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SEQUENCE AND STEPS OF THE BUDGET PROCESS AT
COUNTY LEVEL.¹

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ABBREVIATIONS AND ACRONYMS

1. CA County Assembly
2. CBROP County Budget Review and Outlook Paper
3. CFSP County Fiscal Strategy Paper
4. CIDP County Integrated Development Plan
5. CSP County Sectoral Plans
6. PFM Act Public Finance Management Act

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1.0. THE KEY LEGAL FRAMEWORKS

The two key laws that guide the county budgeting process are the Public Finance Management Act, 2012 and the County Government Act, 2012.



THE PUBLIC FINANCE MANAGEMENT

(PFM) ACT

Section 125- Section 133:

Stipulate the county budgeting process



THE COUNTY GOVERNMENTS ACT

Section 102- Section 115

Provide for the various county development plans

2.0. KEY TIMELINES IN THE PLANNING AND BUDGETARY PROCESS²

Kenya's Financial Year begins on 1st July every year, by which time the budgets should be approved. In this regard, the PFM Act stipulates the timelines for the key steps leading up to 30th June. The Table 1. below summarises these critical steps whereby the public's involvement and participation, both quantitatively and qualitatively, directly and indirectly, is required.³

Table 1

Timelines	Activity
Every 5 years	Development of the County Integrated Development Plan (CIDP). ⁴
Every 10 years and reviewed every 5 years	Development of County Sectoral Plans (CSP) by each County Department. It is reviewed by the county executive every five years with the County Assembly's approval. ⁵
Every 10 years and reviewed every 5 years	Development of the County Spatial Plan by the County Department of Physical Planning with the approval by the County Executive Committee. ⁶
Every 5 years	Cities and Urban Areas Plan. ⁷

² The timelines are stipulated within the PFM Act and the County Government Act, See also Budget Calendar by the International Budget Partnership: https://www.internationalbudget.org/wp-content/uploads/ibp_kenya_budget_calendar_2015.pdf (accessed 28.11.2021)

³ Section 107 and Section 115 of the County Governments Act, 2012 and Section 125(2) of the PFM Act,2012

⁴ Section 107 and Section 108 of the County Governments Act, 2012

⁵ Section 107 and Section 109 of the County Governments Act, 2012

⁶ Section 110 of the County Governments Act, 2012

⁷ Section 111 of the County Governments Act, 2012

Timelines	Activity
Activities undertaken Every Financial Year	
By 30 August	Issuance of a budget circular by the County Executive Committee member for finance. ⁸
By 1 September	A County Annual Development Plan is prepared by the County's Planning Unit and tabled in the County Assembly and a copy shared with the National Treasury and the Commission of Revenue Allocation. ⁹
By 30 September	The County Treasury should prepare and submit a County Budget Review and Outlook Paper (CBROP) to the County Executive Committee. ¹⁰
By 14 October	The County Executive Committee has 14 days to review and approve the CBROP and submit it back to the County Treasury. ¹¹
By 21 October	The County Treasury submits the approved CBROP to the CA and publishes and publicizes the document. ¹²
By 15 January	The County Treasury should have a draft County Fiscal Strategy Paper (CFSP).
By 28 February	Submission of the CFSP and the Debt Management Strategy to the County Assembly. ¹³
By 20 April	Submission of County Budget Estimates and other supporting documents to County Executive Committee for approval ¹⁴

⁸ Section 128 of the PFM Act,2012

⁹ Section 126(3) of the PFM Act,2012

¹⁰ Section 118(1)(b) of the PFM Act,2012

¹¹ Section 118(3) of the PFM Act,2012

¹² Section 118(4) of the PFM Act,2012

¹³ Section 117 and Section 123 of the PFM Act,2012

¹⁴ Regulation 30(7) of the PFM County Government Regulations, 2015

Timelines	Activity
By 30 April	Submission of County Budget Estimates and other supporting documents to the County Assembly for approval. The County Executive Committee member for finance shall then prepare and submit a County Appropriation Bill to the county assembly of the approved estimate. ¹⁵
By 30 June	Approval of the estimates by the County Assembly in the form of the Budget and Appropriation Act. ¹⁶
Within 90 days of the Budgetary approval	Approval of Finance Bill by the County Assembly. ¹⁷

3.0. DETAILS OF THE KEY STEPS IN THE PLANNING AND BUDGETARY PROCESS AT COUNTY LEVEL HIGHLIGHTING OPPORTUNITIES FOR PUBLIC PARTICIPATION

Table 2. below is an expansion of Table 1. above. It provides further details of the summarised steps in Table 1. and also highlights public participation opportunities as they allow citizens to engage in the process, provide feedback, and influence county priorities.

Timeline	Activity	Purpose as Stipulated in Law	Opportunities for Public Engagement
Every 5 years	Development of the County Integrated Development Plan (CIDP)	Every county develops a County Integrated Development Plan, which is the county's five-year development plan.	The County Treasury should involve the public at formulation before tabling the Plan before the County Executive. ¹⁸

¹⁵ Section 129(2)(a) and (7) of the PFM Act,2012

¹⁶ Section 131(1) of the PFM Act,2012

¹⁷ Section 133 of the PFM Act,2012

¹⁸ Section 106 and Section 115 of the County Governments Act, 2012

Timeline	Activity	Purpose as Stipulated in Law	Opportunities for Public Engagement
		It sets out clear goals and objectives and includes an implementation plan with clear outcomes, monitoring and evaluation, and reporting mechanisms.	The County Assembly should publicize the CIDP within 7 days of submission, and the public is allowed to give views on the document proposed for adoption.
Every 10 years and reviewed every 5 years, updated annually	Development of County Sectoral Plans (CSP) by each County Department. It is reviewed by the County Executive every five years with the County Assembly's approval.	The CSPs are part of the CIDP, they are programme based, they are the basis for budgeting and performance management for each department, and they outline key objectives for each sector in the county.	Public participation in development of the CSPs is important because it provides the opportunity to influence priorities for the county depending on citizens' needs.
Every 10 years and reviewed every 5 years	Development of the County Spatial Plan by the County Department of Physical Planning with the approval by the County Executive	<p>The County Spatial Plan outlines the strategies and policies relating to the use of land at the county level; the National Spatial Plan informs the individual County Plan</p> <p>The spatial plans will consider issues such as population, key economic activities, infrastructure, transport, environmental conservation concerns, climate change, and disaster risk reduction, mitigation and adaptation, inclusion of marginalised and minorities within the county</p>	<p>There is an opportunity for public participation at formulation by the Department of Planning and when pending the County Assembly's approval.</p> <p>The process should aim to create awareness of the plans, identify the community's needs, and ensure sustainable land use.</p>

Timeline	Activity	Purpose as Stipulated in Law	Opportunities for Public Engagement
Every 5 years	Cities and Urban Areas Plan	<p>These are the lowest level of plans prepared by Counties and their ground the projects identified under the County Spatial Plan in the specific city, municipality, or town. The Plan provides for functions and principles of land use and building plans, location of various types of infrastructure within the city, municipality, or town, and development control</p> <p>These plans should reflect the overall objectives of the Spatial Plans and provide for the functions and principles of land use and building plans, location of various types of infrastructure within the city, municipality, or town and development control, and whether they are favourable consistent with land laws.</p>	
Activities undertaken Every Financial Year			
By 30 August	Issuance of a budget circular by the County Treasury.	The Budget circular is a guideline for the county budget process and should include guidelines for public participation in the various stages of the budget-making process, thus guiding members of the public who wish to participate in the process.	The circular should be published for access by members of the public.

Timeline	Activity	Purpose as Stipulated in Law	Opportunities for Public Engagement
By 1 September	A County Annual Development Plan is tabled in the County Assembly. The County's Planning Unit prepares this.	The Law provides that public funds can only be utilised within a planning framework. Counties thus develop annual development plans informed by the CIDP.	<p>Opportunity for input by the public should be provided right from the formulation of the plan by the County Planning Unit to when it is before the County Assembly for approval.</p> <p>The annual development plan is published within 7 days of submission to the County Assembly.¹⁹</p> <p>Citizens should be involved through the sector working groups that conduct workshops and public hearings to discuss development priorities.</p> <p>The sector working groups bring together the various government departments in a sector to engage on priorities for the sector. They are also the primary mechanism for public engagement on the sector priorities.</p>

¹⁹ Section 126(4) of the PFM Act, 2012

Timeline	Activity	Purpose as Stipulated in Law	Opportunities for Public Engagement
By 30 September	The County Treasury prepares a County Budget Review and Outlook Paper (CBROP) to the County Executive Committee.	The CBROP is a review of the county's financial performance in the previous year. Looking at the budget, what was actually spent, and deviations from the financial objectives of the year.	The CBROP should be published for public review at least 7 days after it is submitted to the County Executive Committee for approval. ²⁰
By 14 October	The County Executive Committee has 14 days to review and approve the CBROP and submit it back to the County Treasury		
By 21 October	The County Treasury submits the approved CBROP to the CA and publishes and publicizes the document.		
By 15 January	The County Treasury should have a draft County Fiscal Strategy Paper (CFSP)	The CFSP sets out the strategic priorities and policy goals that guide the county in the prepared budget and the county's revenues, expenditures, and borrowing.	There should be opportunity for feedback from the public, before the County Treasury finalises the CFSP for tabling before the County Executive. ²¹

²⁰ Section 118(4) of the PFM Act, 2012

²¹Section 117 (5) of the PFM Act, 2012

Timeline	Activity	Purpose as Stipulated in Law	Opportunities for Public Engagement
By 28 February	Submission of the CFSP and the Debt Management Strategy to the County Assembly		The County Treasury should publish and publicise the CFSP, at least 7 days after its' submission to the County Assembly. ²²
By 15 April	Submission of County Budget Estimates and other supporting documents to County Executive Committee.	The Budget Estimates should detail the planned development activities, recurrent expenditures, estimated revenue and the sources, and also the strategies for financing the deficits.	The budgetary estimates should be published within 7 days of being submitted to the County Assembly. ²³ The County Assembly will invite the public's views or hold public forums through the various sectoral committees to review the estimates. ²⁴
By 30 April	Submission of County Budget Estimates and other supporting documents to County Assembly (County Appropriation Bill).		
By 30 June	Approval of the estimates by the County Assembly in the form of an Act called		The Act must be publicised together with all the accompanying documents within 21 days of the approval of the County

²² Section 117(8) of the PFM Act, 2012

²³ Regulation 6(2) and Regulation 7 of the PFM County Government Regulations, 2015

²⁴ Section 131(2) of the PFM Act, 2012

Timeline	Activity	Purpose as Stipulated in Law	Opportunities for Public Engagement
	the Budget and Appropriation Act		Assembly in a form that is clear and easy for members of the public to understand. ²⁵
Within 90 days of the Budgetary approval	Approval of Finance Bill by the County Assembly	The Finance Bill provides for the mechanisms by which the County will raise revenue and the taxes the county government will impose.	The Budgetary and Appropriations Committee of the County Assembly should organise public forums and also invite views on the proposed measures for revenue collection. ²⁶

Besides the public participation opportunities highlighted above, Section 137 of the PFM Act requires the establishment of the County Budget and Economic Forum in each County that is constituted of the Governor, members of the Executive Committee, and representatives of a number equal to the number of the executive committee members who are not county public officers and are nominated by organisations representing professionals, business, women, persons with disabilities, the elderly etcetera. The Forum provides a means of consultation by the county governments on the preparation of the county plans, the CFSP, the CBROP, and matters relating to budgeting, the economy, and financial management at the county level.²⁷

²⁵ Section 131(5) (6) of the PFM Act, 2012

²⁶ In line with Court decisions such as *Kiambu County Government & 3 others v Robert N. Gakuru & Others* [2017] eKLR available at <http://kenyalaw.org/caselaw/cases/view/137956> (accessed 17.11.2021)

²⁷ Section 137 of the PFM Act.

4.0. EMERGING CASE LAW ON COUNTY BUDGET PROCESSES

Since the commencement of the devolved system of governance in Kenya, some counties have been cited in courts for a breach of the stipulated procedure in legislation. Most of the issues are related to the failure to provide sufficient opportunity for public participation. Highlighted below are some of the cases:

One of the most significant cases on public participation was: ***Kiambu County Government & 3 others v Robert N. Gakuru & Others [2017] eKLR - [Failure to allow for public participation is unconstitutional and sufficient ground for nullification of an Act]***

In the case, the petitioner was seeking a declaration that the Kiambu Finance Act, 2013, as gazetted, violated various provisions of the Constitution as no consultations took place before the Act was passed. The petitioner's case was that though they had been consulted on an initial bill where their views were incorporated, that bill was rejected by the County Assembly. Another bill was gazetted without considering the petitioner's views. The High Court declared the Finance Act null and void for the absence of public participation, and the Court of Appeal agreed with the findings.²⁸

Also relevant is the ***Tyson Ng'etich & another v Governor, Bomet County Government & 5 others [2015] eKLR - [The Appropriation Act only takes legal effect upon being gazetted]***; which petition related to the constitutionality of the process by which the Bomet County Appropriation Act 2014 and the Bomet County Appropriation (Amendment) Act 2014 were passed due to various infractions of the PFM Act at different stages of the budget process.²⁹

The Appropriations Act was not gazetted as required in law for an Act to take effect and therefore there was no legal anchor for application of the County's budget estimates. The Court found that the budget making process of Bomet County for the financial year 2014-2015 was unlawful and unconstitutional, that

²⁸ See the case of *Kiambu County Government & 3 others v Robert N. Gakuru & Others [2017] eKLR* available at <http://kenyalaw.org/caselaw/cases/view/137956> (accessed 17.11.2021)

²⁹ See the case of *Tyson Ng'etich & another v Governor, Bomet County Government & 5 others [2015] eKLR* available at <http://kenyalaw.org/caselaw/cases/view/109724/> (accessed 17.11.2021)

the Bomet County Appropriation Act of 2014 and the Bomet County Appropriation [Amendment] Act of 2014 were unprocedural, unconstitutional, null and void.

Another notable case is *Local Empowerment for Good Governance & 6 others v Community Executive Committee Member Finance & Economic Planning - County Government of Mombasa & 2 others [2021] eKLR - [Establishment of the County Budget and Economic Forum is compulsory as required by Section 137 of the PFM Act]*

The petition sought to nullify the budget-making process of Mombasa County for the Fiscal Year 2018/2019 for reasons that the process did not comply with the timelines at each stage of the budget process, that crucial documents such as the County Fiscal Strategy Paper (CFSP), the County Integrated Development Plan (CIDP) among others were not published nor availed upon request.

The Petitioners were also concerned that the county had never established the County Budget & Economic Forum. Unfortunately, too much time had elapsed when the matter was determined thus the Court considered the issues relating to the budget process in the financial year 2018/2019, resulting in the Mombasa County Appropriation Act of 2018 moot. However, the Court ordered that the Respondents establish the County Budget and Economic Forum in line with Section of 137 of the PFM Act within 90 days of the decision.³⁰

5.0. CONCLUSIONS

Based on the following analysis the following four conclusions arise:

Firstly, the budgetary process at county level is comprehensively articulated in various laws that have been cited above. In this regard, for the public to engage competently at the various steps, it is imperative that the public is well informed and educated about the sequence and various steps applicable. Clearly the necessity for budget related civic education cannot be gainsaid.

Secondly, the finalization of the very long awaited public participation law is essential for the budget process. The process is quite systematic and carefully laid out with clear timelines in legislation. The Law also provides for public participation, which is one of the most important tools for citizen participation in

³⁰ See the case of *Local Empowerment for Good Governance & 6 others v Community Executive Committee Member Finance & Economic Planning - County Government of Mombasa & 2 others [2021] eKLR* available at <http://kenyalaw.org/caselaw/cases/view/215388> (accessed 17.11.2021)

governance under the current constitutional dispensation. From the case law highlighted above, public participation has emerged as a key issue for non-compliance in the process. Of note, Parliament is yet to enact a public participation law as at the time of conclusion of this paper.

Pen ultimately, the respective County Plans are an integral part of the budget priorities. Therefore, it would be necessary to review the County Integrated Development Plans of the select counties to establish current priorities and inform engagements in the next cycle when the plans are under review.

Lastly, there are many different actors at every stage of the planning and budgeting process. Therefore, there is a need to map out and engage with the different stakeholders on pro-WEE budget issues.

6.0. RECOMMENDATIONS

Drawing from the above conclusions AWSC WEE Hub should:

Firstly, engage in advocacy efforts to push Parliament to finalize the public participation law. There are currently two different bills in the National Assembly and the Senate.

Secondly, provide technical assistance in developing a model law on public participation for counties that mirrors the national Law for consistency at the county level.

Thirdly, review CIDPs of select counties and develop proposals that should inform WEE Hub's advocacy as the next cycle of CIDPs are being developed.

Lastly map out key stakeholders that should be involved in strategic engagements to advocate for the pro-WEE budget lines.