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CITIZEN PARTICIPATION IN THE BUDGET PROCESS

Towards linking the budget process to specific needs of the people

Wandaka Lewis Mungai, Eric Kanyi and Odindo Opiata

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List of Acronyms and Abbreviations

AG	Auditor General
AIA	Appropriations in Aid
BPS	Budget Policy Statement
BROP	Budget Review and Outlook Paper
C-BROP	County Budget Revenue and Outlook Paper
CAC	County Assembly Clerk
CARA	County Allocation of Revenue Act
CBO	Community-based Organization
CEC	County Executive Committee
CEMF	County Executive Member for Finance
CEMP	County Executive Member for Planning
CFS	Consolidated Fund Services
CFSP	County Fiscal Strategy Paper
COB	Controller of Budget
CRA	Commission on Revenue Allocation
CSF	Cabinet Secretary of Finance
CSO	Civil Society Organization
DORA	Division of Revenue Act
EAC	East African Community
GDP	Gross Domestic Product
JSC	Judicial Service Commission
KRA	Kenya Revenue Authority
MP	Member of Parliament
MTEF	Medium Term Expenditure Framework
NGO	Non-governmental Organization
PFM	Public Finance Management
PSC	Public Service Commission
VAT	Value Added Tax

Foreword

Just a few years ago, any meaningful citizen participation in the budget process was simply a mirage. Budget making was seen as a technocratic exercise and the only people who were expected to participate in it were the few senior civil servants at the then Ministry of Finance and Planning. Surprisingly, the majority of other civil servants did not understand how the budget they implemented was developed.

Indeed the National Budget was considered as a state secret. The first time the public, and anybody else for that matter, came into contact with it was during the Minister of Finance's speech delivered in June of every year in Parliament. Most Kenyans then and probably even now were concerned with the new taxes imposed, and not how their money as taxpayers had been appropriated. This potentially explains why some poor spending proposals and financial scams went unnoticed for far too long.

However, all this changed in 2010 when the country adopted a new constitution that not only ushered in a new governance system, but also guidelines on how public finances should be managed. One such area was the budget. The constitution did not only entrench the right of participation and access to information, but went a step further to open up the budget-making processes to unprecedented public scrutiny. Since then, members of the public have struggled to engage with the budget exercise. Although some significant gains have been made, specifically with regard to the fact that the exercise is now open to public participation, it is also clear that the participation has largely remained symbolic. The budget information has remained inaccessible to the majority and the language has become only marginally understandable.

It is as a result of the above challenges that Hakijamii launched a project that aims to link the budget process to specific needs of the people. The first output of this effort was the publication of a booklet that linked the 2012 budget to the land policy implementation. Following a favourable response from the public and other stakeholders, the organization with the support of the Ford Foundation, decided to develop a more inclusive booklet on the budget that would attempt to highlight the key areas that citizens should be aware of in order to enhance active public participation in the process. This booklet is the result of this effort and we hope that it will add to the bourgeoning work in this area which we hope will eventually ensure that the budget works for the people and not the other way round.

Odindo Opiata
Executive Director
Hakijamii, 2013

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Hakijamii is also grateful to the many partners, including community-based organizations (CBOs) and civil society organizations (CSOs) that have continuously supported us in our efforts to launch the Budget Project.

Last, but by no means least, Hakijamii extends special gratitude to Ford Foundation for their unwavering support and faith that enabled us to take the next step in this new area in our continued work on social justice and service to the marginalized communities.

About Hakijamii

The Economic and Social Rights Centre (Hakijamii) is a national human rights organization that was founded in 2004. Hakijamii works with marginalized groups to claim their rightful position in the society in terms of progressive realization of economic and social rights in order to improve their livelihoods.

It is registered as a non-governmental organization under the NGO Coordination Act with its e secretariat in Nairobi. The organization has strategic community partners in Nairobi, Kisumu, Kitale, Eldoret, Garissa, Kakamega, Kisii, Migori, Homa Bay, Turkana, Lamu and Mombasa.

Alive to the national and global character of the issues that it deals with, Hakijamii has established strategic partnerships that include being a founding member of the Kenya Land Alliance, member of the Shelter Forum, the Urban Housing Coalition, founding member of the International Network on Economic and Social Rights where it serves in the Adjudication Working Group, and the Economic and Social Rights Monitoring Working Group. Its Executive Director also serves a Board member of The Global Initiative for Economic, Social and Cultural Rights, an organization based in the USA.

Hakijamii's vision is that of a society that is free from discrimination, exploitation and injustice. Its mission is to strengthen the capacity of people's organizations to effectively and directly participate in advocating for and realizing their economic, social and cultural rights in Kenya. Throughout its existence, the organization has been guided by the goal of promoting social movements to engage in realizing and promoting human rights-centered practices and policies.

Hakijamii's broad strategic objectives include:

- The progressive realization of economic and social rights through enhanced participatory and accountable policy, legislative and making use of national and international instruments.
- Partner with communities in order to effectively advocate for the realization of economic, social and cultural rights in Kenya using enhanced capacities and knowledge.
- Vibrant and effective national and international networks and partnerships to strengthen advocacy for ESC rights, improve knowledge and develop human rights-based approaches.

CHAPTER ONE

WHAT IS A BUDGET?

Simply put, a budget is a plan outlining incomes and expenses for a given period of time. Most individuals have a rudimentary plan of expected revenues and expenditures which forms the essence of a budget. The key reason for budgeting is that scarce resources have competing and alternative needs which necessitates a plan of how revenues and expenditures will be allocated in order to create maximum utility. The government does exactly this sort of balancing act when it comes up with the National Budget. It also comes up with a plan to use its scarce finances in the most effective way possible so as ensure the happiness and welfare of its citizens.

The practice of budgeting has been around for a long time. It was however, not until the 18th century when the principles of modern government budgeting including the annual budget began. The origin of the word budget is the Latin *bulga*, a little pouch or knapsack, which may have come from a Gaulish source that's related to the Irish *bolg*, "bag". The word turned up in English in the fifteenth century, having travelled via the French *bougette*, a diminutive form of *bouge*, "leather bag" in which businessmen in medieval France kept their money in.

Its connection with finance first appeared only in the eighteenth century when it was turned into political jargon and by the nineteenth century it began to be used as a verb in the sense of planning one's expenditure. In England however, it begun being used in reference to a the leather bag where the Chancellor of Exchequer- the Minister of Finance – kept his proposals for revenues and expenditures when he made his annual speech on the British finances to the British Parliament.

Budgeting basically involves three basic steps: estimating the income for the period the budget is being prepared for, allocating that income and finally, monitoring to ensure that spending is according to the plan. However, what makes the government budgeting process complex are the rules and regulations that govern it and the number of actors with vested interests involved. The government's budget is prepared for a 12-month period called fiscal year or financial year. In Kenya that period starts on 1st July and ends on 30th June of the following year. The process of coming up with the budget takes place prior to the fiscal year during which it will be executed.

Why is the budget important?

The simplest and most obvious answer is that money matters. The budget is a reflection of our choices and priorities as it entails making tough decisions on what to spend on among competing needs. The spending priorities we choose have a profound impact on our wellbeing and happiness and that of our families. Misplaced priorities can have dire consequences. This is also true for the government budget.

The budget is arguably the most accurate indicator of priorities, choices and values of a country. Poor spending policies – the result of poor choices and wrong priorities – have caused the economic malaise that has been witnessed in many countries in Africa, including Kenya, since independence. Spending has always tilted towards areas such as defense, at the expense of areas such as education, health care and physical infrastructure. Further, the budget has been used as a political tool to reward political support. In Kenya, the famous Swahili statement "*Siasa mbaya maisha mbaya*" is irrefutable evidence of this. The consequence of this has been unequal development which has triggered resentment and violence.

It is unfortunate that few Kenyans are concerned about the country's budget and even fewer know how it is prepared. Yet, its impact on our daily lives is profound – choices have consequences. This guide, therefore, tries to explain in a simple language and manner the process that leads up to the budget highlights speech by the Cabinet Secretary of Finance (CSF) to Members of Parliament (MPs) and what happens after. It is interesting to note that the budget highlights speech takes eight months to prepare, probably the longest time taken to prepare an hour long speech.

This guide:

- Looks at the links between the Constitution and the budget
- Explains the stages the budget goes through as it is prepared
- Examines how Kenyans can contribute to the budget, both at the national and county levels.

Why citizen participation in the budget process is important

For a very long time, the budgeting exercise, especially in developing countries, remained a closely guarded affair, with citizens playing a limited, if any, role. This was probably because of the autocratic regimes that were in power and bureaucratic resistance to the process. Citizen participation requires a large degree of democratic space and values which were non-existent until recently. The results of the closed budget process were "white elephants", stalled projects and corruption. Goldenberg and Anglo-leasing in Kenya serve as good examples.

In the recent past however, there has been a shift in thinking and attitudes. Many governments, including the Kenyan government, have started acknowledging the pivotal role that citizens and citizen groups can play in the budget process. Some countries have gone to the extent of making citizen participation a constitutional requirement e.g. South Africa and Kenya. While public policy decisions remain the primary responsibility of the state, it has been recognized that public participation in the policy-making process improves the effectiveness of such policies, including the budget.

Citizen participation in the budget exercise is founded upon the following broad principles:

- **Legitimacy:** through effective and meaningful citizen participation, the budget exercise becomes more legitimate and acceptable as competing and conflicting interests are identified and resolved. Citizen participation also increases public trust in authorities, improves citizen political efficacy, enhances democratic ideals and improves the quality of policy decisions.
- **Accountability and transparency in decision-making**: citizen participation in the budget process enhances accountability by exerting pressure upon the government to be transparent in its revenue raising and expending activities. This is because, under the watchful eye of a vigilant citizenry and a robust civil society, the government would be hard pressed to be open throughout the entire budgeting process. When relevant information is available, it becomes easier to monitor whether resources are being used effectively and efficiently.
- **Inclusivity:** too often, marginalized voices are excluded from the budget process. By institutionalizing participation in the process, these groups will have an opportunity to present their concerns and lobby for their interests to be incorporated into the budget.
- **Fairness:** meaningful citizen participation will help in promoting equity in the allocation of resources.

Citizen participation has some benefits. It improves the public trust in the state; it better aligns policy to the citizens' needs and offers innovative solutions that would not have arisen from traditional decision-making.

The nation's budget

As earlier noted, the Kenyan budget is prepared for a 12-month period starting on 1st July and ending 30th June of the following year. Different countries have different start and end dates for their fiscal year. In South Africa and United Kingdom the fiscal year begins on 1st April and ends on 30th March of the following year. Uganda, Tanzania, Burundi and Rwanda have the same fiscal year as Kenya. This is because of the East African Community (EAC) treaty which requires the partner states to harmonize policy, including the budget process.

What are the functions of the budget?

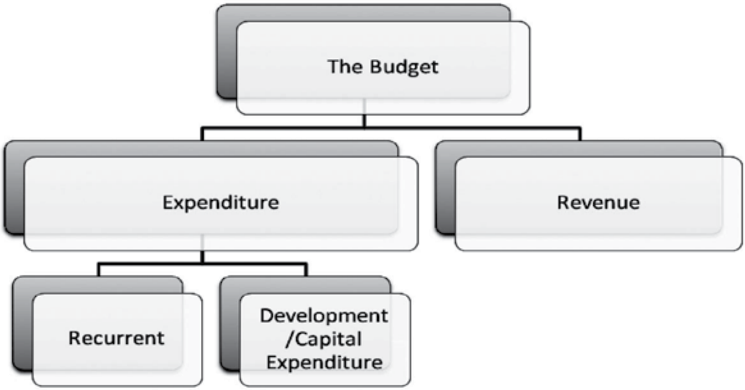
One function of the budget is that it is a statement of government policy, arguably the most important. It is through the budget that different policies are reconciled and implemented in concrete terms. It sets forth the policy priorities to be achieved, the levels of spending required to achieve them and the ways of financing that spending. In Kenya, an analysis of the budget since 2003 indicates that allocations to education and infrastructure have taken up a significant portion of the country's budget. We can therefore conclude that the Kenyan government considers education and investment in infrastructure as key policy targets. Some countries in Africa allocate substantial amounts to defense and security, therefore for those countries security concerns are key priorities to the country's government.

The budget also functions as a fiscal tool used by governments to manage their economies. By playing around with taxes and composition of public expenditure, the government can influence the country's economic conditions. As an economic tool, the budget works in three ways: allocation, stabilization and distribution.

The structure of the budget

The budget has two parts namely the revenue section and expenditure.

Figure 1: Structure of the budget

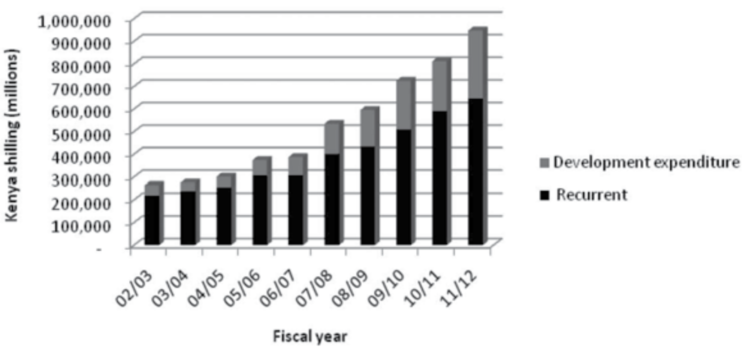


As shown in figure 1, expenditure comprises two categories: recurrent and development expenditure which is also referred to as capital expenditure. Recurrent expenditure refers to that spending on goods and services required by the government in order to provide its services. They include the salaries and wages of its employees, expenses incurred in procuring equipment and supplies such as stationery, furniture, vehicles, etc.

Development, also known as capital expenditure, refers to spending that results in the government acquiring or improving long-term assets such as schools, roads, hospitals, ports, etc. Investments in public companies or in public-private commercial ventures are also considered development expenditure.

As shown in figure 2, recurrent expenditure has formed the bulk of total expenditure since the fiscal year 2002/2003. It is also evident that development expenditure has been rising which may be an indication that the government is increasingly keen to invest in assets such as roads, schools, and so on in order to spur economic development. This is especially so because of the multiplier effect, a curious effect in macro-economic where an expenditure of a certain amount by the government results in a more than proportionate increase in economic growth. For instance, whenever the government invests in road construction, the resulting boost to the economy is quantitatively higher than the initial investment, through increase in the number of houses and industrial growth near the improved infrastructure.

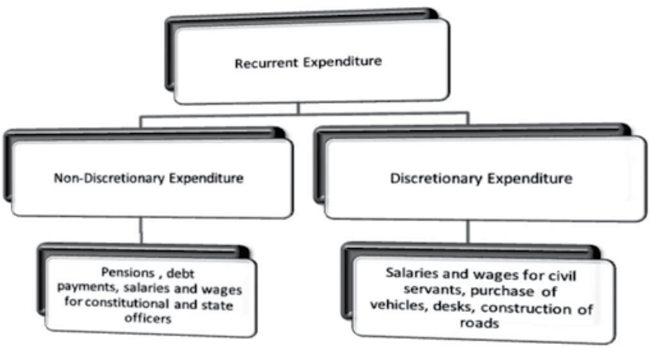
Figure 2: Kenya's recurrent and development expenditure



Recurrent expenditure is made up of two categories: discretionary and non-discretionary expenditure. Non-discretionary or mandatory expenditure refers to the pre-determined spending established by permanent law e.g. the Constitution. This spending has first priority when it comes to revenue allocation. They are directly charged on the consolidated fund and are commonly referred to as consolidated fund services (CFS). They include, among other things, expenditure such as pensions, debt payments, salaries and wages for constitutional officers. Since they take first priority on revenues, they actually reduce the amount of revenue that can be budgeted for other expenses. Therefore, if non-discretionary or mandatory expenditure takes a large part of government revenues, concerns must be raised.

Discretionary expenditure refers to the spending that can be adjusted by government or parliament depending upon policy or availability of funds. Most recurrent expenditure falls under this category. Discretionary expenditure includes civil servant salaries and wages, spending on equipment, roads, defense, etc.

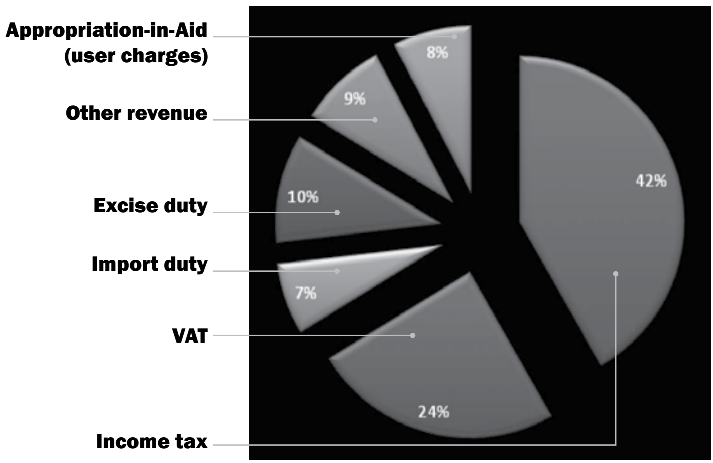
Figure 3: Structure of the recurrent expenditure



Revenues

The government has different sources of revenue. They include taxes, user charges for goods and services, grants and investment proceeds. In 2011/12, the Kenyan government got 42% of its revenue from income tax, 24% from VAT, 10% from excise duty and 9% from import duty. As is evident, a large amount of the government's revenue comes from taxes. Other revenue sources include government income from investment proceeds, dividends from publicly-owned companies such as Kenya Power, and from sale of goods. Appropriation in Aid (AIA) refers to the income earned by government ministries, agencies and departments from providing services. Such income is used by these departments or ministries to offset their expenditure instead of being handed over to Treasury.

Figure 4: Sources of government revenue in the fiscal year 2011/2012



The introduction of devolved governments in Kenya necessitated a distribution of tax revenue sources between the national government and county government. According to Article 209 of the Constitution, the national government has been given sole jurisdiction to raise tax revenue from such taxes as income tax, value added tax, custom duty and excise duty. The county governments, on the other hand, have been given power to impose property taxes, entertainment taxes and any other tax allowed by an act of Parliament.

The national government is prohibited from imposing taxes on areas set aside for county governments. On the other hand, counties are prohibited from imposing taxes that interfere with the movement of capital, labour, goods or services within the country or negatively affect national economic policies.

Public debt

When planned expenditure exceeds expected revenues, a shortfall arises. This shortfall is called a budget deficit. To fill this shortfall, governments can either resort to increasing taxes, reducing expenditure, borrowing or all. Most governments prefer borrowing (debt) than raising taxes because of the political cost of raising taxes or reducing expenditure. Given this, the debt acquired by governments is just the amount borrowed to finance the budget deficit and is referred to as public debt. In Kenya, there are two types of public debt: domestic and external debt.

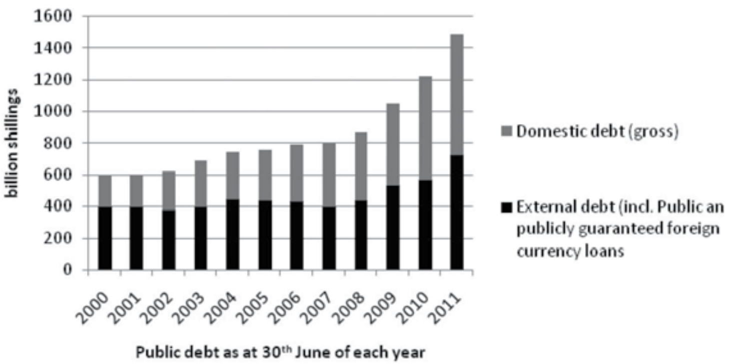
A consistently increasing budget deficit in relation to the GDP (implying an increasing public debt level) can be problematic because:

(a) It means less money for public needs. Debt repayments take first priority when revenues are being distributed. Therefore, an increasing public debt level means that the government will have to put aside increasing amounts of revenue for debt payments, thus reducing the money available for expenditure projects such as schools, roads, hospitals, etc.

(b) Public debt reduces incomes for future generations. To pay back public debt, higher taxes are required. Therefore, if we borrow to finance our current expenditure, future generations who may not have benefited from that expenditure will have to dig deep into their pockets to pay. The constitution in Chapter 12 tries to overcome this shortcoming by requiring the government to equitably distribute debt benefits and burden between current and future generations.

(c) Amount of funds available for borrowing by the private sector (including amounts available for citizens) is reduced. Economists have a fancy name for this, the "crowding out" effect. This where increased government borrowing reduces the amount of money that can be lent to the private sector. The reason for this is that lending to the government is far less risky than leading to businesses or individuals. Therefore for the private sector to access capital, they must be willing to pay much higher interest than government which discourages them from borrowing.

Figure 5: Public debt as at 30th June of each year



Assuming a population of about 40 million people as at June 2011, every Kenyan then theoretically owed Kshs 38,233 to government creditors.

The Kenyan Constitution and the budget

The Constitution is the set of rules that make provisions on how a government can exercise its power and authority over citizens. It is the basis from which laws and policies including the budget of a country are developed.

Chapter 12 of the Kenyan Constitution which starts from Article 201 provides the requirements that will guide management of government revenues and expenditure. These requirements are:

- Openness, accountability and public participation in the management of public finances
- Public finances shall be managed in a manner that promotes equity. This means that the burden of taxation shall be shared fairly at both levels of government, public expenditure shall promote equitable development both at the national and county level and address marginalized areas and vulnerable groups and equitable sharing of the benefits and burden of debt between future and current generations
- Responsible and prudent utilization of public finances
- Proper financial management with clear fiscal reporting.

The Constitution provides the criteria that shall be used to guide the division of revenue between the national and county government and among the county governments. When deciding on the division of revenue the following, *inter alia*, shall be considered:

a) National interest and specifically, public debt and other obligations
b) The needs of the national government
c) Need to ensure that county governments adequately perform the functions that have been assigned to them by the Constitution and any other Act of Parliament
d) Development and other needs of the county
e) Economic and development differences between and within counties and the need to address them
f) Disadvantaged areas and groups and the need for affirmative action
g) The need for optimization of county economic potential
h) The need for stability and predictability in revenue allocations.

The Constitution goes ahead and explicitly defines the roles and responsibilities of various institutions with regard to the budget process. Table 1 summarizes those roles and responsibilities.

Table 1: Responsibilities of constitutional bodies in the budget process

Institution	Roles and responsibilities
Commission on Revenue Allocation	1. Make recommendations on the basis for revenue allocation between national and county government and among county governments. This is its principal function 2. Make recommendations on financial matters of county governments 3. Define and enhance revenue sources of the national and county governments 4. Encourage fiscal responsibility 5. Develop the criteria for identifying marginalized areas for purposes of the equalization fund **All the recommendations shall be submitted to the Senate, National Assembly, county assemblies and county executives and the National Executive.

National Assembly	1. Determine the allocation of revenue among the three arms of government; Judiciary, Parliament and the Executive 2. Review and approve with or without the budget estimates, the budget for the three arms of government 3. Approve the revenue raising measures of the government (Finance Bill) 4. Provide oversight over the implementation of the budget 5. Enact into law the Appropriation Bill
Senate	1. Determine revenue allocation among the counties 2. Provide oversight over county revenues
Parliament and Judiciary	1. Prepare and submit their budget estimates to the National Assembly not later than 30th April
Executive	1. Prepare and submit their budget estimates for the National Government excluding that of the Judiciary and Parliament to the National Assembly not later than 30th April
Controller of Budget	1. Authorize lawful withdrawal of funds from public funds at both levels of government for purposes of budget implementation 2. Prepare reports on the implementation of the budgets to Parliament
Auditor General	1. Audit accounts of the government and submit reports that are relevant to parliament and county assemblies within six months of the end of the financial year

The Constitution in Article 43 provides a set of economic and social rights that the government (both national and county) should strive to progressively realize. The most effective and arguably the most important tool or policy for this is the budget. These rights include:

- Right to health
- Right to adequate and decent housing
- Freedom from hunger and having adequate food of acceptable quality
- Right to clean and safe water in adequate quantities
- Right to education
- Right to social security
- Right to a clean environment.

CHAPTER TWO

THE BUDGETARY PROCESS IN KENYA

Introduction

The Annual Budget Estimates that are presented to Parliament not later than 30^{th} April of each year are an outcome of the budgetary process. This process in essence has four distinct phases: formulation, legislative approval, implementation and auditing. During each phase, critical decisions about government revenue and expenditure – choices that affect us – are made. This is why understanding the budget process is important.

Budgeting in Kenya is made through an approach known as the Medium Term Expenditure Framework (MTEF). This is basically where budgets are prepared for a three-year rolling period, the coming fiscal year and next two fiscal years. For example, in 2013 budgets were prepared for fiscal years 2013/2014, 2014/2015 and 2015/2016. As we move to a new financial year, the process rolls to include another new fiscal year. This is why it is called a rolling budget.

The budget estimates presented to parliament and county assemblies contain the budget estimates for the next three years. However, legislative review and approval is only required for the coming fiscal year.

This approach was introduced in the year 2000 for the following reasons:

- To improve the link between policies, planning and budgeting. Under the MTEF process, revenue allocation decisions are based on policy and country development plans. Sectors with a greater relevance to the country's development plans are allocated more funds compared to those with less relevance. High policy priority areas receive higher funding.
- To improve the predictability of resource allocation to government ministries, agencies and departments. This will in turn help them better prepare their programs and activities.
- Increase public participation and enhance transparency in the budget process. The public gets a three-year picture on how and where government plans to spend their money.

Stages of the budget process

As earlier pointed out, the budget is the culmination of a process where important decisions are made along the way. It is therefore important to understand what happens during the process, so that we as citizens can have some influence on resource allocation in the budget.

1. Estimating revenue and setting maximum expenditure (setting the initial medium term macro-fiscal framework)

The first step in any budgeting process is to estimate the expected income. It is after this, that a feasible expenditure plan can be prepared. It would be folly to develop expenditure plans without knowing how much income is expected.

Estimating revenue and setting maximum expenditure is done for a three-year period (remember the MTEF process!) and it is a technical process. It involves, *inter alia*, looking at the economic situation (macro-economic), coming up with plausible revenue estimates, setting the allowable budget deficit and its financing and then setting upper spending limits for the budget for the next three fiscal years.

Information on the macro-economic outlook, projected revenue forecasts, allowable budget deficit and its financing and the maximum expenditure for the next three years forms what is referred to as the medium term macro-fiscal framework.

The Ministry of Finance publishes the initial medium macro-fiscal framework in a budget document called the Budget Review and Outlook Paper (BROP) which according to the PFM Act must be submitted to Cabinet for approval not later than 30th September of each financial year.

This macro-fiscal framework is the initial one and will be constantly updated to reflect the changes in the economy up to point when the Budget Policy Statement is prepared. Thus the expenditure ceilings contained in the Budget Review and Outlook Paper are not static; they are adjusted upwards and downwards depending on the changes in the framework.

The macro-fiscal framework is important because it forms the basis on which the Ministry of Finance (National Treasury) proposes initial upper spending limits for the various sectors and line ministries. To give flexibility to sectors and line ministries during the budgeting process, these ceilings act only as reference points.

2. Issue of budget guidelines by Treasury and preparation of initial three-year budget estimates for sectors and line ministries

Once the initial macro-fiscal framework has been prepared and initial budget ceilings set , sector working groups are formed. A sector working group can be described as a "committee"of representatives drawn from various ministries and government agencies within a sector, the Ministry of Finance and development partners. The private sector and any other interested groups can also send representatives.

It is in the various sector working group planning sessions that the first initial three-year budget estimates for the various government entities are developed. These initial budgets estimates are contained in documents called sector reports and are subjected to a public review before they are finalized and submitted to Treasury. The public review is referred to as sector hearings. Submissions by the public during sector hearings are taken into account when the finalized sector reports are being done.

3. Determination of the vertical and horizontal division of revenue

The Constitution requires that the minimum 15% of the last audited revenue be transferred to the counties. It gives the responsibility to the Commission on Revenue Allocation (CRA) to come up with the recommendations on the division of revenue between the National Government and County Government (vertical division) and amongst the 47 counties (horizontal division). CRA recommendations are just that, recommendations. They are therefore not binding to Parliament. Parliament can allocate higher or lower than what CRA recommends but subject to the 15% minimum rule set in the Constitution. The recommendations are submitted to Parliament, national and county executives and county assemblies not later than 31st December of each year.

Revenue sharing among counties is done based on the formula approved by the Senate. The current formula was approved by the 10th Parliament on 27th November 2012 and will be in force for three years before it is reviewed by the Senate, unless a two-thirds majority decided to look at this sooner. The formula divides revenue according to the following factors: population, land size, poverty levels, fiscal discipline and equal share.

4. National Treasury reviews sector budget estimates, sector dialogue and preparation of a draft National Budget

After the sector working groups have finalized their budget estimates for the various ministerial and government entities, including incorporation of any necessary public submissions, they submit their proposals to the National Treasury. The National Treasury reviews and adjusts them to the latest updated fiscal framework (estimates of aggregated national revenues and expenditures including transfers to counties).

Government ministries and spending agencies then head to the Ministry of Finance to negotiate their initial budget estimates. This is a tough time for them because they often have to make difficult decisions on what budget cuts they have to accede to so that their estimates are in line with the allocated revenue.

The National Treasury after negotiating and adjusting the various ministerial and agency budget estimates, consolidates them to get the sector resource allocations and the draft National Budget.

5. Preparation of the Medium Term Budget Policy Statement and drafting of the Division of Revenue Act and County Allocation of Revenue Act

Once Treasury has the sector allocations, the draft National Budget and CRA recommendations on revenue division, it prepares a document known as the Medium Term Budget Policy Statement and drafts the Division of Revenue Act (DORA) and County Allocation of Revenue Act (CARA).

The Medium Term Budget Policy Statement is a policy document that shows:

- The government's goals and objectives for the next three years, in brief
- Information about how the government expects the economy to perform over the next three years
- How much revenue the government expects in the next three years
- How much the government wants to spend in the next three years (upper expenditure limit) and the budget deficits
- Proposed allocations to the various sectors for the three-year period including Parliament and the Judiciary
- Possible risks facing the budget and the economy in the next three years
- Indicative revenue transfers to the county governments.

The primary purpose of the Budget Policy Statement is to guide the preparation of actual budgets by the national and county governments for the next three fiscal years. When preparing the Budget Policy Statement, the law requires the National Treasury to seek and take into account the views of Commissions on Revenue Allocation, the county governments, Controller of the Budget, Parliamentary Service Commission, Judicial Service Commission, the public and any other interested group (PFM Act, Section 25(5), (f) & (g) 2012).

The Division of Revenue Act (DORA) sets out the division between the two levels of government. The County Allocation of Revenue Act (CARA) divides the county revenue amount counties, based on the resolution made by the Senate. The two revenue sharing bills should be in line with the proposed revenue transfers to county governments in the Budget Policy Statement. The Medium Term Budget Policy Statement, Division of Revenue Act and County Allocation of Revenue Bill are submitted to the Cabinet for review and approval.

6. Submission of the Budget Policy Statement and Revenue Sharing Bills to Parliament for consideration and approval

Once Cabinet approves the Budget Policy Statement (BPS) and the two revenue sharing bills, they are submitted to Parliament. This must be done no later than 15^{th} February as per the Public Finance Management Act. Further, the two revenue bills must be accompanied by an explanatory memorandum in line with Article 218 of the Constitution.

The submission of the BPS to Parliament for review and approval with or without amendment and the subsequent publication serves a number of purposes. First, it helps Parliament guide the allocation of resources in the actual budget both at the national and county levels. Second, it increases transparency in the budgetary process as required in Article 201 of the Constitution. Third, it improves the debates and discussions around the budget by making them more informed. Finally, it helps reduce the risk of our Parliament budgeting beyond total planned expenditures by binding it to a fiscal framework (total estimated national revenues and expenditures including transfers to counties). Once Parliament has approved the BPS, it legally binds itself to an upper limit of expenditure and revenue (fiscal framework). According to the Public Finance Act, the Budget Policy Statement should be adopted with or without amendments not later than 28th February.

The Public Finance Management Act in section 42 requires that Parliament pass the revenue bills not later than 15th March.

7. Submission of budget estimates to Parliament

After the Budget Policy Statement is approved by Parliament, the various arms of government prepare and finalize the detailed expenditure estimates, i.e., the budget books and the required documentation. The approved Budget Policy Statement acts as a guide. These detailed budget estimates must be ready for submission to Parliament not later than 30th April according to Article 221(1) of the Constitution. The Cabinet Secretary of Finance (CSF) submits the budget estimates for the Executive, the Clerk of the Senate for Parliament and Chief Registrar of the Judiciary for the Judiciary.

8. Budget and Appropriation Committee of the National Assembly holds hearings on the budget estimates and reports to the National Assembly

According to Article 221(4) of the Constitution, the estimates once submitted must first be referred to a committee of the National Assembly for review and consideration. The committee then makes recommendations and reports to the National Assembly. The National Assembly may then approve the estimates with or without amendments. That committee is known as the Budget and Appropriation Committee.

The Constitution goes further and requires in Article 221(5) that the Budget and Appropriation Committee while formulating its recommendations to the National Assembly seek:

- Public views on the budget estimates
- The view of the Cabinet Secretary on Finance (CSF) on estimates

of Parliament and Judiciary since they are prepared independently of the control of Treasury as a result of the new constitution.

These views should be taken into account when making recommendations.

9. Enactment of the Appropriation Bill into law

After the Budget and Appropriation Committee reports back to the National Assembly, the National Assembly can now begin to debate the Appropriation Bill. The Appropriation Bill is a bill that once adopted and passed by Parliament allows the various arms and departments of government to spend funds that have been allocated to them as stated in the budget. The Controller of Budget cannot release funds without parliamentary legislation authorizing it and the budget estimates are not a law. The Appropriation Bill is the instrument which converts the budget estimates into law.

The National Assembly can make changes to the budget by making amendments in the Appropriation Bill. The National Assembly cannot amend the overall budget as they are bound to the macro-fiscal framework they adopted in the Budget Policy Statement. However, they can shift allocation of money from one ministry to another or from one arm of government to another. For example, more money can be allocated to Defense and less to Foreign Affairs.

The Appropriation Bill is supposed to be passed and assented into law not later than 30th June in time for the beginning of the government financial year on 1st July. However, there are instances when the National Assembly may have not finished reviewing and approving the estimates in time to pass the Appropriation Act by 30th June. The Constitution allows the National Assembly to authorize withdrawal of one-half of the net amount included in the estimates of expenditure for that year to carry on with services of national government until such time as the Appropriation Act is assented to. This withdrawal and subsequent spending is called Vote on Account. County governments are also allowed to do the same.

10. Budget execution

Budget execution begins on 1st July when the fiscal year begins. The government begins to collect revenue from taxes and duties and spends it. The Provisional Collection of Taxes and Duties Act allows the Cabinet Secretary of Finance to issue a Publication of Provisional Collection of Taxes order, a legal notice, allowing the collection of duties and taxes by the Kenya Revenue Authority (KRA) or any other entity until such time as the Finance Bill, which contains the revenue raising measures has been passed. The PFM Act section 41 establishes a timeline within which Parliament should have passed the Finance Act; 90 days after the enactment of the Appropriation Bill into law.

Based on the Appropriation Act or the Vote on Account, the Controller of Budget authorizes the lawful withdrawal of funds and reports on the budget implementation quarterly as required by the Constitution. As per Article 228 (5) of the Constitution, these two instruments (Appropriation Act and Vote on Account) are the only ones which allow for government withdrawal and spending from the Consolidated Fund.

11. Audit and reporting

The Kenyan Constitution under Article 229 (4) and (7) requires audit of accounts of all government entities by the Auditor General and a report to be submitted to Parliament or the relevant County Assembly. The reports should be submitted not later than 31st December, that is, within six months of the end of the financial year. Parliament and the relevant county assemblies are required to consider and take necessary action with regard to the audit report within three months after receiving it. This was introduced to prevent a backlog of audit reports that had not been considered and appropriate action taken by Parliament, a situation that has occurred frequently in Kenya's history.

The entire budgetary process at the national level ends when Parliament accepts the annual accounts of the National Budget.

Figure 6: The budget process

Estimating initial revenue and setting initial maximum expenditure (Setting the Initial Medium Term Macro-Fiscal Framework)

Issue of budget guidelines by Treasury and preparation of initial three-year budget estimates for sectors and line ministries

Determination of the vertical and horizontal division of revenue

National Treasury reviews sector budgets estimates, sector dialogues and preparation of a Draft National Budget

Preparation of the Medium Term Budget Policy Statement and drafting of the Division of Revenue Act and County Allocation of Revenue Act

Submission of the Budget Policy Statement and Revenue Sharing Bills to Parliament for consideration and approval

Submission of budget estimates to Parliament

Budget and Appropriation Committee of the National Assembly holds hearings on the budget estimates and report to the National Assembly

Enactment of Appropriation Bill into law

Budget execution

Audit and reporting

Table 2: National budget calendar

Activity	Responsibility	Deadline
Start of Financial Year 2013/14		1st July
Budget circular issued	National Treasury	30th August
Submission of Commission on Revenue Allocation (CRA) recommendations on vertical and horizontal division of revenue to Parliament	CRA	31st December
Submission of the Budget Policy Statement (BPS) to Parliament	National Treasury	15th February
Submission of the Division of Revenue Act (DORA) and the County Allocation of Revenue Act (CARA) to Parliament	National Treasury	15th February
Adoption of a report on recommendations on the BPS	Parliament	1st March
Approval of DORA and CARA	Parliament	15th March
Submission of budget estimates for National Government to Parliament	National Treasury	30th April
Submission of budget estimates and proposed appropriations for Judicial Service Commission (JSC) and Parliamentary Service Commission (PSC) to Parliament	Chief Registrar of Judiciary, Clerk of the National Assembly	30th April
Submission of comments on budget proposals for PSC and JSC	National Treasury	15th May
Public hearings on the Budget	Parliament	May
Reading of the Budget Highlights by the Cabinet Secretary in Parliament	National Treasury	15th June
Submission of the Finance Bill to Parliament	National Treasury	15th June
Approval of the budget estimates and assent to the Appropriation Bill	Parliament	30th June
Approval of the Finance Bill	Parliament	28thSeptember
Submission of audit report for previous FY to Parliament	Auditor General	31st December
Parliament completes review of the report and takes necessary action	Parliament	31st March

Source: Kenyan Constitution and Public Finance Management Act 2012

County budget process

The county budget process almost exactly mirrors the budget process at the national level. The only differences are in the first step where instead of the Medium Macro-fiscal Framework we have a Medium Term Integrated Development Plan. The county governments have a budget policy statement which is referred to as the County Fiscal Strategy Paper. Table 2 illustrates the budget calendar for the county process.

The Constitution is very clear that the county governments as part of their functions must involve the people in policy decision-making including the budget process. Key areas where the public needs to be consulted include:

(a) In the preparation of the County Integrated Development Plan
(b) In the preparation of the County Fiscal Strategy Paper
(c) Review of the budget estimates by the County Assembly.

The county governments therefore need to develop guidelines on public participation to make this process effective and efficient.

Table 3: Budget calendar for the counties

Timeline (deadline)	**Activity**
30th August	County Executive Member for Finance (CEMF) issues budget circular to all county entities and spending units (s. 128)
1st September	Integrated Development Plan submitted to County Assembly for approval by County Executive Member for Planning (s. 126 (3) and 125(1) (a))

21st October	County Budget Review and Outlook Paper (CBROP) is tabled in Assembly (s. 118 (4) (a)) and published as soon as practicable after that (s. 118 (4) (b))
	County Treasury prepares County Fiscal Strategy Paper (CFSP) taking into account the views of CRA, public, interested persons and any forum established by legislation. Must be aligned to policy objectives in the national BPS. CFSP is submitted to the County Executive Committee for approval (s. 117 (1) - (4))
28th February	County Fiscal Strategy Paper (CFSP) is submitted to the County Assembly (s. 117 (1)-(2))
14th March (within 14 days after CFSP being submitted	County Assembly adopts CFSP with or without amendments (s. 117 (8))
30th April	CEMF submits budget estimates. Must be in line with Assembly resolutions on the CFSP. (s. 129 (2)). Budget documents to include detailed list of entities that will receive appropriated money, shown by economic classification and vote. Should also include a summary, statement of how the estimates comply with fiscal responsibility principles and financial objectives, and how CFSP resolutions have been taken into account (s. 130 (6). It must be in a form that is clear and understood by the public (s. 131 (6).County Assembly Clerk submits estimates for County Assembly (i.e., its running costs) to Assembly, with copy to the CEMF (s. 129 (3))
As soon as practicable after presentation to the Assembly	County Executive Member of Finance (CEMF) publishes and publicizes estimates (s. 129 (6))
	CEMF submits comments on the estimates to the County Assembly

	Relevant County Assembly Committee meets to consider the estimates and make recommendations to the County Assembly. It must take into account the views of the CEMF (s. 131 (2))
	County Assembly considers estimates and approves with or without amendment, in sufficient time for the county appropriation law to be passed By 30th June (s. 131)
	County Assembly may amend estimates only if any proposed increase is balanced with a reduction in another appropriation, and any proposed reduction is used to fund the deficit (s. 131(3))
	After estimates are approved, CEMF submits County Appropriation Bill to the County Assembly (s. 129 (7))
15th June	County government must submit annual cash flow projection to the Controller of Budget (s. 127 (1)
30th June	Appropriation Bill must be passed by the County Assembly (s. 131 (1)
	CEMF makes a public announcement of the proposed revenue measures (s. 132 (1)). Finance Bill is tabled in the County Assembly at the same time (s. 132 (2))
	Assembly committee considers the Finance Bill and may amend, provided total revenue is consistent with the Fiscal Framework and County Allocation of Revenue Act and taking into account recommendations of the CEMF (s. 132 (3) & (4))
90 days after Appropriation Law is passed	County Assembly considers the Finance Bill and approves with or without amendments (s. 133)

Adopted from the World Bank, 2012

CHAPTER THREE

THE CITIZEN AND THE BUDGET PROCESS

As demonstrated in the introductory part of this guide, the money involved in the budgeting process is of such vast amounts that it would be foolhardy to leave the decisions touching on its use only to civil servants, county representatives, members of the National Assembly and the Senators, with the exclusion of citizens. Citizens also have a paramount role to play in the decision-making. They contribute the money for the budget through payment of taxes and as such deserve a say in how the taxes will be utilized in nation building, a feat which can only be accomplished through active participation in the budget process.

The Constitution has recognized that the citizen has a role to play in the budget process. It has facilitated that role by requiring that the process be open and transparent. The question then becomes; how can the citizen meaningfully participate in influencing the budget process?

Impacting of government policy

Although it may seem far removed from the budget-making process, influencing government policy has an effect on the budget allocation decisions. Since the introduction of the MTEF process in Kenya back in 2000, budget decisions are increasingly being made based on agreed policy. This is evident during the sector working group planning sessions where decisions on resource allocation within the sector, that is, between ministries and government agencies are based on policy priority. Citizens should ensure appropriate policies are implemented or enacted into law at both the county and national level as this affects their money.

Participating in the hearings on the budget

The budget process has established points where citizens are invited to give their comments and views on budget allocations. These are the hearings on the sector reports and the Budget Policy Statement before they are finalized. The Constitution further requires that the National Assembly Budget Committee seeks representations from the public when discussing and reviewing the estimates of revenue and expenditure (Art. 221(5)) and take into account the public's recommendations when making its submissions to the National Assembly.

The Public Finance Management Act requires that the Cabinet Secretary to the National Treasury develop procedures setting out the manner in which the public shall participate in the budget process. Similarly, the Act requires that in preparing the County Fiscal Strategy Paper, the County Treasury shall seek and take into account the views of the public.

Under the County Government Act, county governments are required to facilitate the establishment of structures for citizen participation including budget preparation and validation fora.

These two documents have a major impact on resource allocation decisions.

Budget monitoring

This can be done through citizen accountability forums. The participatory budgeting process offers an opportunity for Kenyans to monitor budget spending at both national and county levels. Since budgeting is based on policies agreed at sector levels, the ideal situation is where citizens have influenced the policies in those sectors. The citizens are well placed to not only to prioritize key issues, but also monitor the spending and allocation of revenue to the respective sectors.

This helps in preparing a score card for the national government as well as county governments in a given fiscal year. Delivery of services becomes indicative of government performance as expected by the citizens and depending on the allocated resources. Implementation of the budget therefore needs to be monitored to ensure that the targeted policy objectives that were identified as core are fully or substantially realized. This means that the citizenry is able to monitor the use of resources, monitor the speed at which the resources are dispensed for service delivery thereby ensuring better service delivery, transparency and accountability in management of funds and integrated development, both at national and county level.

Whatever shortfalls and challenges are realized during the budget-making process, implementation and monitoring process, these are factored and addressed in the next cycle of the budget-making process as well as through other administrative and legislative mechanisms, hence the aspect of integrated development.

Prior to the 2010 Constitution, budget monitoring was a herculean task due to the challenges in the budget-making process noted earlier in this document. For instance, it was difficult to understand the considerations taken into account in appropriation of resources between different sectors.

Hakijamii has for a long time been aware of the centrality of the budget and the budget-making process in as far as this relates to realization of economic and social rights. Accordingly, it started off with the concept and idea of a people's budget. This involved the review of previous financial budgets and making of recommendations to be considered in the subsequent financial year. This process was a joint effort between Hakijamii and its community partners and included analyzing allocations of key sectors like education, health, water and sanitation, land and housing, food security, security and safety, among others.

For instance, in the year 2007, Hakijamii and the People's Budget made the following proposals to the 2007/08 budget:

- Reduction in the number of ministries and commissions in order to save at least 50% of the recurrent expenditure
- Reduction of the fuel levy by 50% in order to reduce the cost of transport
- Allocation of more funds for upgrading of informal settlements
- Provision of electricity to urban informal settlements on similar terms as the rural electrification program
- Amendment of the then existing legislations, that is Constituency Development Fund and Local Authorities Service Development Act, to provide for direct representation of communities and participation in decision-making.

From the above recommendations, and in particular recommendation number 5, it's clear that the Kenyan citizenry were already clamoring for their right to take part in the process of deciding how their taxes would be used for purposes of service delivery. However, due to legislative inadequacies, this was not a walk in the park, since prior to the 2010 Constitution such recommendations would not be given much consideration by the technocrats involved in the budget-making process as well as the implementing ministries and agencies.

Fortunately, the current environment gives citizens the right and the mandate to monitor how funds are utilized. In particular, budget monitoring gives the citizenry a role in ensuring that the total revenue and expenditure planned for in the national and county budgets is adhered to as far as possible during the financial year, thereby enhancing transparency and accountability on the one hand, and effective and efficient delivery of services by the government, on the other.

Moreover, with the concept of progressive realization of economic and social rights, it is imperative for the citizens to identify basic standards from which they can measure and monitor the progressive fulfillment of these rights. The basic starting pointing as noted elsewhere in this document is at the prioritization level, which happens at each sector and the amount of funding allocated to each sector. Accordingly, besides establishing what the key priorities of the government are, the amount of funding allocated to each sector will form a basic monitoring tool of the aspect of progressive realization/fulfillment of the economic and social rights.

Some challenges to effective citizen participation in the budget process

Although public participation in the budget process is now explicitly entrenched in the Constitution and other laws, a number of challenges still remain. These include:

- **Resistance towards the "politics of participation":** many government officials are still reluctant to embrace the democratic space that allows for increased citizen involvement in governance. The culture of perceiving citizen demands for increased participation, accountability and transparency as being inspired by the opposition and other "dark forces" remains real. It is thus important to invest in grassroots sensitization of communities and community leaders to ensure sustained popular mobilization so that constitutional gains are translated into reality.

- **Inadequate transparency of budget information**: the budget information continues to be framed in terms and language that is largely incomprehensible to the majority of the population. Even for those people well versed in "budget parlance", the information provided is often inadequate, especially due to lack of disaggregation of the figures. Timely and easily accessible budget information is critical in ensuring effective and meaningful citizen participation in the process. It is hoped that the enactment of the Right to Information Bill will help to overcome some of these handicaps.

- **Lack of structured mechanisms for participation:** the current haphazard manner of public participation in the budget process is another serious challenge. The practice of simply placing notices in the newspapers is inadequate. There is an urgent need to develop clear and effective guidelines to facilitate participation as well as clear frameworks for explaining the responses to the recommendations that emerge from participation and why. The fact that legislation requires such guidelines to be developed is an advocacy opportunity that should be used by the public to demand for the same.

- **An insensitive legislature to citizens' demands on the budget:** the current trend by members of the National Assembly to simply ignore citizen concerns regarding the budget is a very worrying development that may render the entire public participation useless and largely ineffective. Pressure on the legislature to perform its constitutional legislative and oversight roles with regard to the budget process should be intensified by the public if citizen participation in the budget exercise is to have any meaning. The Constitution vests sovereignty on the people and Members of

Parliament should be made to understand this. Consistent naming and shaming may be one of the possible avenues of getting the legislature to respond to citizen demands.

- **Absence of any avenues for effective remedies:** despite the judicial reforms, it is apparent that citizens still lack any effective remedies. There are still no effective avenues for citizens to seek justice and redress when the process of participation has been disrespected or ignored. This calls for crafting of innovative ways to ensure that avenues for redress are established.

- **Inadequate citizen capacity:** the budget process still remains a highly technical area and very few citizens including civil society organizations have sufficient knowledge to meaningfully and effectively engage in the exercise. Capacity building and enactment therefore remains critical. This can be done through training and development of popular publications in easy-to-understand and accessible language. The media also has an important role to play in this by giving adequate airtime to issues relating to the budget.

CHAPTER FOUR

RECOMMENDATIONS AND CONCLUSION

Recommendations

In view of the above challenges facing public participation in the budget process, the following are some recommendations to improve the process:

National level

1) The National Treasury should develop and implement the circular providing for the structure for public participation in the budget process as required by the law.
2) Parliament should publicize their budget hearings in popular media so as to elicit better feedback from the citizens on the budget process.
3) A simple citizen guide to the budget should be prepared by the National Treasury that explains in simple terms what is contained in the budget estimates.
4) The National Treasury should publicize in popular media their public hearings on sectors reports and Budget Policy Statement so as elicit public participation.
5) Public participation guidelines and frameworks should be publicized by the National Treasury so that citizens and citizen groups can understand how to engage in the process.
6) Budget documents issued by the National Treasury should be written in a simple and easy-to-read language.
7) The National Budget and Appropriations Committee should hold its public hearings on the budget in every county to give all citizens a chance to participate in the budget process.

County level

1) The County Treasury should develop and implement guidelines providing for the structure for public participation in the budget process as required by the law.
2) County assemblies should publicize their public hearings on the budget in the popular media in their area so as to elicit public interest and participation as required by the Constitution.
3) A simple citizen guide to the budget should be prepared by the County Treasury that explains in simple terms what is contained in the budget estimates.
4) The County Department of Planning should publicize their hearings on the integrated development plan in the popular media so as to elicit interest and public participation in the development of the County Integrated Development Plan

Conclusion

There is little doubt that Kenya has made remarkable strides in expanding the space for public participation in governance and decision-making. The fact that the right to participation has been entrenched in the Constitution is quite significant. Other laws have also been passed that complement the constitutional provisions. All of these are clearly steps in the right direction and citizens should make maximum use of them. Sadly, in reality all of these still remain paper promises. It is therefore the responsibility of the citizens individually and collectively to continue piling pressure on the relevant state organs so that these gains can be translated into tangible and concrete policy benefits for the people. It is only through such efforts that the standard of living, especially of the marginalized groups and the poor, will be improved and the public confidence in the new order restored and sustained.

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