FISCAL TRANSPARENCY AND PARTICIPATION IN KENYA

Current Status and Priorities for Reform

CABRI

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July 2014

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The Collaborative Africa Budget Reform Initiative (CABRI) is a professional network of senior budget officials of African Ministries of Finance and/or Planning. CABRI aims to promote efficient and effective management of public finances in Africa. Specifically, the network seeks to:

- support senior budget officials in the management of public finance systems by developing appropriate approaches, procedures and practices;
- advance the development of member states by building capacity and promoting training and research in the field of public finance management; and
- develop and promote common African positions on budget-related issues of interest to Africa.

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Production by COMPRESS.dsl | www.compressdsl.com

This report is published within a joint programme with the International Budget Partnership. Particular thanks are due to Paolo de Renzio and Jason Lakin for their contributions to the report.

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Collaborative Africa Budget Reform Initiative

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ACKNOWLEDGEMENTS

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CABRI, the IBP and the joint country review team would like to thank the Kenyan National Treasury for its contribution to and support during the review. The following National Treasury departments and units, and Kenyan institutions are acknowledged for the frankness with which they engaged the team during the in-country fieldwork: the Principal Secretary and the Budget Director of the National Treasury, the Budgetary Supplies Department, the External Resources Department and the Internal Audit Department of the National Treasury, the Controller of Budget, the Integrated Financial Management System Unit, the Ministry of Devolution and Planning, the Nyeri County Executive, the Office of the Accountant General, the Office of the Auditor-General, the Parliamentary Budget Office, the Public Financial Management Reform Unit, the European Union and World Bank Country Offices. The team would also like to thank civil society organisations for their time and contributions, especially the Institute of Economic Affairs, and Development Initiatives, Transparency International, Africa Youth Trust, National Taxpayers Association, Africa Centre for Open Governance and the Institute of Certified Public Accountants.

ACRONYMS AND ABBREVIATIONS

CABRI	Collaborative Africa Budget Reform Initiative
CoB	Controller of Budget
CSO	civil society organisation
IBP	International Budget Partnership
IFMIS	integrated financial management information system
MDA	ministry, department and agency
NAO	National Audit Office
OBI	Open Budget Index
OBS	Open Budget Survey
PBO	Parliamentary Budget Office
PEFA	Public Expenditure and Financial Accountability
PFM	public financial management
PFMA	Public Finance Management Act of 2012

1 INTRODUCTION

1.1 THE JOINT COUNTRY REVIEW AND REPORT

The purpose of this report is to reflect the findings and recommendations of the Kenya Joint Country Review on Fiscal Transparency and Participation.

CABRI joint country reviews are assessments of the transparency and participation systems of the subject country by a team that includes CABRI peer countries. The reviews provide participating CABRI member countries with an opportunity to investigate and document the experiences, successes and lessons learnt in respect of reforms to specific aspects of a country's budgeting system. The Kenya Joint Country Review is part of the CABRI/IBP programme on Fiscal Transparency and Participation (see Box 1).

Box 1: The CABRI/IBP Fiscal Transparency and Participation Programme

The CABRI/IBP programme, *Supporting Fiscal Transparency and Participation Reforms in Africa*, was launched in November 2012 and aims to work with up to four CABRI participating countries to define country-specific, attainable reform objectives and plans towards improved fiscal transparency and participation.

The goal is to achieve concrete improvements in the coverage and/or quality of fiscal information published in participating countries, while assisting them in developing strategies for managing a more open fiscal environment and moving towards effective transparency and participation in fiscal matters.

The programme involves countries volunteering to review themselves with the aid of a team of senior budget officials and civil society representatives from African peer countries, assisted by representatives from CABRI and the IBP. The outcome of such a review is the joint development of findings, recommendations and reform objectives, and the incorporation of these objectives into the country's public financial management reform strategies.

The programme also makes provision for participating countries – both assessed countries and those undertaking the joint review – to meet over the duration of the three-year programme to discuss the reviews, lessons learnt and progress in terms of the recommendations and objectives.

The Kenya Joint Country Review was undertaken by a team comprising civil society representatives and senior budget officials from Kenya, Liberia and South Africa, a senior budget official from Lesotho, a representative from the CABRI Secretariat, a representative from the IBP, a representative from the World Bank/World Bank Institute and a public financial management (PFM) consultant. The team engaged in dialogue and an interactive investigation of the government's fiscal transparency and participation reforms during a mission from 16 to 20 September 2013. The mission was guided by a background paper, which presented pre-mission findings on transparency and participation in Kenya, based on a review of Kenyan budget documentation and existing secondary sources, such as the Open Budget Survey (OBS).

This report provides a summary of the findings and recommendations of the review, as discussed in the closing workshop with Kenyan state and civil society representatives. Its intent is to provide a basis for further decision-making by the National Treasury of Kenya and Kenyan civil society on concrete steps to improve fiscal transparency and participation. It is a summary report: in other words, the report does not repeat the systematic findings of the background paper against the CABRI/IBP country review framework, covering the full budget cycle and transparency and participation issues. Rather, the report focuses on the five key areas identified by the review as indicating potential for significant and important gains over the medium term: the executive budget proposal; availability of outturn information; specific inclusions; participation; and other stakeholders. For detail on transparency and participation beyond the areas discussed here, readers are referred to the IBP Open Budget Survey Kenya Country Questionnaire and Report and the background paper for the review.[1]

1.2 DEFINING TRANSPARENCY AND PARTICIPATION

In broad terms, the project is aimed at reviewing the extent to which citizens and other external stakeholders can observe the government's fiscal and budget strategies and decisions, and their outcomes, using publicly available information, and whether they have meaningful and fair opportunities to participate across the budget cycle.

In order to guide its activities, the review drew on the ten high-level principles of the Global Initiative for Fiscal Transparency (GIFT), the OBI's Survey and Index, the IMF Fiscal Transparency Code and Manual (2007) and the OECD Best Practices for Fiscal Transparency (2002). It defined fiscal transparency as openness toward the public at large about government structures and functions, fiscal policy

1 See http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ke and www.cabri-sbo.org.

intentions, fiscal activities, public sector accounts, and fiscal projections. It involves ready access to reliable, comprehensive, timely, understandable and comparable information on government fiscal decisions, activities and intentions. The review used the OBS framework to operationalise this definition. This framework requires the public availability of eight key documents at specific decision and review points throughout the budget cycle, and sets out parameters of the fiscal information that should be provided through each of the documents to achieve these objectives of fiscal transparency. Appendix A, Table 1, provides a brief review of the Kenyan system measured against this framework.

For the purposes of the review, the team used the OBS and the GIFT's 10th principle to set parameters against which to review participation in Kenya. The GIFT principle provides a sound outline of requirements for participation and reads: 'Citizens should have the right and they, and all non-state actors, should have effective opportunities to participate directly in public debate and discussion over the design and implementation of fiscal policies' (GIFT n.d.). After the adoption of the Public Financial Management Act of 2012 (PFMA), with its provisions on participation in the Kenyan budget process, a broad range of Kenyan civil society organisations (CSOs) formulated ten principles for public participation in Kenya, drawing on good practice across the world and in Kenya. These 'operational' principles echo OBS benchmarks and the GIFT principle. The review referred to the ten Kenyan principles to guide its work on participation. The principles are provided in Box 2, and Annex 1, Table 2, offers a brief review of the Kenyan system measured against each of these principles.

1.3 THE KENYAN CONTEXT

The choice of focus areas was influenced by two key contextual factors, namely: (i) that the review took place at a time when Kenya was in transition from its previous to a new constitutional order, with many issues noted during the review already under the spotlight and targeted for clarification or reform; and (ii) the degree of progress already made since the 2000s in improving fiscal transparency and creating opportunities for participation in the budget process, not only for citizens and civil society, but also for Parliament and spending agencies. The second factor set the review in the context of a government with a long-term interest in and understanding of the importance of transparency and participation in sound public financial governance.

Box 2: Ten principles for public participation

1. Public consultations should be open to all citizens and taxpayers, without discrimination.
2. Safeguards should be established to prevent consultation forums from being dominated by one political group, organised interest, or politician.
3. Public consultations must have clear and specific purposes.
4. The timeline and venue for public consultations should be known at least two weeks in advance of the consultation.
5. Public consultations must set aside dedicated time for public feedback and questions.
6. Public participation in the planning and budget process should occur at all stages in the process.
7. The public must have access to all relevant plan and budget documents in a timely fashion.
8. All plan and budget documents should contain a summary and a narrative.
9. Citizens should be able to provide input into public consultations through direct participation, through representatives, and through written comments.
10. There should be a feedback mechanism so that citizens know their inputs were considered.

New legal framework for PFM

The review was conducted at a time of constitutional change in Kenya. The new Kenyan Constitution was promulgated on 27 August 2010, after receiving the support of 67 per cent of voters in a referendum. It fundamentally changed the public finance landscape in Kenya:

- It created two levels of government, a national and a county level, with the latter taking on significant service-delivery responsibilities (funded to a significant degree through unconditional transfers from the national level of government). Altogether, 47 counties were created, some of which involve city and municipal boards.[2]

2 The Urban Areas and Cities Act of 2011 classifies urban areas as city counties, cities, municipalities and towns. Nairobi is a city county (i.e. it is administered through a county legislature and executive like all counties). Other cities, like municipalities, have boards that are appointed by and accountable to the county, but with participatory accountability measures to local citizens. Towns have committees, which have fewer executive powers than the boards.

- It separated the powers of the executive, the judiciary and Parliament, with separate budgets and budget processes for each arm. A second house was introduced in the national Parliament, with responsibility for the affairs of the counties.
- It introduced a framework for an intergovernmental budget process, with the Commission on Revenue Allocation fulfilling an advisory role on the division of revenue between the national and county levels of government, and between counties.
- While the Constitution provides a central role for the Cabinet Secretary for Finance and establishes a National Treasury, it introduced a new key budget institution, the Controller of Budget (CoB), which has a pre-audit function and is tasked with overseeing the implementation of the budget, at both national and county level, by authorising the withdrawal of money from the constitutionally established public funds.
- It created special-purpose public funds, besides the national revenue fund, namely a Contingencies Fund (which the PFMA requires to be maintained at KSH10 billion) and an Equalisation Fund (which receives 0.5 per cent of all national revenue each year, to be used for basic services in poor areas).

The Constitution required several key pieces of legislation to be in place by August 2012, including the PFMA, giving effect to provisions in the Constitution. After much debate about the legislation, the PFMA was promulgated on 27 August 2012. The Act was harmonised with a draft Controller of Budget Bill, which gave effect to the Constitutional provisions for this new institution.

The PFMA, itself, brought about several changes to the way in which budgets are managed in Kenya, including the information that is (or should be made) available to the public and the public's participation in budgetary matters. It created further budgetary institutions, including a public debt office and the Intergovernmental Budget and Economic Council, a consultative body for national and country members of executive councils for finance, and the judiciary and Parliament.

The 47 counties came into being on announcement of the results of the general election held on 4 March 2013. On 30 June 2013, some, but not all, county legislatures approved their first budgets, as required by the PFMA. Also, some, but not all, budgets were made available to the public at the time. Some of these budgets were based on estimates of spending previously elaborated by the national government, on functions that are now undertaken by the counties, even though, at the time of the review, details of the assignment of expenditure functions between national and county governments in sectors had not yet been clarified.

At the national level, 2013/14 was also the first year that the national budget was prepared and passed in terms of the PFMA; and the systems it put into place were coming into being. For example, this meant that each ministry had to appoint an accounting officer, who would be responsible for signing off on cash releases to the ministry and expenditure by the ministry.

> **"The PFMA brought about several changes to the way in which budgets are managed in Kenya, including the information that is available to the public and the public's participation in budgetary matters.**

Progress since the 2000s

The second key contextual factor for the review was the progress achieved in Kenya in terms of transparency and participation since the early 2000s. This took several forms:

- Much more information on the budgetary choices made by the executive was available to the public throughout the budget cycle. For example, during budget preparation, sector expenditure review reports were made available online, a budget strategy paper was published, which provided information on the macro-fiscal budget framework prior to the submission of the budget in Parliament, and in-year expenditure reports were published, both by the National Treasury and the CoB.
- More useful information was available. For example, the National Treasury introduced a programme budget classification, which presents budget allocations against high-level programmes in each vote, creating a link between expenditure and policy objectives and priorities, and non-financial performance information. Also, the expenditure review reports provide significant discussion of sector objectives, strategies and programmes against sector expenditure.
- The opportunities for participation by citizens and civil society in the budget process have expanded. From the

mid-2000s onwards, the Kenyan budget has been prepared with the participation of sector working groups, which include civil society representatives, and which make key recommendations on the allocation of funding within sectors. Also, public hearings have become an institutionalised feature of the Kenyan budget process, providing open forums for participation.

The new Constitution and PFM legislation have captured these improvements in practice, anchoring them in law, including the institutionalisation of public participation practices at national and county level, the preparation of the budget by programmes and the availability of fiscal proposals and information at key points in the budget cycle.

2 OPPORTUNITIES FOR REFORM

This section presents the five key areas identified by the review as having potential for significant and important transparency and participation gains over the medium term. For each area, the key findings are presented, followed by the recommendations with reference to experience elsewhere in Africa, particularly in the participating peer countries.

As noted above, these areas of opportunity were selected on the basis of the recognition that the review took place during the transition from a highly centralised system of government to a devolved system with many new county-level public institutions, including new county governors and executives, and assemblies. As this system was still in formation, it naturally encountered many important transparency challenges, such as the clarity of the division of expenditure responsibilities, transparency on intergovernmental fiscal transfers, clarity on the degree of potential unfunded mandates (including on the devolved payroll) and transparency on county-level allocations and expenditures. Participation challenges also arose, with the national government and county governments still working out how to fulfil in practice their constitutional obligations within the framework provided by new national legislation, while recognising that the capacity for meaningful participation by both citizens and public institutions was low. It was the understanding of the review that many of these issues were being addressed through ongoing processes (e.g. to work out the detail of expenditure assignment and unfunded mandates, and through capacity-development programmes). Within this context, the review looked for opportunities that would add value and contribute to next steps, particularly issues that are crucial and which may not receive sufficient attention given the magnitude of the overall task involved in implementing a devolved system of government.

A second factor in selecting the opportunities was the need to identify those that would make a difference to public financial governance in Kenya, insofar as they might result in immediate and significant benefits; in other words, leveraging systems that already exist, or addressing improvements that are necessary for sound public financial governance, but which require some investment in underlying systems and will take longer to achieve.

Using these criteria, the review selected the following five areas of opportunity:

- the set of documents that collectively form the executive budget proposal;
- the availability of fiscal outturn information in the same format as budget information;
- specific inclusions in budget and outturn information, including transparency in respect of extra-budgetary funds, the financial affairs of state corporations, contingent liabilities and donor contributions;
- an effective national practice of budget participation; and
- the role of other actors outside of the national and county treasuries in a Kenyan national system of fiscal transparency and participation.

Box 3: Challenges facing county governments

While the review was unable to visit multiple counties, it was able to engage with the executive in Nyeri County in the central Kenyan highlands. The visit highlighted the extent of the challenge to set up transparent, accountable and effective sub-national governments. Key issues highlighted by the county executive were: capacity constraints in county assemblies and executives, which result in delays in the implementation of key government programmes and projects; lack of information on ongoing projects from national government to counties; the need for clarity on the different roles of the national and the county government in implementing programmes and projects; the opacity of intergovernmental fund flows and responsibility for expenditures; and incomplete roll-out of the integrated financial management information system (IFMIS), resulting in discrepancies between manual and IFMS reports.

The following subsections consider the context and key findings of the review in relation to each of these areas, together with a summary of the recommendations made by the concluding review workshop.

2.1 THE EXECUTIVE BUDGET PROPOSAL

Kenya publishes significant information during the budget preparation and legislative phases of the budget process. The paragraphs below set out the findings on key documents published in these phases, relative to the international benchmarks.

The detailed executive budget proposal is not available to the public at the time of the statutory budget hearings in Parliament. For the 2013/14 budget, the National Treasury published: (i) the budget speech and statistical annex; (ii) a budget highlights document, which summarised the high-level budget decisions; and (iii) a programme budget statement (a statutory requirement) on the day the budget was submitted to Parliament. The programme budget statement provided information on high-level sector and programme allocations (with major sectors such as health being presented by two or three programmes), with a high-level economic spending breakdown. The budget speech and statistical annex provided aggregate information and some detail on the fiscal framework and revenue proposals. All of these documents, except for the programme budget statement, were made available on the Internet.

The detailed estimates of expenditure, however, were not made available through the government printer on budget day and, therefore, were not available to the public prior to the statutory budget hearings in Parliament. Copies were made available two weeks after budget day (13 June) but, by then, the estimates already included the changes proposed by the Parliamentary Budget Committee and approved by the National Assembly on 27 June. This is a break in practice with previous years, when the detailed proposed estimates of expenditure were available from the government printer around budget day, followed by a detailed enacted estimates of expenditure. The National Treasury noted that this break in practice was because of challenges posed by the transition, not only in terms of the Constitution and the new PFM legislation, but also by virtue of a transition to budget preparation being driven by the new IFMIS.

> **"The Parliamentary Budget Office the noted that it is hampered in its work by only having access to paper copies of detailed budget information.**

Even the Parliamentary Budget Office (PBO), which has a statutory duty to advise Parliament on the budget, did not have formal access to the detailed budget information. It also had to request an electronic copy of the programme budget. While the budget policy statement – published in April 2013, two months prior to the start of the fiscal year, but ten weeks after its statutory publication date (15 February) – provided Parliament and the public with important early information on the macro-fiscal framework and the broad budget allocations, lack of access to detailed information hampered Parliament and the public in assessing the degree to which the actual, detailed allocations were aligned to the plans announced in the budget policy statement.

Internationally, benchmarks for the timeliness of budget information are well established. For example, the IMF Fiscal Transparency Code and Manual (IMF 2007) requires the budget to be submitted to the legislature and made available to the public at least three months before the start of the financial year. The Public Expenditure and Financial Accountability (PEFA) framework takes this a step further, stating that *a complete set of documents* should be obtainable by the public through appropriate means at the time that such documents are submitted to the legislature (PEFA 2005).

> A key opportunity for transparency gains, therefore, is *more timely access to a complete set of budget documents by the public on the day that the executive budget proposal is tabled in Parliament*. The National Treasury noted this opportunity, highlighting that the practice thus far has set a platform of performance on which it would build. It would also set a benchmark that county governments could follow.

Budget information is not sufficiently accessible. The review noted that Kenya has a good record in making detailed information on the budget proposals available to the public – through the government printer – but also found that while the information is available, in principle, many stakeholders are excluded, in practice, as printed copies are available only in limited numbers for purchase in Nairobi. They are also made available for reference in some counties' information and documentation centres, which were operated by the districts in the old constitutional dispensation. The PBO noted that it is hampered in its work by only having access to paper copies of detailed budget information, requiring the manual entry of information before analysis can be undertaken.

> While there is no statutory requirement in Kenya for the information to be made available electronically, and while electronic access may not benefit all citizens equally, a clear 'quick win' opportunity with the potential to make a significant difference to the quality of transparency and participation in Kenya, is to adjust systems to enable web-based access to the complete set of budget documentation.

International benchmarks in this regard have been set by the IMF Code and Manual and the OECD Best Practices for Fiscal Transparency (OECD 2002), which respectively require that fiscal information should be 'readily accessed free of charge on the Internet', and 'the availability of all reports free of charge on the Internet'.

The usefulness of the executive budget proposal documentation is limited. A final opportunity area is related to the presentation and content of the executive budget proposal. Kenya has in place a strong platform of budget information (in the budget preparation and legislative phases). It publishes a budget outlook paper approximately nine months prior to the start of the fiscal year, sector working group reports also approximately nine months prior thereto, and a budget policy statement two to three months prior thereto. These set the macro-economic context, providing significant information on the macro-fiscal context and at the sector level on the links between policy, budget allocations, actual expenditure and performance.

As highlighted above, the executive budget proposal is now in the form of a programme budget statement, backed by detailed estimates of expenditure, and accompanied by a citizen's budget of sorts in the highlights, the budget speech and a statistical annex to the budget speech.

Kenya is, therefore, in a good position to publish a (timely and accessible) executive budget proposal that leverages this base to meet the international benchmarks set for the presentation and content of budget information in the upstream phases of the budget, such as the following:

- information comparable to that in the annual budget should be provided for the outturns of at least the two preceding fiscal years (IMF 2007);
- the annual budget presentation should include detailed projections of revenues, expenditures, balances and borrowing (IMF 2007);
- fiscal information should be presented in a way that facilitates policy analysis and promotes accountability (IMF 2007);
- the budget, or related documents, should include a detailed commentary on each revenue and expenditure programme (OECD 2002); and
- the budget should include an explicit explanation of how the government's policy goals are reflected in its budget choices, including both a narrative discussion and quantitative estimates (OBI 2013).

Against these benchmarks, the review highlighted as key potential fiscal transparency gains: (i) the availability of information on past actual expenditure; (ii) the level of detail on projections of revenues, expenditures, balances and borrowing; and (iii) whether information is presented in a way that facilitates policy analysis and promotes accountability. Detailed projections, in a medium-term macro framework, are important for analysing the adequacy of planned funds and their allocation over the medium term against development priorities and plans.

Opportunities were identified in view of the following findings:

- The sector working group reports (nine in total covering the government sector)[3] provide significant sector-level information, matching past budget estimates and revised estimates with outturns, but stakeholders often are unable to track this information through to the finalised executive budget proposal, limiting their ability to use the information for assessing the proposal. Similarly, respondents noted that while the budget outlook paper and budget policy statements are highly valuable documents, it is not possible to track information comprehensively from these documents to the detailed allocations.
- The programme budget statement presents clear progress. It is the culmination of a shift to programme-based budgeting initiated in the mid-2000s. However, the review found that the current document is at such a high level that it does not allow policy analysis and would not promote accountability. There is a clear need to provide sub-programme information, and to break down further the very high level of economic classification. Furthermore, the review found that the high-level programmes presented in the document to a significant degree reflect existing organisational structures, and are not necessarily a grouping of expenditures in line with the government's key long-term policy objectives/mandates. On its own and in its current form, the programme budget statement provides an insufficient basis for parliamentary discussion on budget allocations and, as such, is not an effective replacement for the detailed estimates of expenditure for release on budget day.

3 At the time of the review, sector reports in a devolved context had not yet been produced, and respondents noted that collecting and collating information from different county budgets, in the absence of standardised programming and classification, was likely to be a substantial challenge for these reports in the future. In principle, however, the reports are currently a significant source of sector information.

- While traditionally the estimates of expenditure provided highly detailed information on budget allocations (against an administrative/line-item classification), it does contextualise this information. Information on outturns of previous spending years and projected outturn of the current year is not provided. Furthermore, there is no narrative to assist stakeholders in judging the policy-appropriateness and efficiency of the proposed allocations.

It appeared to the review that the Kenyan National Treasury releases all the required elements to fulfil the international benchmarks, and could be a leader in this regard, but that the released documents are somewhat disjointed and individually incomplete, and, therefore, do not allow citizens or Parliament to undertake comprehensive, systematic, multi-year analyses of expenditure outturns and proposals against policy issues. While it is recognised that there would need to be some system investment (particularly in view of the higher complexity introduced by devolution) to ensure that the budget classifications and chart of accounts are consistent and facilitate multidimensional presentation of information, and allow for this information to be made available electronically on the day the budget is tabled in Parliament, this is a necessary investment to leverage the progress made to date.

A key opportunity exists, therefore, to *streamline, develop and link the documentation that makes up the executive budget proposal to provide systematic, contextualised and multidimensional information on the proposed allocations, which is simultaneously sufficiently detailed and appropriately aggregated to support analysis.* As devolution develops, this will become increasingly crucial, in order to place the proposed vertical and horizontal divisions of revenue, and proposed allocations at both levels of government, in context and to leverage the detailed work done in the sector working groups to assess the budget proposals.

Recommendations

In view of these opportunities, the concluding joint workshop made the following recommendations:

- The Kenyan National Treasury should merge the programme-based budget and the detailed line-item estimates of expenditure into one document.
- This document should present systematic, multidimensional information on the proposed budget allocations, and present forward estimates in the context of past outturns.
- This document should present a further breakdown of programmes into sub-programmes, and provide secondary economic classification breakdowns. At the same time, information must be appropriately aggregated.
- The programmes and sub-programmes developed within the highest level of sector and ministerial structures, should be refined further to align better with the policy mandates/objectives of the government to promote policy alignment and accountability.
- The non-financial information (narratives and performance measures) should be refined further to assist in the contextualisation of allocations. This means, for example: discussing the macro-fiscal framework, fiscal risk and its impact on the economy; highlighting key expenditure priorities and expenditure shifts; linking past expenditure trends and increases or decreases in the budget shares of programmes and budget lines to policy decisions and/or changes in the context of spending programmes; and discussing non-financial performance and targets.
- The National Treasury should make the full set of executive budget proposal documents available online on budget day, such as is the practice in several CABRI member and participating countries, including South Africa, Mauritius and Namibia. In addition, copies must be distributed to county headquarters, to be made available throughout counties in hard copy at central points. An additional bonus would be if the financial information were to be made available in a form that can be manipulated. In the case of South Africa, for example, this is done by providing the tables in the budget documentation as downloadable spreadsheets.
- The citizens' budget document (Budget Highlights: The People's Guide) should be refined (e.g. by adding information on revenues) and more widely disseminated (e.g. by providing copies in Swahili). It could also use more innovative means to make the information accessible (e.g. by using cartoons, where appropriate).

In order to take up the opportunity of implementing these recommendations, the workshop recognised the following:

- Capacity-building for programme-based budgeting must continue at the national level, and must be undertaken at the county level, for both county governments and assemblies.

- Responsibility for developing a streamlined, integrated, comprehensive and systematic set of budget documents must be assigned within the National Treasury (and in the county governments), given that different departments and units are involved. Responsibility for co-ordinating the production of this set of documentation annually, and setting timelines, must also be assigned. One option would be the creation of a public relations office with the technical capacity to liaise with different units and departments from a transparency perspective.
- The PFMA regulations, which are currently under development, should build on the foundation laid in the PFMA by specifying the budget documentation that will be available and its means of distribution.

2.2 AVAILABILITY OF OUTTURN INFORMATION

Kenya already makes some information available on expenditure outturns. For several years now the National Treasury has published quarterly reports online, which take the form of a narrative, supported by tables. These reports cover all main budget expenditure, but provide information only at ministry, department and agency (MDA) level; disaggregated information is not provided. Actual expenditure is compared with budgeted expenditure. Similar analysis is done for revenue and borrowing. The reports are released two or more months after the quarter (OBS 2012).

Since the 2011/12 fiscal year, the new Office of the CoB has been publishing quarterly reports on the implementation of the budget at the national level, covering the macro-fiscal, revenue, and recurrent and development expenditure aspects of the budget. Most usefully, these reports distinguish between exchequer releases to MDAs and actual expenditure by the MDAs. Since the fourth quarter of the 2012/13 budget year, the CoB has also released budget implementation reports for the counties, both by county and by aggregate. These reports track grant releases from the central government, counties' own revenue collection, and county-level releases and actual expenditure.

Kenya, therefore, has made significant strides in the provision of in-year information on the implementation of the budget, placing it far ahead of many of its peers among CABRI member and participating countries. The improved timeliness, coverage and accuracy of in-year information is related to a push in recent years by the National Treasury to refine and roll out a national IFMIS, which is now also being rolled out to all the counties. The system already automates planning, budgeting, budget execution, internal controls, general ledger/accounting and reporting systems, and the National Treasury is aiming to add audit and procurement modules.

However, the review found that several weaknesses persist:

- There are differences between in-year outturn information provided by the National Treasury and the CoB. The CoB also found differences in the budget implementation reports submitted by ministries and those drawn directly from the IFMIS for identical time periods. One factor driving this is that while the IFMIS is used to record revenue and expenditure transactions, manual systems continue to be used to make payments, including emergency payments, because of connectivity challenges. At the level of counties, too, lack of connectivity means that much processing is still done manually, creating room for errors. The review noted these issues that already existed at the national level prior to the 2013/14 devolution, and their likely amplification at the county level, where both system and human capacity will take some time to develop.
- The review also noted that Kenya does not publish a mid-year or year-end report that meets the international benchmarks, in particular the OECD benchmark that a mid-year report should provide a comprehensive update on the implementation of the budget, including an updated forecast of the budget outcome for the current fiscal year and, at least, the following two fiscal years (OECD 2002).
- The lack of timely audited outturn information appears to be a serious issue. In the absence of such information, it is not possible for stakeholders, including Parliament (as the main accountability institution), to verify the accuracy of the in-year reports, no matter how comprehensive and detailed they may be. At the time of the review, more than 12 months after the end of the 2011/12 fiscal year, the audit report for that year was not yet available, despite the PFMA providing that it be made available six months after year-end. Furthermore, the latest PEFA report notes that individual ministries submit their accounts within three months after the end of the fiscal year, but that the consolidated accounts are usually submitted within the fifth month (ACE & Ecorys

2012). The PEFA report, however, states that the amount and degree of errors and omissions in accounts make it unlikely that the National Audit Office (NAO) could complete the audit within the six-month deadline for a PEFA A score (Kenya scored a B). The PEFA report also noted issues with regard to audit reports, as measured against audit standards. The review found that while there has been some investment in the development of capacity in the NAO, capacity issues are likely to be amplified with devolution, making it improbable that issues surrounding the timely availability of audit reports – nationally and at county level – will be addressed soon. A key stumbling block for the NAO remains the quality of financial statements submitted. In some cases, MDAs submit old or incomplete statements in order to comply with the deadline, slowing down or paralysing the audit process. Delay in processing a modernised public audit bill is also hampering the NAO's efforts. Delays at the NAO level are exacerbated by delays in Parliament with the debate on the audit reports and audited financial statements.

- Overall, and related to the lack of (audited) outturn information for the fiscal year, there is no systematic accessible publication of audited appropriation accounts, which would enable citizens to assess budget implementation against budget plans with assurance as to the integrity of the information.

> *A crucial opportunity is the need to continue to invest in system development and capacity, not only within the national and county executives in order to improve the quality and timeliness of statements submitted to the NAO, but also within the NAO.* Beyond the publication of outturn information in the same format as the proposed budget allocations in the national and county budgets, which could be a 'quick-win' drawing on current systems, improvements in this area require significant additional time and investment, particularly to ensure the timely availability of compliant financial statements, and the subsequent timely availability of outturns audited to international standards. However, this is a necessary building block for accountability.

Recommendations

In view of these opportunities, the concluding joint workshop made the following recommendations:

- The executive budget proposal's main document on proposed allocations (currently the programme budget/ estimates of expenditure) should publish audited outturn information for years prior to the current year, in the same format as the proposed allocations.
- For outturns that are not yet audited, the executive budget proposal should provide provisional or revised information (see also the previous section on the executive budget proposal).
- There should be consistency across the years in the presentation of the budget books, so that data can be tracked beyond just the period of data provided in any one year. If function shifts or programme changes occur, data should be historically compatible.
- The government of Kenya should look at establishing a practice whereby frequent budget revisions are consolidated in one supplementary or revision budget, which is processed mid-year, allowing for arising expenditure needs to be assessed in a centralised, pooled process, and for a formal mid-year update on the macro-fiscal and other aspects of the budget. This would enhance the overall transparency of the budget.
- Audit reports should be simplified and made more accessible for non-expert stakeholders to understand and use in analysing public financial governance performance. The NAO would also benefit by using the media more strategically to disseminate its findings.
- The government of Kenya should invest in developing the systems and capacity of the NAO, so that the statutory audit timelines can be adhered to. The statutory independence of the office should be backed up by financial independence. The NAO also plays a vital role in the social accountability system, which obliges public officials and public institutions to account for the state's use of public resources as well as for the state's performance in meeting policy priorities and planned targets. Through regulatory audits, the NAO promotes regular and effective financial management processes.
- At national and county level, the government of Kenya should continue to make the development of accounting and reporting systems and capacity a key priority, in order to address the quality of in-year information and year-end financial statements submitted to the Auditor-General. This includes continuing to address issues of connectivity, reliability and actual use of the IFMIS system. An objective performance audit of the system could contribute to this process, to address different views on whether there are technical issues with the system, or whether the underlying problem is reluctance to use it properly.

- Delays in debating audit reports and financial statements in Parliament and lack of follow-up on Auditor-General and Public Accounts Committee recommendations should be addressed. One key intervention would be improved technical support for the Public Accounts Committee. While the PBO has started providing support, there is an argument to be made that the Public Accounts Committee requires dedicated support. This should include support and linkage across the budget process in Parliament to ensure that the issues raised by the Auditor-General are addressed in subsequent fiscal years.
- Consistency of financial information across the national and county governments must be addressed: an independent public sector accounting standards board for Kenya must be established.

The workshop noted the following as key steps towards making transparency gains in this arena:

- Stronger relationships between the NAO, the Public Accounts Committee in Parliament and civil society stakeholders should be developed. For example, the NAO could enlist lobbying support from civil society to address funding shortfalls against its vastly expanded mandate and to process the new public audit bill.
- At the same time, more accessible reports could also lead to increased pressure on the executive at national and county level to implement audit recommendations.
- Technical support for the Public Accounts Committee is an important element in addressing audit system shortfalls, and increased support from the NAO and civil society for the committee could fill important gaps while dedicated capacity is developed.

2.3 SPECIFIC INCLUSIONS

The coverage of fiscal information in the national system – in terms of intergovernmental fiscal relations, sub-national fiscal activities and specific inclusions – is a key transparency challenge for Kenya. The magnitude of current transparency issues with regard to intergovernmental fiscal relations and sub-national fiscal activities has been noted above. It remains crucial to address these issues, and they are the subject of much current work by the government of Kenya and its development partners. The review process, therefore, chose to focus on specific inclusions, as a key value-add within the current context.

> **"Kenya has performed reasonably well in providing information on donor activities on the revenue side, but poorly on the expenditure side.**

The need to continue paying attention to specific inclusions in the context of significant intergovernmental transparency challenges is driven by the high fragmentation of the Kenyan budget, with a large number of public entities and public funds in existence prior to the recent constitutional change. As stated in the 2012 PEFA report, the government's inventory of state corporations numbered 163 in December 2011. This inventory may not be complete, as indicated by another list totalling 165 corporations (according to the revenue and expenditure reports that they submitted for the second quarter of 2011/12), and the NAO records indicating about 175 corporations. Other informal sources suggest the existence of more than 200 state corporations and more than 40 special funds. A possible reason for the variance in these numbers is the different interpretation of the definition of state corporations by different actors. Attaining a clear definition and governance framework for state corporations is a significant public finance issue in Kenya; in 2010/11, for example, the total amount of revenue and expenditure budgeted by state corporations was equal to 67 per cent of central government budget operations for that year.

The constitutional change has introduced further fragmentation and sources of fiscal risk, with the expenditure budget now divided between the three arms of government (the executive, the judiciary and Parliament), between several constitutional funds (the Contingencies Fund, the Equalisation Fund, and the national and county revenue funds) and other statutory public funds (the local government and the constituency development funds), and between the two levels of government (national and county). Kenya also produces a development and a recurrent budget. On the revenue side, the budget is fragmented between domestic revenue and financing, and external grant revenue and financing, parts of which may fund any of the expenditure-side envelopes.

Some of these issues are already being addressed through provisions of the PFMA, including the requirement for an annual debt strategy to be provided to Parliament together with the budget policy statement, and the requirement that all loan guarantees must be approved by Parliament through a submission that sets out the existing contingent liabilities of the government. The review also found that work was underway to improve the coverage of contingent liabilities and reporting on new forms of financing, such as public-private partnerships. The current administration has also made the reform of parastatal entities a key component of its agenda. However, non-Treasury stakeholders were not familiar with information sources with regard to debt, contingent liabilities, off-budget expenditures and the financial affairs of state corporations.

The following key remaining issues were identified by the review:

- Under the previous PFM legal framework, the National Treasury was obliged to publish in an annex to the budget the revenue and expenditures of all state corporations. This was in line with established international benchmarks on the transparency of public corporations in respect of public finances. However, this obligation has not been provided for in the PFMA. Instead, the Cabinet secretary for public investment is now required to submit to Parliament and the Auditor-General a report on the extent of central government involvement in the financial affairs of state corporations, including loans made by the government to the corporations. Publication of this statement is not required (although it is deemed public by virtue of its submission to Parliament), and it does not constitute full disclosure of the financial affairs of these public bodies. In addition, while the State Corporations Act of 2010 requires the corporations to submit their budget proposals to their relevant line ministries and the National Treasury for approval, none of this process is public.

- The Open Budget Survey for 2012 shows that the amount of information given on specific inclusions has deteriorated over the surveys, for the most part. Whereas, in the past, Kenya provided information on some extra-budgetary funds, the 2012 survey judged this information to be lacking in important details. Whereas Kenya provided significant details on transfers to local governments in the first survey (in 2006), scoring 100, by the 2012 survey this had deteriorated to a score of 33. Kenya has never provided information on quasi-fiscal activities, pension obligations or financial and non-financial assets, and has stopped providing information on expenditure arrears and contingent liabilities (both of which were covered only in 2008).

- Kenya has performed reasonably well in providing information on donor activities on the revenue side, but poorly on the expenditure side. In the 2012 Open Budget Survey, it scored a B, meaning that at least two-thirds of donor revenue was identified by individual source. The 2009 PEFA report, however, awarded a D for the completeness and accuracy of information on donor expenditure/revenue in fiscal reports. Respondents noted that whereas processes were in place to include all donor-funded projects on budget – and this is a legal requirement – in practice, many projects were not reported, particularly when funds were not allocated or did not physically flow through country systems.

As in the other opportunity areas, there are well-established international benchmarks with regard to transparency on these specific issues, namely:

- The budget documentation, including the final accounts and other published fiscal reports, should cover all budgetary and extra-budgetary activities of the central government (IMF 2007).

- Statements describing the nature and fiscal significance of central government tax expenditures, contingent liabilities and quasi-fiscal activities should be part of the budget documentation, together with an assessment of all other major fiscal risks (IMF 2007).

- The budget documentation should report the fiscal position of sub-national governments and the finances of public corporations. In addition to the other transparency requirements falling on public corporations, it is important that information be included in the budget documentation on their finances, including operating balances in a degree of detail that allows a proper evaluation of fiscal risks (IMF 2007).

- CABRI's position on aid transparency, the Paris Declaration and Accra Agenda for Action, and the PEFA framework are all in alignment on the need to include comprehensive and compatible information on donor financing in the budget.

> A crucial opportunity exists to improve the coverage of specific inclusions regarding state corporations, extra-budgetary funds, contingent liabilities and donor financing in the executive budget proposal.

Recommendations

In view of these opportunities, the concluding joint workshop made the following recommendations:

- The National Treasury should disclose the financial affairs of all public corporations in the budget documentation, potentially through an annex similar to the one published in the past. While this is not part of the PFMA, it is in the spirit of increased transparency that underpins the Constitution and the PFMA, and in line with practice elsewhere. In the South African budget documentation, for example, all public entities' disclosures are covered by law, with some falling under corporate governance requirements (publishing their financial statements as part of an annual report), and others provided as budget and outturn information in annexes to the estimates of their associated national and sub-national departments, besides publishing annual reports directly as required under the South African PFMA and Treasury regulations.
- IThe National Treasury should implement PFMA provisions for disclosure on specific inclusions, particularly with regard to timeliness. This includes providing a debt strategy, loan reports and reports on guarantees, as required.
- IThe ongoing work for better disclosure on contingent liabilities, new forms of financing and other off-budget fiscal operations should be crystallised into the development of a reporting framework on these issues, which could be embedded in the regulations.
- IThe National Treasury's debt management office should enhance communication and engagement with CSOs and other external stakeholders through, for example, workshops to improve understanding of specific inclusions and information needs.

2.4 PARTICIPATION

As with transparency, Kenya has made great strides since 2000 in establishing a practice of public participation in the budget process. This has included the creation of sector working groups with civil society participation, and the holding of sector hearings and general budget hearings by the National Treasury and the working groups, both in Nairobi and in different counties.

The new Constitution and PFMA entrenched a participatory approach to public financial governance in law. For example, the Constitution guarantees the right of citizen to participate in the budget process (Chapter 12 on Public Finance), and requires the National Assembly to seek public input before approving the budget. The PFMA goes into more detail than the Constitution, and provides additional opportunities for participation, at both the national and county level of government. It requires that citizens are consulted before the budget policy statement (or pre-budget statement) is drafted (article 25). The PFMA requires the Cabinet secretary for finance to issue to all national bodies of government a circular that lays out how citizens can participate in the budget-making process (article 36). At county level, the law establishes county budget and economic forums, which facilitates participation by the public in county plans and budgets in so far as it is a multi-sector institution with government, private sector and civil society membership (article 137). Provision is also made for participation through Parliament and county assemblies, with budget committees in these institutions required to hold hearings on executive budget proposals. The PFMA also allows for the development of regulations to give further effect to the participation principles expressed in the Constitution and the PFMA.

There is, however, a risk that the statutory requirements could lead to a widespread compliance that does not result in functional or meaningful participation. This is particularly true of circumstances where the capacity for participation – on the part of citizens and the government – is not in place. When participation becomes mere procedure for counties and the national government, citizens may become disillusioned and withdraw from the process. Another risk is that statutory processes are skewed towards party or factional political interests. The review, therefore, recognised that the current and next few fiscal years are critical in determining the tenor of participatory practice across Kenya, but also in specific counties. Thus, the forthcoming PFMA regulations, which are widely seen as a vehicle for further developing the legal framework for participation, are critical for the establishment in Kenyan practice of the key internationally accepted principles. This includes: wide dissemination of the announcement of participatory channels or events in the budget process; provision of accessible documentation, so that citizens are informed when participating; ensuring that the rules of engagement are commonly understood by all parties; ensuring that consultation is structured within the framework of available resources, so that citizens are aware of the need for negotiation and trade-offs, to manage expectations and prevent participation leading to unrealistic wish lists of citizens' needs and preferences;

ensuring that different voices are heard within the participatory process; and formal feedback mechanisms.

Against this background, the review found that Kenyan institutions were indeed grappling with how to implement the PFMA provisions in practice. Parliament, together with the PBO, has developed a practice of offering a decentralised tour of hearings, allowing citizens outside of the capital to have access to statutory participation forums. Emerging participatory practice in Nyeri County includes making available budget documents in documentation centres across the county, roadshows to include citizens in planning and budgeting processes (and to provide feedback) across the county, and the appointment of community representatives at the ward level to act as intermediaries between the county and citizens in planning, budgeting and other issues. While the county could be described as relatively well capacitated compared to some other counties, and while these practices are not necessarily replicated across counties, these findings are illustrative of efforts being undertaken to operationalise the requirements. However, the review did not find emerging mechanisms to ensure that lessons learnt and good practices in respect of participation were shared across counties, or to engage Kenyan civil society systematically in developing good practice frameworks. This appeared to present a significant opportunity to address risks associated with low initial capacity for participation. Counties have also been very slow to set up county budget and economic forums.

CSOs with which the review consulted reported that the opportunities created through the sector working groups, the national budget hearings and parliamentary processes have been meaningful and have allowed citizens' perspectives to enter budget debates, albeit through the participation of CSOs. A common refrain, however, was difficulty in obtaining reliable, consistent and timely past and forward budget information to facilitate participation. Linked to delays in critical reports such as the quarterly expenditure, audit and public accounts committee reports, as well as inconsistent budget and data formats across counties and reports, this was identified by the organisations participating in the discussion forum with the review team as their first priority for improved practice. A second set of priorities concerned better management of the participatory process by way, for example, of: the timely announcement of opportunities; having clear and pre-shared agendas for meetings; and providing formal feedback, so that citizens could recognise the value of their contributions and retain their interest in participation. A final set of priorities centred on complementing statutory opportunities for participation in the budget preparation process with opportunities for citizens to become engaged in monitoring implementation and audit.

In summary, the review found that Kenya is at an important juncture for the future direction and quality of budget participation. The national government has laid an important foundation of participatory opportunities over the past decade. Formalising this practice into the statute books was an important step forward; however, this step needs to be followed by mindful implementation, capacity-building and monitoring of implementation, to prevent empty, compliance-driven practices.

Given the overall burden of managing a major transition in PFM practices from a centralised to a devolved system of government, there is a real risk that participation may not receive the focus and attention it needs in order to grow. This appears to be an opportunity for key CSOs, the National Treasury and interested development partners to ensure that the capacity to manage the development of participatory practice over the medium term is in place and adequately resourced.

Recommendations

In view of these opportunities, the concluding joint workshop made the following recommendations:

- A key focus for the lead agencies on fiscal transparency, such as the national and county treasuries, should be to ensure that fiscal information is complete, consistent, timely and useful, insofar as it is sufficiently detailed and supported by explanatory narratives.
- County governments, county assemblies and the institutions of national government will require clear guidelines on how participation should be carried out.
  - The PFMA regulations – as a legal framework – can fulfil this function only partially, to the extent that rules are established. The non-negotiables of effective participation should be included at this level, such as the requirement to provide information in advance of forums and meetings, and to provide feedback after the conclusion of related decision-making processes. Such feedback should ideally be captured in government planning and budget documents, to provide evidence to citizens that their participation is feeding into planning and budgeting processes, so as to maintain interest.

  - A secondary instrument, with the status of guidelines, should be developed to assist institutions in achieving good practices around participation. This may include examples of good practice or advice on ensuring that documentation or information is accessible. The National Treasury could draw on Kenyan capacity in participation to develop the framework further.

- The emerging good practices, and lessons learnt from less effective practices, should be shared amongst counties. A community of practice may be a good way of tackling this need. Such a community of practice can draw on existing knowledge in civil society and the government to support the development of good practices. The community of practice should embrace all key actors in budget transparency and participation, including the National Treasury, county treasuries, Parliament and the PBO, county assemblies, the CoB, the NAO, and ministries of national government such as the Ministry of Devolution and Planning.

- As an early step, county governments and the national government should identify and map out stakeholders in budgetary decision-making, and ensure that the participation mechanisms they develop allow for fair representation and participation by all stakeholders.

- Overall, participatory practice should bring civil society into planning and budget processes in the early stages, as an additional source of technical support and knowledge of/information on needs within communities, which can assist in effective and responsive planning and budgeting.

2.5 OTHER STAKEHOLDERS

As noted several times in the report, Kenya has built a strong platform of transparency and participation since the early 2000s. One result of this is that multiple actors are involved in providing fiscal information to the public, and in shaping participatory opportunities.

> **"Effective transparency and participation also require the involvement of non-state actors.**

In principle, too, fiscal transparency and participation are not just an obligation of the national and county treasuries. In the public sphere, the Auditor-General, Parliament, the PBO, county assemblies, the CoB, the Ministry of Devolution and Planning, sector ministries and state agencies all are required to be transparent, provide fiscal information and support participation. Arguably, however, effective transparency and participation also require the involvement of non-state actors. CSOs, for example, have a role to play in responsibly acting as intermediaries between the state and ordinary citizens, through translating technical documents, capacitating citizens and functioning as communication channels. CSOs that are capacitated for budget work could also arguably have an obligation to provide training and support to fellow CSOs, including community-based organisations, and the media to deepen their work through engagement with public budgets and service delivery. Media organisations have a critical role in disseminating information (e.g. by publishing summary versions of key documents), reporting responsibly and providing sound and defensible analysis. They also play a role in disseminating information on opportunities for participation and key dates in the budget cycle.

The review was also aware that fiscal transparency and participation need to be cost-effective. In this regard, the review noted that there appeared to be little collaboration and agreement among key actors on their different contributions to a national (or county) transparency system and how to ensure that their outputs were complementary and added value. There was some evidence that collaboration between state and civil society actors was ad hoc and driven by key networks of individual actors, rather than being systematic and comprehensive. Also, the review did not find evidence of extensive collaboration or coalition among CSOs to engage the government on transparency and participation issues, to build capacity across society and to interact with the executive and Parliament on budgetary decisions. These factors contributed to less than effective leverage of existing opportunities for participation, and a transparency system that was incomplete in some areas, with overlaps of information provision in others.

> The review found that inter- and intra-sector (as in public, private, civil society and media) collaboration to establish a national system of transparency and participation constituted a key set of opportunities for budgetary actors in Kenya.

Recommendations

In view of these opportunities, the concluding joint workshop made the following recommendations:

- Civil society actors should form coalitions or forums to leverage their respective strengths for participation throughout the budget process, both at the budget preparation stage and thereafter to build improved social accountability. This may be at the cross-sector level or within sectors, and will require effective leadership within the sector/s.

- In the public sphere, there must be collaboration between state actors across the cycle to ensure that comprehensive information is made available in a timely manner to relevant actors and stakeholders in useful formats, for transparency, accountability and participation purposes. Duplication and overlap should be reduced to ensure cost-effective transparency, while an overall framework on the formats of budget information should improve the consistency and usefulness of information across national and county governments, and from sector to central level.

- At the same time, there should be appropriate distinctions between the different phases of the budget process. For example, it is crucial that: a detailed executive budget proposal is publicly provided separately from the enacted budget, to make clear whether the executive or Parliament is responsible for budgetary decisions; participation opportunities are created in both phases; and the capacity of county assemblies for fiscal transparency and participation is developed separately from that of county executives.

- The oversight role of Parliament and county assemblies needs to be strengthened, and the understanding of the institutions and elected representatives of the role of legislatures in the budget process is essential. Investment in the capacity of Parliament is crucial for the effective and efficient execution of its mandate, role and functions in democratic governance. This includes: investment in the continuous capacity-building of representatives; the consolidation and deepening of permanent support capacity, such as the national PBO and parliamentary researchers; and support for initiatives like the Centre for Parliamentary Studies and Training to enhance the capacity of parliamentary members and staff.

- Development partners have a role in supporting capacity-development in public institutions, as well as backing civil society in building an effective national public financial governance system, anchored in the PFMA.

- The Kenyan media has a crucial role in increasing transparency by disseminating fiscal information fairly and accurately, and by building the economic literacy of ordinary citizens. Civil society and key state actors should encourage the development of capacity in the media to undertake this role, by building the fiscal and economic literacy of media institutions and individual reporters.

3 CONCLUSION

The current fiscal year (and a few years to come) constitutes a period of extraordinary development and reform activity in the public finance and financial management arena in Kenya. This is the result of a major constitutional transition from a centralised to a devolved system of government, with the establishment of counties, county governors and executives, county assemblies and revenue sharing. The new constitutional dispensation also involves a restructuring of the roles of the executive and the legislature in public financial governance, the fragmentation of the national budget into three components, the creation of various public funds and a new key budgetary institution, the CoB.

The new Constitution also anchors public financial governance in transparency and participation. These principles, particularly participation, are very much at the forefront of ongoing public finance development and reform activity in Kenya. The challenges are many: despite some investment in preparing for the devolution of public service delivery responsibilities to counties and for revenue sharing, the review was presented with evidence of major challenges associated with clarity on the fiscal roles and responsibilities of different actors, and the transparency of national, intergovernmental and sub-national revenues, transfers and expenditures. The basic priorities are clear and well understood by many actors: establishing across national and county governments institutional arrangements that, in practice, will ensure a fair distribution of revenues, allocative efficiency and stable service delivery, while maintaining overall (and county) fiscal discipline; establishing institutional arrangements across national and county governments to ensure reliable, consistent, compatible, timely and accessible fiscal information on the proposed and actual use of revenues; and establishing accountability and participation practices that will meaningfully contribute to sound public financial governance.

The review, therefore, focused on opportunities for improved fiscal transparency and participation, which would add value to the existing understanding of priorities. This was deemed to mean opportunities that represent quick wins and/or are crucial or might be overlooked in the current period of heightened activity. With these criteria in mind, the review highlighted five areas of opportunity involving different actors within and outside of the Kenyan state.

- Firstly, the executive budget proposal, as yet, does not fully leverage the important budget-preparation reforms that Kenya has undertaken since the early 2000s. While much information is released during the budget preparation process, the system is inadequate at the last hurdle, insofar as it produces an executive budget proposal that is: not adequately contextualised (by providing compatible information on past outturns and policy narratives linked to information releases earlier in the process); not timely enough to inform participatory processes or Parliament; not accessible for key actors or the public; and not streamlined, with the programme budget not providing sufficient detail, and the estimates of expenditure providing excessive detail without context. The review made several recommendations on the executive budget proposal.
- Secondly, despite significant improvement in the availability of in-year fiscal information, the review found that the lack of timely, consistent, audited financial statements and appropriation accounts presents a risk of the in-year information becoming meaningless, as the checks on its integrity are late or absent. It appears that addressing this weakness is not a quick win, but will require significant further investment in systems and capacity.
- Thirdly, given some fragmentation of the Kenyan budget, with many public bodies and funds operating outside of the main budget, as well as significant fiscal risk associated with a high number of public corporations, the review found a continued need to improve transparency with regard to the specific inclusions in fiscal information on extra-budgetary funds, public corporations and donor financing.
- Fourthly, the review recognised that the inclusion of participation clauses in the Constitution and specific provisions in the PFMA is important, and has triggered considerable development and reform in this area. It, however, found that this activity could be leveraged by collaboration between counties, national government and actors to share emerging lessons and good practices, and to ensure that frameworks are developed that capture established principles of budget participation adequately.
- Fifthly, and relatedly, the review found an overall need for different actors in the national transparency and participation system to take up strong roles and collaborate intra- and inter-sector (within the public, civil society and media spheres and across spheres), in order to develop and strengthen the system at this crucial time.

This report is intended to form a basis for the National Treasury of Kenya and Kenyan civil society to identify concrete actions towards immediate and longer-term transparency and participation gains. Annex 2 provides a matrix template to assist in this process. The programme concluding workshop will follow up on progress against the actions set out in the matrix.

ANNEX 1: SUMMARY REVIEW OF TRANSPARENCY AND PARTICIPATION IN KENYA

The two tables in this annex provide a summary of the status of transparency in Kenya against the OBI framework (Table A.1), and of participation against the ten operational principles for participation identified by Kenyan civil society (Table A.2). The annex is intended to supplement the main body of the report. Readers are also referred to the Background Paper to the Kenya Joint Country Review, which is available on the CABRI website (www.cabri-sbo.org).[4]

Table A.1: Availability of key budget documents

OBI abbreviation	Kenyan document	OBI description	Status	New legal framework	Practice under new legal framework
PBS	Budget policy statement	Pre-budget statement: Provides information that links government policies and budgets, and typically sets forth the broad parameters that will define the budget proposal that is presented to the legislature.	Published	Required to be published (national and county)	Published in 2013 online for national government (but late against statutory deadline); limited county papers available in 2013
EBP	Budget estimates	Executive's budget proposal: Presents the government's plans to raise revenues through taxes and other sources, and to spend these monies to support its priorities, thus transforming policy goals into action.	Published	Required to be published (national and county)	Published for national government but already with proposed amendments by the Parliamentary Budget Committee; late against international standards and not online; limited county documents available in 2013. It should be noted that a high-level programme budget document was made available (but not online) earlier than the budget estimates.
EB	Appropriation Act	Enacted budget: The legal instrument authorising the executive to raise revenues, make expenditures and incur debt.	Published	Required to be published (national and county)	Published for national government (not online); limited county compliance.
CB	Kenya budget highlights	Citizens' budget: A non-technical presentation to enable broad public understanding of a government's plans for raising revenues and spending public funds in order to achieve policy goals.	Published	Not required to be published (national and county)4	Published online, on budget day, two weeks prior to start of fiscal year. Only available in English.

4 Note that the PFMA requires the budget highlights to be submitted to Parliament (article 40), but it does not specify what should be in the highlights or whether they should be published. Currently, the National Treasury publishes a document called 'Highlights of the Budget', which effectively is a citizens' budget. As the PFMA article does not specify the content of the legally required highlights, the judgement here is that a citizens' budget is not required.

OBI abbreviation	Kenyan document	OBI description	Status	New legal framework	Practice under new legal framework
IYR	Quarterly reports	In-year reports: Periodic (monthly or quarterly) measures of the trends in actual revenues, expenditures and debt, which allow for comparisons with the budget figures and adjustments.	Published	Required to be published (national and county)	Published by national government online; county compliance limited. The CoB, however, publishes a quarterly budget execution report, which includes information both on releases by national and country treasuries, and actual use of resources by spending agencies.
MYR	Budget review and outlook paper (part fulfilment of requirements)	Mid-year review: An overview of the budget's effects at the midpoint of a budget year, which discusses any changes in economic assumptions that affect approved budget policies.	Produced for internal use	Required to be published (national and county)	The BROP was first published in 2012, in line with the PFMA. It undertakes what a mid-term report should, but is published after one quarter and, therefore, does not fully comply with the OBI definition of a mid-year report. It informs the supplementary budget.
YER		Year-end report: Information comparing the actual budget execution with the enacted budget.	Produced for internal use	Required to be published (4th-quarter report; CoB reports)	The 4th-quarter report could be seen as a year-end report as it compares actual budget execution and budgeted expenditure. It would have to be expanded however, to fit the OBI description of a year-end report.
AR		Audit report: Independent evaluation of the government's accounts by the country's supreme audit institution.	Published	Required to be published (national and county)	Published by NAO, but 2011/12 late.
Not OBI	Electoral reports	Pre-electoral reports on state of public finances and macro-economy.	Not published	Required to be published at national level	Not published. But, the government published the budget policy statement almost two months early, so as to be considered by Parliament before the election.

Table A.2: Review of participation in Kenya

Principle	Summary review
Public consultations should be open to all citizens and taxpayers, without discrimination	In the national budget process, there are different types of consultation. The participation by CSOs in the sector expenditure review processes is by invitation. The sector and budget hearings, however, are open, but the way in which they are structured means that there is limited opportunity for wide public participation. At the Parliamentary level, the hearings of the budget committee are open and are conducted across the country. There is also selected engagement with the PBO by expert CSOs. The selected nature of participation in some cases is defensible; in these cases, the specific expertise and knowledge of CSOs are sought as a technical and information input; this could be seen as different from public consultations, which are open, in principle, to all citizens and taxpayers.
Safeguards should be established to prevent consultation forums from being dominated by one political group, organised interest or politician	National Treasury budget hearings and the hearings of the budget committee in Parliament are publicised through the media. At the county level, the visit to Nyeri County provided evidence of efforts to involve all citizens through the appointment of representatives at the ward level (which can both guard against capture or be a form of capture itself). These representatives, however, are the only safeguard against capture of processes by specific groupings or individuals of which the review team was aware. Further process safeguards – to ensure equitable participation by all members of a public forum on forum proceedings – would be an important area in which to develop good practice.
Public consultations must have clear and specific purposes	It is not always clear what the purpose is of sector and budget hearings organised before the budget is submitted to Parliament, the and opportunity for public input at these meetings is limited. At the county level, their usefulness is still untested.
The timeline and venue for public consultations should be known at least two weeks in advance of the consultation	This principle is not always adhered to: the public hearings in the budget preparation process are not always announced well in advance, and the National Treasury website, where the public can check to see what the forthcoming dates are, has not been consistently live recently. Nevertheless, there are examples of national practice following this guideline. In 2013, the budget process was unusual, due to the elections and the creation of counties, and the statutory deadlines for documentation and processes were not followed. 2014 will be an important year of practice, being the first 'normal' year with all constitutional and PFMA provisions active.
Public consultations must set aside dedicated time for public feedback and questions	The extent to which this principle is adhered to is unclear.
Public participation in the planning and budget process should occur at all stages in the process	At the national level, there is significantly more consultation in the planning and budget preparation, and legislative, phases of the planning and budget process. There are no formalised opportunities for participation in subsequent phases. However, in the previous dispensation, some local authorities and constituencies did include citizens in public reviews of the implementation of projects from special funds, such as the Constituency Development Fund and the Local Authority Service Delivery Action Programme. There is, therefore a base of practice on which the new counties can build.
The public must have access to all relevant plan and budget documents in a timely fashion	In 2013, this was not the case for the executive budget proposal (see main text and Table A.1).
All plan and budget documents should contain a summary and a narrative	This is not consistently the case. The detailed estimates of expenditure does not contain a narrative, and provides financial information only. However, other reports, such as the quarterly report, the budget policy statement and the CoB's reports all contain narratives and summaries.
Citizens should be able to provide input into public consultations through direct participation, through representatives and through written comments	In Kenya, citizens can participate directly and through representatives at the national level. The National Treasury requests written submissions on the budget via the media. For example, this year an advert was placed in the media in February, well before the budget policy statement and budget were submitted to Parliament.
There should be a feedback mechanism, so that citizens know that their inputs have been considered	Feedback mechanisms are still weakly developed.

ANNEX 2: NEXT-STEPS MATRIX

Review recommendation	Specific commitment/target change by NT and/or civil society	Complexity of change (low, medium, high)	Specific actions required	Timeline to reach target	Responsible actor	Other actors to be involved
EXECUTIVE BUDGET PROPOSAL						
The Kenyan National Treasury should merge the programme-based budget and the detailed line-item estimates of expenditure into one document. This document should : • present systematic multidimensional information on the proposed budget allocations; • present forward estimates in the context of past outturns; and • present a further breakdown of programmes into sub-programmes, and provide secondary economic classification breakdowns (at the same time, information must be appropriately aggregated).						
Programmes and sub-programmes developed within the highest level of sector and ministerial structures should be refined further to align better with the policy mandates/objectives of the government to promote policy alignment and accountability.						
The non-financial information (narratives and performance measures) should be refined further to assist in the contextualisation of allocations.						
The National Treasury should make the full set of executive budget proposal documents available online on budget day, such as is the practice in several CABRI member and participating countries.						
The citizens' budget document (Budget Highlights: The People's Guide) should be refined and more widely disseminated; and could use more innovative means to make the information accessible.						
AVAILABILTY OF INFORMATION ON OUTTURNS						
The executive budget proposal's main document on proposed allocations (currently the programme budget/ estimates of expenditure) should publish audited outturn information for years prior to the current year, in the same format as the proposed allocations. For outturn that is not yet audited, the executive budget proposal should provide provisional or revised information (see also previous section on the executive budget proposal).						
There should be consistency across years in the presentation of the budget books, so that data can be tracked beyond just the period of data provided in any one year. If function shifts or programme changes occur, data should be historically compatible.						

Review recommendation	Specific commitment/target change by NT and/or civil society	Complexity of change (low, medium, high)	Specific actions required	Timeline to reach target	Responsible actor	Other actors to be involved
The government of Kenya should look at establishing a practice where frequent budget revisions are consolidated in one supplementary or revision budget that it processes mid-year, allowing for arising expenditure needs to be assessed in a centralised, pooled process, and for a formal mid-year update on the macro-fiscal and other aspects of the budget.						
Audit reports should be simplified and made more accessible for non-expert stakeholders to understand and use in analysing government public financial governance performance.						
The government of Kenya should invest in developing the systems and capacity of the NAO, so that the statutory audit timelines can be adhered to. The statutory independence of the NAO should be backed by financial independence.						
The government of Kenya, at national and county level, should continue to make the development of accounting and reporting systems and capacity a key priority, in order to address the quality of in-year information and year-end financial statements submitted to the Auditor-General.						
Delays in debating audit reports and financial statements in Parliament and lack of follow-up on Auditor-General and Public Accounts Committee recommendations should be addressed. One key intervention would be improved technical support for the Public Accounts Committee.						
Consistency of financial information across the national and county governments must be addressed. An independent public sector accounting standards board for Kenya must be established.						
SPECIFIC INCLUSIONS (public corporation, extra-budgetary expenditure, contingent liabilities)						
The National Treasury should disclose the financial affairs of all public corporations in the budget documentation, potentially through an annex similar to the one published in the past.						
The National Treasury should implement PFMA provisions for disclosure on specific inclusions, particularly with regard to timeliness. This includes providing a debt strategy, loan reports and reports on guarantees, as required.						
The ongoing work on better disclosure of contingent liabilities, new forms of financing and other off-budget fiscal operations should be crystallised into the development of a reporting framework on these issues, which could be imbedded in the regulations.						
The National Treasury's Debt Management Office should improve communication and engagement with CSOs and other external stakeholders.						
PARTICIPATION						
The 'non-negotiable' principles of effective participation should be included in the regulatory framework, such as the requirement to provide information in advance of forums and meetings, and to provide feedback after the conclusion of related decision-making processes.						
Guidelines should be developed to further assist institutions in good practice for participation. This may include examples of good practice or guidelines on ensuring that documentation or information is accessible.						
The National Treasury could draw on Kenyan capacity in participation to develop the framework for participation further.						

Review recommendation	Specific commitment/target change by NT and/or civil society	Complexity of change (low, medium, high)	Specific actions required	Timeline to reach target	Responsible actor	Other actors to be involved
The emerging good practices in counties, and lessons learnt from less effective practices, should be shared amongst counties. A community of practice may be a good way of tackling this need. Such a community of practice should include all key actors in budget transparency and participation, including the National Treasury, county treasuries, Parliament and the PBO, county assemblies, the CoB, the NAO, and other ministries of national government such as the Ministry of Devolution and Planning.						
As an early step, county governments and the national government should identify and map out stakeholders in budgetary decision-making, and ensure that the participation mechanisms they develop allow for fair representation and participation by all stakeholders.						
Participatory practice should bring civil society into planning and budget processes early on as an additional source of technical support and knowledge of/ information on needs within communities, which can assist in effective and responsive planning and budgeting.						
OTHER STAKEHOLDERS						
Civil society actors should form coalitions or forums to leverage their respective strengths for participation throughout the budget process, at budget preparation stages and in building improved social accountability.						
In the public sphere, there must be collaboration between state actors across the cycle to ensure that comprehensive information is made available in a timely manner to relevant actors and stakeholders in useful formats, for transparency, accountability and participation purposes. Duplication and overlap should be reduced to ensure cost-effective transparency, while an overall framework on the formats of budget information should improve the consistency and usefulness of information across national and county governments, and from sector to central level.						
There should be appropriate distinctions between the different phases of the budget process, with adequate information releases on fiscal decisions and activities in each phase.						
The oversight role of Parliament and county assemblies needs to be strengthened. It is essential in this regard that the elected representatives understand the role of legislatures in the budget process. Investment in the capacity of Parliament is crucial.						
Development partners have a role in supporting capacity-development in public institutions, as well as supporting civil society in building an effective national public financial governance system.						
The Kenyan media have a crucial role in increasing transparency by disseminating fiscal information fairly and accurately, and by building the economic literacy of ordinary citizens. Civil society and key state actors have a role in supporting the development of capacity in the media in this regard, by building the fiscal and economic literacy of media institutions and individual reporters.						

ANNEX 3: INSTITUTIONS MET

National Treasury

Principal Secretary and the Budget Director

Budgetary Supplies Department

External Resources Department

Internal Audit Departments

Integrated Financial Management System Unit

Public Financial Management Reform Unit

Other government institutions

Controller of Budget

Ministry of Devolution and Planning

Nyeri County Executive

Office of the Accountant-General

Office of the Auditor- General

Parliamentary Budget Office

Development partners

EU

World Bank

Civil Society Organisations

Institute of Economic Affairs

Development Initiatives

Transparency International

Africa Youth Trust

National Taxpayers Association

Africa Centre for Open Governance

Institute of Certified Public Accountants

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