Preface

This publication is a joint project of the Commission for the Implementation of the Constitution (CIC) and the International Budget Partnership (IBP).

THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION (CIC)

The Commission for the Implementation of the Constitution is established under Constitution of Kenya 2010 with the mandate of monitoring, facilitating and overseeing the development and reform of legislation and administrative procedures for the effective and timely implementation of the Constitution.

INTERNATIONAL BUDGET PARTNERSHIP (IBP)

The International Budget Partnership collaborates with civil society around the world to analyze and influence public budgets in order to reduce poverty and improve the quality of governance. The IBP provides training and technical assistance to State and Non-State actors and conducts research on transparency and accountability of public finances in Kenya and around the world. Dr. Jason Lakin is the IBP's Senior Program Officer and Research Fellow based in Nairobi.

THE PUBLICATION

This publication responds to various issues that have been raised by the citizenry in relation to the public finance aspects of the Constitution and the Public Finance Management Act (PFM). The PFM Act was enacted to operationalize Chapter 12 (Public Finance) of the Constitution. CIC is of the view that unless there is an understanding of the key components of the Constitution and the Act, citizen participation in the public finance process, which is a national value and a requirement of the Constitution, will be compromised, hence this publication.

CIC will continue to work with other State and Non-State institutions in ensuring that the intents of the Constitution are met and appreciates the partnership with IBP that has made this publication possible.

This Publication can also be accessed at the CIC and IBP websites:
www.cickenya.org or www.internationalbudget.org/kenya

How to Read this FAQ

This FAQ is intended as a guide through the Public Finance Management Act 2012. It does not go through the Act line by line, however. Instead, it approaches the PFM Act from the perspective of a citizen who wants to participate in decision-making on issues related to how government raises and spends money. Because the way that decision-making on government finances is done is regulated not only by the PFM Act, but also by the Constitution and other documents, we also make reference to these.

The FAQ is organized around a series of questions that an ordinary person might ask about Kenya's budget process and other financial matters. These questions are captured in the Index immediately below this introduction.

However, there are also two additional features to make the guide easier to use. First, there is a glossary of terms. All terms that are highlighted in grey in the document are in the glossary at the end for easy reference. Second, there is a timeline for the national and county level budget process in Box I at the end of the document. This calendar is also useful for reference to help citizens follow the process throughout the year.

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Accountability

42. So all these laws are nice, but what really worries me is accountability. Kenya has had very nice laws and regulations in the past, but people still "eat" public money whenever they can. Do any of these laws create new ways to hold our officials to account?
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50. Documents are helpful, but is there anyone I can speak to if I have further questions?

1. What is the PFM Act and why should I care?

Conflict over the ways in which public resources—including land, services, and money, such as school bursaries—are shared between people in Kenya is central to the nation's history and citizen demands for change. The 2010 Constitution introduced new rules to change how these resources are shared that should mean a fairer distribution and one that benefits those that need help the most. The new rules are also designed to minimize waste and to sanction misuse of public resources.

The PFM Act sets the rules for how government at national and county levels can raise and spend money. Along with the 2010 Constitution, it is the main document that tells the President, MPs, Governors, Senators, County Assembly Members and ordinary people what role they have to play in decisions about how public money is used. If you care about how the government spends your money, and want to know how you can influence government spending, you should care about the PFM Act.

2. So what role does an ordinary mwananchi like me have to play in issues related to government spending?

We have a right to know how government is using public money. Remember, public money is money that belongs to all of us, because it is raised through taxes that we all pay, such as income tax, VAT and other sales taxes on commodities we buy every day. Public money also consists of grants and loans that government raises on behalf of all of us. The government does not have any of its "own" money; all of it belongs to the people of Kenya and is managed for us by government.

The main tool government uses to decide how to raise and spend money is the budget. In the past, the budget process was closely guarded and it was very difficult for ordinary people to know what government was doing with public money.

Under the new Constitution, citizens have a right to ask government to spend money on certain things, to know if government is really spending that money, and to be given information about how the money is being shared so we know if it is really fair or not.

This means that, as Kenyans, we can no longer simply complain about the way government uses money, but we must also participate whenever we can and monitor what government is doing to make sure it keeps its promises and uses public money well.

3. Okay, that sounds nice, but is there a legal basis for ordinary people to participate in the budget?

Absolutely, Let's start with the Constitution. In Chapter 12 on public finance, the Constitution says that "there shall be openness and accountability, including public participation in financial matters." The Constitution also says that the budget must be presented to the National Assembly no later than April 30 and that the Budget Committee of the Assembly must seek public input before making its own recommendations.

So this means that, every year in early May, you have an opportunity and a responsibility to tell Parliament what you think about the way government is spending its money, and what you think government's spending priorities should be[1].

You are probably thinking that it is not that easy for wananchi to meet MPs and tell them what they think of the budget. But, remember, the budget is about the money government spends on things you interact with everyday: public schools, school bursaries, agriculture subsidies, roads, health clinics, and so on. You know about the quality of these services and which things are working well and which are not. Parliament needs to hear from you about what the government's priorities should be. The rest of this FAQ discusses how you can participate in more detail.

Of course, for you to comment on the budget, it would also help you to have information about how much government is currently spending and how much it proposes to spend. That is why government must release information to the public in good time for people to see it. Article 35 of the Constitution guarantees every citizen the right to state information, and we must insist that all information about public spending is made available to the public.

4. I am just wondering: can I only participate in the budget process as an individual or can I also work with others?

Good question. Actually, it can be hard for any individual to influence the budget process alone because there are so many different voices asking for different things. Sometimes, it can be useful to work with others that share your concerns. For example, there are certain organizations focused on health or disability issues that may make a submission to the budget and if you were interested in those issues, you could contact them and add your concerns to theirs. Last year, the parliamentary Budget Committee received submissions from organizations like the Kenya National Union of Teachers (KNUT), the Child Welfare Society of Kenya, and the Economic and Social Rights Centre. You might want to join with a group that already makes a submission like one of these, or you might want to suggest to other organizations that share your interests that they too make a submission.

5. So there is a right to participate in the Constitution, but what about the PFM Act?

The PFM Act goes into more detail than the Constitution, and provides additional opportunities for participation. The public can comment on the overall direction the budget should take before it is tabled, and should have opportunities to engage with the Parliamentary Budget Office, which is a research office that advises Parliament on budget issues[2]. But the public is also given the right to participate throughout the entire budget process, which runs from the formulation of the budget, through its implementation, to evaluation of implementation[3].

6. So when do I need to be ready to participate in formulating the budget?

The PFM Act creates opportunities for citizens to participate at both the national and county level of government. This is important because some things that ordinary people care about, like education, will mostly be dealt with by national government. Other things, like health care, will mostly be dealt with by counties[4].

At the national level, the PFM Act mentions very specific dates that are important to remember. You may find it useful to refer to Box 1 at the end of this FAQ to see the whole budget calendar for the year.

If a citizen wants to input into the budget process from the beginning, the first important date is February 15. This is when the government must release what is known as the Budget Policy Statement (BPS) to Parliament.

The BPS is a statement by the government about its plans to raise and spend money in the coming financial year and the main priorities it will spend on. It is not yet the detailed budget proposal with all the specific numbers for each ministry. That document, known as the budget proposal, or Budget Estimates, comes later.

The law says very clearly that the government shall seek and take into account the views of the public in drafting the BPS. So this means that even before February, the government should create some opportunities for ordinary citizens to give their views on what government priorities should be, in keeping with the constitutional requirement for public participation in financial matters.

The budget year starts on July 1, so this statement is due 4½ months before the new budget year begins. The statement comes to Parliament on February 15, but it must be made available to citizens by the end of February. As soon as the BPS is published, citizens should read it and check to see whether government is taking into consideration their priorities.

Sometime in February or March, the Treasury often requests public submissions on the budget through a newspaper advert. In 2013, Treasury placed an advert on February 22. The advert called for the public to make submissions by March 1 via email at budget2013@treasury.go.ke. Whenever Treasury places this call for submissions, citizens can still try to influence the Budget Estimates before these are released to Parliament in April.

7. So we can check the Budget Policy Statement after it is released, but how do we influence it while it is being developed?

The government has typically held public hearings by sector (like health, or education) before the BPS is released. At these hearings, the public is supposed to be able to ask questions and make suggestions. For the 2012/2013 and 2013/14 budget years, Treasury organized county level hearings in November, 2011[5]. These were in addition to the main national sector hearings that are normally held at the Kenyatta International Conference Centre (KICC) in Nairobi. The Judiciary has also started to call public hearings before they submit their budget request[6].

In theory, the public can try to influence the BPS by participating in these hearings. In practice, it can often be difficult to comment or ask questions during these hearings because of the way they are organized. However, if citizens are well-informed and prepared, they could make better use of these hearings in the future.

These are the opportunities to participate in the formulation of the BPS that we know about, but the PFM Act also says that every year by August 30, the Cabinet Secretary for Finance shall issue a circular to all national government bodies that lays out in more detail how the public can participate in the budget-making process[7]. This may contain additional opportunities and specific dates on which public input will be sought.

Finally, the Act also says that regulations may be drafted to provide more detail on the manner of public participation under the Act. For example, regulations may specify the procedures for the public to be notified and to comment on financial matters, and regulations may provide for special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups[8].

8. When can we see the government's detailed budget proposal (Budget Estimates) with the amounts set aside for specific programs in education and health?

Parliament is supposed to debate and approve the BPS by the end of February. Then, by the 30th of April, the government must send its full proposed budget (Budget Estimates) to Parliament. At the same time, both Parliament and the Judiciary must also send their proposed budgets to Parliament by April 30th[9].

9. So the Judiciary now formulates its own budget and sends it to Parliament?

Yes. Under the 2010 Constitution, Parliament and the Judiciary set their own budgets. This is a big change from the past. These budgets are no longer controlled by the Ministry of Finance, although the Cabinet Secretary for Finance is given until May 15th to formally comment on the submissions from Parliament and the Judiciary.

These reforms were intended to make certain that there was a real separation of powers in Kenya and to break from past experience, where Parliament and the Judiciary were subservient to the executive.

10. Maybe I missed it, but when is the government's budget proposal made available to the public? You said it must be sent to Parliament by April 30, but when does the public get to see it?

You didn't miss it. The PFM Act provides that the budget estimates should be made known to the public "as soon as practicable" after tabling in the National Assembly[10]. Due to the indefinite nature of this provision this is an area where citizens really need to insist that the regulations be written or changed to ensure that the public gets the proposal (the Budget Estimates) no more than a week after Parliament does.

This is important because, as we mentioned earlier, the Constitution says that the parliamentary Budget Committee must seek input from the public on the budget before it makes its recommendations. This should happen in May. But if the public has not yet seen the Budget Estimates, as happened in May 2012, it is difficult to give meaningful inputs. Citizens must insist that in order to participate, they need information.

11. Are there are any limits to the kinds of changes that we can request Parliament to make to the budget proposal?

Yes. You can only ask Parliament to make changes that the law allows. The PFM Act restricts Parliament in one major sense. It says that if Parliament wants to spend more on a particular area, say education, it must cut an equal amount of funding from another area. This is designed to avoid changes to the budget that increase the deficit. Parliament is allowed to cut spending without limit to decrease the deficit[11].

If Parliament is not happy with the overall level of spending, revenues or the deficit, it can try to adjust these issues when it debates and amends the Budget Policy Statement. By the time of the budget proposal (Budget Estimates), however, it is restricted to making changes that do not raise the deficit.

12. **Okay, so let me see if I have understood: every year between April 30 and June 30, Parliament can make changes to the budget proposal as long as they don't increase the deficit, and the public can participate in debate with MPs about the budget and make suggestions any time during that period? So there is plenty of time to participate, right? Two full months?**

That is almost right, but not quite. In fact, the Constitution puts some limits on the process by which Parliament makes changes to the budget proposal.

Remember that the parliamentary Budget Committee has to table a report on the budget first in order to start the debate on the budget in Parliament. The Constitution requires that Parliament can only make changes to a budget bill "in accordance with the recommendation" of the Budget Committee[12]. Once the Budget Committee has tabled its report and this report has been approved by the National Assembly as a whole, there are limits to the kinds of changes that can be made.

This puts the Budget Committee in Parliament in a very powerful position. It means that the main opportunity to participate is to make inputs to the Budget Committee. In general, the Budget Committee has sought input from the public in May, which means this is the most important time to participate (See Box 1). It also means that the time for the Parliament as a whole to debate the budget is not really two months, but closer to one month.

Now, after the Budget Committee makes its report, this then becomes the basis for the Appropriations Bill that is tabled in Parliament. The Appropriations Bill is the bill that authorizes the government to spend the money that is in the budget proposal. Parliament must debate and approve the Appropriations Bill. This then becomes the Appropriations Act, also known as the approved budget.

The bottom line? The best time for you to participate in changing the budget proposal is in May when the Budget Committee is actively seeking inputs from the public. This does not mean you should only approach the Budget Committee. If you are interested in, say, health issues, the Health Committee will also be engaging directly with the Budget Committee at this time, and you can take up your concerns with the Health Committee as well.

13. So how does the Budget Committee actually get views from the public?

In 2012, the Budget Committee left Parliament and held public hearings in 17 counties. The public and civil society were also able to make written submissions to the Budget Committee. The Budget Committee then tabled its report in Parliament based on all of these submissions on June 6. It is likely that the Committee will follow a similar process in future, but citizens can always check on this by contacting the Parliamentary Budget Office for details about when and how the Committee will engage with the public (see Q50).

14. I know that in the past, the budget hasn't always been approved before the new financial year starts. Does the PFM Act say anything about what happens in this case?

Yes, this has often been a problem. In fact, the Constitution regulates this problem. When the budget is passed in Kenya, it is done through what is known as an Appropriations Bill. This is basically just a bill that shows the total amount of money that Parliament is approving for each Ministry, Department and Agency (or each "vote," as they are known). So, once Parliament has made changes to the budget proposal, the Cabinet Secretary for Finance should lay an Appropriations Bill in Parliament specifying the funds to be used over the next year. Once approved, this becomes the Appropriations Act, and represents the final approved budget.

The Constitution states clearly that if the Appropriations Bill is not likely to be passed before the new financial year starts, the National Assembly can authorize spending up to one-half of the amounts that have been proposed for the coming year. This is designed to avoid the government being shut down due to lack of money.

This issue has already led to lawsuits in Kenya. The courts have ruled that, in general, this procedure can only be used if the Appropriations Bill has been tabled in Parliament, but is not likely to be approved on time. It cannot be used if the Treasury has failed to table any Appropriations Bill.

This is important because if the National Assembly votes to start spending money when there is an Appropriations Bill, it means that the Bill reflects amendments to the budget proposed by Parliament. If there is no Bill, it means that the proposal in Parliament is still that from the Executive, and does not include changes introduced by Parliament to the budget. If the law allows spending based on the Executive's budget proposal, this gives the government an incentive to delay introducing the Appropriations Bill so that it can start spending money based on its proposal, rather than Parliament's. Citizens should be vigilant to ensure that this does not happen.

15. Besides participating in the formulation of the budget, I have heard about Kenyans monitoring whether funds are actually spent the way they are supposed to be. Some groups have monitored Constituency Development Fund (CDF) money, for example. Do the new laws also create new opportunities to monitor the implementation of the budget?

Yes. Citizens can also monitor whether what goes in the budget is actually spent. The PFM Act mandates government to provide information to the public about actual spending and whether it is consistent with the approved budget at specific times during the year. (See Box 1 for the budget calendar).

The final budget is supposed to be published 21 days after it is approved by Parliament[13]. Since the budget is to be approved by June 30, this means that the final approved budget should be made available by late July. This document, the final "enacted" or approved budget, is the basic document that any citizen needs to be able to track government spending through the year. This is the government's promised spending.

After the new budget year begins on July 1, there should be a report on spending after every three months (a financial quarter). The government has 45 days after the end of the 3 month period to produce and publish a report on how much it actually spent as against what it promised to spend[14]. These reports are essential reading for citizens who want to know whether, for example, the government has really spent what it said it would on hospitals.

In early November, the government must publish the Budget Review and Outlook Paper[15]. This reviews spending from the previous year and takes another look at the broad economic assumptions in the Budget Policy Statement for the current year to update them. This is another chance to see if government has met its goals for spending. It is also a chance to see if the economic situation is changing in Kenya, meaning that there is more or less money available for citizen priorities.

The law also states that the Controller of Budget, a new position in Kenya created by the Constitution, must oversee and provide the public with information about the implementation of the budget at national and county level throughout the year[16]. The Controller of Budget should let citizens know if government is spending money the way it is supposed to, and should also prevent government from spending money in unlawful ways.

One additional set of reports that citizens may want to monitor in election years are the pre-election and post-election economic and fiscal updates. The first of these reports must be released within four months of the election, and the second, no more than four months after an election. The purpose of these reports are to help citizens understand how much money is being spent on elections and what if any implications this has for the economy. For example, the reports should include information about planned and actual spending on the Independent Electoral and Boundaries Commission (IEBC) and any increase in police or security forces[17].

16. We have been talking about citizens monitoring the budget. Besides checking to see that government is spending what it promised, are there other rules that the government must follow in its budgeting?

Yes. The PFM Act lays out a set of “fiscal responsibility principles” that should be observed[18]. These include:

*When we look at spending over a three to five year period, at least 30 percent of the budget should go for development (or capital) expenditure

*Some limit should be put on the share of spending that goes for wages and benefits for public officers (but the exact limit is to be set in separate regulations)

*Again over a three to five year period, government borrowing should only be used for development or capital expenditure

*Public debt should be maintained at a sustainable level (Parliament must set the exact level that it considers sustainable)

*Tax rates should be reasonably stable and predictable

17. I often read in the newspaper people fighting about whether Kenya has too much debt. Does the PFM Act also say more about government debt beyond that it should be maintained at a "sustainable level"?

Yes. First, the law requires government to report information about its debts on an annual basis at the same time as the Budget Policy Statement (February 15). No more than two weeks after tabling this report, it must be made available to the public[19].

In addition, there should be a report every four months on loans to the government, so that no one is caught by surprise at the end of the year by changes in what is owed and what has been paid during the year[20].

The law also establishes a Public Debt Management Office to manage government's approach to borrowing and to keep the cost of that borrowing to a minimum. The Public Debt Management Office is also responsible for collecting and providing information on government debt[21].

Importantly, the head of this office must be recruited through a competitive process. This is not a political appointment, though it serves under the Cabinet Secretary for Finance.

Each year, the level of debt must be agreed in the Budget Policy Statement, which must be approved by the National Assembly. Loans may only be contracted to pay for allocations approved by Parliament. Again as stated in Q16, over a three to five year period, government borrowing should only be used for development or capital expenditure.

18. I also have read in the newspapers about the government paying off the debts of state corporations. This means that the debts of state corporations may also become a responsibility of taxpayers. Does the PFM Act ensure that the public knows about the debts of state corporations?

The law does require state corporations to release more information about their activities. A report must be produced every year within four months of the end of the year that provides extensive information about the financial position of all state corporations. This report must include information on any public loans made to state corporations, and any debts that the government has guaranteed.

It is often the case that the debts of state corporations are not initially supposed to be covered by taxpayers, but this can change suddenly if these corporations perform poorly. For this reason, it is important to look at all of the financial information about the performance of these corporations that will be in the annual report.

19. What about grants? Are there any limits on grants that the government may receive, such as money from development partners?

The main limitation put on grants is that the Cabinet Secretary for Finance must approve any grant or donation that goes to any national government entity. The law also says that the grant must be accounted for using national financial accounting systems. The law instructs Parliament to pass regulations governing grants separately, but these regulations should ensure that grants are consistent with the national development plan. The purpose of these rules is probably to prevent individual government agencies from getting grants to do things that are not in line with government plans, like Vision 2030, or that duplicate things other agencies are trying to do or already spending money on.

The law also prevents government agencies from starting to spend money from grants before the money has been appropriated by the National Assembly, or the Cabinet Secretary has otherwise given written approval. This is designed to prevent government agencies from beginning projects based on matching funds that have not yet been officially committed by the Parliament.

20 I understand that sometimes, even if the government plans well, there may be unexpected events that may result in a need to adjust the budget. Does the PFM Act allow for this?

There are three ways in which the government can respond to unexpected circumstances. First, accounting officers are allowed to make small changes to their budgets of up to 10 percent of the total. In other words, they can shift money between different areas within their ministry or "vote" with the approval of the National Treasury, but they do not need to return to Parliament for approval[22].

For routine changes to the overall budget that result from the normal inability to fully plan for the future, the Constitution itself provides for a supplementary budget. This must be approved by Parliament within two months after the money is spent through a new appropriations act, and it may not exceed 10 percent of the total budget for the year unless special permission has been granted by Parliament[23].

Finally, in the case of disasters, the PFM Act creates a Contingencies Fund[24]. This may be used only in extreme circumstances where an unforeseen event "threatens damage to human life or welfare." The Contingencies Fund is to be maintained with 10 billion KSh. Money from the Contingencies Fund may be used in a disaster without parliamentary approval, but the Cabinet Secretary must table a report explaining its use within two months for Parliament to approve it.

21. I thought we were headed toward devolution, but you have only been talking about the national government. What happened to the counties?

The counties are very much in the PFM Act. Remember that counties will have two main sources of funding: revenues they raise on their own, and revenues that are transferred to them by the national government. The revenues from national government, which must be at least 15 percent of revenues collected by national government, will be the larger share. It is possible for counties to receive funding from loans or grants from donors as well. But, for most counties, their single biggest source of revenue will be in the form of transfers from the national government.

Nevertheless, counties will also want to find ways to enhance their own revenues. As per the Constitution, counties can generate revenues from property and entertainment taxes, and from fees charged for services. Any additional taxes that counties may wish to introduce must be approved by Parliament first (see Q39 for more on taxes). The Constitution also gives the new Commission on Revenue Allocation (CRA) responsibility for assisting counties (and national government) to find new sources of revenue (see Q23 for more on CRA)[25].

22. I thought there was also something called an Equalisation Fund that would give money to counties. How does that work?

The Constitution does create something called an Equalisation Fund. This Fund receives one half of one percent of all national revenue each year and is to be used for basic services in poor areas. However, the Constitution says that the Fund may be spent either directly by the national government, or it may be given to counties as a conditional grant. The Commission on Revenue Allocation (see Q23 for more on CRA) must make a recommendation on this.[26] If the money is given to counties as a conditional grant, then it will be part of their revenues. However, if it is spent by national government, it would not be part of a county's funding. Either way, the Fund will only constitute about 3 billion KSh based on the 2010/11 budget figures, or less than 2 percent of the total monies that are to go to counties based on the CRA recommendations from 2012.

23. Who decides how much money the counties actually get?

The Constitution says that a new body called the Commission on Revenue Allocation(CRA) must make recommendations for the share of revenues that the national government should keep, and the share that must be given to the counties as a group.[27] It is also responsible for making recommendations for the way that the total revenues for counties are shared among all 47 counties. The recommendations must take into account a set of factors laid out in Article 203 of the Constitution, including the development needs of each county and the efficiency of each county's spending.

The CRA must send its recommendations at least six months before the beginning of the financial year (that is, by the beginning of January), unless the Cabinet Secretary for Finance and the CRA agree to a later date.[28] Although the CRA makes a recommendation on the total share of revenues that go to counties, and the amount that goes to each individual county, the actual decision remains with the Senate and the National Assembly. Every five years, the Senate and the National Assembly must agree on how money will be shared among counties.[29] In other words, they must agree to a general formula or set of criteria for sharing resources between counties.

In 2012, CRA proposed, and Parliament adopted, the first formula for sharing money between the counties. The formula weighs different factors in deciding how much each county will get. The final formula has the following weights: county population (45%), county poverty level (20%), land area of the county (8%), county's level of fiscal responsibility (2%), and a basic share that is equal for all counties (25%)[30].

This does not mean that the counties will receive the same amount every year for five years. For example, suppose that Parliament agreed with CRA that each county should receive a certain amount of money based on its population (as it did last year). Counties will continue to receive money based on their population and other criteria for 3 years, and then another formula may be adopted for the next 3 years. After that it will be revised every 5 years. However, if the total amount of money to be shared changes each year (e.g., because total government revenues increase), or new data shows that the populations and other criteria of counties are changing (e.g., new census data is released), the actual amount they receive each year will be different based on these changes.

Therefore, the actual sharing of resources must be approved by the Parliament annually through a Division of Revenue Bill and a County Allocation of Revenue Bill. The Constitution requires these two bills to be presented to Parliament no later than when the overall budget estimates are presented (by April 30)[31]. However, the PFM Act actually moves this up so that they are to be presented with the Budget Policy Statement (by February 15th). This makes sense, since we need to know how much money the national government is going to have in order to divide it up among ministries and agencies. These bills are to be approved within 30 days of tabling in Parliament[32].

24. When will the counties get their money?

The law states that these transfers for counties must be sent at the beginning of every quarter, and no later than the 15th day of the quarter[33]. The law also requires that the quantity of money and the timing of the releases be printed in the official gazette. This is very important, because in many countries that have tried devolution, there are long delays in receiving money from the national government. Making it a legal requirement that money be distributed regularly at a set time allows citizens to monitor whether national government is meeting its responsibilities to counties. The PFM Act also sets up a consultation mechanism through which any problems associated with the release of money to the counties can be discussed and resolved (see Q26).

25. Are there any conditions under which the national government can refuse to send money to the county governments?

Yes. Under exceptional circumstances, the Constitution allows the national government to stop up to 50 percent of the funds flowing to a county government for a period of 60 days. Parliament must approve this stoppage of funds, and must renew by legislation any stoppage that is longer than 60 days. Such measures can only last 60 days at a time before they must be renewed.

The Constitution says that the national government may only stop the flow of funds to county governments for "serious material breach or persistent material breaches" as established by legislation. This is then further spelled out in the PFM Act. The PFM Act defines these breaches to include:

- failure (by the county) to make payments when due,
- default on financial obligations,
- excessive deficits beyond what the law allows,
- more than 2 months delay in submitting financial statements to the Auditor-General,
- concerns raised by the Controller of Budget or the Auditor General about the finances of the county,
- and any additional financial problems that prevent the county from carrying on normal business of procuring goods and services[34].

Within 7 days of stopping funds, the Cabinet Secretary for Finance must seek approval from Parliament, which has 30 days from the date of stoppage to grant it[35]. When a county has had its transfers stopped by the national government, the Cabinet Secretary must come up with a "recovery plan," working together with the county governor, to fix the problems in the county and eventually restore funding. This must include a clear timeframe for a full reinstitution of funding[36].

26. It seems like it might be necessary for the national and county governments to coordinate from time to time, since they share revenues and responsibilities. Does the PFM Act say anything about how national and county governments work together?

Yes. The Act creates something called the Intergovernmental Budget and Economic Council for just this reason. This body brings together the County Executive Members for finance from all 47 counties with the Cabinet Secretary for Finance at national level. It also includes representatives from the Judiciary and Parliament, and from the Council of County Governors. Finally, the Cabinet Secretary for intergovernmental affairs also sits there.

This body is designed as a space for consultation on all major budget issues, including the distribution of revenues between levels of government. The Council is to meet twice a year and is chaired by the Deputy President.

27. Okay, that is all fine, but I want to know about the county budget process and how I participate. That is why you told us we should be interested in the PFM Act in the first place. So when and how do we get involved in the county budget?

Good question. In many ways, the county budget process is similar to the national budget process. You probably want to review Schedule Four of the Constitution, though, which lays out the responsibilities of counties and national government, so you know what kinds of things to expect to find in county budgets. For example, counties are not responsible for primary, secondary or university education, so you won't find those things in a county budget. But counties are responsible for health clinics and pharmacies, so you should look for those in county budgets.
Once you have figured out which issues you care about that counties are responsible for, you need to know when and how to express your views.

Before there is a budget, there should always be a plan. The county budget is supposed to be based on a county development plan. This plan must be submitted to the County Assembly by September 1 each year, and must be made available to the public within 7 days of it being sent to the Assembly. This plan should form the basis for the next budget, so it is important to read it and comment on it.

Many counties, possibly including your own, have started to create “citizen-led” strategic plans and frameworks. You should also find out if such a planning process exists in your county and how to be part of it. To see an example, look at this draft Machakos Strategic Framework (still to be finalized), available here: http://www.kenyampya.com/userfiles/file/Machakos%20Strategic%20Plan%20Draft.pdf

28. So I guess I should comment on the county development plan when it is published in September, but can the public also influence the plan while it is being developed?

Yes. The law establishes a new body at county level called the County Budget and Economic Forum. This body is supposed to encourage consultation with the public about county plans and budgets, including the county development plan. It is a mixed body that contains county officials and also nominees from the private sector and non-state actors. The law allows county organizations representing professionals, business, labour, women, persons with disabilities, the elderly and faith-based groups to nominate members. This is an opportunity for civil society to influence who sits on this body and consults on the county budget.

Unfortunately, the law is not very specific about how the Forum will work, and some CSOs and professional associations have raised concerns that it could be dominated by the Governor and his or her friends, rather than the public. It is up to you and to residents in each county to make sure that the Forum becomes a space for real consultation.

You can read more about the Forum and the concerns that have been raised at: http://internationalbudget.org/wp-content/uploads/Joint-Brief-on-Participation-in-Kenyas-New-PFM-Law.pdf.

29. Okay, so we have tried to participate in the planning process, but how do we get involved in the budget and make sure our priorities are really being addressed?

The county budget process begins with a paper that is like the Budget Policy Statement (BPS) at national level(see Q6), but is known as the County Fiscal Strategy Paper (CFSP). This paper has to be tabled in the County Assembly by February 28 each year[37].

Remember that the BPS has to be tabled in the national Parliament by February 15. The County Fiscal Strategy Paper must take the BPS into account, so this gives the counties two weeks to read and understand the BPS and figure out how to align their own plans with it.

Just as at the national level, the CFSP should provide an overview of plans for raising and spending money at the county level for the next year, while considering a 2-3 year perspective. And just as at the national level, the CFSP must take into consideration public views. So this is a first chance for county residents to input into the budget for the coming year, possibly through the County Budget and Economic Forum (see Q24).

Once the County Treasury has submitted the CFSP to the County Assembly on February 28, it has 7 days to make this paper available to the public. The County Assembly has 14 days to approve it[38]. This could provide as much as one week for the public to engage with the County Assembly to discuss any concerns it may have with the CFSP before it is approved by the Assembly.

Remember, this is a broad document, so the kinds of issues you might raise are whether the county is planning to spend enough on investments as opposed to wages, and whether you agree with the types of investments it plans to make (e.g., roads versus bridges). You might also raise issues around the level of the deficit and whether it is sustainable.

As at the national level, the PFM Act also says that every year by August 30, the County Executive Committee member for finance shall issue a circular to all county government bodies that lays out in more detail how the public can participate in the budget-making process. This may contain additional opportunities and specific dates on which public input will be sought[39].

30. Since the County Fiscal Strategy Paper comes after the national Budget Policy Statement, does that mean the county budget proposal also comes after the national budget proposal?

Actually, no. The county budget proposal must be tabled in the County Assembly on April 30, just like the national budget proposal[40]. This means that the County Executive has less time to make adjustments based on the County Assembly's amendments to the County Fiscal Strategy Paper before the budget is tabled. But it also means that the County Assembly has the same two month period, until the end of the fiscal year on June 30, to debate and amend the county budget proposal. And that means you, the citizen, have time to participate.

However, once again, the PFM Act does not clearly state when the county budget proposal should be made public. The County Executive Committee member for finance is only required to make the county budget proposal public "as soon as practicable" after submitting it to the County Assembly. So, once again, citizens must demand that they receive the proposal within one week of its tabling in the Assembly.

31. At the national level, the Budget Committee seems to be a very important entry point for the public to give input into the budget. Is there a budget committee in the County Assembly as well?

Good question. Yes, the PFM Act envisions a county level budget committee in the County Assembly that is to review the budget proposal and make recommendations to the County Assembly. The only difference with the national level is that the role of this committee at county level is not described in the Constitution. However, the PFM Act does state that this committee should take into account the views of the public before it makes its recommendations [41]. It is reasonable to assume that it might also hold hearings, like the national parliamentary Budget Committee, to get views from county residents.

Because the county budget committee is not in the Constitution, it is not as powerful as the national parliamentary Budget Committee. In other words, there is not the same restriction that the County Assembly can only modify the budget in ways that have been endorsed by this committee (see Q12). The County Governments Act introduces a provision that restricts the changes that a county assembly may make to those that are "in accordance with the recommendation" of the budget committee[42].

32. Are there restrictions at county level on the kinds of changes the County Assembly can make to the budget like there are at national level?

Yes. The same restrictions apply (see Q11). The County Assembly can increase spending on particular areas only if it reduces spending elsewhere to avoid an increase in the deficit. Spending may be reduced in any area to reduce the deficit[43].

33. Are there any other restrictions on how the county government spends money like those that apply to the national level?

Yes. Just as at national level, there are certain fiscal responsibility principles that must be followed [44].

*The county's recurrent spending should never exceed its total revenues

*When we look at spending over a three to five year period, at least 30 percent of the budget should go for development (or capital) expenditure

*Some limit should be put on the share of spending that goes for wages and benefits for public officers (but the exact limit is to be defined by county regulations)

*Again over a three to five year period, government borrowing should only be used for development or capital expenditure

*Public debt should be maintained at a sustainable level (though this is to be defined by County Assembly)

*Tax rates should be reasonably stable and predictable

34. At the national level, there are ways to adjust the budget after it is approved, like the supplementary budget and the Contingencies Fund. Are these also there at county level?

Yes. Counties may establish something known as a County Emergency Fund. This is similar to the Contingencies Fund at national level and is only to be used in exceptional circumstances that pose a danger to human life, welfare or the environment (see Q20) [45]. Payments from the Emergency Fund should not be greater than 2 percent of the previous year's total revenues. These payments must be approved within two months after they are made by the County Assembly.

There is also a procedure for a supplementary budget at county level, which is quite similar to that at national level. A supplementary budget request can be submitted for up to 10 percent of the total budgeted expenditure for the year, unless the County Assembly has specifically approved a higher limit. The money must be approved by the County Assembly within two months after it is used [46].

Finally, just as at national level, accounting officers can, with the approval of the County Executive member for finance, adjust spending within their agency (or vote) by up to 10 percent [47].

35. At the national level, Parliament can approve spending even if the Appropriations Act has not been passed. Is this also true at the county level?

Yes. The procedure is the same as at the national level [48]. See Q14 above.

36. Okay, so what about monitoring implementation of the county budget?

Again, this starts with the enacted budget, which is government's promise to spend for the year. The enacted (or approved) budget takes the form of a final Appropriations Act approved by the County Assembly. As at national level, the approved budget should be available within 21 days of passage by the Assembly, which, in the absence of delays, would be by late July [49].

As at national level, there should also be quarterly implementation reports that provide financial and non-financial information on the performance of county government entities. These reports should be prepared and consolidated within a month after the quarter ends (every 3 months) and submitted to both the County Assembly and the public for oversight and monitoring [50].

By September 30 each year (the end of the first quarter of the financial year), the County Treasury must submit to the County Executive Committee its Budget Review and Outlook Paper [51]. This paper is to be approved or amended by the Executive Committee within 14 days and then tabled in the County Assembly. It should be published after that "as soon as practicable." This paper is also important for citizen monitoring, because it should compare the last year's budget to actual performance and explain failures to implement the budget as planned.

37. We talked about new requirements for national government to explain how it is managing debt and to maintain debt at sustainable levels. What about counties?

The requirements for counties are similar. For example, by February 28th, along with the County Fiscal Strategy Paper, the county government must present a debt management strategy paper to the County Assembly each year [52]. The law lays out clearly the contents of this paper.

During the year, the County Treasury must also report every quarter on county government loans to the County Assembly [53].

One important difference between national and county debt is that the Constitution limits the degree to which counties can take on debt. All loans that a county wants to obtain must be guaranteed by the national government, meaning that national governments will pay off the loan if the county fails to do so [54].

This means that counties will have to request a formal guarantee from the national government before they agree to a loan, in addition to getting the approval of the County Assembly.

38. Can individual counties also receive grants and donations from development partners?

Yes, they can. The rules are exactly the same as at the national level (see Q19), except that the approval must be given by the County Executive member for finance, rather than the national Cabinet Secretary for Finance [55].

39. Up to now, we have talked about spending, and we have talked about debt, but what about taxes? Does the PFM Act have anything to say about taxes at national and county level?

Yes, it does. But the place to start is the Constitution, which clarifies which taxes may be raised at each level of government [56]. The Constitution clarifies that the national government may impose: income tax, value-added tax, customs duties and excise tax (another form of sales tax).

Counties may impose only: property taxes, entertainment taxes, and other taxes that have been specifically approved by the national Parliament. Both levels of government may charge fees for services they provide.

Now, under both the old and new system in Kenya, taxes are actually dealt with separately from the budget proposal in something called the Finance Bill. The Finance Bill, which when passed authorizes the government to collect revenue, is introduced into the national Parliament in June. The PFM Act suggests that this will continue to happen when the budget speech (or budget policy highlights) is read in Parliament, which is normally on a date in June that is commonly agreed across the East African Community [57].

According to the Act, the Finance Bill must be approved by Parliament within 90 days of the budget approval (that is, 90 days after the Appropriation Act is passed) [58].

So this means that it normally must be passed by September 30, which is 90 days after June 30, which is the last day to pass the annual budget. However, as we discussed above, it is possible for the Appropriations Bill to be delayed, which could push this date back.

In any event, there are theoretically up to three months to debate the tax side of the budget after the budget proposal is approved, and this is another opportunity for the public to engage with Parliament.

Incidentally, the PFM Act also mandates the Cabinet Secretary for Finance to publish information within 21 days of the end of every month about the actual revenues collected during the month [59]. This allows the public to monitor whether government is meeting its revenue targets or not.

40. Okay, so that is for national taxes, but what about the county taxes?

The system at the county level is identical. There is a County Finance Bill, which is introduced when the revenue measures are announced to the County Assembly by the County Executive member for finance. The County Finance Bill must be passed within 90 days of the approval of the county budget, so it is on a similar timetable to the national Finance Bill [60].

41. We have discussed many documents. Can you just review for me the key documents that must be made available to the public at county and national level and when to expect them?

Certainly!

National Level

Commission on Revenue Allocation recommendations for sharing revenue. To be submitted by January 1 to national and county executives and legislatures.

Budget Policy Statement. Tabled in Parliament by February 15. Released to public within 15 days.

Debt Management Strategy Paper. Tabled in Parliament by February 15. Released to public within two weeks.

Budget Estimates. Tabled in Parliament by April 30. Released to public as soon as practicable.

Budget Review and Outlook Paper. Submitted to Cabinet by September 30. Released to the public by sometime in November.

Quarterly implementation reports on national budget. To be made public within 45 days of the end of each quarter.

County Level

County Development Plan. Tabled in County Assembly by September 1. Released to public within 7 days.

County Fiscal Strategy Paper. Tabled in County Assembly by February 28. Released to public within 7 days.

County Debt Management Strategy Paper. Tabled in County Assembly by February 28. Released to the public as soon as practicable.

County Budget Estimates. Tabled in County Assembly by April 30. Released to the public as soon as practicable.

County Budget Review and Outlook Paper. Submitted to County Executive Committee by September 30. Released to the public as soon as practicable.

Quarterly implementation reports on county budget. To be made public within 30 days of the end of each quarter.

42. So all these laws are nice, but what really worries me is accountability. Kenya has had very nice laws and regulations in the past, but people still "eat" public money whenever they can. Do any of these laws create new ways to hold our officials to account?

Of course, a law is only a piece of paper. It has to be enforced by the government, by the courts, and by citizens using and defending it. So no law can create accountability by itself.

However, the PFM Act does create a system of accountability, in the sense that there are people who are given clear responsibilities for certain things and face clear sanctions for failure to follow the rules. Citizen participation is important, because citizens must understand who is to be held to account and must demand accountability.

The main person who is accountable for the use of public funds in most government entities is the accounting officer. This is true at national and county level. An accounting officer is a formal title that is given to someone working at a government agency. The law makes very clear the reporting and other responsibilities of these officers.

Accounting officers at national level are to be appointed for each and every government entity by the Cabinet Secretary for Finance in writing [61].

At county level, they should be appointed by the County Executive Committee member for finance [62]. Thus, there should be no confusion about who is the accounting officer.

The law says that the accounting officer for a government body is responsible for planning and budgeting for their entity, and preparing and keeping all financial records. They must further use public funds in a manner that is lawful and that is "effective, efficient, economical and transparent [63]."

The law also makes it clear that accounting officers who believe that money is being used improperly in their agency must approach the Cabinet Secretary responsible for the agency, the Chief Justice, or the Speaker of the National Assembly and make their concerns known [64].

If there is not an adequate response from any of these officials, the accounting officer must present his or her case to Parliament [65]. The purpose of these clauses is to ensure that where different government officials work together to misuse funds, accounting officers can report financial mismanagement to bodies higher than themselves and beyond their direct supervisors. Not only can they do so, but they are bound to do so by the law.

In the chain of command created by the law, an accounting officer is responsible for public officers under his or her control at the entity where he or she is an accounting officer, and is responsible for disciplining them. The accounting officer is under the disciplinary control of the Cabinet Secretary responsible for that government entity [66]. This means it is the Cabinet Secretary who is responsible for making sure the accounting officer is held to account.

43. Okay, so what happens if the accounting officer and the Cabinet Secretary work together to misuse funds? Who can hold them accountable?

Again, no system is perfect. If an accounting officer is responsible to a Cabinet Secretary, but both work together to defraud the public, the first question is how the public can get to know about it. All government entities must have an internal audit system that should allow them to find irregularities of this type [67]. In the event that internal audits fail to uncover abuse, government entities are also audited externally by Kenya's Auditor-General (Kenya National Audit Office, KENAO). All accounting officers are mandated by the law to submit financial statements annually to the Controller of Budget and the Auditor-General for audit within three months of the end of the financial year [68]. The Auditor-General must audit all government agencies and table a report based on his or her findings in Parliament. The Controller of Budget is also responsible for ensuring that money is used lawfully before authorizing expenditure at both national and county levels.

44. You mention that audit reports by Kenya's national auditor looking at the performance of government agencies are tabled in Parliament. Are these also available to the public?

Yes, all audit reports should be made available to the public. Some of these reports are on the website of the Kenya National Audit Office (KENAO). Others must be requested directly from KENAO offices. In fact, citizens and the media have made relatively little use of these audit reports in the past, but they are a rich source of information that can be used to raise awareness of poor management of public money and to press for greater accountability.

45. What are the sanctions for public officials or agencies that misuse funds?

If an accounting officer or other public officer is found to have misused public funds, the PFM Act prescribes punishments that can be applied. Part VII of the Act lays out the types of offences governed by the Act. For certain violations that involve abuse of power, the punishment is a prison fine of up to two years, and/or a fine of up to 1 million Kshs. For an additional set of violations, including corruption, officers may be imprisoned for up to five years and/or fined up to 10 million Kshs. The government may also recover any loss of money that is caused by abuse of power or corruption on the part of public officers [69].

In addition, where a government agency has violated the law, for example by taking on debt which is not authorized, the agency may be sanctioned directly. Among the possible sanctions are to forbid the agency from further borrowing and to withhold funds that the agency would normally receive by law [70].

46. I have heard people say that cities and urban areas also have certain procedures to follow for budgeting. Is this covered in the PFM Act?

Yes. One of the last sections of the Act lays out a budget process for cities and urban areas. The budget process is different because the status of cities is different.

Cities are not a distinct level of government like counties, so the city budget process is linked to the county budget.

For example, cities are only allowed to charge fees for services they provide, but they cannot raise their own revenue through taxes. They are, however, to be allocated revenues from the county in which they sit. The law says that the counties must use some form of “objective criteria” to determine the level of demand for services in urban areas when allocating funds to them [71]. These criteria may include population, poverty, physical area, and so on. The criteria should also ensure a minimum amount of money to provide for effective delivery of essential services.

Otherwise, the urban areas and cities are to develop plans and budgets in a manner that is similar to the national and county governments. They are also to observe a similar set of fiscal responsibility principles. One difference is that the plan and budget must be approved by the urban area or city Board [72]. If you want to know more about this, you should look at the Urban Areas and Cities Act 2011 [73].

The accounting officers for the urban areas and cities are responsible for ensuring that the public can participate in the development of the strategic plan and the budget [74]. The accounting officer of an urban area or city is appointed by the County Executive Member for finance of the respective county [75].

Urban areas and cities are restricted from borrowing on capital markets. They may only take loans from or through the county, or directly from a bank in the form of a bank overdraft [76]. They may, however, receive grants or donations with the approval of the County Executive Member for finance [77].

47. Is there anything else we should know about the PFM Act that might affect our access to services, such as education, health or water?

Yes. Much of the work to figure out how these services will be provided has yet to be determined, and the PFM Act really doesn't clarify it. You need to keep an eye on what the Transition Authority is doing, and how the government decides to split up functions that have not been fully detailed in the Constitution.

However, one area that the PFM Act could affect is water. The reason is that water is now generally provided by independent, corporate boards. The PFM Act has some provisions that would allow a county to take control of providers in their jurisdiction and convert them into county entities, managed by the county government [78]. This could include water service providers. In a way, this is no different from other county services, except that water services were specifically taken away from local authorities in the past and converted into corporations because they were mismanaged.

48. A lot of services are actually not delivered directly by government, but have to be contracted from private providers. This has been an area where there has been mismanagement in the past. Does the PFM Act say anything about procurement?

The PFM Act has little to say about procurement, but procurement is mentioned in the Constitution. The Constitution calls for separate legislation on procurement, and requires that the procurement of services be done in a way that is "fair, equitable, transparent, competitive and cost-effective [79]." The Constitution prescribes sanctions for contractors that have not performed and for those involved in corruption, failure to pay taxes, or violations of fair employment law.

Procurement is currently regulated by the Public Procurement and Disposal Act (last revised in 2010), which created the Public Procurement Oversight Authority to manage procurement processes in Kenya [80]. The Act has not been revised since the passage of the Constitution.

49. Is that everything that is in the Act? How come it is so long and this FAQ is so short?

No, of course we have not covered everything. We have only focused on what we think are the most important areas for the wananchi. But the Act has more to say about a number of financial issues, such as loan guarantees, derivatives, and so on. If you are interested in these areas, you should refer to the Act itself. You can also read more at:

http://internationalbudget.org/wp-content/uploads/brief15.pdf or at www.cickenya.org

You should also consult the Act directly for more details in areas that are discussed in this FAQ. For example, the Act provides details about what should be contained in government reports. You should confer with the Act when these reports are released to see if they are really providing the information required by law, especially if you do not see information you think is important.

Finally, remember that there are also regulations being drafted to support this Act, and those regulations will contain more detail still about a number of issues, possibly including public participation and access to information.

50. Documents are helpful, but is there anyone I can speak to if I have further questions?

A number of organizations work on issues related to budgeting in Kenya. The place to start is the Parliamentary Budget Office. You can access their website here:

http://www.parliament.go.ke/index.php?option=com_content&view=article&id=201:parliamentary-budget-office-pbo&catid=77:parliamentary-budget-office-pbo

And their contact information is:

Parliamentary Budget Office
Protection House, 10th Floor (Parliament Road)
P. O. Box 41842, 00100 – GPO, NAIROBI.
Telephone: +254 - 020 - 2133074, 2221291-3 or 2848000
E-mail: info@parliament.go.ke

You can also contact the CIC and the IBP on the following addresses

Commission for the Implementation of the Constitution
Parklands Plaza
P.O Box 48041, Nairobi
Tel : 020 2323510
Email: info@cickenya.org

or

International Budget Partnership
P.O Box 19875 - 00202
Nairobi
Tel: +254729937158
Email: lakin@cbpp.org

For questions about the budget process, you can also contact the independent, non-partisan Institute of Economic Affairs:

ACK Garden House, 5th Floor, Block D,
1st Ngong Avenue, Upper Hill/Community,
P.O.BOX 53989 00200,
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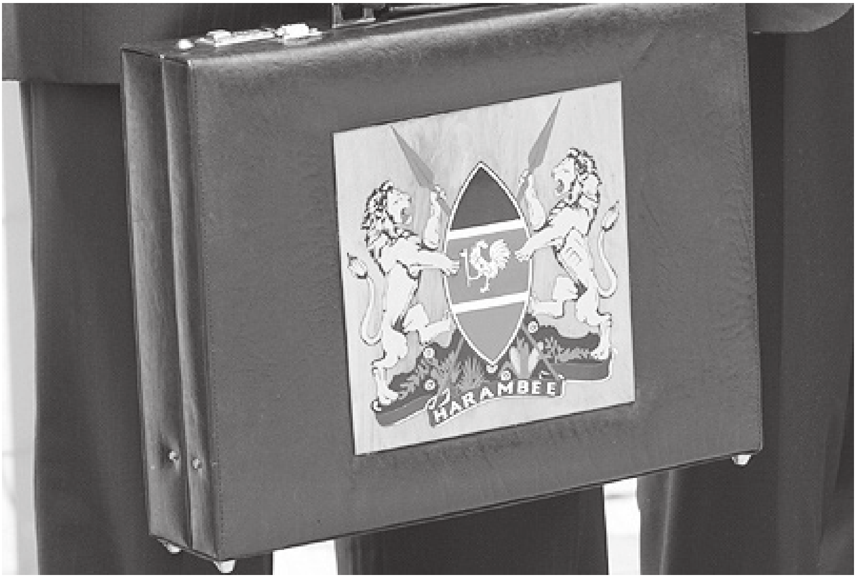

HARAMBEE

Box 1: Budget Timeline at National and County Level

August 30. National Treasury releases a circular to all government agencies starting the process, and setting out guidelines for public participation. The County Executive Member for finance must also release a circular by this date doing the same at county level.

September 1. Counties must prepare and table a county development plan in the County Assembly by this date. The plan must be made public within 7 days.

September 1 to February 15. During this time, the National Treasury and the various ministries and agencies should undertake some type of consultation with the public and other stakeholders. This can include sector hearings as in the past, or visits by Treasury to counties to solicit views. Views from the public should feed into the formulation of the Budget Policy Statement.

January 1. By January of every year, the Commission on Revenue Allocation should submit its recommendations for the division of revenue between national and county governments, and among the counties, to the rest of government.

February 15. Cabinet Secretary for Finance to submit the Budget Policy Statement to Parliament. Also the deadline for the debt management strategy paper, and the Division of Revenue and County Allocation of Revenue Bills to go to Parliament.

February 28. Deadline for Budget Policy Statement to be approved by Parliament. This is also the deadline for the County Fiscal Strategy Paper to be tabled in each County Assembly.

March 1. Deadline for Budget Policy Statement to be made available to public.

March 16. This is the deadline for passing the Division of Revenue and County Allocation of Revenue Bills.

April 30. This is the deadline for the Cabinet Secretary to submit the budget proposal, or Budget Estimates to Parliament. It is also the deadline for the Judiciary and the Parliamentary Services Commission to submit their own budgets to Parliament. This is also the date for the county budget proposal to be submitted to the County Assembly.

May. This is likely when the Budget Committee will begin to hold public hearings on the budget.

May-June. This is when the Budget Committee will table its recommendations on the budget in Parliament.

May 15. This is the deadline for the Cabinet Secretary to give any comments on the Judiciary and Parliamentary budget requests.

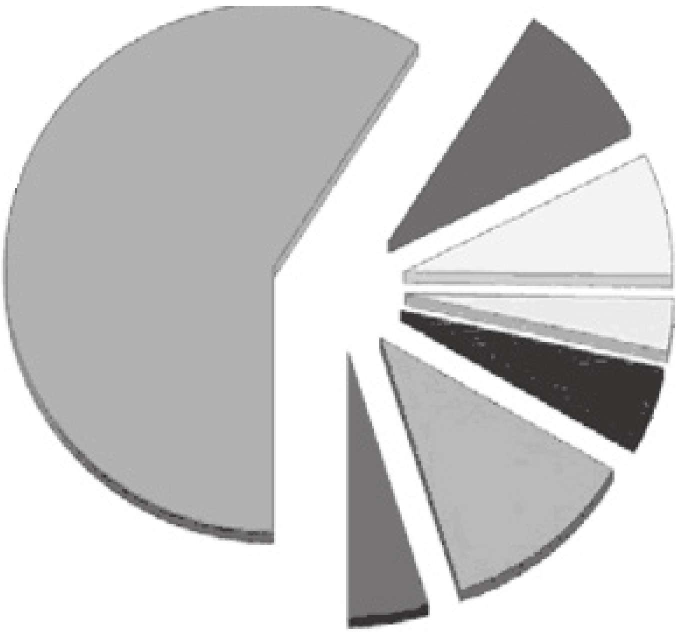
June. The national Finance Bill to authorize tax and revenue collection is tabled in Parliament. A county Finance Bill is to be tabled at this time in the County Assembly.

June 30. This is the end of the financial year, and the deadline for the Appropriations Bill to be passed by Parliament to authorize spending for the new budget year.

July. Sometime in the latter half of July, the final approved budget estimates should be available to the public.

November. Government must publish the Budget Review and Outlook Paper, reviewing last year's budget performance and this budget year's initial forecasts from the Budget Policy Statement in February. There is no deadline for the County Budget Review and Outlook Paper, but it should be available around this time as well.

November 15. Government must publish an implementation report on the first quarter of budget implementation from July-September no later than 45 days after the end of the quarter.



Glossary

Accounting officers. Every government agency must have an accounting officer. This person is appointed at the national level by the Cabinet Secretary for Finance, or at the county level by the County Executive Committee member for finance. This person is responsible for managing the finances of the agency and reporting on them. They are to be held accountable for any misuse of funds.

Appropriations Bill/Act. This is the bill/law that the National Assembly must approve to allow the government to start spending the money that is in the budget. It is the official authorization to spend government funds. The county must also pass an Appropriations Act to authorize spending the county budget funds.

Budget Estimates. This is the executive's budget proposal, tabled in the National Assembly by April 30. The budget proposal lays out all of the spending for all ministries (or votes) and is normally several volumes, including separate volumes for recurrent and development (or capital) spending.

Budget Policy Statement (BPS). This is the first official document released by government laying out its broad plans for the next budget year. It normally includes a discussion of economic trends and an estimate of overall spending and revenues. The BPS must be tabled in Parliament by mid-February, and published for the public by end of February.

Budget Review and Outlook Paper (BROP). This paper is to be produced every year by end of September, and published by November. The paper assesses how well the government did in meeting its revenue and spending targets during the previous year. It is also supposed to update the forecasts for the current year that were contained in the Budget Policy Statement (see previous definition).

This is an important document to assess whether government is keeping its promises and why or why not.

Cabinet Secretary for Finance. This is the name of the new position that will replace the Minister of Finance. Recall that Cabinet Secretaries will no longer be drawn from Parliament and will no longer be referred to as Ministers.

Contingencies Fund. This is a special fund set aside for emergencies that were not foreseen when the budget was passed. It is only to be used in cases of serious disasters that can cause "damage to human life or welfare."

Controller of Budget. This is a new position that is designed to ensure that someone is accountable for the flow of funds into and out of government accounts. The Controller must ensure that money is used only for legal and approved purposes and must report on budget implementation.

County Allocation of Revenue Bill. This is a bill that must be tabled in Parliament to determine how much each county will get of the total amount that is allocated for all 47 counties. The total for all counties is contained in the Division of Revenue Bill (see below). The Commission on Revenue Allocation has recommended that the sharing of resources among the 47 counties be done through a formula, which is likely to be contained in the County Allocation of Revenue Bill.

County Budget and Economic Forum. This is a new body at the county level that is supposed to serve as a forum to consult on county plans and budgets. It is to consist of government officials and appointees from outside of government.

County Emergency Fund. This is a fund in the counties that is similar to the Contingencies Fund at national level and follows the same rules (see Contingencies Fund above).

County Executive member for finance. The equivalent of the Cabinet Secretary for Finance at county level.

County Fiscal Strategy Paper. This is the county equivalent of the national Budget Policy Statement (see above).

County Treasury. The County Treasury is composed of the County Executive Member for finance, the Chief Officer for finance, and the departments responsible for financial and fiscal matters.

Division of Revenue Bill. This is the bill that is tabled in Parliament to establish how much of national revenue will be given to the national government, and how much will go to all the counties together. After this is decided, the County Allocation of Revenue Bill determines how much each individual county receives from the overall share for counties.

Finance Bill. This is the bill tabled in the National Assembly to authorize tax and other revenue measures. In Kenya, this is presented and passed separately from the budget. A County Finance Bill must also be passed to authorize tax and revenue measures at county level.

Intergovernmental Budget and Economic Council. This is a new body composed of the Cabinet Secretary for Finance and all of the county level Executive Committee members for finance to discuss finance and budget issues affecting both levels of government.

National Assembly. One of houses of Parliament. Parliament under the new Constitution consists of two houses: the National Assembly and the Senate. The National Assembly is similar to the current Parliament, with members drawn from constituencies. The Senate consists mainly of representatives drawn from each of the counties.

National Treasury. The National Treasury is composed of the Cabinet Secretary for Finance, the Principal Secretary for Finance, and additional departments responsible for economic and financial matters.

Parliamentary Budget Office. This is a research office that supports Parliament's role in the budget process, and directly supports the Budget Committee in Parliament. They conduct analysis and help Parliament to read and understand the budget proposals tabled each year by the various arms of government.

Senate. One of the two houses of Parliament. See the entry for National Assembly.

Supplementary budget. A supplementary budget is generally passed sometime during the budget year, after the budget has been approved, to make changes due to a failure to plan fully for the needs of the government. The supplementary budget is limited to 10 percent of the total budget that was approved, unless in exceptional circumstances Parliament authorizes a larger supplementary budget.

1. In theory, the Parliament has until June 30 to approve the budget, and therefore a full two months to debate it and make amendments. In practice, the Budget Committee hearing have been in May, and this is the main opportunity to give comments. This is because the Constitution puts limits on the amendments that can be made with out the recommendation of the Budget Committee.
2. PFM Act, 25:6; 10:2.
3. PFM Act 35:2.
4. These responsibilities are laid out in the Fourth Schedule of the Constitution.
5. See Ministry of Finance, "County Stakeholders Consultation on 2012/13-2014/15 MTEF Budget," November 2011.
6. This year, the hearing was held on October 30 at Milimani Law Courts.
7. PFM Act, 36:2.
8. PFM Act, 207.
9. PFM Act, 37.
10. PFM Act, 37:8.
11. PFM Act, 39:3.
12. Constitution, 114. Here, a "money bill" includes the annual budget proposal.
13. PFM Act, 39:5.
14. PFM Act, 83:5.
15. PFM Act, 26.
16. PFM Act, 39:8.
17. PFM Act, 27.
18. PFM Act, 15:2.
19. PFM Act, 33.
20. PFM Act, 31.
21. PFM Act, 62-64.
22. PFM Act, 43:2.
23. Constitution, 223.
24. PFM Act, 20-21.
25. Constitution, 216
26. Constitution, 204.
27. Constitution, 216.
28. PFM Act, 190.
29. Constitution, 217.
30. For more on the formula, see www.crakenya.org
31. Constitution, 218:1.
32. PFM Act, 42.
33. PFM Act, 17:6
34. PFM Act, 94.
35. PFM Act, 97:2-4.
36. PFM Act, 99.
37. PFM Act, 117.
38. PFM Act, 117:6, 117:8.
39. PFM Act, 128:2.

40. PFM Act, 129:2a.
41. PFM Act, 131:2.
42. County Governments Act, 21.
43. PFM Act, 131:3.
44. PFM Act, 107.
45. PFM Act 110-114.
46. PFM Act, 135.
47. PFM Act, 154:2.
48. PFM Act, 134.
49. PFM Act, 131:5.
50. PFM Act, 166.
51. PFM Act, 118.
52. PFM Act, 123.
53. PFM Act, 122:5.
54. Constitution, 212.
55. PFM Act, 138.
56. Constitution, 209.
57. PFM Act, 40:3.
58. PFM Act, 43.
59. PFM Act, 46:2.
60. PFM Act, 133.
61. PFM Act, 67.
62. PFM Act, 148.
63. PFM Act, 68:1b.
64. PFM Act 68: 2f.
65. PFM Act 68:3.
66. PFM Act, 74.
67. PFM Act, 73.
68. PFM Act, 68:2k.
69. PFM Act, 196-99, 202.
70. PFM Act, 204.
71. PFM Act, 173.
72. PFM Act, 175:8.
73. http://cickenya.org/bills/urban-areas-and-cities-act-2011
74. PFM Act, 175:9.
75. PFM Act, 170.
76. PFM Act, 177.
77. PFM Act, 178.
78. PFM Act, 5. For a discussion of this issue with respect to water, see World Bank, "Devolution without disruption: Pathways to a successful new Kenya," October 2012, Chapter 7.
79. Constitution, 227.
80. http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Acts/PublicProcurementandDisposalAct_Cap412C_.pdf