

KENYA DEVOLUTION

WORKING PAPER 2

FEBRUARY 2015

Basic Requirements for Public Participation in Kenya's Legal Framework

OBJECTIVE: Kenyan policymakers have put strong emphasis on transparency, participation and accountability in the new Constitution and legal framework. This paper highlights key provisions in Kenya's legal framework to stimulate discussion on how the provisions can be converted to functioning participatory systems.

Understandably, given the pace and scale of Kenya's transition to devolved government, there are ongoing questions about roles and responsibilities of different parts of government and the role of citizens under devolution. Global experience shows that it takes time for systems to be put in place and for legal requirements to be operationalized.

This working paper seeks to distil key provisions in the legislative framework related to transparency, accountability and participation in county government, in particular the planning and budgeting cycle, and present them in a format that is useful for county planners, executive and assembly members. It can be used as a guide for how Counties can interface with citizens based on Kenya's legislative framework.

KENYA'S CONSTITUTION AND LEGAL FRAMEWORK PROVIDE STRONG FOUNDATION FOR PUBLIC PARTICIPATION

Transparency

Disclosure of information: Clear fiscal reporting and citizen access to timely accurate information on budgets, government programs and results; ATI legislation (CoK Arts: 35, 201, 232; CGA 2012 Arts: 94, 95, 96; PFMA 207)

Accountability

Responsiveness and answerability: Accountability in financial matters, Independent Commissions to oversee implementation of constitutional provisions, handle citizen complaints (CoK Arts: 174, 201; CGA 89)

Participation

Public consultation and decision making: Public shall be engaged in budget and policy formulation, planning and social service delivery priority setting (CoK Arts: 174, 201, 232; CGA 47, 91, 99-100; PFMA 125, 128, 131, 137 UAC 2011, 21 and 22)

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Useful resources in this working paper include:

- Minimum requirements for transparency, accountability, and participation at the county level based on Kenya's legal framework (Box 1).
- A public participation checklist which can help County Governments assess whether they are on track in operationalizing legal provisions related to citizen participation in planning, public financial management and monitoring (Box 2).
- County budget documents and timeline for tabling in the county assembly and for release to the public (Box 3).
- Minimum requirements for Transparency, Accountability and Participation in the budget cycle (Box 4).

Commitment to citizen participation in the planning, delivery of services, budgeting and monitoring is well articulated across the legislation. The Constitution refers to these principles in Articles 10 and 174 and reference is made specifically to participation in: public finance (Art. 201), the process of policy-making (Art. 232) and, the governance and management of urban areas and cities (Art. 184). The County Governments Act (Sections 3 and 6); the Public Finance Management Act (Section 10); the Transition to Devolved Government Act (Section 14); and the Urban Areas and Cities Act (Section 3) are all guided by principles of transparency, accountability and participation.



Ministry of Devolution
and Planning

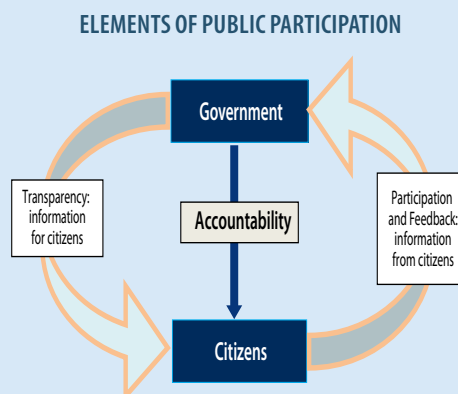


Kenya School of Government

Key elements of public participation (social accountability)

Social accountability refers to processes which enable citizens to hold state institutions accountable and make them responsive to their needs. **Transparency** of public finances and performance is ensured through rules, mechanisms, and capacities for sharing information on government programs, budgets, expenditures, and results with citizens. **Participation** mechanisms enable citizens to participate in setting budget priorities and monitor expenditures, and assess service delivery performance; they also include feedback systems, which provide citizens with the opportunity to provide comments and grievances.

Accountability mechanisms include both direct and indirect relationships, where service providers are sanctioned if they fail to meet an established standard.



Kenya's emphasis on public participation is in line with emerging global experience on what is needed to make decentralization work

Global experience indicates that effective decentralization often depends on balancing increased discretion of local governments with increased accountability—both upwards and downwards. Global and Kenya's own experiences suggest that there are significant risks associated with devolved service delivery, if proper accountability mechanisms are not quickly put in place. Building downward accountability requires tailoring county systems to be responsive to citizens' needs and adapted to the local context, such as the size of the county, level of urbanization, capacity of the county government, number of marginalized groups and others. Experience shows that such a process of adaptation is enhanced through a participatory process in consultation with the county government, along with civil society, as opposed to a top down approach.¹

Kenya's progressive legal framework

Transparency, participation and accountability are at the heart of the Constitution of Kenya (CoK) and subsequent legislation. The Constitution places extensive requirements for public participation upon national and devolved governments as enshrined in Article 1 of the CoK. The devolution laws in turn provide multiple provisions that county governments are required to implement including timely access to information, public involvement in planning, budgeting, in the establishment of performance standards and involvement in county decision making. The challenge ahead is to translate legislative provisions into operational guidelines, working systems and capacities.

What are minimum legal requirements for accountability at the county level?

This paper provides an overview of core provisions in Kenya's legal framework for transparency, accountability and participation at the county level (Box 1). These include public participation in policy making, throughout the planning and budget cycle. This means that citizens must be given adequate time and information to participate effectively. Box 3 provides the recommended timeline for release of budget documents to the public and for tabling in the county assembly.

"County Governments should conduct their business openly and publicly and facilitate citizen involvement in their business and committees."

– Constitution Art. 196

"Members of the County Assemblies should maintain close contact with the electorate and consult with them on issues under discussion in the County Assemblies."

– CGA Section 9:1

"County Governments should create structures, mechanisms and guidelines for citizen participation... ensure participation is open to all without discrimination and have safeguards against domination of the consultations by one group (whether politicians, elites or CSOs)."

– CGA Section 115

¹ World Bank, *Devolution without Disruption*, pg. 162.

BOX 1: MINIMUM REQUIREMENTS FOR PARTICIPATION AT THE COUNTY LEVEL BASED ON KENYA'S LEGAL FRAMEWORK

Overall legal, regulatory, institutional framework	Reference in Legislation
1. County Governments (CGs) should create structures, mechanisms and guidelines for citizen participation. The structures and guidelines should ensure participation is open to all without discrimination and have safeguards against domination of the consultations by one group (whether politicians, elites or CSOs).	PFMA Section 207.
2. Each county assembly shall develop laws and regulations giving effect to the requirement for effective citizen participation in development planning and performance management within the county and such laws and guidelines shall adhere to minimum national requirements.	CGA Section 115 (2) and 47
3. CGs and its agencies shall designate an office or officer for purposes of ensuring access to information and shall enact legislation to ensure access to information for which reasonable fees may be imposed.	CGA Section 96 and CoK, Art. 35.
4. CGs should promote access to information for minorities, marginalised groups and communities.	CoK, CGA, PFM Act (Specifically Article 35 and 254:3)
5. CGs should establish mechanisms to facilitate public communications and access to information with the widest public outreach using media, which may include: television stations, information communication technology centres, websites, community radio stations, public meetings; and traditional media.	CGA Section 94 and 95.
6. CGs should develop city-level interactive websites on which planning information will be posted and feedback received.	Urban Areas and Cities Act 2011.
7. CGs should create legislation to provide the institutional framework for facilitating civic education and establish a civic education unit.	CGA Section 100-101.
8. County Governors are responsible for promoting and facilitating citizen participation in the development of policies and plans, delivering services, and for submitting an annual report to the county assembly on citizen participation in the affairs of the county government.	CGA, Section 30 and 92.
9. CGs should establish County Budget and Economic Forums (CBEF) as a “means for consultation” by the county government on plans and budgets.	PFM Act Section 137
10. CGs should develop complaints (grievance redressal mechanisms) which are followed up and have the confidence of citizens. These should be based on common standards, with clear regulations and operational mechanisms.	CGA Section 47 and 59, PFM Section 48 and 139.
11. County Government Authorities, agencies and agents have a duty to respond to petitions and challenges from citizens. Public authorities should promote accountability; ensure that expenditure of public funds is subject to effective oversight; and promote informed debate on issues of public interest.	CGA Section 89, FOI Clause 27.
12. The County Governor should publicly deliver an annual State of the County address.	CGA Section 30K.
Participatory Budgeting	
13. County Governors are responsible for ensuring citizen participation in the planning and delivery of services.	CoK Art. 232 and CGA Section 115.
14. Citizens should be engaged in preparation of integrated development plans. Citizens should be represented in the boards of cities and municipalities including representatives of professional associations, private sector, registered associations of informal sector, neighbourhood associations and associations of urban areas and cities.	Urban Areas and Cities Act (Section 22 and Second Schedule Clauses 1 and 2).
15. County planning should serve as a basis for engagement between county governments, citizens, other stakeholders and interest groups.	CGA Section 102.
16. The County Planning Unit (CPU) will be responsible for ensuring meaningful citizen engagement in planning processes through a 5 year County Integrated Development Plan (CIDP); a 10 year County Sectoral Plan; a 10 year County Spatial Plan; and a Cities and Urban Areas Plan.	CGA Section 105.

Participatory Budgeting	
17. The County Executive Committee (CEC) member for finance should ensure citizen participation in planning and budgeting.	PFMA Section 125.
18. The County Budget circular should prescribe the manner in which the public will participate. Participation could take various forms including but not limited to direct participation, written comments and through representatives.	PFMA Section 128.
19. The public should be consulted in preparation of the County Fiscal Strategy Paper.	PFMA Section 117.
20. The accounting officer of an urban area or city should ensure that the public participates in the preparation of the annual budget estimates/strategic plan.	Urban Areas and Cities Act Section 21, draft Urban Policy pg. 18, PFMA Section 175.
21. The relevant committee of the County Assembly should take into account public views in considering budget estimates.	PFMA Section 131.
Participatory Monitoring	
22. Each county should develop the Performance Management Plan to provide for mechanisms of monitoring the work of the county.	CGA Section 47 and 59, PFM Section 48 and 139.
23. Each County should establish County Public Service Boards. The CPSBs should be responsible for (i) reporting to the county assembly, (ii) informing and educating county public officers, (iii) advising the county governments on the implementation and monitoring of the national performance management system which should involve citizens facilitated by the County Executive Committee.	CGA Section 57-59.
Financial Transparency – Public Financial Management (PFM)	
24. Various budget documents (e.g. Budget estimates and approvals, fiscal strategy paper, Audited accounts, Annual Reports, Quarterly Report, Pre and post- election reports) should be published and publicized within laid out times in user friendly formats (e.g. have executive summary and narrative) so the citizens can provide meaningful input and engagements.	PFMA Section 48, 123(3), 139 and 166(4c).
25. Municipal and city boards should make public their annual audited financial statements; to be published in two major public dailies, as well as on Board's website, and in a conspicuous place at the Board's office.	The Urban Areas and Cities Act, Section 48.

Proposed checklist for assessing level of Transparency, Accountability and Participation

The County Public Participation Checklist (Box 2) has been developed as a tool for use by County Governments (Executive and Assembly), civil society organizations, citizens, partners and others to track progress in relation to legislative requirements for participation, transparency and accountability.

A common assessment framework such as this tool can help identify challenges and barriers to promoting effective participation. It can provide government and citizens with a 'baseline needs assessment' to identify good practices and areas where additional attention is needed. This tool can assist county governments to implement an effective public participation and accountability framework in their planning and budget cycle. Furthermore, it can serve to bring together government and civic actors to work jointly to embed participation in county planning and budget processes that brings together supply- and demand-side interventions.

While the proposed checklist has 34 questions/indicators, all indicators are not of equal importance. Based on the Working Paper 5, *One Year On: Review of County Initiatives in Public Participation in the Role out of Devolution*, the checklist highlights 10 indicators that are proposed, for discussion, as priority indicators.

BOX 2: COUNTY PUBLIC PARTICIPATION CHECKLIST

County Name:

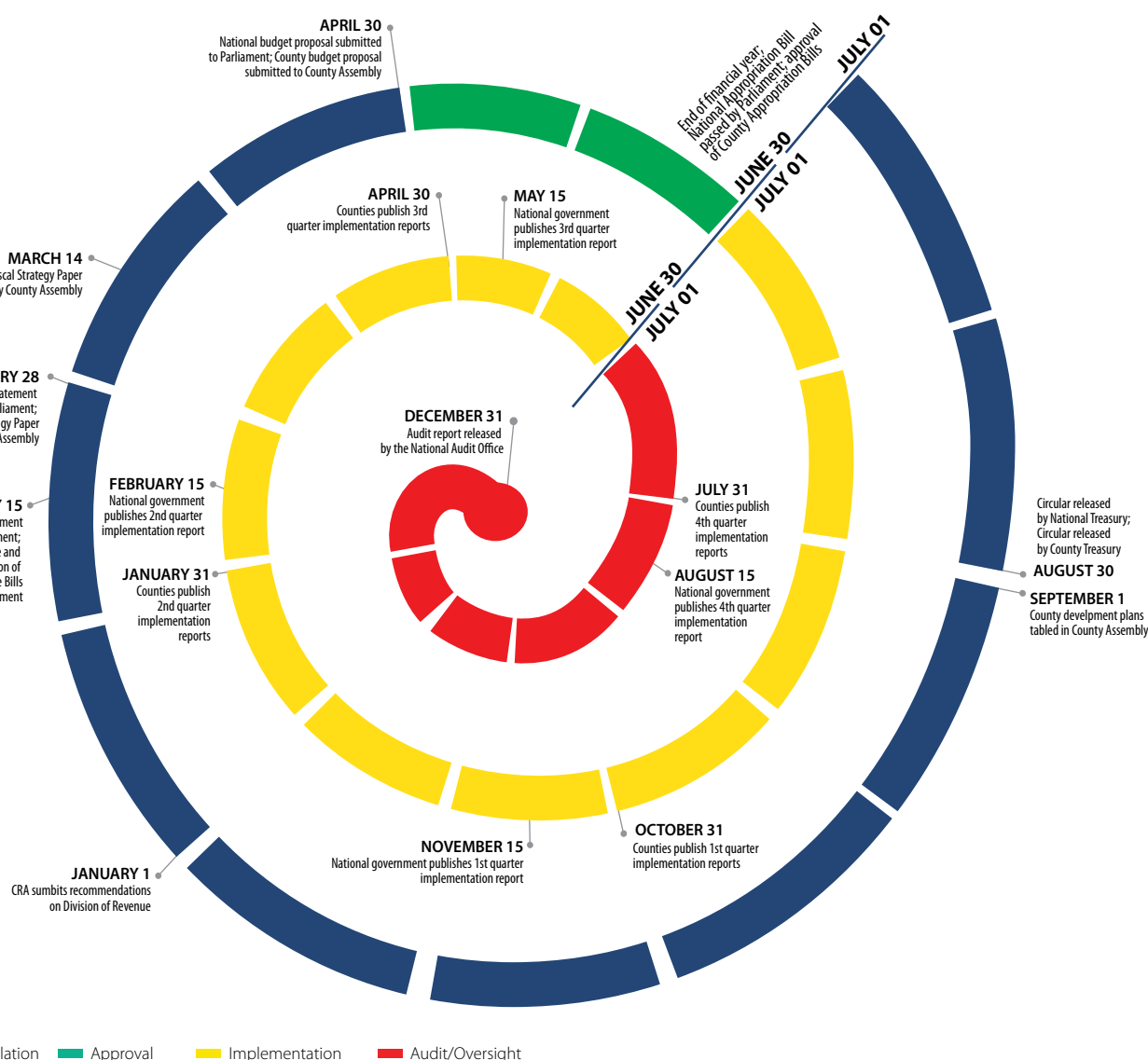
Assessment undertaken by: Date:

		Yes	No	Requires Action
1.0 COMMUNICATIONS AND TRANSPARENCY AROUND CITIZEN ENGAGEMENT				
1.1	Have the County Government (CG) enacted legislation to provide the institutional framework for facilitating public participation and civic education?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.2	Are there mechanisms in the CG to facilitate public communications and information access e.g. media, TVs, ICT centers, websites, community radio, baraza, tradition media?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.3	Are there platforms to promote access to information for minorities, marginalized groups and communities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.4	Has the CG established a civic education unit for purposes to ensure access to information by the public?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.5	Has the County Governor publicly delivered an annual State of the Country Address?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.6	Has the County Governor submitted an annual report to the county assembly on citizen participation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.0 PARTICIPATORY PLANNING				
2.1	Has county assembly developed laws and regulations supporting effective citizen participation in development planning and performance management?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.2	Has the CG established County Planning Units (CPUs) or County Planning Committees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.3	Has the CPU or county planning committee ensured effective citizen involvement in planning processes in (1) CIDP (2), Sectoral plan (3), spatial plan (4), urban areas plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.4	Are citizens represented in key forums, including the boards of cities and municipalities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.0 PARTICIPATORY BUDGETING				
3.1	Has CG published and publicized various budget documents within specified time to enable citizens meaningful input and engagement? (all with executive summary and narrative)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.2	Has the County Executive established the County Budget and Economic Forum (CBEF)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.3	Does the County Executive facilitate public consultations at different stages of the budget cycle?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.4	Does the CA have a Budget and Appropriations Committee (CBAC)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.5	Does CBAC release budget information?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.6	Does the CBAC convene public budget forums for analysis of the CE proposed budget	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.0 PARTICIPATORY MONITORING				
4.1	Has the CG established the County Public Service Boards (CPSBs)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.2	Has the CG developed the Performance Management Plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.3	Does the CPSB (1) report to the county assembly? (2) inform and educate county public officers? (3) advise the CG on the implementation and monitoring of the county performance management system which should involve citizens facilitated by the CEC?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.0 GOVERNMENT RESPONSIVENESS AND ACCOUNTABILITY TO CITIZENS				
5.1	Does CG establish feedback mechanisms for citizens to know their input was considered?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.2	Do the public forums set aside specific time for public questions and feedback?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.3	Does the CG have a service charter on access to information?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.4	Does it avail the information within the specified time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.5	Has CG developed interactive websites on which planning information is posted and feedback received?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.6	Has the CG conducted an Annual Public Expenditure Tracking Survey (PETS) with engagement of the Controller of Budget?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.0 FINANCIAL TRANSPARENCY & REPORTING				
6.1	Has CG published and publicized various budget documents within specified time (Audited accounts, annual reports, quarterly reports)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.2	Did municipal boards make public their annual audited financial statements by publishing in two major public dailies, on boards website and on board's office where easily viewable by the public?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.3	Does the CG have a Public Accounts Committee and Public Investment Committee that regularly audit CG financial reports?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

BOX 3: COUNTY BUDGET DOCUMENTS AND TIMELINE FOR TABLING IN THE COUNTY ASSEMBLY AND FOR RELEASE TO THE PUBLIC

	Budget Document	Contents of the Document (What MCAs should look out for before approving the document)	Date Due in the County Assembly	Deadline for Action by the CA	Rationale for public release	Publication Information / Input by the Public
1.	Budget Circular	<ul style="list-style-type: none"> Timelines for various activities; Procedures for review and projection of revenues and expenditures; Key policy areas to be taken into consideration; Procedures for public consultation; and Format for budget documentation. 	30 th August (County)	<p>-</p> <p>Action: For the information of members especially in scheduling their annual calendar.</p>	The document is critical for the public to know when, where and how to participate in the budget process.	To be publicized within 7 days of publication.
2.	County Integrated Development Plans (CIDP)/ Annual Development Plans	<ul style="list-style-type: none"> Strategic priorities for the medium term; Programmes to be delivered; Significant capital expenditure; and Grants, transfers and subsidies to be made on behalf of County Governments. 	1 st September	<p>No date provided but should be within 14 days</p> <p>Action: To debate and approve with or without amendments.</p>	<p>The plans will go through three main stages:</p> <p>a. Formulation by the County Planning Unit</p> <p>b. Approval by the County executive</p> <p>c. Tabling and approval in the CA.</p> <p>In each of this stages there is need to share with the public the documents whether as draft especially in stage (a) and (b).</p>	<p>14 days before adoption in the County Executive and then tabling in the CA.</p> <p>To be publicized within 7 days of tabling in the CA and within 7 days after approval in the CA.</p>
3.	Budget Review and Outlook Paper (BROP)	<ul style="list-style-type: none"> Actual fiscal performance in the previous year; Updated economic and financial forecasts from the recent Budget Policy Statement; Identification of broad policy priorities to be implemented by the CG in the medium term; Provide indicative available resources (i.e. ceilings) to fund CG priorities—in consultation with CRA and the National Treasury; and Reasons for any deviations from the financial objectives in the County Fiscal Strategy Paper (C-FSP). 	30 th September	<p>-</p> <p>Action: For Information of Members.</p>	The County Treasury will prepare the BROP and it is important that before they table it in the County Executive the Public be given an opportunity to comment.	<p>14 days before tabling in the county executive committee (with 7 days allowed for input).</p> <p>To be publicized 7 days after tabling in the CA.</p>
4.	County Fiscal Strategy Paper (CFSP)	<ul style="list-style-type: none"> Broad strategic priorities and policy goals—medium term and long term. Outlook on expenditures, revenues and borrowing for the medium term. 	28 th February	<p>15th March</p> <p>Action: To debate and approve.</p>	<p>There is need that before the County Executive approves the CFSP, the public be given an opportunity to input.</p> <p>Thereafter when it is tabled in the county assembly it should be made public.</p> <p>Finally what the CA approves (with or without amendments) should be made public too for greater certainty.</p>	<p>7 days before tabling in the County executive.</p> <p>To be publicized 7 days after tabling in the CA.</p>
5.	Debt Management Strategy	<ul style="list-style-type: none"> The total stock of debt as at the date of the statement; The sources of loans made to the county government; The principal risks associated with those loans; The assumptions underlying the debt management strategy; and An analysis of the sustainability of the amount of debt, both actual and potential. 	28 th February	<p>-</p> <p>Action: For information of members in decision making on the liabilities of the county.</p>	-	-
6.	Budget Estimates (Revenue and Expenditure) Appropriation Bill	<ul style="list-style-type: none"> Details of all planned development and recurrent expenditures of the government. Also the estimated revenues by source and explanation of strategies for deficit financing. 	30 th April	<p>30th June</p> <p>Action: To debate and approve with or without amendments.</p> <p>To pass the appropriations bill to authorise withdrawals from the County Revenue Fund.</p>	<p>The public need to see what is tabled in the CA.</p> <p>This should also be complemented by clear dates (Not later than 30th May) as to when the public can give feedback to the departmental committees (on sector specific matters) or to the Budget and Appropriation Committee.</p>	<p>7 days after tabling in the national or CA with 14 days of public input.</p> <p>To be publicized 7 days after tabling in National and CA.</p>
7.	Budget and Appropriation Act	Same as above.	30 th June	-	Once all has been discussed and the final budget approved it should be made public via the appropriations act and detailed programme/itemized budget documents on the day it is approved but not later than 7 days.	To be publicized 7 days after approval in the National and CA.
8.	Supplementary Budget documents	Revised budget estimates.	On needs basis		All supplementary budgets should be availed before they are tabled in the respective houses for people to input where need be and thereafter when they are being considered in the house.	<p>14 days before tabling in the National or CA.</p> <p>7 Days after tabling in the National or CA.</p>
9.	Finance Act / Finance Bill	Taxation and other revenue raising measures of the county government.	30 th September (within 90 days)	<p>-</p> <p>Action: To debate and approve with or without amendments.</p>	<p>There is need that the public have a opportunity to input into the Finance Bill before it is tabled in the National or CA;</p> <p>Further the public should also be allowed space by the Finance Committee to contribute before the house (s) approve it.</p>	<p>14 days before tabling in the National or CA.</p> <p>To be publicized 7 days after approval in the National or CA.</p>
10.	Expenditure Review Reports	An indepth analysis on specific sectors to establish the progress (or lack of it) by the county.	No Specific Date	<p>-</p> <p>Action: For information of members.</p>	-	-
11.	Audit Reports	An independent opinion on the use of public funds in the county (both the county executive and county assembly).	31 st December	<p>3 months</p> <p>Action: To debate and decide on what actions should be taken.</p>	-	-

THE BUDGET PROCESS IN KENYA: NATIONAL AND COUNTY LEVEL



BOX 4: MINIMUM REQUIREMENTS FOR TRANSPARENCY, ACCOUNTABILITY AND PARTICIPATION IN THE BUDGET CYCLE

Stage in the Budget Cycle	Requirement	Legal/Policy Provision
Formulation	<ul style="list-style-type: none"> Resource Envelope Details made public Availing of Budget Information (Proposals and their rationale) Public Participation calls at least 7 days to the meeting Adequate (at least 7 Days) to the public to avail feedback. 	Public Finance Management Act Section 125 & 128.
Approval	<ul style="list-style-type: none"> Framework for public engagement with the County Assembly in the approval process Public participation and feedback mechanism Provision of documents (in an easy to understand format) before consultative meetings are held. 	Public Finance Management Act Section 125, 129, and 130.
Implementation	<ul style="list-style-type: none"> Service Implementation and Monitoring Committees Feedback mechanism in quality of public goods and services Mechanism for petitioning. 	Public Finance Management Act Section 125.
Audit	<ul style="list-style-type: none"> Public input in the financial and value for money audits Recourse measures for the public where appropriate action is not taken. 	Public Finance Management Act Section 125.
Crosscutting	<ul style="list-style-type: none"> Engagement of the public through the County Budget Economic Forum (CBEF). 	Section 137.

PUBLIC PARTICIPATION AT EVERY LEVEL—FROM RURAL WOMEN TO URBAN YOUTH



Women in Wajir County participate in focus group discussions



Members of the Yes Youth Can! Forum presenting their perspectives on devolved government

Abbreviations and Acronyms

CBAC	County Budget and Appropriation Committee	CPAC	County Public Accounts Committee
CBEF	County Budget and Economic Forum	CPSB	County Public Service Boards
CEC	County Executive Committee	CPU	County Planning Unit
CG	County Government/s	FOI	Freedom of Information
CGA	County Government Act	PETS	Public Expenditure Tracking Survey
CIDP	County Integrated Development Plan	PFMA	Public Financial Management Act
CoK	Constitution of Kenya		

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