 231</td>
<td>176 240 569</td>
<td>192 454 012</td>
<td>264 237 614</td>
<td>187 228 766</td>
</tr>
<tr>
<td>Total own revenues</td>
<td>351 642 159</td>
<td>385 536 351</td>
<td>485 856 066</td>
<td>445 415 230</td>
<td>519 538 286</td>
<td>437 601 618</td>
</tr>
<tr>
<td>LDT on seed cotton</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LDT on food products</td>
<td>4 250 600</td>
<td>8 800 200</td>
<td>9 242 000</td>
<td>0</td>
<td>0</td>
<td>4 458 560</td>
</tr>
<tr>
<td>LDT on planks</td>
<td></td>
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<tr>
<td>LDT on ruminants in transit</td>
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<td>LDT on small ruminants sold</td>
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<tr>
<td>LDT on large ruminants sold</td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LDT on pigs sold</td>
<td>123 182 000</td>
<td>135 122 321</td>
<td>142 300 600</td>
<td>152 262 000</td>
<td>143 238 000</td>
<td>139 220 984</td>
</tr>
<tr>
<td>LDT on transported mining products</td>
<td></td>
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<tr>
<td>LDT on the operation of national parks</td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LDT grand total</td>
<td>127 432 600</td>
<td>143 922 521</td>
<td>151 542 600</td>
<td>152 262 000</td>
<td>143 238 000</td>
<td>143 679 544</td>
</tr>
</tbody>
</table>

Cotton LDT rate / Own revenues

| Overall LDT rate / Own revenues      | 36,24% | 37,33% | 31,19% | 34,18% | 27,57% | 32,83% |
| Overall LDT rate / Tax revenues      | 59,41% | 65,58% | 48,95% | 60,19% | 56,10% | 57,39% |

Assumption 1, namely that «the main resources generating the LDT” are in insufficient quantity and do not allow for the collection of LDT in the commune of Dangbo», is thus justified.

The verification of this assumption allowed us to shed light on the impact of the economic potential on the collection of LDT. In conclusion, even if all the conditions are met for a good collection of the LDT, without the effectiveness of the taxable events represented by the economic potential or the main resources of the commune, no collection is possible. The more taxable events the municipality has, the more it is predisposed to a good collection of LDT.

Regarding Assumption 2, the administered questionnaire allowed us to confirm the constraints identified through the document review; the questionnaire also enabled us to highlight new constraints such as the evasion of LDT and the non-retrocession of the tax to the producing municipality.

We were able to note that the sectors of agriculture, breeding, fishing and the sea sand deposit are suffering and they do not produce enough raw materials, principal resources of the commune.

Then, thanks to Garret’s ranking technique, we have prioritized the constraints relating to the recovery of the LDT in connecting with the taxable events existing in the commune of Dangbo. At the end of this exercise,

1. The first constraint is the low popularization of the law among local economic actors;
2. Then comes the informal nature of the production organization;
3. The marketing of local products (marketing);
4. In fourth position, there is the lack of motivation of LDT collectors (without employment contract);
5. The low level of equipment and tools;
6. The insufficiency of taxable events resulting from the economic potential;
7. The low level of technical competence of the staff committed to the collection of taxes;
8. The lack of exploitation of the city’s entire potential;
9. The informal nature of the organization of the production and marketing of local products (marketing); the tax base does not relate to the industrial production/processing of all local natural resources (mineral water, ornamental stones, etc.);
10. The low level of the number of staff engaged in collection;
11. The stockout of PIRA counterfoil books. It is now obvious that significant constraints weigh on the collection of the LDT concerning some taxable events available in the municipalities.

Lessons learned:

At the end of our study, the lessons learned relate to the need for the existence of some conditions before the effective and significant mobilization of LDT:

The first one is that the municipality must have on its territory the main resources generating the LDT because the actors of the local economy are subject to this tax.

Another one is that it will also be necessary to produce enough for local consumption at the household level in order to be able to sell the surplus that generates LDT through the sale, transport or passage of products from the agriculture, animal husbandry, fishing, or forestry.

In addition, some organized subsectors such as cash crops (cotton for example) provide sufficient resources compared to other speculations even if the quantity of production is not to be neglected. This is the case for certain resources such as cotton or mineral resources.

The organization of tax collection must be very well done and the collection agents must be sworn agents with an acceptable minimum level of education; this implies a reassuring professional treatment; the taxable persons must be sufficiently aware of LDT as they play a very important role in the mechanism for the collection of such a tax.

However, the commune of Dangbo lacks certain main resources, with collecting agents without contractual situation. A certain of taxable generating events could not be collected due to insufficient awareness of the members of the municipal council, due to the lack of collecting agents, and due to the fact that some taxable persons refuse to pay the LDT.

Recommendations to the town of Dangbo:

It is urgent for the municipality:

- **To take the LDT collection order.**
- **To move to a professional exploitation of the sea sand deposit.** To this end, it must have recourse to the Ministry of Mining so that approved companies are recruited. The municipality would benefit from the royalties and from the LDT that would provide the transport of sand by trucks.
- **To encourage and support actors in all sectors of activity to improve their performance.** Farmers must explore the feasibility and invest in certain cash crops such as cotton, cashew, and pineapple, and if possible create transhumance corridors by taking into account the experience of municipalities in hardship as a result.
- **To increase the workforce (up to thirty) of the collection agents while raising their intellectual level and by making them take an oath.** They must be under contracted.
Awareness-raising must be made on a continuous basis for all stakeholders.

The Prefecture, the tax revenue agencies and revenue collection agencies:

- Must also support the municipality in these different strategies to be implemented to boost the collection of LDT;
- They must ensure that the decree for the effective collection of all taxes by the municipal council is taken;
- While collecting these resources, the Prefecture, the tax revenue agencies, and the revenue collection agencies have to play the role of a controller to prevent the gates of tax evasion to be largely open.
- The Directorate General of Taxes (DGI) must ensure the effective application of article 1084 quinter 10 which stipulates that “the proceeds from assessment and collection penalties are divided between the municipality in the jurisdiction of which the taxed material is located, the municipality having apprehended and imposed the fraudster, and the tax services of the latter”

Out of ignorance or due to insider trading, this article is enforced by no municipality in the Republic of Benin.

- The prefectures must continue and perpetuate a good practice which began in the Collines department area. This is a harmonization of the rates of the LDT in all the municipalities of the department.

Another step remains to be taken which is the pooling of the efforts of all the municipalities of a department for the collection of the LDT in compliance with Article 1084 quinter 10.

One must continue the thinking related to the study of the possibility of changing the nature of this tax and transferring its collection to local governments.
Profiting without producing: towards the financialization of cities

Ms. Lola Davidson - Deputy Secretary General - INTA

INTA, the International Association for Urban Development, a global network of public and private actors in the urban field, addressed the question of the financialization of cities and the coordination, cooperation and planning tools to supervise such financialization, during the Habitat III conference in Quito in October 2016, then at the World Urban Forum 9 in Kuala Lumpur in February 2018. To go further in the thinking about actions and instruments to better capture urban value, with local development actors, INTA has organized a special session on this subject at the last Africities summit, hosted by UCLG-Africa, on November 22, 2018 in Marrakech.

Understanding the role of financial players in the construction of cities, both in developing and more mature countries, is necessary for the analysis of contemporary urban problems: why are offices built while we are in the midst of a housing crisis and that we desperately need to increase the supply of affordable housing? Why are rents going up? How and where is urban value produced from urban space? All of these questions relate to how finance shapes cities

Financing the cities

From the welfare state to the city as an asset

Cities have always been used to create physical assets - houses, roads, equipments, infrastructures, shops, etc. - from the mobilization of land and real estate to making it a source of capital (loans, mortgages, etc.). Today, the significant increase in land and property prices is disconnected from the income of the population, and the difference between individual income and the cost of housing in the city has a strong impact on the social, economic, and spatial organization of the territories.

Much of the expansion of finance in the built environment has taken place in the gaps opened by the reduction in the first place in public investments in housing and infrastructure, then by contraction of public services and their privatization. The total or partial privatization of social housing, public transport, education, or health care has contributed to the emergence of new investment opportunities for mobile capital in search of high profitability. The transformation of the social system «from welfare to debtfare» has changed the way finance «settles» in social production previously supported by public action.

Cities are therefore increasingly subject to a concentration of real estate investments that are disconnected from social demand. The result is urban «production» of a more speculative nature that is costly for public investment and efficient only in financial terms. This accumulation of capital generated by the capital gain and the land and real estate rent is encouraged by local and
national governments who see in the rise of the land and real estate values a useful tax source for the financing of the equipments and infrastructures. The currently very low interest rates do encourage the production of real estate assets which themselves serve as collateral to obtain other loans for other investments.

In order to avoid misunderstandings, let us clarify the financing schemes leading to financialization within the context of urban and territorial development.

Privatization means private ownership of land and of the production of buildings, a fact as old as the city itself. Privatization also includes the private status of municipal services (hygiene, security, distribution of fluids, public transport, and housing). The public status of urban services is not an obligation, and many cities subject to budgetary constraints rely on the private sector for the provision of adequate services.

The city is a private asset.

Partnership is a contractual agreement between a public authority and the private sector in different areas: management of services, infrastructures, or large-scale urban projects; Semi-public Company, Private Finance Initiative (United Kingdom), Public Private Partnership...: Many mechanisms do exist.

The city is a common asset shared by several urban actors.

Financialization, from an urban point of view, is understood as a form of accumulation characterized by the capture of urban value through many forms of financial intermediation which make of cities a financial asset.

Financialization of the built urban environment

According to Forbes magazine, financialization is defined as «the growing scale and profitability of the finance sector at the expense of the rest of the economy and the shrinking regulation of its rules and returns». The city is a financial asset (a commodity, a marketable asset generating income), which often, and in many countries, imposes itself in the local economy through violence and corruption for the control of land, of urban services, and of the construction industry.

Financialization is also defined as the growing power of financial capital over the economic, social, and political processes of the “production” of the city with financial flows stemming from real estate investments and from the urban infrastructures reinvested only in other financial flows. Financialization would be the production of urbanized spaces without the production of urban or social value; or more precisely the ability of investors to generate “capital interest” by capturing “socially produced value”. It is a transformation of the production of cities by actors, tools, and representations of market finance that «colonize» an increasing number of sectors of public action.
Effects on the territory and socio-economic impacts

The city has certainly always been the basis of investments in order to develop real estate and heritage assets. The considerable financial volumes generated by the Quantitative Easing2 (QE) in search of high profitability find an interest in the cities to diversify the offers of financial investment, the real estate constituting a direct attraction and a lever to obtain other financing. The cities least regulated by taxation are the most impacted ones (Shanghai and London more than New York and Paris). The accentuated effects of these investments weigh on the social and economic organization of cities. Thus, one sees strongly segregative effects and a weakening of populations, namely relatively depopulated city centers, which have become inaccessible for a large part of the population, with borrowers exposed to potentially predatory lending practices and a scarcity of new entrants in the housing market. This leads to population displacements and to the gentrification of the cities of the South and of the North. In addition, new cities remain empty for decades despite a housing crisis in these same countries.

In many cities in the South, private developers have acquired title deeds and development permits often on public land (investment in land titling programs), supported by banks and multinational companies causing unprecedented spatial expansions of metropolises. These phenomena of private land ownership also extend to irregular housing. The neo-customary regimes that govern 50 to 90% of the urban population of the African continent have also contributed to the enlargement of the land market and to the increase in prices in peri-urban areas in particular. One therefore speaks more in terms of risks than urban values.

Financialization has effects on the urban forms and on the authorized uses. The selectivity of the investment affects the urban form. First concerning the selection of the type of investment (retail, offices, logistics); then concerning the forms (large size, labeling, useful surface area ratio, etc); concerning users (major accounts with long-term leases), and finally concerning localization: metropolitan areas are fueled by this funding circuit, and monofunctional polarizations are identified within metropolitan areas. There is a risk of bursting property bubbles subject to the ebb and flow of volatile capital.

This financialization is also a reflection of the abandonment by the public sector of its power to regulate markets and of the reflection of the requirement of accountability by the private sector. But then, does the financialization of capitalism call for new forms of urban struggles: creation of corporate citizen rating agencies, debt strike (Occupy Wall Street, etc.), citizen disobedience, etc ?

Focus 1: Forced abandonment of central areas

The exclusion by the market leads to displacing populations or making central spaces financially inaccessible for a large part of the population of these cities. The structural effect is the increase in empty dwellings (going from 20% to 20% in Paris in 20 years) and the creation of central areas comprising a majority of dwellings non occupied by their owners (downtown Beirut), or even towers remaining empty, despite having been sold entirely to individuals (Iranian investments in Dubai). The financialization of housing has consequences in terms of social and spatial inequalities, and generates exclusion processes in particular in the largest cities of the world. As a result, property owners in neighborhoods in high demand have grown wealthier, while escalating property prices have impoverished lower-income households.
Focus 2: New towns, private towns, ghost towns?

One sees the emergence of projects of cities entirely financed by private investment, without the need to match programming to social demand (Lavasa in India, built by the HCC consortium, or King Abdullah Economic City (Kaec) managed and financed by a consortium made up of the Saudi government and a Dubai real estate group, Emaar Properties, for example). In Africa, the planning of satellite cities, from Kenya to Ghana, including Nigeria, Algeria, Zambia, or Angola, designed by foreign companies, have one thing in common: they offer luxurious programs combining housing, business districts, hotels, leisure facilities, and even marinas like in Kinshasa (DRC), on the Congo Rive.

Towards a coalition of public-private actors in the real estate asset assembly chain

These different modes of production, whether virtuous or not, by cities do signal the existence of a new generation of decision-makers and urban builders: property developers in association with banking interests. One must recognize the existence of networks of private actors (consultants, analysts and property developers, investors and banks, architects and town planners, surveyors, contracting authorities, notaries, ...) forming coalitions with local public actors but also national actors, who are at the center of new forms of negotiation (urban development instruments) aimed at “installing” financial capital in a local context; some actors try to play fairly while others optimize the situation to their sole advantage.

Indeed, asset managers create investment agreements, corresponding to a set of representations shared by them concerning the urban areas: where to invest, on what type of product, etc. The more traditional players do align themselves, the promoters build buildings according the managers’ criteria, and the developers adapt their programming to ensure balanced operations, thanks to the sale of land charges and the assurance of having corporate real estate for example. The circulation of this capital therefore includes numerous intermediaries who put some distance in the decision-making process and in urban planning, while making the system more opaque.

Finally, there are four major recompositions of the production of urban spaces associated with the financialization of the built urban environment:

- **First of all, the players who manufacture, manage, and market. Some industries are becoming assembly lines of assets ranging from the public to the private sector.**
- **Then new power relations with coalitions which endeavor to support this financialized infrastructure. This is an opportunity for local governments to finance their urban redevelopment when trying to attract capital, be attractive, and sell urban spaces (like at MIPIM, the International Market of Real Estate Professionals, for example). This financial capital attraction policy is strongly encouraged by a context of public austerity in the Northern countries. In fact, local and central governments are forced to attract external capital.**
- **Another major recomposition is the concentration of investments in metropolitan areas. Territorial redistribution pushes for metropolization and accentuates intra-metropolitan specializations.**
- **Finally, the redistribution of wealth is changing. Such a redistribution is carried out through the sale of usage rights to those who can pay for the services and the uses: savers, global investors, and intermediaries who participate in the financialized subsector.**
The levers of local action

Grasping challenges at multiple levels

What are the means at the disposal of local governments to direct financial flows towards the implementation of their public action? What effects of financialization on the cities’ development economy?

First of all, mention should be made of the need in the urban and economic fields for regulating financial infrastructures, at the local and central levels. This includes the necessary double alignment of private financial institutions on the principle of Corporate Social and Territorial Responsibility and on the principle of financing the Sustainable Development Goals and the New Urban Agenda by placing the social objective at the heart of their governance and of their activities.

Financial innovation must be considered at all levels to make finance more in tune with society. This involves viewing finance as a system including public and private institutions, and considering the full range of tools, from taxation to monetary policy and from financial regulation to business incentives, including financial innovation.

In addition, one can see that access to financing for local investment rests on four traditional pillars which remain to be improved: transfers; own resources (taxation, income-generating equipment, business licenses, etc); external grants; and loans. In borrowing, African local governments today make little use of bond issues, but an initiative underway could help promote municipal bond issues by improving the solvency of local governments.

Africa Territorial Agency (ATA): a financial cooperative institution for African cities and territories

Meeting the funding needs of cities
17 million new inhabitants each year in African cities.

The local financing needs of African cities are huge: 25 billion dollars per year. The investment capacities of cities represent 4% of the need.

The budgets of African cities represent 1% of the GDP (on average).

Decentralization is not followed by a sufficient transfer of resources, in Africa as in the rest of the world.

▶ ATA would be a solution to increase the financial resources of cities.

An enabling institutional environment

In 75% of countries, the legislative framework is favorable to a more autonomous management of cities.

Cities are not lacking in support to improve their financial management. Local investment support programs do not meet all needs.

The transparency of municipal management is increasing on the continent.

▶ Funding from ATA would allow for the stimulation for a better management

A cities’ fund for cities

An initiative of UCLG Africa member cities.

A financial institution managed by the member cities and territories.

Governance that guarantees the independence of management. An institution dedicated to financing cities territories and local governments

▶ ATA could be the credible response of cities to their funding needs

▶ Source: Kalutere Polis and INTA for UCLG-Africa.

Beyond access to borrowing, whatever its forms, other tools and policies can accompany the financing of the city and avoid certain excesses making the urban built environment lose all of the urban and social value, only to keep the financial value of it.

Anchoring planning at the local level as a foundation of development

Urban planning is mainly built on expressed or foreseeable socio-economic needs. Urbanization surpluses (vacant housing) are most often analyzed as a marginal and temporary effect, a variable of adjustment, to quantitative planning. New cities are scheduled to accommodate investments without examining the necessary housing-employment balances or the means of access that are sufficient for the jobs provided (Gift New Town near Ahmedabad). Urban design takes precedence over planning and programming. The project must be attractive to investors with programs often beyond the reach of the market and local demand (Gift wants to compete with London and Hong Kong as an international financial center, etc.). The commodification of urban services follows a similar logic, producing high-cost urban services with great difficulty in controlling activities by the public authorities.

In this context, it is necessary to adapt the planning tools. There is a need for a significant strengthening of the balance of power in favor of project management by controlling land use, the setting of specifications going beyond the current regulations, the financing of the unbuilt parts and of the public spaces giving urban value to the projects. One can also think of the downstream part, for example of the implementation instruments such as the contractualization ones in order to be closer to the changes and evolution of the local contexts, and thus avoid a gap between what
is written in the contract and the real situation. In other words:

- Engage private sector operators or investors at a very early stage in the planning process for the built environment in order to build trust between partners;
- Relax public procurement rules to avoid collusion and market distortions;
- Diversify the urban offer (housing, offices, infrastructure) to diversify investors;
- Maintain political control over real estate production by zoning and appropriate phasing of urban projects;
- Give local authorities the means to develop the city, that is to say, allow them to have operations that are not balanced in the land development reports.

Some local governments are heavily involved in land development to counter the effects of speculation and financialization. By proposing charters relating to land developers, local governments try to control release prices. This helps regulate the municipal market, and limits the formation of the capital gain on the initial acquisition. Upon resale, the speculative cycle resumes its course.

Planning, but also actions on land and real estate, are indeed tools of territorial planning, in the hands of the public authorities to better articulate its development and organize its financing.

**Valuing land to finance development**

In the field of land and property policies, the challenge for local authorities is to have mechanisms for capturing the added value of land as a return on investment. This sharing of the capital gain is at the heart of the city's financing systems, especially for major investments.

One must first return to the main types of land valuation, three of which seem likely to be used in Africa separately or simultaneously, depending on the context:

- The direct sale of the land to be built, when the public authority owns the land, which makes it possible to sell it to finance or refinance the investment;
- The direct contribution of the owners or developers, that is to say the participation in kind on the part of owners or developers who transfer land in exchange for the implementation of investments by the public authorities (very common in Europe for example);
- The taxation system relating to capital gains, which can take many forms.

The inherent risk in land valuation might be too great a dependence of local budgets on building rights, particularly with the cyclical nature of the markets, as well as risks of corruption. These risks can be counterbalanced by creating a land observatory that is transparent and which would alert people about market shifts, but also by making a more systematic use of public procurements.

Innovating in terms of financing mechanisms (crowdfunding, land trust, etc.) would make possible to reduce the place of private assets in the financing of the city, and explore a new framework in which the public authorities and the redevelopment of their territories would rely less on the players and resources of the real estate market. This also requires strengthening the capacity of ad hoc public development agencies to derive sufficient value from land and urban transformation. But also, to review existing land redevelopment models that would place the funding of affordable housing, infrastructure and green spaces at the mercy of the optimization of the rent created by developers and of its taxation by local authorities.

The investment funds, that are capable of hybridizing financing methods (donations, bank loans,
bonds, subsidies, etc.), can adapt themselves to development operations and in particular to the medium and long-term logic of these operations. They can also encourage the necessary interactions between public stakeholders and financial engineering, and even land engineering. The implementation of these intervention tools within the framework of a land valuation strategy supposes the existence of specific operational systems: land operator (for price regulation which can also serve as an observatory of transactions) and development operator (or both at the same time).

**Experimenting with land and property action tools**

In seeking the diversification of financing mechanisms, one can see that many of them are based on land and/or real estate policies, with clear benefits for the territories, but also sometimes perverse or counterproductive effects, particularly upon upscaling.

**Land Venture Capital (LVC) and land-based financial instruments**

By relying on land valuation methods, these are experiments which attempt to recover the capital gain resulting from the increase in the land value and to redistribute it.

The certificates of potential additional construction (CEPAC) are a method of mobilizing private funds to finance public investment in the revitalization of neighborhoods through a rezoning process and auctioning of building permits. With the rezoning and sale of CEPACs, the city garners funds for the initial construction costs, long-term maintenance, and other priorities, such as historical or cultural preservation. These revenues are collected in a fund separate from the general treasury and are dedicated to the development operation. In Rio de Janeiro, the wholesale auction of CEPACs to a single third-party supplier, Caixa Economica Federal (CEF), covered the costs of improving public infrastructure and the costs of future services in the district of Porto Maravilha for 20 years. CEF then placed the CEPACs on the open market, where they are publicly traded and purchased by investors or developers. Thanks to specific regulations requiring different CEPAC values for residential, commercial, and tertiary construction, cities are creating incentives for mixed programming or specific developments. Incentives and compulsory deductions from the CEPAC revenues can also be used for the preservation of heritage, the promotion of environment-friendly construction techniques, and the development of integration through employment, etc. (source: C40)

However, the experiments / tests / have proved disappointing in Colombia, in the United Kingdom, and especially in Brazil (where the LVC - CEPAC, in the context of urban operations - is explicitly mentioned in the Articles of Incorporation of the city) due to the low monetary value generated by the LVC instruments. In practice, the status quo prevails when there are particular interests; the solutions are very localized and only rarely tackle the (often very entrenched) spatial disparities which lead to drop the planning at the city level; these tools are based on a speculative logic (obtaining more investments so as to redistribute more which is a commodification logic) which often goes against the initial redistributive intention.

**The Community Land Trust**

CLTs are an alternative approach to private land ownership and to the individual ownership of the land resource. The principles of the Community Land Trust consist in severing the links between private land ownership and use, and placing the land in the hands of an entity dedicated...
to being its perpetual depositary who will administer it in a non-profit and participatory manner. The cost of the land is deducted but the permanent access to the building after the resales is guaranteed. Some experiences show limitations when the public authorities get tied to the freezing of the land. The authorities lose tax revenues and find themselves pushed to be an actor of speculation by supporting the creation of value elsewhere to capture the capital gain to finance their development policies.

Baan Mankong (housing security)

This example, in line with the Community Land Trusts, offers a program dealing with the issue of land insecurity, particularly in informal cities, as well as the limitation of speculation. The Baan Mankong housing and infrastructure program (“safe housing”), launched in Thailand in 2003 by the CODI (a public body reporting to the Ministry of Social Development and Human Security) innovates on 3 points:

- Government subsidies are directly intended for low-income communities in informal settlements for the acquisition of housing (or long-term leases) and the modernization of infrastructure;
- his financial support program targets the collective acquisition and long-term rental of land in order to support the capacity of the most vulnerable populations to stay on well-located land, a goal encouraged by the collective dimension of the land tenure system which must foster the collective strength, the confidence, and the recognition necessary for long-term community development.
- Loans are not prescriptive; rather, they depend on the proposal of organized community groups who must submit plans for their own redevelopment. It is not a solution that works for everyone, but the program promotes creativity and community-based solutions.

The approach is certainly innovative. Nonetheless, the potentially long duration of implementation of the program - which certainly does not have a very high cost - has limited effects on the territory and the populations to which one should add the fear of indebtedness resulting from the improvement of the living environment, possibly from the construction of a new house. In addition, while the lease is considered secure in the short term, the long-term situation is unclear. Finally, housing cannot be sold outside the community and, therefore, Baan Mankong is valued more for improving housing and strengthening community cohesion than as a financial investment motivated by profit.
New technologies as a lever for the development of investment and tenure security

New transaction transparency mechanisms such as blockchain can help secure the cadastre and title deeds, which could partly limit the land speculation produced by the mixture of state and customary rights. In addition, new crowdfunding platforms in the real estate sector in particular (real estate crowdfunding) allow developers to raise funds from individuals for the implementation of real estate programs (subdivision, residence...). In this context, the sums injected by individuals via a real estate crowdfunding platform come to supplement the developer’s equity. The investor receives nothing during the construction of the project. He recovers his capital and interest, which corresponds to an annual rate of return, once the apartments or the building have been delivered. This mechanism is a good lever to attract investments from the diaspora on the African continent, and in the field of urban and real estate development, even if it involves many risks often borne solely by the investor.

These partial and incomplete tools show that there are many possibilities for innovation to be explored (financial, technological, legislative engineering, etc.) to promote development, while limiting the excesses of the financialization of the city. These tools also show the need to maintain or create a diversification of funding circuits: tax exemption, social housing, CLT (or any other mechanism for dissociating buildings and land)... At the same time, measures can be taken, particularly in terms of housing policy.

Developing and promoting housing policies

A number of national and sometimes local governments are tackling the effects of excessive capital flows and financialization on the access to housing for low-income households. Several subnational governments are taking steps to guarantee the social function of housing and to facilitate the expropriation of vacant housing. Some governments have chosen to foster a more inclusive approach to private investment in housing by providing financial incentives to encourage the construction of affordable housing.

National governments must ensure that any investment in the housing sector takes into account the social function of the latter in order to fulfill their human rights obligations. This presupposes a necessary transformation of national housing policies and of the relationship between national governments and financial markets, where the guarantee of human rights must occupy a central place and not be confined to a secondary and too often neglected obligation.

To do this, one can imagine encouraging national public policies in favor of housing, and in particular of social housing and affordable housing. On the one hand, by promoting social housing policies and by financing the construction part of it (“assistance for stone”), to avoid the speculative logic of assistance provided to persons (for the benefit of private owners with the effect of increasing the share of the national government because of rising rents, as is the case in France). On the other hand, social housing is a way of producing non-speculative housing. Not fitting with a resale logic, it can maintain the low-income classes on a territory and limit the segregation forced by the real estate market.

However, in Africa, housing policies often remain ineffective because of the lack of production of urban land and its orientation towards access to medium and higher end housing, out of step with the reality of the market and of the demand. The housing sector, downstream of urban development, cannot develop normally for want of sufficient land production; but also because of the higher costs of modern production. The modern production sector has indeed higher costs
than those of the informal sector, and the real estate development sector is still underdeveloped.

Furthermore, if land production becomes normalized, then the housing subsector could capture the remittances of migrants (who invest in housing), without losing the capital invested, the tax return and the induced effects in the construction sector, in particular employment. Asking the question of supervising the evolution of the land value also means considering building a property value index, as is the case in some countries for rents. It seems common sense, but this idea seems to run counter to private property law and is potentially very difficult to implement despite all the general interest that it can represent.

Training people to understand the issues and negotiate

Questioning the financialization of urban development is emphasizing the importance of first becoming aware, then of training and of the acquisition of tools and know-how in terms of urban financial engineering and local governments finance.

Local and subnational governments, their decision-makers, and experts, the entire public sphere must learn in first place about the phenomena that are inherent to the financialization of the city. This means knowing the players in the sector, but also discovering new intermediaries, new agents of change, who are sometimes unconventional.

In Africa, the new types of funding completely skip from the control of local governments (philanthropic foundations, remittances from migrants / the diaspora, sovereign funds, carbon finance, investments in kind, etc.). It is therefore essential that local governments manage to capture part of it because these funding methods are growing rapidly. This incapacity seems currently due to a lack of know-how on the part of local authorities, particularly in terms of financial engineering.

Foundations, for example, prefer to work with NGOs that are experienced in program execution and in terms of project cycles and therefore capable of reporting on the progress of programs. This is doubly damaging for local governments which also lose the opportunity to increase their skills in these fields and collaborate with financial players. This is one more reason to widen the field of competence of the local governments in a process of training local managers. However, training should not only be targeted at public actors because it would be useful to better structure the entire real estate sector from the public decision maker to the architect, because there is a blatant lack of skills and actors in this sector in the continent.

The empowerment by each player of the challenges and concepts and funding schemes, calls for the necessary renewal of the thinking regarding the relationship between the public and the private players in the urban production and management, by taking into account the general interest and the social issues. It is necessary to be able to complete changes in urban production methods by introducing unconventional actors and methods, in particular through interventions by users or residents and operators who are subject to performance criteria that are not linked to the profit maximization. It is also necessary to have citizens’ demands, university research and the actions of public and political actors converging around this question of the right to the city, especially in countries where 50% of the city is informa.
ENHANCING INFRASTRUCTURE INVESTMENT IN COUNTY GOVERNMENTS OF KENYA

By Mr. Patrick Karanja, «Acting Secretary/Chief Executive Officer, Intergovernmental Relations Technical Committee », Kenya

BACKGROUND

The World Bank, in its report titled *Kenya: Enabling Private-Sector Participation in Infrastructure and Social Services* estimates that Kenya faces a significant infrastructure financing deficit estimated at $2.1 billion annually. The Bank notes that this deficit places a constraint on the country’s growth and development. In order to meet the country’s infrastructure needs, Kenya needs to consistently invest almost $4 billion annually.

The Constitution of Kenya establishes Government at two levels i.e. the National and County levels. The functions of both the National and County Governments are provided for in the Fourth Schedule of the Constitution.

These functions provide the basis for infrastructure development by either the national or county governments. Each level of government therefore has an obligation to invest and develop infrastructure that supports service delivery.

My article will focus on county governments and infrastructure development.

County Governments in Kenya

There are 47 County Governments in Kenya established by the Constitution. They are governed under several laws including the County Governments Act, 2012 and the Public Finance Management Act, 2012. The functions of county governments are provided for in Article 186 and the Fourth Schedule of the Constitution. They include Public Health, County Roads, Water and Sewerage, Development Control, Town Cleaning, Trade, Pre-primary Education and Village Polytechnics, Environmental Protection, Housing, Agriculture, Social Services, Public Works and Fire Fighting.

Some of the infrastructure development required to facilitate provision of services related to the above functions and boost economic activities include dams, farm-to-market roads, grain storage, health facilities, housing, storm water drains, sewerage systems, power generation and electricity distribution.
Sources of County Revenues

To finance the above functions, County Governments have been assigned the following sources of revenue:

1. Equitable share of revenues raised nationally
2. Own source revenue
   a. Property tax
   b. Entertainment tax
   c. User fees and charges
3. Conditional and unconditional grants from national government
4. Conditional and unconditional grants from development partners.

County Expenditure Classification

County governments utilise the revenues generated above to meet the following expenditures:

1. Personnel emoluments
2. Operations and maintenance

Funding for infrastructure development is sourced from the Development Expenditures.

COUNTY INVESTMENT IN INFRASTRUCTURE

Due to limited revenues and competing expenditure needs, county governments have not invested sufficiently in infrastructure development. The revenues generated are not sufficient to ensure satisfactory levels of service delivery in terms of scope and quality. This has resulted in underinvestment in infrastructure development particularly large-scale infrastructure projects. Other causes for limited infrastructure funding include allocation of a higher percentage of county budget to recurrent expenditures. The underinvestment in infrastructure development has caused an under-provision of services in time, scope and quality.

One major contributor to the limited investment in infrastructural development is the reliance by county governments on their annual revenues to finance all their expenditure requirements including capital or development budgets. This is a mismatch where counties utilise short-term funds to finance long-term expenditures. The County Governments have not been innovative enough to explore opportunities that exist in raising long-term funds for infrastructural development.
Table 1. Total Budget: Actual Expenditure and Actual Development expenditure for the Financial Year 2018/19

<table>
<thead>
<tr>
<th>Total budget (Billion Kes)</th>
<th>Actual expenditure (Billion Kes)</th>
<th>Actual development expenditure (Billion Kes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>483.4</td>
<td>376.4</td>
<td>107.4</td>
</tr>
</tbody>
</table>

(Controller of Budget: County Governments Annual Budget Implementation Review Report FY 2018/19)

The above table shows that out of a budget of Kes 483.4 Billion (Approx. $ 4.83 Billion), counties were only able to spend Kes. 107.4 Billion (Approx. $1.07 Billion) in development expenditure. This is approximately 22% of total budget. This is an indication that counties are not spending enough on development.

Table 2. Affectation budgétaire par rapport aux Dépenses Réelles pour les dépenses récurrentes et de développement

<table>
<thead>
<tr>
<th>Budgeted Amount (Billion Kes)</th>
<th>Actual Expenditure (Billion Kes)</th>
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<tbody>
<tr>
<td>Recurrent Development Total</td>
<td>Recurrent Development Total</td>
</tr>
<tr>
<td>297.7</td>
<td>185.7</td>
</tr>
<tr>
<td>268.9</td>
<td>107.4</td>
</tr>
</tbody>
</table>

The above table illustrates that county governments have a better absorption rate for recurrent expenditure at 90% compared to 57% for development. There is not only an under-budgeting, but also a lower absorption rate for development.

It is therefore necessary for other funding methods for infrastructure development to be pursued in order to bridge the funding gap identified above. This situation suggests that the new method should consider current financing trends. With limited funding in the public sector, it is inevitable that counties should consider approaching the private sector for long term infrastructure financing.

These funds can be tapped in two ways:

1. Private sector credit
2. Public private partnerships (PPPs)

To access the above private sector funds, county governments will however require to overcome some obstacles. These include ensuring availability and quality of data to support the risk assessment that is a vital part of infrastructure development. County governments will have to subject themselves to credit rating as this is a requirement of the private sector.

The challenge therefore is to develop a bridge that links the shortage of funds for infrastructure development at the counties and availability of funds from the private sector. The bridge will seek to establish the conditionalities that county governments have to meet to access the funds.
ROLE OF THE PRIVATE SECTOR
The cycle of underinvestment in infrastructure and services will persist unless a method is found that enables county governments to access long-term funds for their infrastructure improvement, which will enhance their capacity to deliver services to the satisfaction of their residents. Counties have to mobilize new resources and increase their capacity to borrow responsibility for investments in local services, and seek ways of attracting private participation in the financing and delivery of local public services. There is need therefore for county governments to restructure and position themselves as attractive borrowers and thus exploit the existing potential in the financial markets. An attractive borrower is one whom the institutional investors have confidence in, and thus one who meets their conditions for lending.

In order to raise sufficient funds to finance infrastructural development, County governments have to match two trends i.e. the increased demand of funding for infrastructural development and the increasing role of private sector in mobilising investments funds.

There are however some basic requirements for the counties to access the potential financing. Since they are attracting private sector funds, the county governments must provide an attractive investment vehicle to the private sector. Some prerequisites include;

1. Sound financial management policies
2. Reliable financial records that can help the investors assess the risk/return structure of the institution and thus make a decision on whether or not to invest and at what risk. This should incorporate international accounting standards (including adequate disclosures)
3. Efficient capital market that will bring together the institutions seeking investments and the investors. The county governments will typically be looking for huge investments to be repaid over a longer period than ordinary bank loans, and with a fixed interest payment paid periodically. These requirements are normally matched by big institutional investors who are looking for reliable and predictable constant rate of return. The most appropriate place for the two to meet is in an efficient and dynamic capital markets.
4. To assist in the evaluation of an issuer’s creditworthiness, it is critical that the institution be subjected to credit rating by a reputable firm. The Ratings agencies analyse the issuer’s ability to meet its debt obligations. This information is relied upon by investors to make investment decisions.
5. Appropriate financial products must be structured in such a way that can attract and match the investor’s requirements. The products to be developed and sold to the investors should backed by the fixed assets of the institution.
6. Reliable enforcement of legal obligations
7. Predictability of county revenues
8. The product (Municipal Bond) may be backed by insurance policies guaranteeing repayment in the event of default. This will reduce investor concern.

FINANCIAL PRODUCT
County governments then have to decide on the financial product to be offered to the market. Municipal Bonds are the most appropriate and most common form of borrowing. This is a type of long-term borrowing that local government’s use primarily for long lived infrastructure assets.

Municipal bonds are interest bearing obligations issued by local governments to finance public
facilities’ capital or operating costs. They pay interest to the owner periodically and will be redeemed on a certain date in the future. Although bond financing imposes interest and other debt related costs, bringing a project to construction more quickly than otherwise possible, could sometimes offset these costs.

There are various types of municipal bonds

i. Municipal revenue bonds - these are issued by a self-supporting agency of the municipality such as a water system. The agency will accumulate user fees and pay interest and principal to investors to retire the debt.

ii. General obligation bonds - these are issued by municipality to fund projects that are not self-supporting such as roads. Municipalities collect property and income taxes from their residents, accumulate the revenues and pay interest and principal to investors to retire the debt.

Lessons from Jurisdictions that have offered Municipal Bonds

Some learning points from jurisdictions supporting development of Municipal Bonds include the following:

i. Where the local debt market for Municipal Bonds has not been developed, the national government has a critical role to play in encouraging the creation of the market

ii. the role of the national government should however not be subsidising or guaranteeing the local government loans.

iii. The national government may consider tax exemption for interest earned from bonds

iv. County governments participating in the market should be exposed to market Conditionalities.

v. County governments that are exposed to markets conditions are capable of adopting to the financial discipline required by financial markets.

vi. County governments can greatly enhance their credit by leveraging funds received from national governments. National Government transfers are predictable and reliable. When leveraging on the National Government Transfers, county governments can issue their debts at near national government bond coupon rates.

vii. National Government should publish rules that limit municipal borrowing based on debt service coverage ratios. Counties should be discouraged from ‘over borrowing’

viii. The national government should enact the necessary legal framework to develop the debt market.

CONDUCTIVE MARKET ENVIRONMENT

Kenya has an efficient and vibrant capital markets operating within the Nairobi Stock Exchange. It provides for both primary issues and secondary trade.

There is therefore a big potential for county governments to access the market. To minimise the risk to investor and encourage their active participation, it will be necessary that a conducive environment should be developed that will encourage the growth of a county government debt market within the stock exchange in Kenya. The following credit enhancement programmes are considered necessary:

- Functioning stable legal framework-that enforces creditor remedies arising from default in payment either through inability or unwillingness
■ **Stability of local revenues**—this is the most important requirement of local credit worthiness as it reflects on the counties’ ability to pay the debt.

■ **Local credit rating system**—there is a need to develop a set of standards whereby foreign institutions can assess the creditworthiness of local government. Such standardized systems lower the transaction costs since individual financial institutions do not need to recreate the credit assessment methodology from scratch.

■ **Proper county government management**—this entails stable local revenues, good management skills, focused political leadership (ready to make unpopular decisions including raising taxes when necessary) and proper cash management

**DEVELOPING THE BOND**

Once the investors are willing to participate, the counties should then offer a financial product in the market that can be taken up by the investors. One such instrument is the municipal development bond.

The county governments can use the transfers received from the national government to leverage their credit rating and become attractive to investors. The counties can structure the instruments for sale in a way that they are deemed as sovereign debt since the payment of both principal and interest can be tied to the transfers received from the national government.

**Increase in credit**

The county governments should create credit enhancement mechanisms to address both political and repayment risks. The measures should include

■ An escrow account for collection of the government transfer funds.

■ Invest the escrow funds only in government securities

■ Create a sinking fund for principal repayments

■ Ensuring a minimum debt coverage ratio of 1.5

■ Offer lien on general revenue streams in case insufficiency in escrow account

■ Seek tax exemption for the bond income

■ Secure insurance for the bond

■ Provide collateralization

With the right investment environment in place, coupled with an attractive innovative product in the market and with the above credit enhancements, the county governments will be in a position to improve its investment in infrastructure and thus greatly improve the living standards of its residents.
CONCLUSION
The demand for infrastructure in the County Governments will continue to rise. It is clear that for the county governments to greatly improve their investment in infrastructure to match demand and to play their stated role, they will have to think creatively and adopt the bond system for infrastructure financing. It has been clearly demonstrated that reliance on annual revenues to finance infrastructure is neither a viable nor a sustainable option. There are huge private funds available that the counties can tap through meeting the conditions of the market. The counties can also widen their options by seeking partnership with the private sector and take advantage of their experience. The counties will however be required to fulfil certain conditions before they can access the financial market. It is also clear that at the initial point where municipal debt market does not exist, the national government will have to encourage the growth of the market.
Having appeared since the years of independence (in the 1950s and 1960s) in French-speaking sub-Saharan Africa and having especially accelerated from the 1990s onwards, decentralization consists for the central Government in transferring to local elected bodies the powers that it exercises on their territory. To this end, local and regional governments are endowed with legal personality, financial autonomy, and powers which they exercise freely in the territory they administer.

In Francophone countries of sub-Saharan Africa, decentralization is experiencing an unprecedented evolution. This development is due to the triumph of the ideals of democracy and of the rule of law.

Indeed, after independence, the French-speaking States of sub-Saharan Africa aimed to implement development policies. In this sense, decentralization appeared at that time as an instrument at the service of the central Government.

However, with the economic crisis of the 1970s as a result of military regimes and single-party systems, decentralization lost its majesty, making local authorities mere instruments to ensure law enforcement, maintenance of order and the implementation of the various development policies drawn up by the central government.

In addition, the local authorities benefited from transfers of missions and responsibilities from the central State without, however, benefiting from the corresponding financial resources. In reality, decentralization served as an instrument for central governments to reduce their spending. This situation was encouraged by the adoption of structural reform programs encouraged by international financial institutions.

Finally, fiscal decentralization, promoted through democratization and political liberalization from 1990, is based on specific legislation adopted specifically by WAEMU States.

In the broad sense, legislation refers to legal documents in which the provisions relating to financial decentralization are recorded. Among these documents, one can cite the Constitutions, the organic laws, the ordinary laws, and the regulatory deeds.²

² Decrees and orders.
Moreover, it is obvious that legislation is supposed to provide the guarantee of a rule of law called upon to govern society in a very specific field. And to do this, this guarantee must be able to emerge at the same time from the general, abstract, permanent and coercive character of the legal norm. In short, the rule of law must be applicable and applied in order to achieve the objective which has been assigned. This is the principle of the effectiveness of the law. Indeed, this principle consists in verifying the content of the “reconciliation between the written law and the applied law” 3 because financial decentralization “can be measured more than it is defined” 4. Thus, the issue would therefore be whether the financial and institutional implementation of the planned financial decentralization is operational?

In this regard, it would be a question of verifying whether the legislation on local finance, institutionalized in most of the countries of French-speaking sub-Saharan Africa, do really and ideally apply; and are sufficiently extended and widened to the point of allowing local entities to exercise and manage local affairs that are attributed through the transfer of competencies. This financial check consists in knowing whether the financial compensation for the transfer of powers in favor of the local governments is effective. Likewise, it would be advisable to verify whether the State grants some budgetary, financial, and fiscal freedoms to its local entities.

To address this issue, we will build on the analysis of legislation on local finances of countries like Togo, Benin, Burkina Faso, and Senegal. This choice is not intended to be comparative, but rather will serve as a basis for illustrations. Indeed, these countries have several points in common.

First, these are countries that are members of the same regional organizations 5. Then on the administrative level, they are unitary states having the same state form and having practically the same categories of decentralized governments 6.

Finally, politically, these are countries that have all been colonized by the same power: France. And at the end of colonization, these are countries that were under the influence of single parties and military regimes 7.

In short, if it is obvious that the legal texts on decentralization abound, and also address financial aspects in French-speaking sub-Saharan Africa (I), the fact remains that these texts need to be improved because they have proved to be ineffective in practice (II).

I- Existing but ineffective legislation

The Francophone African countries are characterized by a well-stocked legislation on local finances. This legislation includes both texts on the financial regime of local and regional governments and other texts related to financial decentralization (A). However, certain factors make this legislation ineffective and inefficient (B).

5 They are all members of ECOWAS and WAEMU (the latter harmonizes certain areas of law at the community level like public finance law. In this sense, several directives do exist in the area of local finance within the framework of the Union).
6 These countries have two levels of decentralized governments: Municipalities and regions (Art.8 of the CGCT, Burkina Faso).
7 The Eyadéma GNASSINGBÉ regime in Togo, the SANKARA and COMPAORE regime in Burkina, and the Matthieu KEREKOU regimes in Benin.
A- Existence of laws on local finance

To promote a qualitative participation of citizens in political life, decentralization is proving to be an essential instrument while also making it possible to educate these citizens politically. In this regard, it promotes a certain autonomy of local governments in the management of public affairs concerning them. Thus, alongside administrative autonomy, local financial autonomy appears essential insofar as it makes it possible to materialize local administrative autonomy and, by extension, decentralization. These two aspects of autonomy derive from the principle of the free administration of decentralized governments.

This principle is recognized and enshrined in the various constitutions. Thus, article 141 of the Togolese Constitution affirms that: "Local and regional governments are administered freely by councils elected by universal suffrage, under the conditions provided for by law." Article 151 of the Beninese Constitution of December 11, 1990 uses practically the same formula, stating that "local governments are administered freely by elected councils and under the conditions provided for by law". Likewise in Burkina Faso, article 145 of the Constitution of June 2, 1991 provides that "The law organizes the democratic participation of the populations in the free administration of local and regional governments".

However, while the principle of the free administration of decentralized governments has constitutional value, the same is not true of its corollary, the principle of financial autonomy which enshrines financial decentralization. Through the texts cited above, we note that the drafters of the Constitution left it to the law to set the details of the free administration of decentralized governments. This is how most of the legislation governing local finances has an infra-constitutional value.

Thus, we observe a plurality of laws and regulations on local finance. Apart from Senegal and Burkina Faso and other countries that have a general code on local governments, which code also contains provisions relating to local finances, the other countries have the provisions relating to local finance scattered in several documents. This causes a certain tangle of provisions. Moreover, these infra-constitutional provisions relate to the financial regime of local governments, transfers, and sharing of powers between the central government and local authorities. Also, it is these provisions that enshrine the principle of the financial autonomy of local authorities. Also, it is these provisions that enshrine the principle of the financial autonomy of local and regional governments. This is how the Burkinabé legislators do define the local and regional government as: « a subdivision of the territory endowed with legal personality and financial autonomy "11. Therefore, it appears that for decentralization and more specifically local finances, through the various Constitutions, this principle is exercised in accordance with the principle of national unity, a principle with a constitutional value. Indeed, article 141 of the Constitution affirms that "The Togolese Republic is organized in local and regional governments on the basis of the principle of decentralization with respect for national unity "12. In this sense, primacy is given to respect for national unity.

However, even a legislative guarantee of financial decentralization confers rights and obligations on decentralized governments. Thus, beyond their obligations, local and regional governments benefit from a number of rights and advantages from the national Government in order to enable

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9 Designation chosen by the various legislations in the WAEMU countries. It has the same meaning as Local & Regional (Subnational) Governments, and local governments.
10 This Togolese Constitution of the Fourth Republic was amended on 12/31/2002 and revised by the constitutional law of May 15, 2019.
11 This definition comes from the General Code of Local and Regional Governments (“Code Général des Collectivités territoriales”, CGCT) of 2004. Indeed, it is Article 8 of this code which provides this definition.
the efficient and effective realization of their financial autonomy. Thus, the General Code of Local and Regional Governments of Burkina Faso illustrates this situation by affirming, under the terms of Article 303 of the General Code of Local and Regional Governments of 2004, that: “the competences transferred to the local and regional governments require from the State (the national Government) measures of concomitant support in terms of human, financial, and material resources’. Also, article 309 of this same code affirms that “the State places at the disposal of the local and regional governments the financial resources necessary for the exercise of their competences”.

In addition to this support, local financial decentralization is based on the rule of the crucial part of own resources and the rule of financial compensation for transfers of powers from the central governments to the local authorities.

B- Ineffectiveness of local finance laws

It is clear that the legislative framework of local finances proves their existence from several standpoints. However, this framework suffers from multiple handicaps which do not allow local governments to enjoy all the fruits associated with the existence of such framework.

Firstly, there is a profusion of texts, which complicates the implementation of decentralization, while introducing a slow and significant delays between the vote of projects or draft laws and their practical application. Sometimes delays of the order of ten years are observed.

In many countries, the legislative provisions which govern the decentralization process, and in particular the financial aspects, are difficult to be applied. Consequently, the legal texts providing for the framework of financial transfers are not sufficiently clear and, above all, are not all followed by implementing decrees. Moreover, these situations put the central government in total illegality with respect to the law, thus undermining the rule of law.

Secondly, it should be noted that beyond the organic limitations of local finance laws, there are several other handicaps. To this end, it should be emphasized that from the material standpoint, the legislation on financial decentralization in French-speaking black Africa is inefficient.

▶ In terms of resources

Indeed, the laws do not allow for a better mobilization of financial resources. In addition, we note that in these countries, the resources of the local and regional governments have the same structures. The decentralized governments benefit mainly local taxes, financial assistance from the central Government, and assistance from of the decentralized cooperation to fund local public services.

For example, for municipalities, as basic territorial governments, the own resources come from the local taxation, mainly from:

- The business license (the “patente”)
- the housing tax
- the property taxes and on built and non-built properties
- the single professional tax.

13 Article 110 of Law number 2009 65 (Burkina Faso): “The resources necessary for the exercise of the missions of the local and regional governments are entrusted to them either by tax transfer, or by appropriations, or by both at the same time, or through support from partners other than the State (the national government)”.  
14 Art.17 of Law number 2009 65 (Burkina Faso): “The commune is the basic local government”.  
15 Art.334 of the Togolese law - The fiscal revenues of the Operations section come from: a) Direct tax revenues such as: • the land tax on built properties (TFPB); • the Land Tax on Unbuilt Properties (TPNB); • the business license; • Housing Tax (TH); • the Single Professional Tax (TPU) and assimilated direct taxes.  
b) Income from the following indirect duties and taxes: • the tax on shows and on automatic devices providing a game, show, hearing, or entertainment (TSA); • revenue from registration fees; • the tax on the distribution of water, electricity, and telephone; • the proceeds from stamp duties; • the tax on the operation of local communications companies; • the tax on gambling products (TPJH); • the assimilated indirect taxes.
However, the fact is that these local taxes have very archaic bases and are very little adapted to a modern economy which is dominated by the IT sector, technology, services and “the great mobility of companies mainly due to the search for maximum profits”.

In reality, the local tax systems of the countries have not undergone a dynamic and rational evolution linked to the life of local government because the legislation which defines the methods for the assessment and collection of local taxes mainly come from the colonial period. Consequently, these texts appear unsuitable for the current economic and social environment of these local entities.

The non-adaptability of the sources of financing of local authorities to new realities imposes on these entities the phenomenon of lack of fiscal accountability.

Thus, a 2010 study notes that “the local tax legislation currently in force in Senegal is still largely the result of the transposition of local tax rules, that often very complex, and which were previously applied in France. This complexity and this maladjustment lead to very high collection costs compared to the income generated by taxes”.

By way of consequence, local taxes which are levied for the benefit of local authorities are mainly based on land bases or on the physical equipment of companies. To this end, we can wonder about the profitability of these taxes which are intended to decrease over time. Likewise, with the conditions characterizing new businesses, it is evident that the tax base is shifting.

Beyond local taxation, decentralized governments must benefit from the financial transfers of the central Government following the transfers of competencies (transfer of powers). Thus, in Burkina Faso, the law provides that “the transfers of powers by the State (the central Government) must be accompanied by the transfer to local governments of the means and resources necessary for the normal exercise of these powers, under the conditions provided for by law”.

Similarly, in Togo, the law provides that “the powers transferred to local authorities require the State to take concurrent support measures in terms of human, financial, and material resources.”

If overall, the legislations of the WAEMU States recognize the rule of financial compensation for the transfer of powers, the result is that these legislations say nothing about the modalities of implementation of this mechanism. In addition, instead of the principle of concomitance between transfers of powers and financial transfers in compensation, the tax administrations and certain legislations rather advocate the progressivity of financial transfers. Therefore, financial transfers are postponed, thus inducing and unequal access of local citizens to basic services according to which the area is urbanized or not, because urbanized areas appear richer. Indeed, the quality of social services (education, health, etc.) is not uniform.

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16 ZAKI (M.), Obstacles to the financial autonomy of local authorities in Senegal, p.9
17 For Michel BOUVIER, “from the legal standpoint, (...) one may be surprised by the lack of interest shown in the modernization of local tax law both by the legislators and by case law or doctrine. (...) One can also wonder, from an economic point of view, if the local taxes weighing on companies, (...) are not likely to be definitively doomed to disappear if the development of the new economy were to continue. Indeed, the activities that are created in the high-tech sector hardly require large premises or even capital assets as massive as for large traditional companies”, in “Fiscal autonomy and free administration of local governments”, “Revue Française de Finances Publiques”, n° 81-March 2003, p. 30
18 We can cite Order No. 828 M. INT. / BC of February 3, 1958 setting the maximum rate and determining the methods of assessment and collection of the tax that the municipalities governed by the law of November 18, 1955, on the electricity consumed for lighting may institute. Law No. 72-52 of June 12, 1972 setting the maximum rate and determining the methods of assessment and collection of the tax that the municipalities governed by the law of November 18, 1955, on the electricity consumed for lighting may institute. Law No. 72-59 of June 12, 1972 establishing the rural tax.
19 For example, the contribution of the business tax (called “patente”) which is a professional tax, whose assessment and calculation difficulties justified the reform by law 2004-12 of February 7, 2004, instituting a single global contribution, comes from the French system but remains intact in Senegalese legislation.
21 Article 36 of Law No. 055 2004 / AN of December 21, 2004 establishing the General Code of Local and Regional Governments (CGCT).
In terms of expenses

The examination of the legislative mechanisms of the WAEMU countries shows us that the budgetary framework of the local governments is really reduced. Indeed, given that the resources are ridiculously low and the taxation possibilities limited, the imposition by law of compulsory expenditures turns out to be a burden for local governments. Also, the constraints weighing on local governments are so broad that operating expenses use up the majority of budgetary resources because the law expressly allocates the proceeds of local taxes mainly to operating expenses.

In short, we note that the local tax system in WAEMU countries is mainly “the fruit of the transposition of taxes and duties from the colonial period. This system suffers from multiple evils linked to a poor distribution of taxes and fiscal responsibilities between the central government and the decentralized governments”.

II- A legislation to be improved

Though it is obvious that local finances have an existence in the legislations of the WAEMU countries, the fact remains that these legislations have explored this area in an incomplete way. In this sense, it becomes imperative to improve the financial decision-making power of local and regional governments (A), while being in the process of renewing local financial evaluation methods (B).

A - The need to increase local financial decision-making powers

In matters of local financial decision, the authorities can act from the budgetary standpoint as well as from the fiscal standpoint.

From the budgetary standpoint, local authorities have powers in terms of preparation, voting, and execution of the budget. Beyond these powers, these local authorities are confronted with certain budgetary limits such as compulsory expenditures, that are prohibited, and regulated by the central authority. Also, some texts of the tax administration or the Finance Laws may call into question certain resources planned to be transferred to local and regional governments. Thus, in order to ensure, for example, the competitiveness of companies in the private sector, the Finance Laws often provide for tax exemptions for certain companies through exemptions. These systems result in the amputation of a significant part of the resources of local and regional governments. Likewise, in order to encourage certain new modern businesses, the Investment codes or even the Public procurement codes and Finance Laws often grant them exemptions from local taxes. These fiscal policy choices with a social purpose depend on the decisions of the national Government and not of the local governments. Indeed, these amputations are generally measures in the form of waivers, exemptions, and reductions. Waivers and exemptions are defined as measures which consist in partially or totally exempting a matter from the scope of the tax, temporarily or permanently. These systems result from the law. These tax abatements, waivers,

23 Article 257 of the Senegalese General Code of Local and Regional Governments (“Code Général des Collectivités Territoriales”) provides that “operating expenses are compulsory or optional. Compulsory expenditures are the ones which must necessarily be included in the budget - either because they are imposed by law on all local authorities or only on those which meet certain conditions; - or because, while leaving an optional character to the creation of certain public services or the design of development programs, the law obliges local authorities to enter the corresponding expenditures in their budget, as soon as these services have been created or as soon as these programs were included in the development plan”; as such, the existence of compulsory expenditures does not constitute an attack on the financial autonomy of local authorities. However, the fact that these expenditures “must be the subject of the opening of appropriations (credits) deemed sufficient...” by the central Government representative who can, if necessary, do an ex officio registration constitutes a real obstacle. The compulsory expenditures are eighteen; they are listed in Art. 258 of the Code of Local Governments (“Code des Collectivités locales”).

and exemption systems obviously have a negative effect on the integrity of the tax base and can often distort the principle of equality (of citizens and enterprises) in the face of taxation and do weaken local financial resources.

To do this, it is important to involve and associate decentralized governments in the development of new tax legislation. It is therefore imperative that an impact analysis be carried out concerning the new changes in the legislation on the financial health of local governments. In this case, cooperation between the various authorities in charge of taxes (agents in charge of the assessment and collection agents, etc.) must be stepped up.

In addition, decentralized governments must be able to have control over local decision-making.

Indeed, under the terms of article 332 of law No. 2019 006 of June 26, 2019 amending law No. 2007 011 of March 13, 2007 relating to decentralization and local freedoms in Togo, it is stated that “the creation of taxes and levies falls within the domain of the law. The local council, by deliberation, sets the rate thereof under the conditions determined by the Finance Law (Appropriations Law). Within the municipality or region, where specific activities that may be imposed are carried out, the local council may, by deliberation, create related non-fiscal taxes, subject to the approval of the supervisory authority and of the Minister in charge of Finance”. This provision takes into account the local taxation power. It is clear that the decentralized governments do not have total power because they cannot create taxes, nor levies, nor determine their rates.

However, according to the provisions of Article 16 of Directive No. 01/2011 / CM / WAEMU financial regime of local and regional governments within the WAEMU area under which it is stressed that “the local government council, through its deliberation, sets the rate of local taxes and fees within the limit of the ceiling determined by law”. Despite this provision, it is clear that elected officials do not have real latitude to determine the threshold for tax levies.

Thus, as it is obvious that the origin of the power of any political power generally derives from the possession of an autonomous fiscal power, it would be all the more natural for the question of free administration to be absolutely linked to the need for genuine local fiscal power, for without a real financial autonomy, the principle of free administration of local and regional governments posed by the Constitution is devoid of any substance. Indeed, the autonomy of the fiscal decision-making power constitutes the engine of financial autonomy, because it means for local governments to have sufficient own resources, the legal control of which is attributed to local elected officials. However, in the decentralized unitary state, this control can only be assessed with regard to the legislative framework of the decision-making power of local elected officials, given that the creation, modification and abolition of taxes come from the legislative domain. To this end, it is important to allow local authorities to be able to set local tax rates although they cannot create them.

B- The need for a culture of local financial evaluation

It is currently established that it is the central Government that sets the rates of the various local taxes in the various WAEMU countries. Thus, in practice, it is the tax administrations that are responsible for the identification, assessment of the base and the issuance of tax rolls, and the collection of local taxes. However, in its role as assessor of local taxes, the tax administration fails in several respects.

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25 BOUVIER (M.), *Autonomie fiscale locale et libre administration des collectivités locales*, BOUVIER (M.) (Local fiscal autonomy and free administration of local authorities), in “Revue Française de Finances Publiques”, No. 81, March 2003, p.27.

26 Except in the case of the rural tax for example in Senegal where the rural council has the option of placing itself in a range between 1000 CFA francs (maximum rate) and 500 CFA francs (minimum rate)
First, the tax administration has no or very few regional or prefectural subdivisions within the country capable of quickly grasping the novelties and modifications concerning the bases and assessment of local taxes.

Second, in terms of land, the configuration of towns and rural communities does not favor the identification of landowners and taxable persons. However, it is often impossible to identify these owners insofar as the administration does not manage to control certain areas of cities where title deeds rarely exist. Otherwise, the usufructuary will bear the tax burden. In the same vein, in Benin for example, the legislation allows the tax administration to impose on the usufructuary tax charges related to land.

Thus, it is important for the tax administration to create administrative and technical collaboration links with the central Government’s services, decentralized local and regional governments, and private partners to allow an effective assessment of local taxes. It is for this purpose and also with a view to banishing land insecurity, and improving the collection of property taxes, that the urban land registers (RFU) have been set up.

Consequently, the evaluation deficit also leads to mediocre returns resulting from the collection of taxes and duties specific to decentralized local and regional governments. Indeed, this level of performance is observed because of the complexity in the definition of the base and the methods of assessment of the taxes and also because of the difficulty to set up “an instrumentation adapted to know the tax potential and to ensure the ‘issuance of tax rolls and collection” 28.

With regard to the financial compensation for the transfer of powers, it turns out that in African countries in general and in this case in the UEMOA countries, there is no real tradition of evaluation of public policies. making it possible to determine in real time the costs of the powers transferred when they were exercised by the central Government. For example, Article 310 of Law No. 2019-006 of 26 June 2019 amending the law No. 2007-011 of 13 March 2007 on decentralization and local liberties modified by Law No. 2018 003 of January 31, 2018 provides that “The resources allocated to local and regional governments are at least equivalent to the charges borne by the State (the central Government) on the date of the transfer of powers (...) that is the subject to an equivalent amount « 29.

This obligation of equivalence provides a certain guarantee as to the consistency of the resources. In this sense, it is not enough only to compensate but the amount of the compensation must be equivalent to the charges borne by the State at the date of the transfer. The mention of the sentence “(...) equivalent to the charges borne by the State at the date of the transfer « reveals a very important reality in that the charges may change. To this end, it is obvious that a procedure has been put in place to assess the amount or the burden of jurisdiction. However, Togolese, Beninese, or Burkinabè legislators, invoking the notion of the equivalence of amounts in the event of a transfer of powers, have not taken the trouble to evoke a need for reassessment or updating over time.30

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27 This taxation is done in compliance with the conditions linked to the ability to contribute and also with regard to the social tax policy implemented by the government.

28 DIOP (C.), « Situation des finances des collectivités locales en Afrique: Caractéristiques des ressources des collectivités locales en Afrique : Etat des Lieux », (“Situation of local government finances in Africa: Characteristics of local government resources in Africa: State of play”), AFRICITIES 2000, Resources of the International Training Center for Local Authorities / Actors (“Centre international de Formation des Autorités/Acteurs Locaux”, CIFAL). This obstacle could be lifted with the recent reform of the general tax code (“Code Général des Impôts”) which introduced the “local tax commission” (“Commission fiscale locale”) which allows elected officials in Senegal to manage the tax base, especially in land matters.

29 Paragraphs 1 and 2.

30 JERRETIE (C.) et DE COURSON (C.), Mission Flash sur « l’autonomie financière des collectivités territoriales » (“Flash mission on “the financial autonomy of local and regional governments”; “) ; May 09, 2018, p.75 “To ensure the proper implementation of this full and progressive compensation, an independent body, such as the Court of Auditors or the regional audit chambers, should participate in the assessment of the cost of the skills transferred and the evolution of this cost. This will limit disputes and ease recurring tensions on these financial issues between the national Governments and local and regional governments. The cost of each competence transferred will have to give rise to a periodic reassessment, which could take place every three years. This “review clause” could work in both directions: whether the cost of the transferred competence increases or decreases, an adjustment of the compensation could take place.
Indeed, the evaluation and compensation method adopted by the legislators of the WAEMU countries had the consequences of widening the gap between the charges transferred and the compensation transfers paid by the central Government. For example, if we consider as the basis of calculation “the expenditures incurred by the State (the central Government) during the year preceding the transfer of powers”, the legislator would take the risk of a compensation that would be lagged and would represent a bare minimum. With this, it happens to end up with a situation as follows: the law relating to the transfer of competences entered into force on January 1, 2010, but the basis of calculation which will be used by the national Government would be the period going from 2006 to 2008.

To do this, the assessment of the costs of the powers transferred to local authorities requires the establishment of a dialogue between the national actors involved in the implementation of decentralization process 31, because, as underlined by the conclusions of the national conference on decentralization in Senegal 32, “the principle of financial compensation for transferred powers is not respected since only five out of the nine transferred domains are subject to partial compensation”. So, contrary to the letter and the spirit of the law, we note that in some countries, the amounts allocated or transferred to local and regional governments are renewed almost systematically every year without any prior assessment in order to integrate the evolutions. Also, with regard to waivers, exemptions, and tax abatements, there is very little evaluation of the cost for local governments, thus inducing revenue losses induced by unilateral decisions by the central Government.

31 YATTA (F.P), Revue Africaine des Finances Locales, Ed.2016, p.19
32 Which also highlight “the weakness of these resources, the interventionism of the administration in their distribution and the preeminent intervention of the decentralized services of the national Government in the management of the powers that are in principle transferred”. See report, p. 10