

Role of Legislature in the Budget Process in Kenya

Policy dialogue on the Role of Legislature in the Budget process

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Outline

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Introduction

- As a result of promulgation of the Constitution in 2010, Kenya was devolved giving rise to national and sub-national governments.
- This meant that powers, finances and functions were devolved to sub-national governments.
- Kenya's governance structure comprises of the National government and 47 County governments.
- The Legislature in Kenya is bicameral parliament consisting of the National Assembly (lower house) and the Senate (upper house).
- National Assembly represents the interests of the national government while the Senate represents the interests of county governments.

Legal Framework: Rules and Procedures

- The Constitution of Kenya, 2010 not only resulted into changes in structure of government (Senate and National Assembly), but also functions, roles and responsibilities of each house.
- The Constitution is the overarching law that clearly outlines the role of the legislature and also outlines the management of public finances in Kenya.
- Chapter 12 of the Constitution of Kenya outlines Public Financial Management.
- In addition, the Public Financial Management Act 2012 provides the timelines, budget documents and also actors responsible in the budget process. e.g. Parliamentary committees, Independent Fiscal Institution, State and non-state actors etc

Kenya's Budget Process: Stages, Actors and Budget Documents

Stages	Budget Documents	Actors
Planning and Formulation (August 30 to April 30 – 9 months)	Macroeconomic Fiscal Framework, Debt Management Strategy Papers, Division of Revenue Bills, Budget Review and Outlook Papers; Budget Estimates	Executive – National Treasury, MDA's; Parliament – both National Assembly and Senate and respective departmental committees; Commission on Revenue Allocation; IBEC; Public
Allocation/Approval (May 1 to June 30 – 2 months)	Budget Estimates; Finance Bill; Appropriation Act	Parliament - National Assembly's Budget and Appropriation's Committee and departmental committees; Public;
Oversight (July 1 to June 30 – 12 months)	Budget Implementation Reports (in year, mid year and year-end)	Controller of Budget; National Treasury; Parliament;
Auditing and Evaluation (July 1 to December 31 - 6 months)*	Audit reports	Parliament – PAC, PIC, SFAC; Auditor General Public

Budget Planning and Formulation (1/2)

- September - February 15, National Treasury is required to hold sector hearings to discuss priorities that feed into the Macroeconomic and Fiscal Framework Paper.
- Kenya's Budget Policy Statement (BPS) and Debt Management Strategy Paper are prepared and should be tabled in Parliament, along with the revenue bills by February 15.
- By 30 April, National Treasury is required to submit the budget proposal to Parliament for approval

Challenge 1 : Insufficient time to review budget formulation documents

- For example, in the 2018, Senate raised an issue that the time for reviewing, debating and approving the BPS and the DMSP was too short and should be extended to 30 days.

Budget Planning and Formulation (2/2)

Challenge 2 : Lack of practical roles between the executive and the legislature

- Law is clear on separation of powers and parliament's role in approval of budget
- For example, in 2015/16 budget, parliament made changes to the BPS by increasing the budget for independent offices thus increasing the budget deficit. Treasury reacted to this by reducing the budgets.
- Another example, passing of the Finance bill 2018 this year.

Budget Allocation/Approval

- Budget Estimates are to be tabled in Parliament by April 30 and should be approved with or without amendments by the National Assembly by June 30.
- In between, National Assembly is mandated by law to hold public hearings and should be reflected in the BAC recommendations.
- Finance bill is also tabled by June 30th and should be approved by parliament within 90 days of tabling.

Challenge 3 : Inclusion of projects not conceptualized by MDAs

- The role of the public in the budget process enhanced following the Constitution and subsequent legislations (PFM Act) and that parliament must take into consideration public input when approving the budget.
- How to balance politics (inclusion of projects to boost MPs popularity with Constituents vis a vis introducing punitive measures for MDAs that do not perform or respond to parliamentary committees).
- Party-political loyalty that may influence budget allocation/ approval

Budget Oversight

- Budget Implementation reports are produced and should be tabled at the National Assembly every quarter by the National Treasury (quarterly economic and budgetary review reports) which Treasury has been producing and publishing them on their website on time
- The Controller of Budget also publishes implementation reports for both the national and county governments at the end of every quarter.

Challenge 4 : Lack of functional oversight of budget execution reports

- Access to implementation reports for instance, when the Controller of Budget publishes the reports late
- Institutional capacity of the various committees (lack of capacity and technical expertise).
- Lack of implementation framework for reviewing implementation reports by parliament

Evaluation and Audit (1/2)

- Year –end report and BROP are documents essential at the evaluation stage of the budget (both produced by Treasury) and should be submitted to the National Assembly
- Auditing is vested in the Office of the Auditor General. This is done at the end of fiscal year (from December 1) and should take six months.
- The reports should be reviewed by each respective committee on the funds and accounts of the national government.

Challenge 5 : Limited capacity of committees to hold government to account

- Technical expertise of the committees that review the audit reports;
- OAG provides capacity to PAC, PIC and SFAC through the secretariat;



Evaluation and Audit (1/2)

Challenge 6 : Independence and resources of the office of the Auditor General

- The role and responsibilities of the OAG increased following devolution (now they audit additional 47 counties);
- There is concern that resources provided for the office of the Auditor General is not sufficient;

Challenge 7 : Committees do not scrutinize audit reports on time to ensure accountability

- Parliament has been late in reviewing and debating the audit reports which affects budget oversight. E.g. At the time of the research, parliament is still reviewing audit reports for the year 2014/15 and 2015/16;



Conclusion and Recommendations

- Designate clear responsibilities and powers between the executive and the legislature in the budget process
- Scrutinize budget execution and audit reports in a timely manner
- Provide the Office of the Auditor General with adequate resources

Thank you