



BUDGET TRANSPARENCY: Kenyan Perspective

**IEA RESEARCH PAPER SERIES No. 4
OCTOBER 2003**

**Albert K. Mwenda
Mary N. Gachocho**



BUDGET TRANSPARENCY: Kenyan Perspective

**IEA RESEARCH PAPER SERIES No. 4
OCTOBER 2003**

**Albert K. Mwenda
Mary N. Gachocho**

Published by:

INSTITUTE OF ECONOMIC AFFAIRS

5th Floor, ACK Garden House

1st Ngong Avenue

P.O. Box 53989

Nairobi- 00200

Tel: 254-020-2717402, 2721262

Fax: 254-020-2716231

Email: admin@ieakenya.or.ke

© Institute of Economic Affairs, 2003

First Published in 2003

ISBN: 9966-9805-1-2

TABLE OF CONTENTS

LIST OF FIGURES	5
LIST OF TABLES	6
ACRONYMS	7
ACKNOWLEDGEMENTS	10
EXECUTIVE SUMMARY	11
SECTION ONE: INTRODUCTION AND BACKGROUND	13
1.1 UNDERSTANDING THE EXISTING LAWS AND REGULATIONS GOVERNING THE BUDGET PROCESS .	13
1.2 WHAT THEN IS THE PROBLEM?	18
1.3 THE RESEARCH	19
1.3.1 Research Methodology	21
1.4 ORGANIZATION OF THE REPORT	22
SECTION TWO: PARTICIPATION	23
2.1 INTRODUCTION.....	23
2.2 PARTICIPATION IN THE BUDGET PROCESS	23
2.2.1 Attendance of Budget Meetings	25
2.2.2 Guidelines for Planning and Preparing the Budget.....	26
2.3 GOVERNMENT SUPPORT IN PARTICIPATION	27
2.4 FACTORS LIMITING STAKEHOLDERS PARTICIPATION IN THE BUDGET PROCESS	29
2.5 SHORTCOMINGS OF THE PARTICIPATION PROCESS.....	29
2.6 RECOMMENDATIONS ON THE PARTICIPATION PROCESS.....	31
2.7 CONCLUSION.....	32
SECTION THREE: BUDGET INFORMATION	34
3.1 INTRODUCTION	34
3.2 ACCESSIBILITY TO BUDGET INFORMATION	34
3.2.1 Challenges in Accessing Budget Information.....	35
3.2.2 Recommendations on Accessibility of Budget Information.....	36
3.3 TIMELINESS OF BUDGET INFORMATION.....	36
3.4 ACCURACY OF BUDGET INFORMATION.....	37
3.5 CLARITY AND EASE OF USE OF THE BUDGET INFORMATION.....	38
3.6 DETAILS AND FORMAT OF BUDGET INFORMATION	39
3.7 INDEPENDENT CHECKS FOR BUDGET INFORMATION INTEGRITY	40
3.8 SHORTCOMINGS OF THE BUDGET INFORMATION.....	42
3.9 RECOMMENDATIONS ON BUDGET INFORMATION	43
3.10 CONCLUSION.....	44
SECTION FOUR: BUDGET FLEXIBILITY	45
4.1 INTRODUCTION	45
4.2 BUDGET FLEXIBILITY	45
4.2.1 Advantages of a Flexible Budget.....	46
4.2.2 Disadvantages of a Flexible Budget.....	46
4.3 RELEVANCE OF THE EXISTING TOOLS OF ENHANCING BUDGET FLEXIBILITY	47
4.4 CHECKS ON BUDGET FLEXIBILITY.....	48
4.5 MODIFICATIONS TO THE BUDGET	50
4.6 OFF-BUDGET TRANSACTIONS.....	51
4.7 SHORTCOMINGS OF BUDGET FLEXIBILITY.....	52
4.8 RECOMMENDATIONS ON BUDGET FLEXIBILITY	52
4.8 CONCLUSION.....	53

SECTION FIVE: BUDGET ACCOUNTABILITY	54
5.1 INTRODUCTION	54
5.2 BUDGET ADHERENCE TO GOVERNMENT POLICY STATEMENTS	54
5.3 MEDIUM TERM EXPENDITURE FRAMEWORK.....	55
5.4 GOVERNMENT PROCUREMENT PROCEDURES	57
5.4.1 Adherence to Existing Procurement Procedures	59
5.4.2 Implementation of Government Programmes.....	60
5.5 SHORTCOMINGS IN THE PROCUREMENT PROCEDURES.....	61
5.6 RECOMMENDATIONS REGARDING PROCUREMENT PROCEDURES.....	62
5.7 CONCLUSIONS.....	62
SECTION SIX: REALISTIC BUDGET	63
6.1 INTRODUCTION.....	63
6.2 INVOLVEMENT IN TREASURY BUDGET FORECASTING PROCESS	64
6.3 COST-BENEFIT ANALYSIS (CBA) OF POLICY STATEMENTS AND LEGISLATION.....	65
6.4 CLARITY, PRACTICABILITY AND ACHIEVABILITY OF GOVERNMENT POLICY STATEMENTS.....	66
6.5 ATTEMPTS TO LINK THE BUDGET TO HUMAN RIGHTS.....	67
6.6 CONCLUSION.....	67
SECTION SEVEN: OVERSIGHT OF THE BUDGET	68
7. 1 INTRODUCTION.....	68
7.2 ROLE OF NETWORKS IN BUDGET OVERSIGHT	69
7.3 EARLY WARNING SYSTEMS.....	70
7.4 MECHANISMS TO HANDLE IRREGULARITIES.....	71
7.5 ADHERENCE OF GOVERNMENT ACCOUNTS TO GENERALLY ACCEPTED ACCOUNTING STANDARDS (GAAS).....	71
7.6 SHORTCOMINGS OF THE OVERSIGHT OF THE BUDGET.....	72
7.7 RECOMMENDATIONS ON BUDGET OVERSIGHT	74
7.8 CONCLUSION.....	75
SECTION EIGHT: CONCLUSION AND RECOMMENDATIONS	76
8.1 INTRODUCTION.....	76
8.2 EMERGING ISSUES	76
8.2.1 Budget Transparency.....	76
8.2.2 Legal Framework	77
8.2.3 Stakeholders Participation in the Budget Process.....	77
8.2.4 Imbalance in the Budget Process.....	78
8.2.5 Resource Mobilization.....	78
8.2.6Budget Information.....	78
8.2.7 Building a Policy Agenda in Budgeting	79
8.3 FUTURE BUDGET FRAMEWORK STRATEGY	79
8.3.1 Continuous Advocacy and Awareness Creation.....	80
8.3.2 Capacity Building.....	80
8.3.3 Integrated Approach to the Budget Process.....	81
8.3.4 Greater Collaboration and Networking in the Budget Process	81
8.4 OPERATIONALISATION OF THE FUTURE BUDGET STRATEGY	82
8.4.1 Decentralization of the Budget Process.....	82
8.4.2 Information systems.....	82
8.5 PROPOSED ACTION PLAN.....	83
SECTION NINE: REFERENCES.....	86
SECTION TEN: ANNEXES.....	88

List of Figures

Figure 2.1	Overall Citizen Participation Rate in the Budget Process	23
Figure 2.2	Attendance of Budget Meetings	24
Figure 2.3	Awareness of Planning and Preparing Guidelines	26
Figure 2.4	Government Support in Participation	27
Figure 2.5	Factors Limiting Kenyans Participation (Intensity)	28
Figure 3.1	Accessibility to Budget Information by Type of Respond	34
Figure 3.2	Clarity and Ease of Use of Budget Information	38
Figure 3.3	Checks of Budget Information Integrity	40
Figure 4.1	Rate of Budget Flexibility	45
Figure 4.2	Relevance of Budget Data in Flexibility	46
Figure 4.3	Awareness of Off-Budget Transactions	50
Figure 5.1	Budget Adherence to Policy Statements	53
Figure 5.2	MTEF Role in Linking Budget to Policy	56
Figure 5.3	Effectiveness of Government Procurement Procedures	57
Figure 5.4	Adherence to Existing Procurement Procedures	58
Figure 5.5	Implementation of Government Programs	59
Figure 6.1	Realistic Budget	62
Figure 6.2	Government Involvement of other Stakeholders in the Treasury Forecasting Process	63
Figure 6.3	Cost Benefit Analysis (CBA) of Policy Statements	65
Figure 7.1	Opportunities for Systematic Assessment of the Budget Performance	69
Figure 7.2	Adherence to Generally Accepted Accounting Standards	71
Figure 8.1	Transparency Rate of the Budget Process	75

List of Tables

Table 3.1	Overall Accuracy of Budget Information	37
Table 3.2	Sufficiency and usefulness of the Details and Format of Budget Information	39
Table 7.1	Effectiveness in the Oversight of the Budget	67
Table 10.1	Annual Budget Programme	87
Table 10.2	Information Accessibility by Type of Respondent	90
Table 10.3	Information Accuracy BY Type of Respondent	91

Acronyms

AG	Attorney General
AG-C	Auditor General Corporations
AIDS	Acquired Immune Deficiency Syndrome
AIEs	Authority to Incur Expenditures
AKE	Association of Kenya Engineers
AKI	Association of Kenya Insurers
APSEA	Association of Professional Societies in East Africa
BMD	Budget Monitoring Department
BSD	Budgetary Supply Department
C&AG	Controller & Auditor General
CBA	Cost Benefit Analysis
CBK	Central Bank of Kenya
CBS	Central Bureau of Statistics
CCGD	Collaborative Centre for Gender and Development
CGD	Centre for Governance and Development
COMESA	Common Market for East and Southern Africa
CSOs	Civil Society Organizations
DDCs	District Development Committees
EAC	East Africa Community
ERB	Electricity Regulatory Board
ERD	External Resources Department
FMAD	Fiscal and Monetary Affairs Department
FSP	Fiscal Strategy Paper
GAAS	Generally Accepted Accounting Standards
GDP	Gross Domestic Product
GEIFIC	Global Economic Investments and Financial Consultancy Limited
ICAD	Institute for Civic Affairs and Development

Budget Transparency: Kenyan Perspective

ICPAK	Institute of Certified Public Accountants of Kenya
ICPSK	Institute of Certified Public Secretaries of Kenya
IDASA	Institute of Democracy in South Africa
IEA	Institute of Economic Affairs
IED	Institute for Education in Democracy
IPAR	Institute of Policy Analysis and Research
IPC	Investment Promotion Centre
KAM	Kenya Association of Manufacturers
KBA	Kenya Bankers Association
KCC	Kenya Cooperative Creameries
KIPPRA	Kenya Institute of Public Policy Research and Analysis
KNAC	Kenya National Assurance Company
KPSF	Kenya Private Sector Forum
KRA	Kenya Revenue Authority
KSA	Kenya Sugar Authority
KTMT	Kenya Times Media Trust
LATF	Local Authority Transfer Fund
M&E	Monitoring and Evaluation
MOF	Ministry of Finance
MPs	Members of Parliament
MTEF	Medium Term Expenditure Framework
NARC	National Rainbow Coalition
NGOs	Non Governmental Organizations
NSE	Nairobi Stock Exchange
PAC	Public Accounts Committee
PIC	Public Investment Committee
PIEA	Petroleum Institute of East Africa
PRSP	Poverty Reduction Strategy Paper
PS	Permanent Secretary

Budget Transparency: Kenyan Perspective

PSCGT	Private Sector Corporate Governance Trust
PWC	PriceWaterhouseCoopers
RBA	Retirement Benefits Authority
SID	Society for International Development
SODNET	Social Development Network
SWGs	Sector Working Groups

Acknowledgements

We would like to acknowledge the invaluable input of the Staff of the Institute of Economic Affairs during the various phases of the study. In particular our sincere gratitude goes to *Kwame Owino*, the late *Roselida Ajwang* and *Fredrick Muthengi* for their useful contributions in terms of comments on our results and analysis. We are grateful to *Irene Omari* for the design and layout of the publication.

This study would not have been complete without the support, encouragement and guidance of the *Dennis Kabaara* (Chief Executive, IEA), *Betty Maina* (*Policy Solutions*) and *Duncan Okello* (*SID*). We thank *David Ong'olo* (lead reviewer), *Njeru Kirira* (GEIFIC), *Anthony Kilele* (Ag Director, CBS), *Phyllis Makau* (Treasury), *B. Kamau Kaniaru*, *Njambi Kinyungu* (*UON*), *David Maina* (CGD), *Luka Obbanda* (IPC) for their very useful insights and reviews of the manuscript.

Special thanks to *Edward Otieno Odundo* and *Kamau Muchiru* for their tireless effort in administering the questionnaires. We would also like to acknowledge the help provided by organizations and individuals who wholeheartedly volunteered information, which was crucial for this study during data collection. Although many respondents were occupied with more demanding activities, they spared hours for both interviews and completing the questionnaires. We extend our sincere gratitude to all.

Finally, we are very grateful to DFID Eastern Africa (Kenya) for the financial support, which has made the research and publication of the findings possible.

Albert K. Mwenda
Mary N. Gachocho

“We dedicate this publication to our beloved colleague, the late Roselida Ajwang who passed away on November 10th, 2003”.

Executive Summary

During the last two decades, the fiscal policy in Kenya has remained the most challenging and complex area of macroeconomic management characterized by persistent budget deficits, rising debt burden, persistent low economic growth rates, high interest and inflation rates. In addition, public finance utilization and management has been poor allegedly due to among other factors, high level of corruption; poor accountability; improper procurement and tendering; over-invoicing; wasteful expenditure; lack of discipline and proper work ethics in the public sector; and lack of openness in the budget process (CGD, 2001). As a result, Budget Transparency¹ is emerging as a critical feature that needs to be an integral part of the budget process² if fiscal policies are to be effective. Budget transparency is being advocated across the world as the means to directing economic growth, efficient allocation of national resources between consumption and investment among sectors, equitable distribution of national resources and achieving macro economic stability. For example, in an attempt to improve budget transparency in five Latin American countries namely Argentina, Brazil, Chile, Mexico and Peru, the Center for Budget and Policy Priorities (2002) generated an index of the budget transparency in each of these countries. The study revealed specific areas which lacked transparency and which governments could work on to enhance budget transparency.

The National Budget is the annual government's spending and revenue collection proposal that reflects its policy priorities and fiscal targets. The annual budget programme (*Annex 1*) indicates the role of various offices in the formulation of the national budget in Kenya. Over the years, the annual budget has been outlining fiscal targets that Kenya must achieve if the country is to get out of the doldrums. However, a review of budget proposals over the years reveals huge discrepancies between the envisaged targets and the actual achievements. For instance, in the financial year 2002/2003 the fiscal deficit was off target by 84 percent³. Similarly, the budget for the calendar year 2000 although based on a GDP growth rate of 2.65 percent, the economy recorded a negative growth rate of 0.2 percent. The revised financial projections published in the budget of 15th June 2000 confirmed that the GDP growth and fiscal targets of 1999/2000 were very optimistic leading to revenue shortfalls of over Kshs. 11 billion.⁴ In the financial year 1996/97, the budget proposals, which projected 5.5 percent growth in GDP, were never realized with economic growth registering 2.3 percent in early 1998. Perhaps this questions the validity of budget targets and the degree of transparency exercised by the government in the formulation of the budget targets.

Past studies (CGD, 2001; IDASA; 2002) have identified a number of factors that may explain the persistent non-achievement of set budget targets. For instance, a CGD

¹ For the purposes of this study, *Budget Transparency* shall be defined as the openness to the public about the structure and functions of government, proposed fiscal policy intentions, revenues, expenditures and deficit projections, and public sector reporting

² The Budget Process is comprised of four major phases: (i) Planning and Preparation (ii) Debate and Approval (iii) Implementation and (iv) Monitoring and Evaluation.

³ See GOK, Financial Statement 2003/2004

⁴ See Wagacha, Mbui: Review of Kenya's Budget and Fiscal Strategy: 2000/2001, (2000) IPAR, Nairobi

Budget Transparency: Kenyan Perspective

survey⁵ revealed seven years of waste between 1991 and 1997, when the Kenyan government lost more than Kshs. 475 billion through corruption, neglect, wastage and a don't care attitude of public officers. The same survey indicates that during this period wasteful expenditure amounted to Kshs. 69 billion; undelivered goods and services Kshs. 39.8 billion; irregular payments Kshs. 54 billion; un-surrendered/uncollected revenue 236 billion; and pending bills Kshs. 77 billion. This situation has been aggravated by among other factors the misallocation of public expenditures; large unbudgeted expenditures, over-invoicing, evasion of duty and unauthorized expenditure. The tendency to authorize large unbudgeted expenditures that reflect unstated priorities such as the Eldoret Airport project, or the purchase of the presidential jet, undermines the budget's ability to finance stated policy objectives (IEA, 1998). The budget indiscipline has also been evidenced by the selective award of tax exemptions and incentives and the recent off-budget transactions, such as the haphazard increases in salaries and wages for Members of Parliament and some civil servants such as the Permanent Secretaries. These studies indicate that the extent, to which efficient and effective resource allocation is attainable, will remain elusive as long as corruption and mismanagement of public resources continue unchecked.

Bearing in mind that a lot of resources are utilized in the administration of the budget process, it is worrying that targets are never realized. This is mainly because they are often based on unrealistic revenue projections. For instance, in the past, the government has included in the budget outturns uncommitted donor funds and receipts expected from the disposal of public corporations, which are never realized. In the end, the actual budget implementation tends to dictate policy priorities despite the enormous resources put into the budget preparation, often resulting in a scenario where budget drives policy rather than the ideal where policy should drive budget. As a result, the budget goals remain largely unaccomplished in public debt reduction; increased savings and investments; poverty eradication; rehabilitation of infrastructure; accelerated civil service reform; human capital development; reduction of corruption and tax evasion; and security and administration of justice. It is against this background that the study investigates budget transparency. The study concludes by making recommendations that will lead to a better-informed public debate on the National Budget, early identification of flaws in government policies, build support for government policies and programmes, enhance accountability in the design and implementation of the budget and also attract investment through clear and consistent policies.

⁵ See The Centre for Governance and Development (CGD) Policy Brief, February 2001.

Section One: INTRODUCTION AND BACKGROUND

1.1 Understanding the Existing Laws and Regulations Governing the Budget Process

☞ *Public Finance Laws and Regulations:*

Various statutes including the Constitution of Kenya under sections 48, 99 to 105, the Exchequer and Audit Act (*Cap. 412*), Paymaster-General's Act and Regulations (*Cap. 413*), External Loans and Credits Act (*Cap. 422*), the Government Contracts Act (*Cap. 25*), the Kenya Revenue Authority Act (*Cap. 469*), have outlined systems of accountability of public finances.

☞ *Overall Public Finance Mandate:*

The *Constitution of Kenya* has established the arms of government and placed significant public finance obligations on the Executive and the Legislature. Section 105 of the constitution clearly stipulates the role of the Controller and Auditor General (C&AG) in overseeing public finance. In particular, the C&AG is supposed to ensure that any withdrawal from the consolidated fund is in line with the provisions of the constitution and/or the existing acts of parliament. Section 105 (2) clearly stipulates the duties of the C&AG which requires that on behalf of the National Assembly, the C&AG shall examine, inquire into and audit the accounts of all accounting officers dealing with public moneys. In particular section 11 (2) requires that the C&AG shall ensure that all reasonable precautions have been taken to safeguard collection of revenue, and all moneys appropriated by parliament have been disbursed for appropriated purposes.

Although the Constitution has clearly stipulated the overall public finance mandate, there have been weaknesses as discussed in subsequent sections (3.7, 4.4, 4.6, 5.4 & 7). Whereas the C&AG has been appointed as the Auditor of the National Assembly, it is evident that the management of public finance has been riddled with irregular withdrawals from the consolidated fund, delays in the production of audit reports, laxity in acting upon auditors recommendations, and limited financial and human resources. The Constitution of Kenya bestows specific powers in respect of revenue collection to the Executive and at the same time mandates the Legislature to act as the guardian of public finances and financial measures. However, there is an apparent contradiction in chapter VII of the Constitution, which requires specifically that no funds may be withdrawn from either the Consolidated Fund or other approved public funds unless parliament has passed a law to authorize such withdrawal. Besides these general powers to authorize expenditure, it is evident that the constitution constrains the legislature by restricting the latter's authority to impose or alter taxation measures that are in place except where they have an effect in reduction⁶. Instead there is a requirement that such a recommendation is subject to presidential approval exercised through the Minister for Finance. This situation confirms that the authority to levy taxation is largely in the hands of the Kenyan Executive. While the authority to make laws is placed in the legislature, it is completely restrained from the alteration or passing of any bills that may have the effect of raising taxes.

⁶ Sec. 48 of the Constitution of Kenya

Budget Transparency: Kenyan Perspective

Although Section 100 (1) of the Constitution empowers the Executive through the Minister for Finance to initiate the preparation of the budget, Section 99 (1) prohibits withdrawals from the Consolidated Fund except by parliamentary approval. In essence, this provision implies that parliament has the exclusive and supreme authority, except where otherwise dictated by the Constitution e.g. non- discretionary expenditures to authorize any use of public funds raised by way of taxes, domestic and external borrowing and any other sources.

☞ Revenue Mobilization & Public Debt Management:

Section 48 of the Constitution does not allow the House to impose or alter taxation measure except for instances where such amendments will only result in reduction and that the president, through the Minister for Finance has to sanction such alterations. The Kenya Revenue Authority Act (*Cap 469*) establishes the Authority as an autonomous agent of the Government, under the supervision of the Minister for Finance with the sole responsibility of overseeing the collection and receipt of government revenues. The funding for the operations of the Authority is based on the percentage of revenues collected and thus assuring the Authority of financial resources and providing a motivation for the Authority to collect more. The Act also holds personally liable officers who engage in any manner of irregularities in exercising their official duties of tax collection.

The Internal Loans Act (*Cap 420*) and the External Loans and Credit Act (*Cap 422*) specifically allow the Minister for Finance to raise loans on behalf of the government. Specifically, Section 3 of the Internal Loans Act allows the government to borrow internally through issuance of bonds, stocks, treasury bills, treasury notes, Central Bank advances, loans or deposits from cereals and Sugar Finance Corporation, bank overdraft on the Exchequer, any public account or any other loan or credit. Section 2 of the External Loans and Credits Act (*Cap 422*) authorizes the government to raise loans outside Kenya by entering into agreement to obtain credit in currencies other than Kenyan currency from any person or government.

The execution of memoranda and other means for contracting loans are subject only to the approval of the cabinet. Section 7 of the External Loans and Credits Act and Section 3 of the Internal Loans Act stipulate that the responsible Minister has the powers to execute these borrowing instruments. All that is required of the Minister by either statute is to provide at his earliest convenience the details of the transaction in terms of amount of indebtedness outstanding, regarding every instrument of borrowing for the loans procured.

Although the laws are clear on the resource mobilization, it was evident that there were some contradictions and weaknesses in the laws that call for review. For example, the procurement of external and internal loans is entirely done by the executive. It is evident that the reporting procedures in the statutes do not demand that the legislature be informed of the terms of the agreements except for the outstanding sums. Since all public debt is charged to the Consolidated Fund without parliamentary approval, it emerges that payment for debt procured by the executive must be authorized by the legislature. This situation demonstrates the imbalance in power between the Legislature and the Executive where the Executive can borrow without legislative approval and yet the latter must authorize repayment through the Consolidated Fund. In addition, despite having public debt ceilings, it is evident that

such limits are rarely adhered to. In particular, the clause allowing the Minister of Finance to alter debt limits provided he/she reports such alterations in the public debt in the next Appropriations Bills has been open to abuse (refer to section 4.4 {b}).

☞ Appropriations:

Ministerial and Government Departments spending proposals are passed in the Appropriation Act following a whole House debate in the Committee of Supply. The debates in the Committee of Supply are allotted 20 days and each expenditure vote a maximum of two days. In a bid to ensure continuity of Government services, Section 101 of the Constitution of Kenya, empowers the National Assembly, by way of Vote on Account to authorize government to withdraw from the Consolidated Fund moneys equivalent to 50 percent of the proposed budgetary allocations, pending the enactment of the Appropriations Bill. Parliamentary Standing Orders further requires that such Vote on Account be passed not later than the 26th June every year. The House interrupts debate on the financial statement to pass a Vote on Account following a one-day debate. This is notwithstanding the fact that the Members of Parliament (MPs) receive the budget documents, from practice, a day or two before the budget day.

☞ The Public Funds Disbursement:

Paymaster-General Act (*Cap 413*) provides for the establishment of the office of the paymaster-general as subordinate to the Treasury, and through which Treasury controls the issue of money to various ministries and departments. The paymaster-general is mandated with the task of providing accounting officers with detailed reconciliation statements, and submitting monthly statements to the treasury.

☞ Budget Oversight:

The Exchequer and Audit Act (*Cap 412*) establishes the office of C&AG as the Auditor of the National Assembly. The Act further provides for the control and management of public finances; collection, issuance of payments vide public moneys; and for the audit of public accounts and the protection of public property. Part II of the act clearly stipulates guidelines for the control and management of public finances. Section 5 requires that no expenditure involving a charge on the consolidated fund shall be incurred, without the general or specific authority of the Treasury. Part V clearly outlines the procedures for the audit of public accounts to enhance accountability. In particular, section 18(1) requires that within a period of four months or longer as may be deemed necessary by the National Assembly, annual accounts will be prepared and transmitted to the C&AG. Section 19 also requires that reports on accounts will be examined and audited by the C&AG within a period of seven months and be submitted to the Minister then in charge of finance. Section 20 requires that the C&AG report any irregularities in the receipt, custody or expenditure of public moneys to the Treasury.

In addition, Kenya National Assembly Standing Orders (1998) No. 147 (1) and 148 (1) establishes parliamentary watchdog committees Public Accounts Committee (PAC) and Public Investment Committee (PIC) respectively to enhance the effectiveness of the surveillance over the collection, issuance of payment of public moneys. The committees are mandated with the task of examining the government expenditure and investment to ensure that the budgeted expenditures are utilized according to parliamentary approval and authority. Standing Order No. 151 (4) (a) establishes departmental committees and empowers them to investigate, inquire into and report

Budget Transparency: Kenyan Perspective

on all matters relating to the mandate of the assigned ministries and departments, including estimates appropriated by parliament for purposes of the same ministries and departments. Further Standing Order No. 151 (5) empowers the parliamentary departmental committees “to exercise all the powers and privileges of parliament including the summoning of witnesses, the request for and receipts of papers and documents from the Government and the public”.

Further, the act empowers the Office of the C&AG to scrutinize the Government of Kenya accounts and to report through the Minister, to the relevant parliamentary committees, which are essentially PAC and PIC for further action. Further, the Act empowers Treasury to open “Exchequer Accounts” as it deems fit. The Act also requires that any withdrawals from these accounts be subjected to certification by the C&AG that the sum required, including the project in question are legitimate. The Act also requires that withdrawals from the Consolidated Fund be subject to C&AG scrutiny.

Sec. 18(1) of the Act requires that Treasury submit to C&AG the accounts showing fully the financial position of Kenya at the end of every financial year. Unless Parliament decides otherwise, these reports must be submitted within a period of 4 months after the end of the financial year. Similarly, accounting officers and receivers of revenues must also file these reports.

The C&AG is required to audit these reports and report within seven months, unless a resolution of the National Assembly decides otherwise to extend this period. The C&AG is supposed to submit this Report of audited accounts to the Minister of Finance. The Minister is required to submit the Report to the National Assembly within 14 days failure to which the C&AG submits it directly to the House.

The Act empowers the C&AG to prepare special reports and submit them to the Minister if he deems it necessary. When this happens, the Minister is required to submit it to the PAC within 7 days of receipt⁷.

While the Exchequer and Audit Act has clearly stipulated guidelines on budget oversight, it is evident that there has been weaknesses in the act (refer to section 7). For example, the Act gives the Minister and Permanent Secretary (PS) Treasury enormous powers without corresponding accountability requirements. While the C & AG is required to identify irregularities, the Act has failed to grant him the power to stop or punish offenders. The Act has authorized the C&AG as the auditor of the National Assembly, requiring him to submit his report to the Minister for Finance who in turn transmits it to Parliament. This is improper as the Ministry of Finance is indeed one of the Ministries that the C & AG audits. The danger with this provision is that the C&AG has no recourse if the Report he is submitting to the Minister is altered when it reaches the floor of the House.

The Act further requires that in the event of failure by the Minister to submit the report to Parliament, the C&AG must do so directly but through the Speaker. The

⁷ IEA, Public Finance in Kenya: A General Survey of Laws and Institutions in Kenya, 2002.

Budget Transparency: Kenyan Perspective

most logical approach would be to submit the report to the PAC of the National Assembly. Given the procedures of electing the Speaker, the governing party will always have the Speaker of their choice. And a government whose Minister feels disinclined to table the C&AG report may just exercise some influence on the Speaker to delay consideration of a Report he is uncomfortable with. It is not clear what purpose is served by routing the C&AG Report through the Minister.

Whereas **Sec. 20** of the Act empowers the C&AG to notify the Minister of Finance of any irregularities in expenditure at any time, it does not specify what happens if the Minister fails to act. It makes little sense for the C&AG to be given whistle-blowing powers without supporting provisions to stop these misdemeanors. The only recourse the C&AG has is to report these occurrences in his end of year report.

The C&AG's office needs to be granted injunctive powers that would allow the office to stop irregular expenditures when and if they are suspected to occur. He should also be vested with prosecutorial power so that his Reports are acted on automatically. The present prosecutorial arrangement that leaves it to the discretion of the Attorney General is ineffective.

One of the most dangerous provisions of the Exchequer and Audit Act is to be found in **Sec. 21 (1)** which allows the Minister of Finance to dispense with audit if he deems fit. This Section state inter-alia that "it shall be lawful for the Treasury from time to time, if they see it fit to do so, to dispense with the transmission to the C&AG" of some accounts or funds. This is mischievous and opens room for abuse. It is easy for Treasury to invoke this provision to shield itself from scrutiny. The constitutionality of this provision is also dubious.

With respect to Local Authorities, the audit space created for the C&AG is severely constrained. First, the C&AG is expected to report to the same Local Authority over which he is supposed to exercise oversight. This is because the Act requires him to file his report with the Local Authority and only supply a copy to the Minister upon whom the responsibility to act is vested. There is no linkage between the C&AG office and the National Assembly with respect to reports of local authorities. This means that the Minister may choose to sit on a local authority audit report filed by the C&AG if it is considered unfriendly.

The fact that the C&AG audit fees are to be paid by the local authorities concerned is also dangerous and open to abuse. The fact that it is envisaged means that there is recognition on the part of government that C&AG is under-resourced. This fact may undermine C&AG's ability to move in at will. It is not clear as to why local authorities are supposed to pay for audit services yet government ministries, which are also audited by the same office, do not.

In conclusion, it is suffice to say that the office of C&AG has been undermined by weak constitutional protection of the technical officers. It has also been undermined by lack of prosecution powers; limited financial and human resource. Over the years, it has primarily concentrated in the performance of its audit function at the expense of control functions. Consequently, monies have been withdrawn from the Consolidated Fund without his permission. The problem is that the office is helpless in law even in

face of such abuses. He can only catalogue the abuses after the fact at the end of the financial year.

Further, whereas the Exchequer and Audit Act gives enormous powers to the Minister and Permanent Secretary, The Treasury for the custody of public funds, the same statute seeks to limit the accountability demands on these officers. The law needs to be recast so that there is a happy balance between the Executive financial responsibility and privilege on the one hand, and C&AG, including overall legislative oversight powers on the other.

☞ *The Government Financial Regulations and Procedures:*

Provide for the administration of government finances in relation to withdrawals from the consolidated fund and appropriation of such funds withdrawn, including the supply services.

☞ *The Government Contracts Act (Cap. 25):*

This is an act of parliament that provides for the entering into contracts on behalf of the Government. The act empowers officers within the ministries to enter into contracts in Kenya on behalf of the Government. It further requires that local contracts be treated differently from the contracts concluded with parties external to Kenya, with Accounting Officers of respective Ministries and Government Departments being mandated to conclude local contracts while contracts with external parties being reserved for the Minister for Finance or officers expressly authorized by the Minister. The most controversial clause is that which absolves officers from liabilities that arise from contracts they conclude on behalf of Government.

☞ *Public Procurement Guidelines:*

These guidelines lay down the procedures for procurement. Further, they have established the threshold for every Accounting Officer in terms of the value of contracts that may be authorized by that individual. This is an attempt to establish accountability among public officers. Although the legal framework has been clear on the procurement procedures, it is evident that the adherence of these guidelines has been poor (see section 5.4). The procurement procedures were in particular cited to be riddled with corruption, overpricing and outright theft. In the overall the problem in procurement is not necessarily because the procurement procedures are grossly flawed but mainly because officers charged with the responsibility to oversee the implementation of the procurement procedures have flouted almost all rules and procedures with impunity.

1.2 What then is the Problem?

Although the existing legal statutes, government regulations and procedures and parliamentary procedures empower respective authorities to oversee the management of public finance, it is evident that the Kenyan Government has continued over the years to experience budget deficits and also lose billions of revenue annually due to mismanagement of public funds. For example, section 105 of the constitution of Kenya requires that the C & AG authorize all payments from the consolidated fund, yet substantial amounts of revenue continue to slip from the fund. The lack of transparency and accountability in public finance management has contributed to

economic policy failures, huge public debt and the withdrawal of the necessary external financing.

It is also worth noting of the contradictions and weaknesses evident in the law, which might hinder the execution of mandates bestowed on various institutions engaged in public finance management. For example, though section 100 (2) of the Constitution grants parliament the exclusive powers to authorize public spending, section 100 (3) (b) on the other hand allows the government to incur expenditure in excess of authorized amounts without providing for any vetting mechanisms upfront. Again, parliament's input in the Finance and Appropriation Bills is limited by section 48 of the Constitution of Kenya, since it stipulates that Members of Parliament (MPs) cannot increase the taxes or budgetary allocations even when such inaction will have disastrous effect like poor service delivery. This scenario therefore raises concerns as to whether the current legal and institutional frameworks are adequate in empowering the respective authorities to execute their mandate in public finance management. Is there need to repeal these sections to ensure that only justifiable cases are authorized in order to avoid corruption?

One cannot underestimate the importance of accessibility of accurate, timely, relevant and comprehensible budget information to the public in enhancing their capacity to contribute effectively in the budget process. Such budget information should include a review of the past performance and more importantly provide justifiable fiscal projections. Gaps have been observed in the provision of the necessary budget information for effective public participation in the budget process. For example, the delays in C&AG and the defunct Auditor General – Corporation (AG-C) audit reports, scanty public debt reports⁸ and irregular and delayed reports on other budgetary issues (CGD, 1998). Perhaps the pertinent issue therefore is to investigate the extent to which the identified problems in public finance management such as the huge public debt, misappropriation of public funds etc. can be attributed to the inaccessibility of timely, accurate, reliable and comprehensive budget information.

1.3 The Research

The overall objective of the study is to assess the degree of *Budget Transparency* in Kenya, the execution of which is the primary responsibility of the government. The research investigates factors that have direct implication on the level of budget transparency with the ultimate aim of establishing requisite reforms to facilitate the achievement of the major functions of budget (i.e. allocation⁹, distribution¹⁰ and macroeconomic stabilization¹¹). The specific objectives are:

- a. To establish the degree of transparency in the budget process with the aim of determining whether the process has been open, inclusive, consultative,

⁸ For example there is minimal reporting on how the government utilizes borrowed funds

⁹ Allocation function relates to expenditures on public and social goods

¹⁰ Distribution function relates to the desired objectives in the income distribution in the society such as poverty alleviation

¹¹ Macroeconomic stabilization function relates to the use of fiscal activities to promote and maintain the rate of employment, price stability and growth.

Budget Transparency: Kenyan Perspective

- participatory, and has enhanced access of information at all phases of the budget process and among all key stakeholders;
- b. To identify gaps and weaknesses that could have an impact on the budget process;
 - c. To make specific policy recommendations necessary to enhance budget transparency; and
 - d. To provide a guide on how to assess budget transparency.

The research utilizes a budget transparency checklist to establish the extent to which the budget process has incorporated the following transparency attributes¹².

i. Participation

- Establish whether key stakeholders (Academicians, researchers, media, Civil Society Organisations (CSOs), private auditing firms actively participate in the budget process.
- Find out the extent to which stakeholders' proposals are incorporated in the national budget.
- Identify if there are legal and institutional frameworks that ensure inclusion and participation of all key stakeholders in the budget process.
- Establish whether time limitation to the budget process influences the participatory and consultation process.
- Identify whether there is financial and technical capacity to contribute effectively in the budget process

ii. Budget Information

- This will aim at checking whether information on the budgetary process is easily accessible, clear, understandable, accurate, reliable, comprehensive, timely and available.
- Is there independent verification of the integrity of the fiscal information provided by the government?

iii. Budget Flexibility

For purposes of this study budget flexibility shall be defined as the capacity of the budget to incorporate sudden changes that would have an effect on the budget e.g. drought, epidemics, floods among other disasters.

- To establish whether the government incorporates anticipated changes in developing budget projections.
- Assess the pros and cons of a flexible budget.
- Establish whether there are measures to check against abuse of budget flexibility.

iv. How realistic is the budget?

- Find out if there are any attempts to justify fiscal projections.
- How realistic are the policy stipulations and is there agreed criteria for resource allocation e.g. Water for all by 2020; Industrialization by the Year 2020; Universal Basic Education (UBE) by 2005 and the Education for All (EFA) by 2015?

¹² These budget transparency attributes have been largely borrowed from the IMF Fiscal Transparency Code (1998)

Budget Transparency: Kenyan Perspective

- Does the Executive conduct a Cost Benefit Analysis (CBA) of such policy statements and any legislation before implementation?
- Establish the extent to which the budget addresses human rights concerns (e.g. right to food, shelter, education and health).

v. **Accountability**

- To conduct an audit on the extent to which the new system of budgeting (Medium Term Expenditure Framework – MTEF) is able to link budgets to policy.
- Assess the efficacy and adherence to procurement procedures.
- Establish if there are any gaps in the legal and institutional frameworks that hinder efficient implementation of governments programs.

vi. **Oversight**

- Establish the effectiveness of parliament (PIC & PAC) in instilling discipline in the budget process.
- Find out if there are any laws and guidelines on budget reporting, their weaknesses and what changes would add value to fiscal development reports.
- Find out the involvement, effectiveness and opportunities that exist for CSOs, private auditing firms and other stakeholders in the oversight of the budget.
- Establish the effectiveness of C&AG in the oversight of the budget process.

1.3.1 Research Methodology

The methodology used comprised of (i.) literature review to provide an overview of the laws and regulation that govern the budget process, (ii.) questionnaire interviews with six (6) main groups which use budget information extensively, and (iii.) focus group discussions. The sample was grouped into six clusters. Respondents were drawn randomly and the clusters comprised of the following:

- a. **Academics and researchers** - These are experts, particularly in the institutions of higher learning, who have specialized on budgetary issues.
- b. **Government** - These included representatives of the parliamentary committees in charge of public finance such as PAC and the PIC; and external auditors (representatives of C&AG office and the Auditor General Corporations' (AG-C) office.
- c. **Media** - Journalists and editors who work for newspapers and magazines publishing firms with a national outlook, including those in Television and radio broadcast.
- d. **Civil Society Organizations (CSOs)** - Organizations engaged in advocacy on budget transparency and the tracking of government revenue and public spending. (*E.g. CGD, NGO council and SODNET*)
- e. **Auditing Firms** - These comprised of auditing firms who analyze budgets for public purposes and are also involved in auditing public finance. (*E.g. PriceWaterhouseCoopers, Delloite & Touche, and Ernest and Young*).
- f. **Corporate Sector Representatives** - These are associations that represent sectoral interests such as Kenya Bankers Association (KBA), Nairobi Stock

Exchange (NSE), Kenya Association of Manufacturers (KAM), Petroleum Institute of East Africa (PIEA), Association of Kenya Insurers (AKI) etc.

The survey was undertaken between October 2002 and January 2003 when electioneering was in high gear and thus limiting the number of questionnaires administered amongst the interviews drawn from the Government and more specifically the Members of Parliament. The study also held a focus group discussion that convened the targeted interviewees in a bid to test the authenticity of the findings.

1.4 Organization of the Report

This report is divided into eight main sections. The **first section** covers the introduction and background to the study and also outlines the study objectives and the methodology used. **Section two** analyses the participation process in the budget process, reviews government support in participation and analyses factors that limit citizens' participation. **Section three** describes budget information in terms of accessibility, timeliness, accuracy, clarity and ease of use, details and format, and independent checks on information integrity. **Section four** discusses budget flexibility while **Section five** discusses the accountability process of the budget. **Section six** assesses the extent to which the budget is realistic and **Section seven** discusses the oversight of the budget process. **Section eight** is the concluding section, which offers possible remedies to redress the gaps and weaknesses identified in the study and to bring some of the broader latent themes to the surface. This section discusses the major conclusions emerging from the study and also presents the future strategic framework for the budget process.

Section Two: PARTICIPATION

2.1 Introduction

Participation is defined as a process through which stakeholders' influence and share control over development initiatives, including the decisions and resources, which affect them. The study identified participation of CSOs, researchers, academicians, media, government and corporate sector to be vital in the promotion of budget transparency. The involvement of different actors in the budget process was viewed as a way of improving budget formulation, ensuring efficient resource allocation and better oversight of the budget process.

This section examines the level of participation by the various stakeholders in the budget process, discusses various shortcomings in the participation process and presents recommendations on how to improve the participation process. The study assessed the overall participation rate by stakeholders in the budget process; the scope, frequency and context of public submission of budget proposals to the Treasury; incorporation of such budget proposals in the final budget; stakeholders attendance of budget meetings and nature of contribution (form and content); government support in facilitating stakeholders participation in budget process; and factors limiting citizens' participation.

2.2 Participation in the Budget Process

Respondents expressed a desire for the government to be committed to institutionalizing a system that ensures an all-inclusive participation of the public in the budget process. Participation in the budget process was viewed as mandatory since the budget funds are contributed to the exchequer through taxes. This gives the public a right to have control on the collection and utilization of these funds. It was stressed that the role of the government in the budget process should be limited to that of a trustee of the funds while the prioritization of development programmes should be done in close consultation with the public. Further, public expenditure should be rationalized through popular participation to reflect the citizens' priorities.

All-inclusive participation was noted to play a pivotal role in enhancing transparency, credibility and accountability of the budget process. Respondents observed that one of the critical functions of the national budget is allocation of scarce public resources. In order to efficiently and fairly allocate the scarce national resources, the budget process should aim at reaching a consensus with the public in setting the priorities of the budget. They further noted that involvement of all stakeholders will help achieve better results, and also help people to identify themselves more with the budget especially if their views are incorporated in the national budget, where possible.

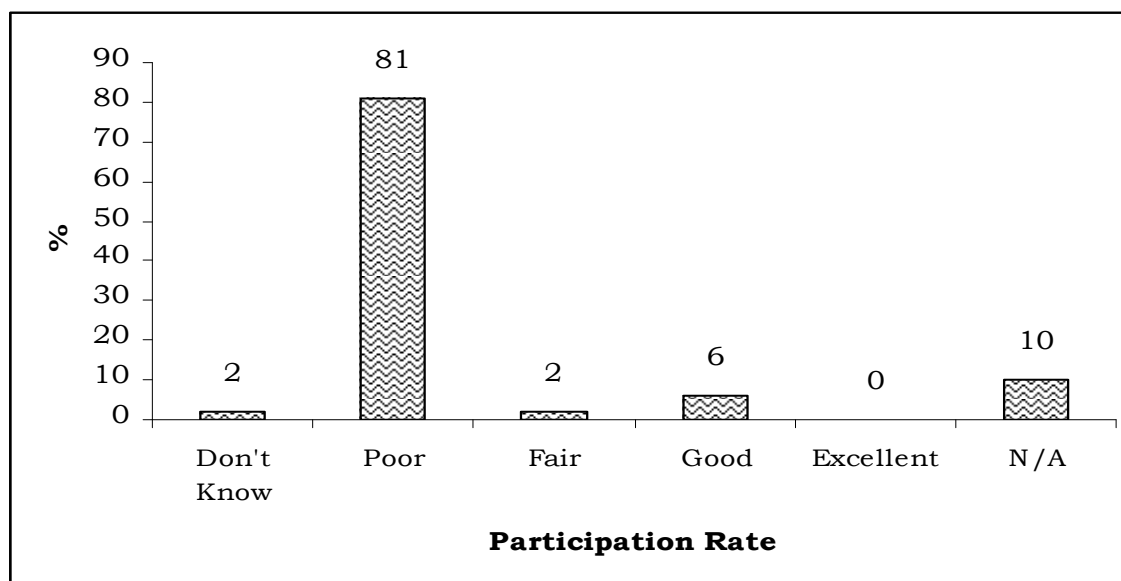
Participation should aim at validating fiscal policies to ensure that they remain focused on national interests rather than partisan interests. Effective participation does not necessarily mean that all citizens' demands should be taken into account. Respondents justified the inclusion of the public in the budget process on the ground that it affected them directly. One of the tenets of good governance requires that all the people of the country are involved in all activities that affect their daily lives, and the

Budget Transparency: Kenyan Perspective

national budget making process should not be an exception. It was noted that the involvement of the public in the budget process would facilitate the inclusion of the views of a wider representation of the populace. This they argued would help in addressing the needs, aspirations and priorities of the nationals. The budget was noted to be a vital tool for financing development and the input of the public is thus critical in enhancing its credibility through consultations.

The study found the stakeholders' participation in the budget process to be limited. On the overall, about 81 percent of the respondents felt that the participation rate in the budget process was poor (*Fig.2.1*). The poor participation rating was consistent across all the clusters of the respondents, with CSOs registering a rate of 78 percent for poor participation, media recording 88 percent, 67 percent for the audit firms and the corporate sector 85 percent. It is worth noting that all respondents (100 percent) in the CSOs cluster rated the overall participation as poor. Participation in all phases of the budget making process was also noted to be wanting. 56 percent of the respondents indicated nil participation in the implementation stage, while 46, 40 and 48 percent of the respondents felt that there was no involvement of the stakeholders at all in the planning and preparation, debate and approval, execution and monitoring stages respectively.

Figure 2.1: Overall citizen participation rate in the budget process



The submission of budget proposals to the Treasury was rated as minimal. Only about 50 percent of the respondents such as Centre for Governance and Development (CGD), Institute of Certified Public Secretaries of Kenya (ICPSK), PriceWaterhouseCoopers (PWC), KAM, and Retirement Benefit Authority (RBA) indicated having submitted budget proposals to the treasury. ICPSK for example indicated having made budget proposals to guide the policy and fiscal formulation. Despite being invited to send budget proposals, respondents felt that their proposals were not given the due attention. This was evident from the responses relating to the percentage of proposals incorporated in the national budget, with only 2 percent of the 50 percent respondents

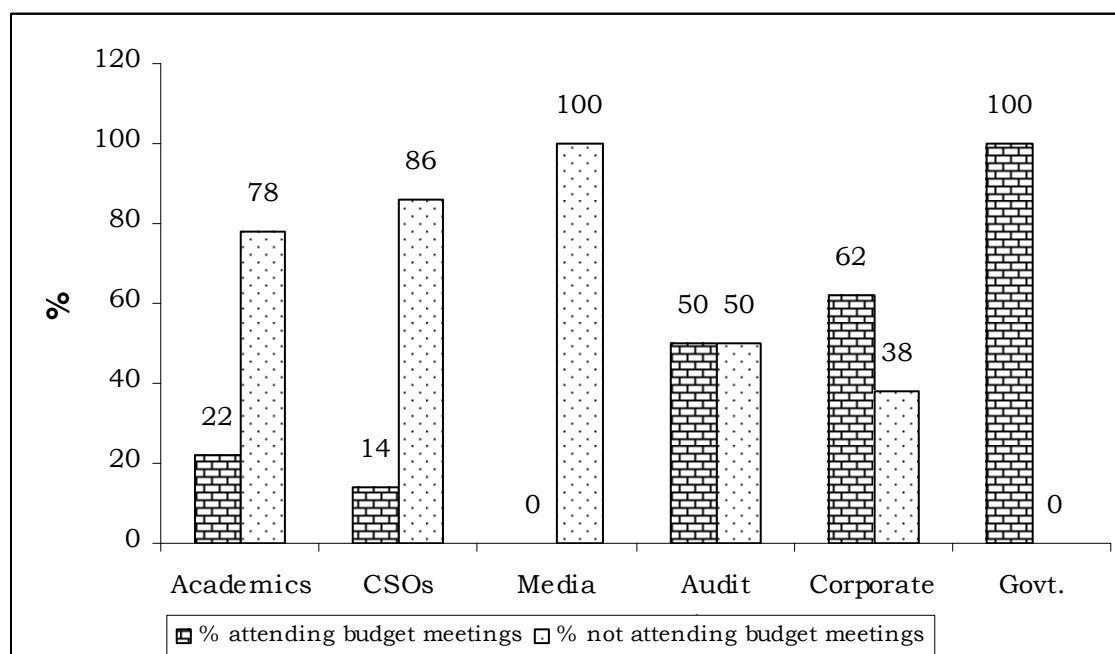
Budget Transparency: Kenyan Perspective

who submitted proposals, registering a ratio of 76-100 percent of total proposals finding way to the final budget; 6 percent with a rating of 51-75 percent; 6 percent with 26-50 percent; 25 percent recording a rate of 1-25 percent; while 10 percent had submitted proposals but none of their proposals were incorporated.

2.2.1 Attendance of Budget Meetings

The attendance of budget meetings with government either at district, ministerial or national level varied across the respondents (*Fig. 2.2*). It was noted that the attendance to the meetings was highest with the government representatives accounting for 100 percent. Attendance by the corporate sector and the audit firms was noted to be fair. However, there was great concern regarding media attendance in these meetings. All media respondents indicated that they have not attended budget meetings in the past. A big percentage of CSOs (86 percent) indicated having not attended these meetings.

Figure 2.2: Attendance of Budget Meetings



The number of meetings attended per year varied. Out of all respondents who had attended budget meetings, 47 percent indicated having attended at least one meeting annually, 30 percent two times in a year, 5 percent three meetings, while 20 percent indicated having attended four meetings per year. The budget proposals were in the form of verbal and/or written submissions with 29 percent of the respondents having contributed written submissions, 5 percent verbal and 42 having submitted both verbal and written. The content of contribution ranged from taxation, which accounted for 46 percent, to policy, which accounted for 9 percent. 36 percent of the respondents indicated that their submissions covered issues of taxation, spending and policy. However, submissions solely on spending were noted to be minimal.

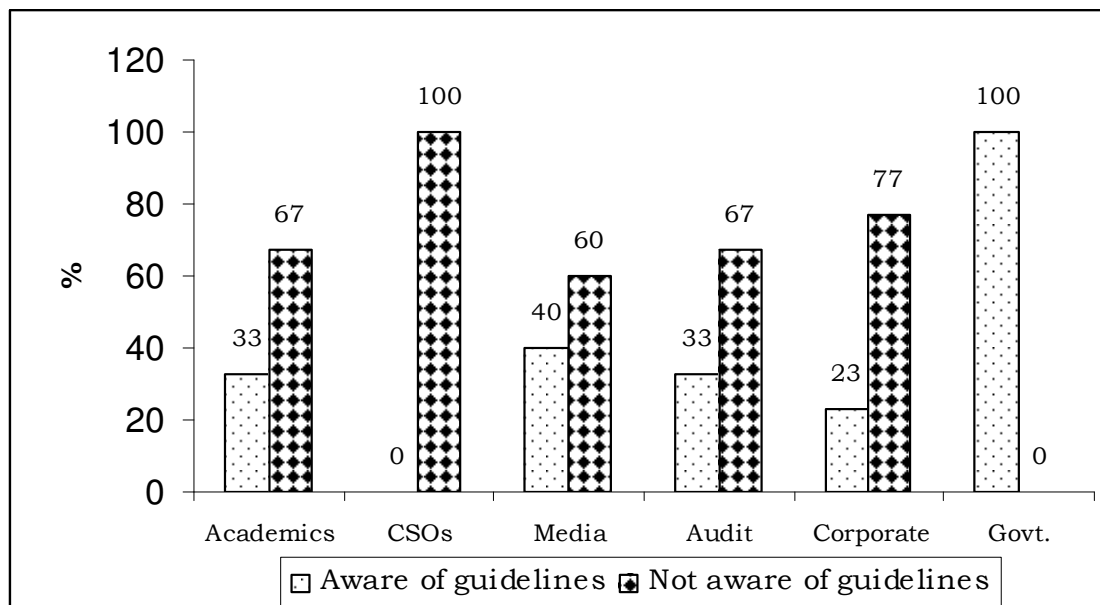
The low attendance and contributions to the budget meetings by respondents, was due to the lack of awareness and information regarding budget meetings. Inaccessibility to budget information was especially singled out to be a major handicap in attending budget meetings. The CSOs noted that due to lack of information on the budget process, they have not been able to mobilize citizens to be engaged in the budget process. Most of the respondents indicated that they had never received an official invitation to the budget meetings. The budget process was generally viewed as a treasury and government affair. The media highlighted that the lack of provisions for consultations and contributions has limited their role to only reporting on the budget day without much involvement on the budget process.

2.2.2 Guidelines for Planning and Preparing the Budget

The study revealed that majority of the respondents were not aware of the guidelines (*Fig. 2.3*) for planning and preparing the budget. The guidelines have been limited to government departments and ministries. The CSOs, media, audit firms, corporate sector and researchers noted this to have contributed to the low participation rate in the planning and preparation phase of the budget.

Out of the respondents who were aware of the guidelines, majority felt that the guidelines were not adequately disseminated. The technicality of the guidelines hindered their use by most stakeholders. In short, the guidelines are not user friendly. The dissemination of these guidelines was also noted to be poor. It was noted that although circulars are sent to ministries and district headquarters before the budget, the public is hardly sensitized on the guidelines. The guidelines were noted to concentrate on giving directives that ministries are required to furnish treasury with expenditure requirements (estimates) but no reference is given to time guidelines. The guidelines were reported as not being fully adhered to. For example, the guidelines do not hold implementing agencies accountable. It was stressed that the only guidelines in the constitution are too general and do not provide for consultations. The guidelines in the form of Acts of Parliament and government procedures are inadequate as they concentrate powers of budget making on the executive. In addition, the unit for budgeting is wholly confined in the ministry and the public is not taken on board in the ministry's budget process. The study revealed that the guidelines have adopted a top-down approach as opposed to a bottom-up approach.

Figure 2.3: Awareness of Planning and Preparing Guidelines

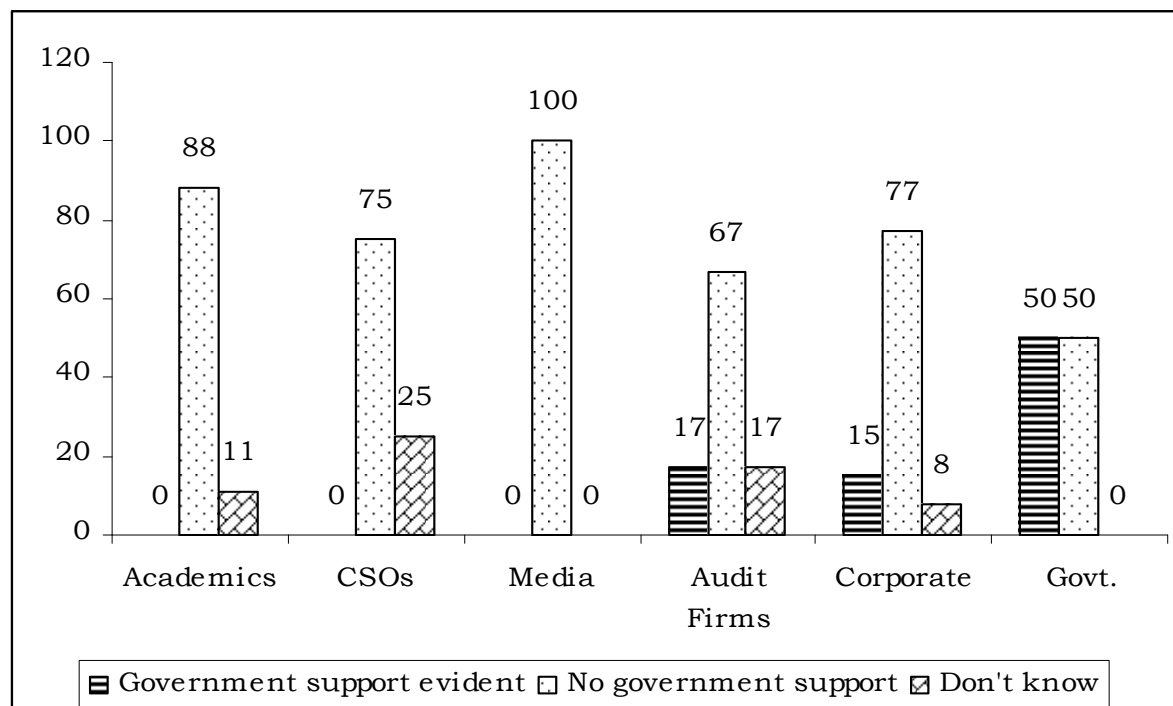


2.3 Government Support in Participation

Government support in facilitating the participation of the citizens in the budget process was identified as a crucial component of the budget process. Although the study revealed that there has been government support for stakeholders' participation in the budget process through the adoption of the three-year rolling MTEF investment programme and the PRSP policy framework, it was noted that such support is usually limited to a few stakeholders largely dominated by officers from government ministries and departments. However, the incorporation of the private sector and the CSOs in the MTEF sectoral working groups was particularly acknowledged as a good initiative in widening involvement of key stakeholders.

Most respondents indicated a general lack of support from the government in participating in the budget process (Fig. 2.4). The government officials indicated a 50/50 percent intra-government support while all the media respondents (100 percent) indicated lack of government support in participating in the budget. It was noted that the media is hardly consulted by the executive in the budget process and only get to hear about the speech a few days before it is presented. The ratio of respondents who registered no support from the government was high among the CSOs, academics and audit firms and corporate at 75, 88, 67 and 77 percent respectively.

Figure 2.4: Government Support in Participation



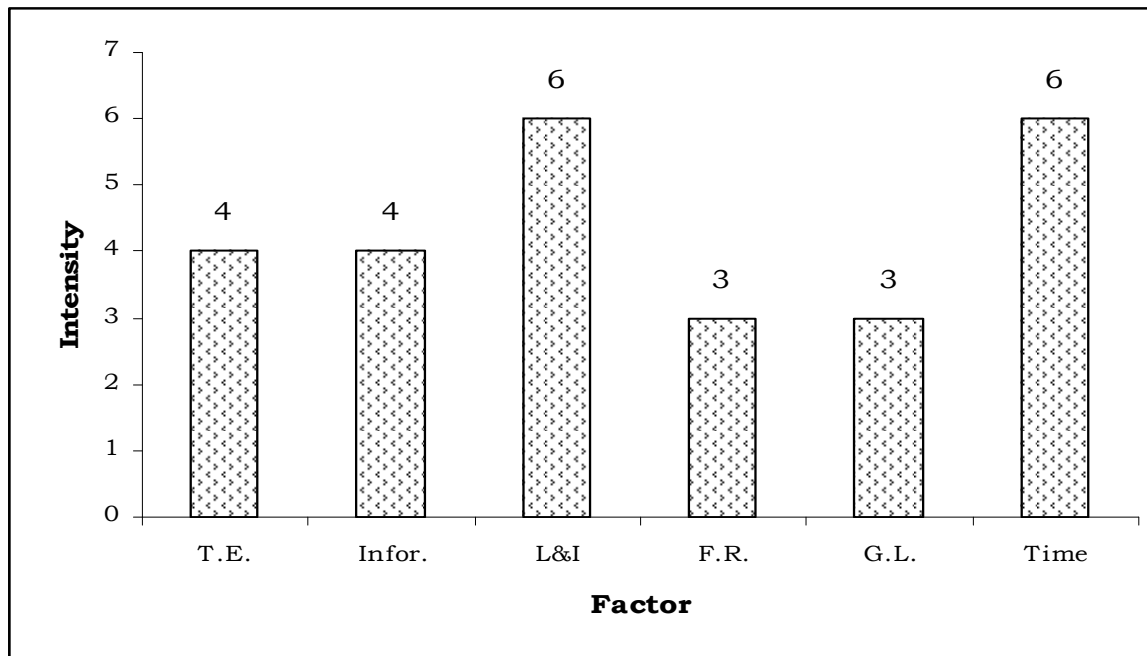
Government support was not evident in the legal and institutional frameworks governing the participation of the public in the budget process. Most of the respondents noted that the legal and regulatory frameworks have not been conducive to govern on their participation. Although it was noted that the Draft Constitution (2002) has addressed issues of stakeholders’ participation in the budget process, most of the existing legal statutes are silent on participatory budgeting. The past experiences where few stakeholders proposals were incorporated in the final budget documents, discouraged successive participation of stakeholders in the budget process. Despite some of the corporate sector operatives and research institutions having been asked to submit their budget proposals, it was noted that there is hardly a follow up to deliberate on such proposals. This has been further constrained by the lack of a consultative forum to inform the public on such deliberations. Worse still where consultative fora were held, the notice of such meetings was very short resulting in poor attendance by stakeholders¹³. Further, it was observed that stakeholders’ participation was limited by financial constraints, and that any financial support from the government would go a long way in enhancing the participation of the CSOs in the budget process.

¹³ For example Open Public Sector Hearings for the fiscal year 2003/2004 budget were broadcasted in the print media three days before the said meetings.

2.4 Factors Limiting Stakeholders Participation in the Budget Process

The study identified a number of factors that limit stakeholders' participation in the budget process. On the overall, respondents ranked technical expertise (T.E.), information (infor), legal and institutional framework (L&I), financial resources (F.R.), geographical location (G.L.) and time on the basis of intensity in limiting their participation in the budget process. Ranking was done using the scale of 1 to 6 with a score of 6 indicating the highest intensity and 1 being the lowest. Legal and institutional framework and time ranked the highest (*Fig. 2.5*) in limiting stakeholders' participation in the budget process. Technical expertise and information emerged second with a score of 4 while financial resources and geographical location scored the least (3), which indicated that these two factors did not affect the participation of Kenyans to a large extent.

Figure 2.5: Factors limiting Kenyans Participation (Intensity)



2.5 Shortcomings of the Participation Process

The study identified a number of specific obstacles, which have contributed to the limited participation in the budget process as presented below:

a. Non-inclusive and non-participatory budget meetings

The study identified that the budget meetings are hardly declared public. Most respondents indicated that they were not aware of the budget meetings and thus these meetings were noted to be generally non-inclusive and non-participatory. Out of the respondents interviewed 59 percent indicated that they have never attended the budget meetings. It was observed that currently, participation is mainly limited to pre-

budget submissions, which are primarily partisan with strong organization e.g. Kenya Association of Manufacturers (KAM), Institute of Certified Public Accountants of Kenya (ICPAK) etc. taking the lead. The participation process in the budget has not been tailored towards bringing into the fold as many people as would be necessary to ensure transparency, especially in the monitoring and evaluation phase. It was noted that the budget process is still treated as a treasury and intra ministerial/government affair.

b. Selective invitation to budget meetings

Invitations to the budget meetings were noted to be selective, and highly tilted in favour of government officials and a few well influential organizations. The CSOs, academicians, researchers, corporate sector and the media cited that they have never received an invitation to attend the budget meetings. In particular, the P.I.E.A. indicated that the Ministry of Energy has never called the Institute for budget meetings. Most respondents felt that the government has refused to invite stakeholders in the budgeting process and some respondent felt this was done for sinister motives. Despite invitations to make proposals to the budget process, most respondents felt that there were no initiatives to incorporate such proposals or any attempt to invite stakeholders to deliberate on them.

c. Limited accessibility to budget information

Accessibility to budget information was cited as a major handicap, limiting participation in the budget process. The CSOs, media and researchers indicated that the limited access to budget information has contributed to their limited involvement in the budget process. This has also contributed to the lack of participation and attendance in budget meetings. Unless the general public has increased access to budget information, it will be very difficult to have a meaningful participation in the budget process.

d. Lack of a clear legal framework on participation

The study identified the lack of a clear framework regarding the participation of the stakeholders in the budget process. The clarity of participation guidelines was identified as essential in getting stakeholders inputs regarding the budget process. Despite having a detailed framework regarding the control and management of public finances in various statutes, it is evident that the participation of the public in the budget process has not been addressed. A number of statutes also lacked in clarity on the specific roles envisaged for institutions in public finance management. The media, for example, indicated that they are only involved when the budget is being presented in parliament. The CSOs also indicated that the lack of clear guidelines on how stakeholders could engage in the budget process has handicapped their initiatives in advocating for citizens participation in the budget. However, good initiatives were noted in the draft constitution, which has spelt out the need for the citizens to participate in the development process.

e. Lack of a public forum for consultations

The study identified the lack of sufficient public fora for stakeholders' consultations. For example, the journalists and other players in the media houses indicated that their involvement in the budget process is only limited to reporting on the budget day. However, there is no framework that integrates the media in the participation process.

f. *Budget language is too technocratic*

Most of the respondents and especially the CSOs and the Media indicated that the budget language is still too technocratic and thus not easily understood by many Kenyans. This has contributed to the limited participation because most people do not even comprehend some of the complex budget details.

2.6 Recommendations on the Participation Process

Avenues for participation should be created, such as consultative budget fora in which people can engage in the budget process. Government and especially Treasury needs to exercise caution in budget management to ensure that budget process is not predominantly an Executive affair. The study therefore recommends that the government initiates the institutionalization of public participation in the budget process as a panacea of creating a mechanism that would allow the participation of all stakeholders in the budget process. There is need to review the legal framework to ensure that public participation is incorporated. The establishment of a consultative budget process would enhance the process of submitting and deliberating on budget proposals. However, such initiatives would be futile unless there are measures to ensure that budget information is widely distributed. Adequate information on the budget process is a prerequisite for involvement and participation of all stakeholders in all phases of the budget. Information should be made available at all phases of the budget, to ensure that stakeholders make informed decisions and proposals. The media (both print and electronic) should be used to sensitize and educate the public on the budget process. However, the government, in collaboration with high profile institutions specializing in public policy analysis should support the simple interpretation of the budget data, and provide simple analysis of budget documents.

The study recommends the need to address the shortcomings cited in the budget process, to improve all stakeholders' participation in the budget process. Further, the study recommends the need to provide adequate time in all budget phases to facilitate greater participation by key stakeholders. Pre-budget hearings need to be institutionalized to enable all stakeholders to get involved in the budget process. There should be ample time allocated to allow for proper preparation and submission of budget proposals, debate and approval.

Some of the issues that would require immediate attention include:

a. *Streamlining stakeholders participation in the budget process*

There is need for the government to streamline public engagement in the budget process through public consultation fora, barazas and workshops; pre-budget hearings; formal requests for proposals as required under the MTEF set up e.g. through representative organizations or lobby groups; and empowering the public to effectively petition irregular public expenditure, participate in the identification, implementation, evaluations and monitoring of projects. Institutions advocating for increased participation in the budget process such as I.E.A., Action Aid Kenya (AAK) should initiate collaborative efforts from the key stakeholders in promoting inclusive participation the strong CSOs budget networks. The introduction of the Local Authority Transfer Fund (LATF) creates opportunities for the public to engage in the budget process at the local level. In this connection, there is need to formulate and disseminate guidelines for all stakeholders participation in the budget process.

b. Decentralization of the budget process

Decentralization of the budget process to the local levels was especially singled out as a desirable initiative to move the level of decision-making closer to those most directly involved and affected by the budget process. Such a shift would essentially widen the level of participation. The rationale for such initiatives is that they will enhance the relevance of the budget process to local needs and conditions while still allowing the executive offices engaged in the budget process to give the necessary technical support. Budget hearings should be decentralized to urban/rural centers to enhance the devolvement of decision making to the local communities. District agencies require technical support in developing planning and financing mechanisms, set national development priorities and work cooperatively with all stakeholders. This will also promote ownership of the budget process at the local levels because the budgeting process can be linked to the planning process and enhance sustainability.

c. Simplify budget information

The budget process should be demystified and made citizen friendly. It should not be seen as an elitist process. Enhanced information flow is the bedrock of public participation in the budget process. The budget information in all budget phases should be simplified and made available to all Kenyans. There is need to have concerted efforts from all stakeholders to demystify the language, process and participation.

d. Public education on the budget process

There is need for the CSOs to create awareness among the public on the need for their participation at the planning, preparation and monitoring stages of the budget process. Lack of awareness by the public on the budget process is a major hindrance to effective participation in the process. It was noted that the public thinks the budget has nothing to do with them except as far as it changes taxation and impacts policies either positively or negatively. There is also the perception that the budget belongs to the government, hence dominating the process. In addition, it was reported that the government rarely engaged the public in the budget process. Kenyans need to change this culture and realize that as taxpayers they have stake in the national budgeting process. Therefore, there is need to educate the public on the budget process in order to increase their participation in all budget phases.

e. Review legal and institutional framework

Legal and institutional reforms are necessary to incorporate inclusion, participation and consultation of all stakeholders in the budget process. It is also incumbent upon the government to spearhead the necessary legal reforms to eliminate the gaps and inconsistencies that exists currently and which have curtailed the all-inclusive participation of the stakeholders in the budget process.

2.7 Conclusion

Participation in the budget process has mainly been limited to the high-level government officials with relatively lesser participation of lower cadre government officials and operational level stakeholders who require involvement in the budget process as well. The top down approach as opposed to top down approach has been an all-time challenge to the budget process. The participation of key stakeholders in the budget process was on the overall indicated as poor. The CSOs, media, academics and

Budget Transparency: Kenyan Perspective

researchers indicated that their participation in the budget process has been weak, which has been further constrained by limited access to budget information. Although the corporate sector indicated having submitted budget proposals to the government, it was noted that there was no legal obligation on the part of the government to deliberate and accept the proposals. The response by most of the stakeholders indicated that they have never received any official invitation to the budget meetings. As a result these meetings have largely ended up being non-participatory and non-inclusive. The legal framework has been inadequate in addressing participation in the budget process. The major challenges in the participation process include the review of the legal and institutional framework to streamline the participation of all stakeholders in the budget process. Kenya like other developing countries has often faced the usual problem of policy development, which neglects the wider involvement of the appropriate actors. The tendency has been to concentrate mainly on the content of the budget policy and marginalizing the policy process and the contextual factors, which influence its success.

Section Three: BUDGET INFORMATION

3.1 Introduction

Availability and accessibility of budget information to all stakeholders has far reaching effects in promoting participation, monitoring and evaluation of the budget. Key requirements of budget transparency should ensure that budget information is accessible, timely, accurate, clear and easy to use, the format and details therein are adequate to facilitate effective participation, and that independent checks have been put in place to check on the integrity of the budget information.

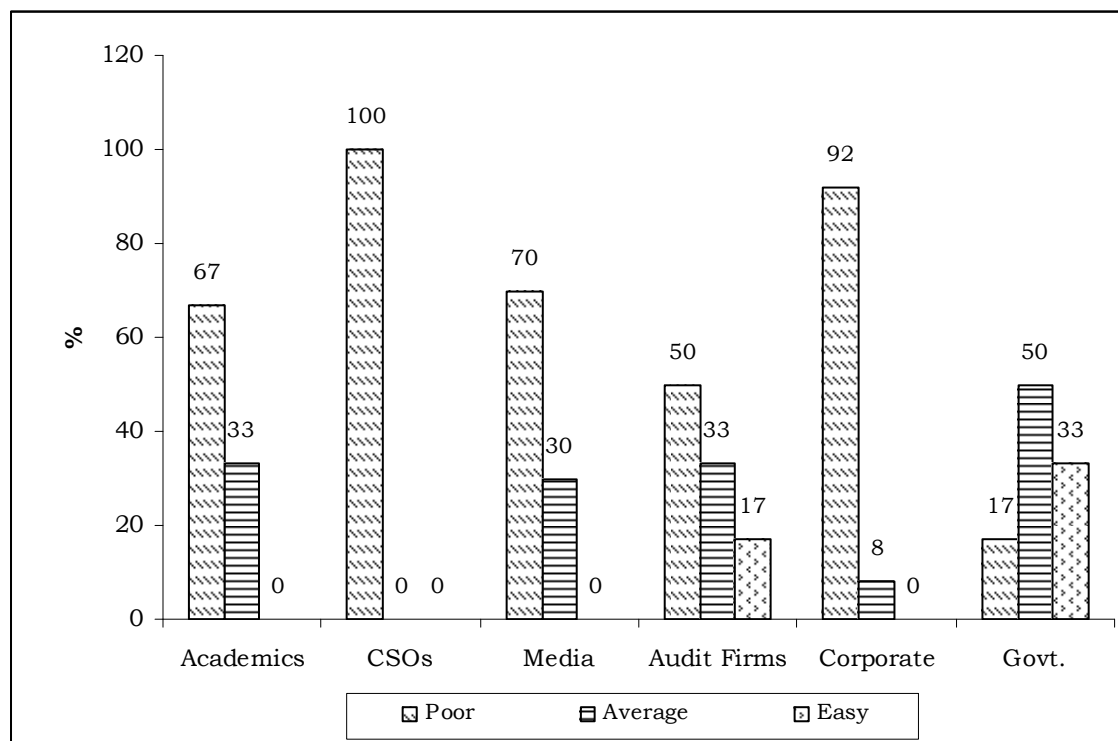
Although there is no clear legal framework addressing the issue of budget information, there are commendable initiatives in the draft constitution to promote availability and access to information. Chapter V section 47 (1) (a & b) of the Draft Constitution of Kenya stipulates that 'Every citizen has the right of access to information held by the state; and any information that is held by another person and that is required for the exercise or protection of any right or freedom'. In addition, the constitution also outlines that the state has the obligation to publicize any important information affecting the life of the nationals.

3.2 Accessibility to Budget Information

The study revealed that the overall accessibility to the budget information to majority of the respondents was poor (*Fig 3.1*). All CSOs respondents (100 percent) indicated that accessibility to the budget information has been poor. The percentages of respondents who registered poor accessibility of budget information was also notably high among the academics and researchers, media, audit firms and the corporate sector at 67, 70, 50 and 92 percentages respectively. The overall rating of information accessibility of all the budget data was also noted to be poor (*see Annex 2: table 10.2*). The study revealed that budget data regarding public spending, public debt, contingent liabilities, audit, extra budgetary activities and pending bills was the most difficult to access by all respondents. Most of the information concerning implementation and compliance of the budgetary proposals is also not easily accessible, despite having two parliamentary watchdog committees (PIC & PAC), which are supported by the office of the C&AG. For example, the project completion reports though available with government offices, are marked for official use and circulated to a limited group who are predominantly development partners and holders of executive offices. It was noted that even in cases where the information is available it is only confined in Nairobi. The CSOs expressed concern over information accessibility, noting that even when budget information is available in print or on websites they cannot access it due to the high cost involved. Most respondents indicated that although the government budget documents are available in government libraries, the public lacks the technical know-how to extract the information contained therein. However, officials from the government indicated there was average accessibility to most budget information. It was emphasized that the budget presented in parliament by the Minister for Finance is published by the Government Press for use by all interested parties. In addition, the quarterly budget review, fiscal strategy paper and the Central Bank of Kenya (CBK) monthly economic reviews and various Central Bureau of

Statistics (CBS) publications have detailed information on economic analysis and are easily accessible to the public.

Figure 3.1: Accessibility to Budget Information by Type or Respondent



3.2.1 Challenges in Accessing Budget Information

a. Centralization of the Budget Process

The study revealed that there is too much centralization of the budget process within the Treasury department and this makes the budget process purely a government process. The budget process is not clear outside the Treasury and bureaucratic tendency in the Ministry of Finance and Planning and National development makes the accessibility to budget information very poor.

b. Poor Information Flows

Information flows from the government to the public were noted to be poor and this has further constrained accessibility to budget information. The executive arm of government was noted to have an interest in making budget information easy to access. Most government documents and information have been treated as confidential and are not made public easily. Even when this information is available at the government press, most stakeholders are not aware. The study also revealed that information on revenue collection, spending and pending bills is quite often inaccurate. As a result, such information is not useful in informing policy decisions.

c. Timeliness of Budget Information

Timeliness of budget information was a huge concern by most respondents. It was noted that information on budgeting is usually not timely to facilitate meaningful participation by stakeholders. For example, the macro-economic and audit data

although available was reported to be released late and usually inaccessible to the public.

d. *Poor Consultation and Collaboration*

Although respondents noted that the budget process has involved quite a number of stakeholders, it was highlighted that poor consultation and collaboration among these actors has complicated access to budget information. There are few fora to facilitate greater consultation and collaboration and where they exist they are restricted to the national level. However, it was noted that there have been good initiatives from the I.E.A. budget fora, which have assisted in informing public on the national budgets. The academicians and researchers indicated that they have benefited a lot from these fora.

e. *Lack of technical expertise*

The lack of technical expertise to decipher the content of budget documents makes it difficult to access budget information. Some respondents lamented that the audit reports read like an accountant's bible and a non-technical expert or person without relevant expertise cannot possibly use this information to query the budget process.

3.2.2 Recommendations on Accessibility of Budget Information

a. *Decentralize the budget process*

In order to address the challenges inherent in accessing budget information, the study recommends the need to decentralize the budget process to the lower levels such as districts. Decentralization of the budget process to the lower levels will enhance information dissemination to these levels.

b. *Strengthen information flows*

Accessibility to budget information should be improved and if possible made free. Budget information needs to be released monthly in order to facilitate close involvement of the stakeholders in formulation, implementing and overseeing the budget. For example revenue collection and internal audit reports should be done and released monthly to facilitate easier monitoring.

c. *Simplify budget information*

The budget needs to be in a simplified language and format. For example, budget data should be stratified in such a way that interest groups are able to extract relevant information. Budget information should be published on the web.

d. *Establish an independent budget office*

There is need to establish an independent central budget office that would oversee the budgeting process and ensure that information dissemination is timely, inclusive and transparent.

3.3 Timeliness of Budget Information

The timeliness of budget is clearly stipulated in various statutes. The treasury circulars give a guide on the budget calendars, ceilings and target dates for submission of budget proposals. The Constitution of Kenya section 100 requires that the Minister should prepare revenue and expenditure estimates and lays them before parliament for approval before the financial year starts. Part V section 18(1) of the

Budget Transparency: Kenyan Perspective

Exchequer and Audit Act requires that the accounting officers submit annual accounts to the C&AG within four months at the end of the financial year to facilitate auditing. The C&AG upon receipt of such accounts shall examine, audit and transmit to the Minister a full report within seven months. Further, section 31 of the exchequer and Audit Act stipulates that all accounts of corporations should be submitted to the C&AG within four months on the lapse of the financial year.

The study revealed that in all the phases of the budget process adherence to the above statutory deadlines and others not stated above was generally poor. The CSOs, media, academicians and researchers indicated that budget information, especially on public spending is rarely made public. In cases where it is released, it is usually not timely and this considerably limits the capacity of the stakeholders to engage in the budget process. The CSOs especially noted that the lack of timely information has to a large extent affected their interaction with the stakeholders over budget matters. Timeliness of information especially in the debate stage was noted to be wanting, with minimal or no pre budget hearings to solicit ideas and recommendations from the citizens. Time allocated after budget day for deliberations was insufficient to enable stakeholders to scrutinize the financial statements and make any contributions. Timeliness of information especially in the implementation and oversight phases was also noted to be most inadequate. It was cited that reports such as the treasury circulars, quarterly budget reports and audit reports by the C&AG and the defunct A-GC office are usually released late. Late audit reporting has also hampered the effectiveness of taking any remedial actions. As a result, these reports have ended up being ineffective tools of planning and decision-making. The C&AG needs to be empowered to release audit reports in good time for appropriate actions. The lack of transparency and accountability was also noted to have contributed to the lack of adherence to set reporting deadlines. However, representatives from the government felt that budget reports were released with some fair degree of promptness. They explained that timing of the release of the annual and supplementary estimates allows for sufficient time for all interested parties to effectively contribute to the debate on the same. It would be important to point out that this observation is not consistent with what is observable. As a tradition, Treasury has consistently released the annual and supplementary estimates to the general public not more than a week before the formal presentation in parliament. Even an institution like parliament, which is mandated by the constitution to scrutinize and approve any withdrawals from the consolidated fund, does not enjoy partial treatment in respect of access. In essence, the ability of parliament to play its scrutiny role over the estimates is curtailed.

3.4 Accuracy of Budget Information

Budget accuracy emerged as a big concern to most stakeholders. It was noted that in many cases the budget estimates and actual expenditure data have been contradicting. Budget information on macroeconomic data, revenue collection, public debt and policy statements was generally assessed as fairly accurate as shown in Table 3.1 below. However, information on pending bills and extra budgetary information was noted to be the most inaccurate. The respondents noted that in some cases there are anomalies and confusing data. For example, there has been a general lack of correlation between the budget speech and printed estimates. In other words, some proposals made in the budget speech were omitted from the accompanying vote books and Finance Bill. However, the assessment of budget accuracy by the various

Budget Transparency: Kenyan Perspective

respondents varied with the type of budget data (see table 3.1 & Annex 3: table 10.3). It is also worth noting that majority of the respondents especially the CSOs did not know the accuracy rate of most of the budget information especially regarding public debt, policy statements, contingent liabilities, pending bills and extra budgetary activities, perhaps questioning the integrity of budget information. This gives a lot of insight into the lack of accessibility of budget information and the lack of comprehension of the technical data.

Table 3.1: Overall Accuracy of Budget Information

Data Type	Accuracy of Budget Information				
	Don't Know (percent)	Inaccurate (percent)	Fairly Accurate (percent)	Accurate (percent)	N/A (percent)
Macroeconomic	23	13	56	2	6
Revenue collection	21	10	54	12	4
Public debt	23	8	48	17	4
Policy statements	25	19	50	2	4
Audit	29	17	35	15	4
Contingent liabilities	46	19	31	2	2
Pending bills	40	31	17	2	10
Extra budgetary activities	56	37	13	0	13

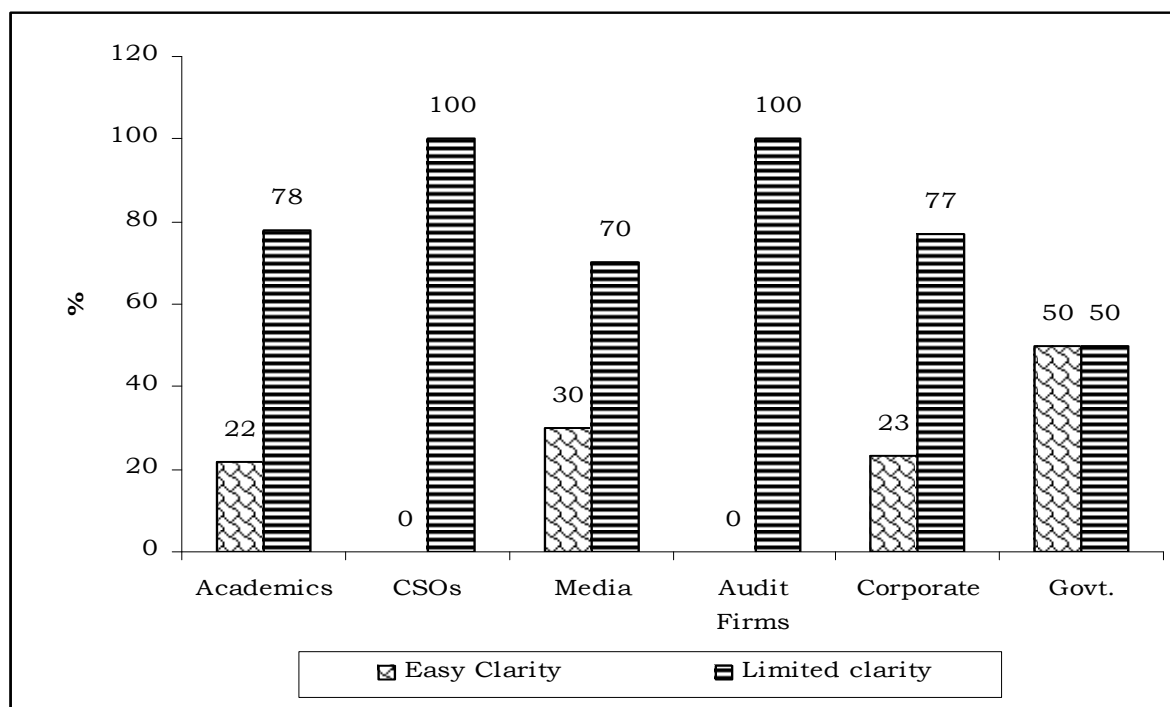
3.5 Clarity and Ease of Use of the Budget Information

The study revealed that clarity and ease of use of the budget information was a critical factor in facilitating the public participation in the budget process. Most respondents noted that there has been limited clarity and that budget information tended to be complex (Fig. 3.2). The CSOs, audit firms, researchers and the corporate sector intimated that this handicap limited the utilization of budget information.

Most respondents indicated that clarity and ease of use have been limited by the technicality and volume of the budget information. The budget information was considered to be too voluminous for stakeholders to read and comprehend within the limited time allowed for feedback. The technicality of the budget information with too many economic jargons was noted to further constrain the use of the budget information. In particular, CSOs participation in the budget process was heavily constrained by the complexity of the budget information.

Limited access to critical budget information has also constrained clarity and ease of use of budget information. Limited knowledge of the public on budget information such as pending bills and extra budgetary activities has limited use of budget information and thus creating loopholes for corruption. Allocations and reallocations, in the case of supplementary estimates, in most cases were noted to have scanty or no explanation at all. For example, the allocations to the Kenya Railways in Financial Year 2002/2003 apparently to assist with the concession the railway services were never credibly explained. Budget information has in the past been presented late and in a complex and ad hoc manner, with limited circulation, which deters the public from making any enquiries.

Figure 3.1: Clarity and Ease of Use of Budget Information



The study recommends the streamlining of the presentation and the content of the budget information to simplify and enhance its clarity. Preferably budget information should be disseminated in English and Kiswahili to enable all stakeholders to comprehend the budget. In addition, the budget process should be open and inclusive and thus provide opportunities for clarifying issues to stakeholders involved in the process.

3.6 Details and Format of Budget Information

The study revealed that the details and format of the budget information are usually not sufficient and presented in a user-friendly form (table 3.2). Most respondents indicated that most of the budget data details regarding contingent liabilities, pending bills and extra budgetary activities are usually insufficient. It was highlighted that inconsistencies on reported pending bills affects the level of public indebtedness and audit reports because if one is incorrect it will lead to misleading information. Most of the respondents raised a major concern over the pending bills and highlighted that information on the pending bills is usually treated as a secret affair, and only released in cases where professional bodies put a lot of pressure. It is also worth noting that quite a big percentage of the respondents did not know about the usefulness and adequacy of budget information. This gives a good indication of the lack of awareness of budget information and the contents therein.

Table 3.2: Sufficiency and Usefulness of the Details and Format of Budget Information

Data	Sufficiency and Usefulness of the Details and Format of Budget Information		
	Sufficient (percent)	Insufficient (percent)	Don't Know (percent)
Macroeconomic	46	44	19
Public spending	38	48	14
Revenue collection	52	37	12
Public debt	52	37	12
Policy statements	37	46	17
Audit	38	42	19
Contingent liabilities	21	54	25
Pending bills	21	52	27
Extra budgetary activities	19	50	31

The study recommends the need to improve the budget information presentation to ensure that all stakeholders can comprehend budget information and thus make it easy for all target groups to use the same. Increased openness of the budget process would also ensure that the details contained in the budget process are reflective of the true and fair position in respect of budgetary matters.

3.7 Independent checks for Budget Information Integrity

Independent checks for the integrity of budget information usually act as stopgap measures to ensure that stated objectives have been met, and offer checks and balances of the budget information. Most of the respondents (*Fig. 3.3*) indicated that there have not been independent checks on the integrity of budget information. Although the C&AG office was cited as an institution charged with the responsibility of checking on the integrity of budget information, its role was found to be wanting. Parliamentary committees such as PIC and PAC were also noted to have failed in checking the integrity of budget information. However, it was noted that the legal and regulatory framework has been weak in providing measures for ensuring independent checks on the budget.

Whereas the C&AG is identified as the auditor of the National Assembly, the Act requires him to submit his report to the Minister for Finance who in turn transmits it to Parliament. This is improper as the Ministry of Finance is indeed one of the Ministries that the C&AG audits. The danger with the provision is that the C&AG has no recourse if the Report he is submitting to the Minister is altered when it reaches the floor of the House. The Act gives the Minister and PS treasury enormous powers without corresponding accountability requirements. Where they exist, they are framed in a manner that opens them to manipulation. Thus, the reporting requirements are weak.

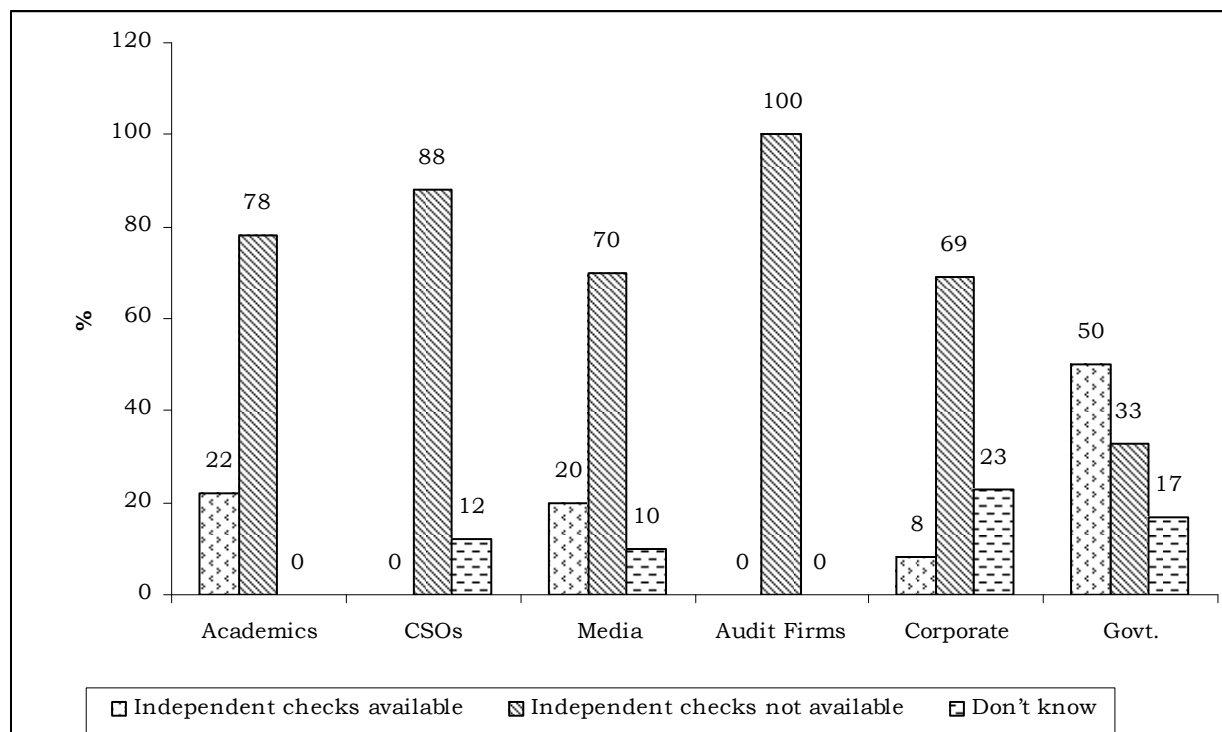
It is also curious that in the event of failure by the Minister to submit the report to Parliament, the C&AG is required to do so directly but through the Speaker. The more

Budget Transparency: Kenyan Perspective

procedural thing to do would be to submit to an Audit Committee of the House, which is the PAC. Given the procedures of electing the Speaker, the governing party will always have the Speaker of their choice. And if it is in the interest of the Minister and by extension the government not to table the C&AG report, he may just exercise some influence on the Speaker to delay consideration of a Report. It is not clear what purpose is served by routing the C&AG Report through the Minister.

In a nutshell, the office of C&AG has been undermined by weak constitutional protection of the technical officers. It has also been undermined by lack of prosecution powers; limited financial and human resource. Over the years, it has primarily concentrated in the performance of its audit function at the expense of control functions. Consequently, monies have been withdrawn from the Consolidated Fund without C&AG authorization. The problem is that the office is helpless in law even in face of such abuses. He can only catalogue the abuses after the fact at the end of the financial year.

Figure 3.2: Checks of Budget Information Integrity



Major differences and controversies over calculation of the budget outturns were highlighted as indicators for the lack of checks on budget information. It was also noted that revenue collection figures are often non-strategic estimates and are usually created without understanding the underlying fundamentals. This has led to a number of anomalies and confusing in the existing budget information. The corporate sector and audit firms noted that there have been inaccuracies and contradictions with the government budget and this makes it difficult for these sectors to utilize this data. The lack of an oversight parliamentary role in checking the integrity of budget information has resulted in the country experiencing ballooning budget deficits,

despite the Finance Minister's commitment to reduce government borrowing. In addition, it is evident that corruption has been rampant and there has been little attempt to link revenue to macro-economic stability. Although institutions such as I.E.A. have been active in budget issues, it was generally noted that there is no institution that has been mandated with checking on the integrity of the budget information and the public just takes what the government presents.

The budget process was noted to be treasury based and the government system is still closed to external checks. The C&AG's reports were noted to have limited checks on the paymaster general accounts, mainly because the institution is heavily understaffed. The weak accountability and law enforcement mechanisms with PAC and the PIC have further constrained the integrity process. A lot of bottlenecks are evident for example with the collapse of a number of public institutions e.g. Kenya National Assurance Company (KNAC), National Bank of Kenya (NBK), and Kenya Cooperative Creameries (KCC) despite contradicting information that the institutions are solvent or stable.

3.8 Shortcomings of the Budget Information

The study identified a number of shortcomings with the budget information.

a. *Poor accessibility to budget information*

Majority of the respondents noted accessibility to budget information to be poor. In cases where it was available, it was noted unaffordable to majority of the stakeholders. This has affected the level of participation and use of budget information, which was highlighted as critical in making informed policy decisions.

b. *Untimely budget information*

Most of the respondents noted that the release of budget information was not timely which affected their participation in all the budget phases. The CSOs, media, researchers and academics noted that in most cases the short notice given for attending meetings and at times the lack of notice altogether, on budget meetings has contributed to the poor attendance in budget meetings. Untimely information has also affected the debate stage by limiting consultation with and among the stakeholders, such as, parliament, CSOs, private sector etc. There was concern over laxity in monitoring and evaluation of government programmes, including the collection and use of government finance. The implementation stage was noted to be the most constrained by untimely information. In addition, it was reported that audit reports by C&AG are in most cases released late for any appropriate remedial action to be taken.

c. *Inaccurate budget information*

It was noted that most of the time there have been contradictions in the budget information, which has limited the maximum use of budget information by most of the stakeholders. On a number of occasions, there was an observable disconnect between the budget speech and the printed estimates. For example, the analytical review of GDP indicates that it is usually understated in comparison to the tax collected.

d. *Poor presentation of budget information*

The presentation of the budget information in terms of details and format was noted to be poor. The budget information was considered to be voluminous and usually presented in a technical form, which limits comprehension and use of the data.

e. *Lack of independent checks*

The lack of independent checks on the budget information was noted to be a big drawback in verifying the accuracy of budget information.

3.9 Recommendations on Budget Information

The study has identified a number of recommendations to address the shortcomings identified in the budget information.

a. *Streamline budget information*

There is need to improve on management of budget information in regard to collection, analysis and dissemination. There is need to develop a data capturing system, which will provide timely and accurate information. Government should give accurate, realistic and achievable projections. Policy statements should be based on facts and expected outcomes. Budget information should be in useful formats and in languages that can be comprehended by majority of Kenyans. Budget information should be presented in a simplified form and if possible accompanied by explanatory notes. There is need for a budget summary to be presented for easy understanding by the non-technical persons. In particular, the budget process should be widely communicated through press statements in order to reach a wider population, so that the stakeholders can prepare and identify the appropriate phases in which they can effectively engage in the budget process.

b. *Institutionalize openness in the budget process*

The budget process should be open and inclusive to enhance timeliness and accuracy of budget information. The Government, and in particular Treasury should be more forthright on the budget information especially on audit and pending bills which has been raised as an issue of national concern. Government needs to be more honest and committed in informing the public. In particular, there should be a provision for verifying selected and critical budget information before publication and dissemination, e.g. by an independent body that draws legitimacy from the Kenyan populace, such as, parliament. There is need to have more goodwill from the leaders in order to ensure that all avenues for corruption are sealed by establishing mechanisms of verifying budget information by way of an legal statute.

c. *Ensure timely budget information*

Timeliness of the budget information is critical in ensuring that transparency in budget is attained. There should be a department specifically mandated with ensuring that budget information is timely.

d. *Promote a consultative process in budgeting*

The budgeting process should be more consultative and bring every stakeholder on board. It is not enough to assume that MPs are representing people effectively. CSOs need to educate the public on the budget process and make them participate actively. There is need to make the budget process more pro-people and give information before and after the budget is formally presented to enable them participate and scrutinize budget information. More consultative fora should be institutionalized and involve more sectors representatives e.g. Kenya Association of Manufacturers, Petroleum Institute of East Africa (PIEA), IEA and professional bodies such as ICPAK, Institute of Certified Public Secretaries of Kenya (ICPSK), Association of Kenya Insurers,

Budget Transparency: Kenyan Perspective

Association of Kenya Engineers etc. Such fora should be pro active in the budget process and monitoring trade offs required to match resources to demand and non-negotiable costs such as debt service.

e. Institutionalize independent checks on budget information

An independent Parliamentary Committee, with an efficient and effective secretariat to provide back up support in the analysis of budget documents, so that they can offer an effective independent check, in addition to the activities of the CSOs and independent research organizations.

f. Use technical expertise in all aspects of budget preparation.

There is need to incorporate the use of qualified technical expertise both from the public service and the private sector.

3.10 Conclusion

Budget information was noted to be inaccessible to most respondents. Although the government officials noted that this information is available at the government press, a large group of respondents indicated that they have not been able to access it due to the high costs involved. The legal framework was also noted to be weak regarding budget information. Timeliness of budget information was noted to be lacking and this has affected stakeholders' participation and involvement in the budget process. The lack of independent checks on the integrity of the budget information was also noted to have compromised the details and format of budget information. The biggest challenge therefore, is the streamlining of budget information to ensure that it is accessible, timely, accurate, clear and easy to use.

Section Four: BUDGET FLEXIBILITY

4.1 Introduction

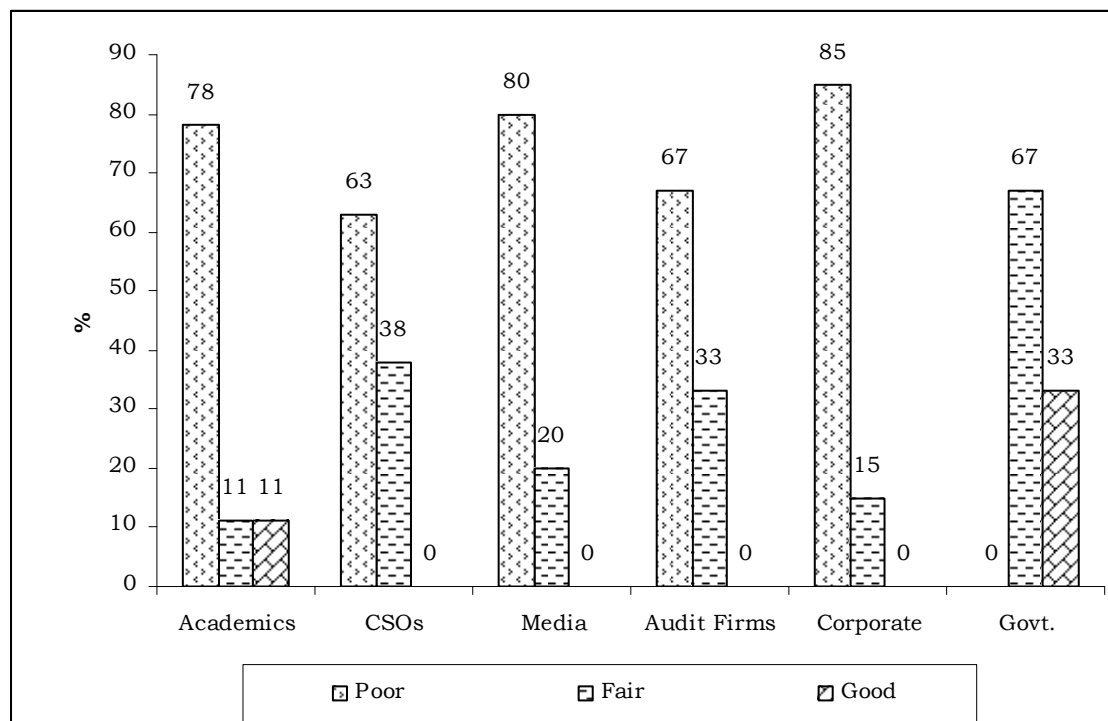
Budget flexibility refers to the ability of the budget to accommodate sudden unforeseen changes such as emergencies occasioned by floods, drought, epidemics and revenue shortfalls without resulting in macro economic instability.

4.2 Budget Flexibility

Budget flexibility section aimed at investigating the ability of the budget process to accommodate changes in cases of emergencies such as drought, epidemics, revenue shortfalls etc. without disrupting service delivery or macro economic stability. The Constitution of Kenya section 102 clearly stipulates that parliament is in charge of making provision for the establishment of a contingency fund and for authorizing the Minister responsible for finance to make advances from the fund in case of urgent and unforeseen needs. Despite such provision, most of the respondents excluding the government officials noted that budget flexibility was poor (*Fig. 4.1*). Most respondents indicated having heard of sporadic tax policy changes such as drought levy but nobody knows how much was collected and how it was used. Budget demands resulting from emergencies occasioned by drought have been poorly addressed and in most cases service delivery is disrupted. It was noted that in cases of revenue shortfalls, the government has in the past opted to borrow domestically despite the adverse inflationary effects. This has resulted in high cost of living due to high inflation rates and less access to credit due to high interest rates. There has been poor predictability of emergencies in the past and usually the budget does not anticipate these sudden eventualities. For example, when Kenya experienced the El-Nino phenomenon, the budget was not flexible enough to accommodate the demands arising from the El-Nino effect, and even up to date the El Nino effects are still evident. The lack of special funds for these potential emergencies coupled by insufficiency of revenue even during ordinary times has been a major challenge in enhancing budget flexibility.

It was highlighted that targeted revenue figures are usually unreliable while over reliance on external sources of government revenue and lack of contingency strategies has further constrained budget flexibility. The budget estimates were indicated as having being based on non-strategic estimates and budget deficits, and thus the budget can hardly manage ad-hoc requirements. It was noted that even for foreseeable emergencies, the government has to seek external support particularly from the UN organizations such as UNICEF, WFP and UNDP. The inadequate allocations for emergencies have been further constrained by misappropriation of funds and especially due to political interferences.

Figure 4.1: Rate of Budget Flexibility



However, it was noted that the absolute powers accorded to the President to declare a national emergency was a good initiative in allowing the budget to accommodate such eventualities by appealing to the goodwill of the able Kenyans to donate towards the upkeep of the affected communities. For example, the 2000 drought was noted to have been addressed properly. Although the civil contingency fund was noted to be useful in addressing emergencies, the accounting of such funds has remained a big challenge.

4.2.1 Advantages of a Flexible Budget

It was observed that a flexible budget ensures that any mistakes in the budget estimates can be readdressed for the benefit of the nation. Opportunities for enhancing budget flexibility, if well administered and managed can assist the country to effectively manage disasters and make planning easier. Budget flexibility was also noted to limit the formal bureaucracy in planning and also be more responsive to real needs by helping stakeholders to adjust accordingly to changes in budget plans in the course of the financial year. In such cases unforeseen emergencies such as drought can be addressed. Budget flexibility was noted to be democratically sound and guarantees better resource allocation. For example, it can be used to minimize the increase of pending bills by reallocating resources to settle bills that fall due to avoid penalties for late payments.

4.2.2 Disadvantages of a Flexible Budget

Budget flexibility was noted to be prone to abuse and unlikely to guarantee better economic performance because it can give way to misuse of public funds by managers in the absence of sufficient legal and institutional frameworks. Again, given the usual

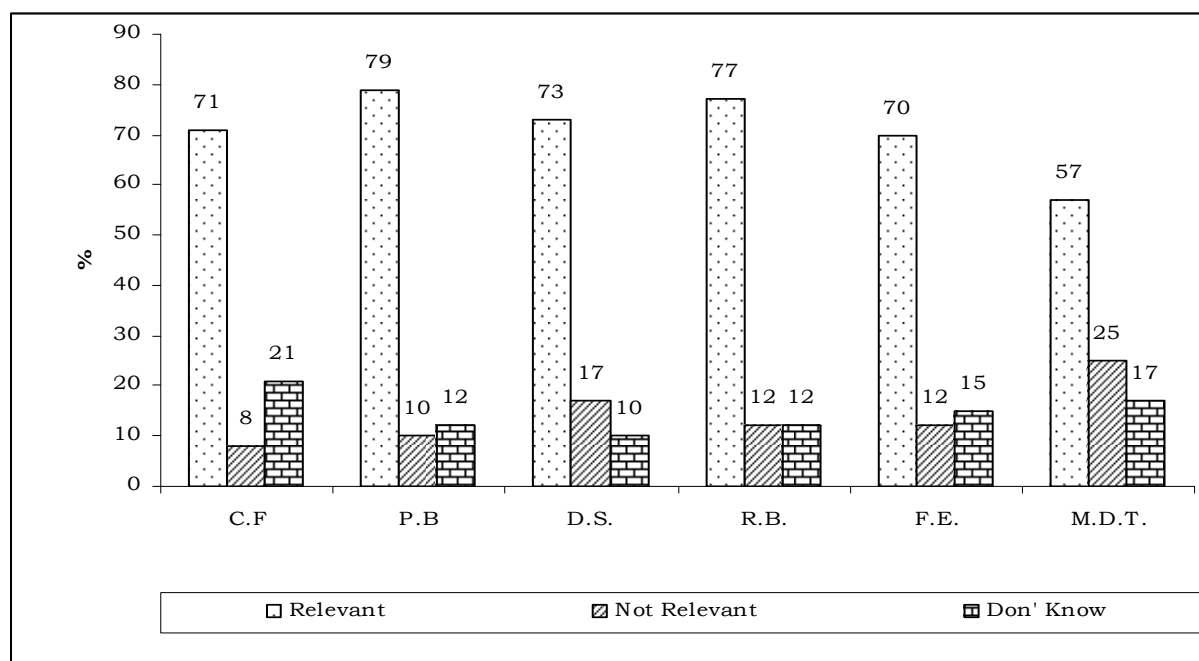
Budget Transparency: Kenyan Perspective

lateness of audit reports there is scope for abuse. Lack of accountability, independent monitoring and transparency were noted to be loopholes for increased abuse and manipulation. In addition, the frequent changes makes policies unpredictable thereby undermining link between budgets and policies. A flexible budget was noted to give way to too much discretion, which leads to increased unpredictability. This can complicate the planning process and result in increased debt burden and distortions of the budget. Owing to the fact that the implementation of the budget is weakened, this in turn means that the planning and preparation phase could become irrelevant and merely formalistic. This also complicates the monitoring and evaluation process since targets and therefore outcomes keep on changing.

4.3 Relevance of the Existing Tools of Enhancing Budget Flexibility

The study also set out to assess the importance and relevance of existing tools of enhancing budget flexibility. Budget data was noted to be considerably relevant in determining budget flexibility by most respondents (*Fig. 4.2*). Most of the respondents (over 50 percent) indicated that all budget flexibility tools, in the form of contingency fund, size of public debt, donor support, revised budget and the stock of foreign exchange reserves were relevant in promoting budget flexibility. The ministerial discretionary tax variation powers were also noted to be relevant.

Figure 4.2: Relevance of Budget Data in Flexibility



C.F. - Contingency Fund
D.S. - Donor Support
F.E. - Foreign Exchange

P.B. - Public Debt
R.B. - Revised Budget
M.P. - Ministerial Powers

4.4 Checks on Budget Flexibility

In spite of the relevance of the budget flexibility tools, majority of the respondents were concerned that there were insufficient checks against the abuse of the opportunities created to accord government the necessary budget flexibility. As a result, the contingency fund, revised budget and foreign exchange reserves have been prone to manipulation. The ministerial discretionary powers were singled out as the most abused of all the budget flexibility tools. The legal, institutional and regulatory frameworks in place to govern budget flexibility have not been adequately utilized to enhance budget flexibility or respond to emergencies. Most respondents indicated that in the past they have witnessed more reliance on ad-hoc committees appointed by the Executive whose performance or accountability could not be guaranteed. Again, there has been a lot of bureaucracy in government budget operations. Although some respondents felt that there are a few checks against abuse of budget, implementation has been wanting. It was highlighted that political powers have been used to override these mechanisms and also there have been expenditure abuses where the ostensible purpose for which funds are budgeted, is not adhered to strictly.

a. Contingencies fund

Section 102 of the Constitution of Kenya empowers the Minister for Finance to establish a Contingencies Fund to cater for unforeseen and urgent expenditures for which no budgetary provision exists and thereafter regularize the same by way of Supplementary Appropriation Bill. Unfortunately, as observed by most respondents the existing checks were not adequate to ensure transparency in the establishment and use of the Contingencies Fund. Most of the time this fund was noted to be used to finance political activities and there are no direct development activities. Lack of transparency, accountability and monitoring of the fund has resulted in gross abuse of the fund. The C&AG reports indicate that this fund is used as a second window to fund expenditures not included in the budget due to tight budget ceilings. Quite often huge withdrawals are made from this account without proper justifications. It was noted that as soon as the contingency fund is available unjustified expenditures are usually made while insignificant calamities are blown out of proportion in order to access and use the money. While some indicated lack of knowledge if there were any institutionalized checks, it was stressed that the parliament has virtually no say in this fund and as a result, expenditures have been incurred in an ad-hoc manner. Nevertheless, some of the respondents indicated that there were some adequate checks over the contingency fund. This was attributed to the requirement for the ministries concerned to provide adequately for the contingency fund and once approved by the Ministry of Finance, the C&AG authorizes the transactions charged to fund.

b. Level of public debt

The Internal Loans Act (*Cap 420*) and the External Loans and Credits Act (*Cap 422*) clearly stipulate the procedures and limits of borrowing by the government within and outside the country. These pieces of legislation have conferred excessive power on the executive requiring that the procurement of external and internal loans be almost exclusively done by the executive. Reporting requirements in the statutes do not demand that the legislature be informed of the terms of the agreements except for the outstanding sums. Since all public debt is charged to the Consolidated Fund without parliamentary approval, it logically follows that payment for debt procured by the

executive must be authorized by the legislature. This situation depicts the imbalance in the public debt management mandate, between the Legislature and the Executive where the Executive can borrow without legislative approval and yet the latter must authorize repayment through the Consolidated Fund. This is good example of a case of laxity in checks against the procurement and use of borrowed public funds.

It was highlighted that section 6 of the External Loans and Credits Act has clearly stipulated the limit of total indebtedness in respect of the principal amounts of moneys that should not be exceeded which is the equivalent of six hundred and fifty million Kenya pounds at the current exchange rate. This was noted as a good check to ensure that the public did not exceed certain levels that would impact negatively on the Kenyan economy. Despite having a public debt ceiling it was observed that such limits were not adhered to. In addition, there still existed many loopholes through which government was committed without the appropriate authorization e.g. with persistent escalation of the pending bills. The public debt has in many cases been manipulated by the Executive to suit their needs. The Executive has tended to abuse the clause that allows the Minister for Finance to alter debt limits provided he/she reports such alterations in the public debt in the next Appropriation Accounts. This has created room for impunity in the flouting of statutory limits on public debt. In essence, therefore this implies that the level of public debt is susceptible to political manipulation by the government. In most cases, public debt is incurred without seeking approvals from the National Assembly. Many respondents registered great concern with the government domestic borrowing via Government stocks, treasury bills and bonds, explaining that the government resorted to this mode of deficit financing because it was not subject to stringent checks unlike the CBK overdraft facility¹⁴ and the external resources, which are subjected to scrutiny by development partners. Notably, most of the times public borrowing has been misused because it is never scrutinized by the Parliament and other appropriate bodies.

c. External Support

A few respondents (35 percent) indicated that there were sufficient checks for externally sourced funds. This was attributed to the rigid rules by development partners on how such money should be spent. Multilateral and bilateral financiers were noted to have stringent disbursement procedures and they closely monitored the progress and performance in the implementation of loan and grant financed programmes and projects. These financiers were noted to be keen and alert to demand the fulfillment of certain conditions and also built in sufficient independent checks on these funds. However, majority of the respondents (65 percent) indicated that inadequacy of existing checks was evident, because external finance is only checked at the entry point. Once money is released it is usually diverted into other uses in some cases. For example, a few external financiers, including multilateral financier have in the past drastically reduced support or withdrawn it altogether citing misuse or abuse. External funds have also been used as a political tool. Some respondent cited cases where projects, which did not make economic sense, though supported by certain development partners e.g. the Turkwell Hydro-electric power project. However, it was emphasized that donor funding can be very well utilized only if tighter controls and transparency can be exercised.

¹⁴ The Central Bank Amendment (1996) Act limits the borrowing from CBK to 5 percent of the revenue levels recorded in the last C&AG audited public accounts.

d. Revised Budget

About 31 percent of the respondents indicated the existence of sufficient checks with the revised budget. This was attributed to the availability of treasury guidelines on preparation of revised budget and existence of parliamentary oversight committees. The revised budget was noted to assist in adjusting expenditures to reflect revenue shortfalls. However, most respondents (69 percent) noted that the existing checks were not sufficient. The revised budget, it was explained was at the discretion of Treasury and therefore subject to manipulation. The revised budget is mainly used to legalize the preferred necessary expenditures or to shift funds within a programme and between programmes, or within and among expenditure votes. The Executive always has an upper hand in the revision of the budget and usually parliament has little or no say in these decisions. This imbalance in mandates of government institutes engaged in the budget process, has resulted in less transparency, poor accountability and monitoring of the implementation of the national budget.

e. Stock of foreign exchange reserves

35 percent of the respondents were satisfied with the existing checks over foreign exchange reserves. It was noted that the Central Bank of Kenya controls the reserves on behalf of the Government whose quarterly reports are published regularly. The CBK was noted to be doing a good job in regulating the stock of foreign exchange and this was attributed to the independence accorded the CBK. The rules guiding the management of foreign exchange reserves were highlighted as a good check in regulating these reserves. The lack of sufficient checks in foreign exchange reserves was reported by about 65 percent of the respondents, citing manipulation by politicians, through the executive powers of nominating CBK board powers. In addition, the liberalization of the money market has complicated the management of these reserves.

f. Ministerial discretionary tax variation powers

Approximately 29 percent of the interviewees felt that there were sufficient checks in the ministerial powers because the tax variation has to be submitted to Parliament in the Finance Bill, which must be debated and enacted by Parliament. There also exist limitations as to what level of variation the minister can authorize tax. However, majority of the respondents (62 percent) indicated that there are insufficient checks on the ministerial discretionary powers because these powers have often been abused. In most cases the minister motives deviates from the official ones. For example, in the past there have been experiences of the ministers exercising too much power in retracting budget proposals due to pressure from certain quarters (interest groups). The budget approvals have been changed in closed-door meetings, and such information is rarely made public. In cases when it is available it is usually too late for appropriate corrective action to be taken. The Government has delegated the power to tax to certain parastatals e.g. Kenya Sugar Authority (KSA), Electricity Regulatory Board (ERB) etc. without specific and elaborate accountability requirements.

4.5 Modifications to the Budget

The study found out that there were inadequate mechanisms of informing the public of amendments made to the national budget. Although the Supplementary (Revised) budgets were identified as an avenue for regularizing and reporting modifications to the budget, most respondents indicated that they rarely get to know about it, until it is

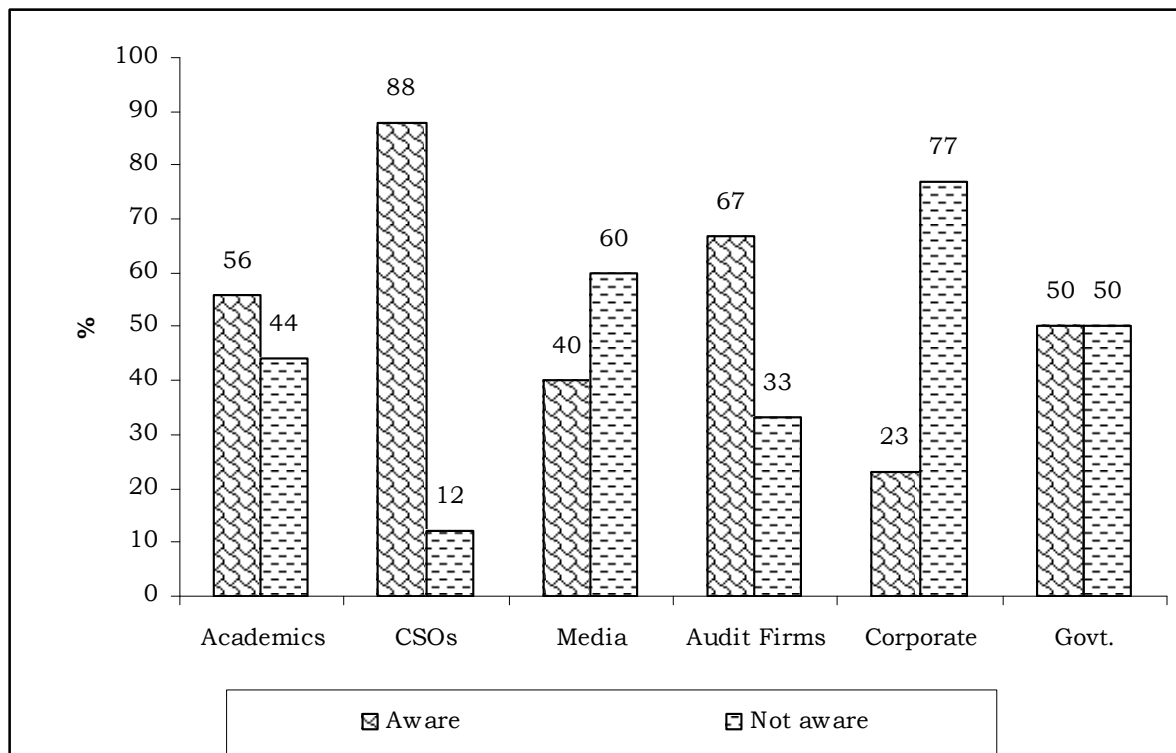
Budget Transparency: Kenyan Perspective

presented in parliament for debate and enactment. Further, the Standing Order number 142 (3), requires that the debate and approval of the Supplementary Estimates be disposed of in one day, notwithstanding that the supplementary Estimates are tabled in the National Assembly to close to the debate in the House. This limits the time for scrutiny and dissemination of information pertaining to the Supplementary Estimates. Although the media was noted to highlight some of this information, it was noted to be inadequate. It was observed that the some CSOs were vocal in the dissemination of the necessary budget information in respect of the Supplementary Estimates to a wide range of stakeholders but their contribution was constrained by the limited institutional capacity.

4.6 Off-Budget Transactions

The awareness of the off-budget transactions varied across the various respondents (*Fig. 4.3*). The peak frequencies in regard to level of awareness of the off-budget transaction was recorded among the audit firms and the CSOs with 67 percent and 88 percent of the respondents respectively having known of some of these transactions. Most respondents indicated that the off-budget transactions have ended being very expensive especially due to the ad-hoc commissions of enquiry that are usually established.

Figure 4.3: Awareness of Off-Budget Transactions



Some of the examples given for the off-budget transactions included the following:

- Goldenberg scandal that involved export compensation for gold not mined within the country.
- Purchase of the presidential jet worth US\$ 50 Million;
- Cases reported in the C&AG Report e.g. the construction of the Eldoret Airport, with the expenditure being charged from the Consolidated Fund;
- Bullet factory construction in Eldoret;
- Increase of salaries for Members of Parliament;
- The Petroleum Development Levy Fund instituted by parliament many years ago, not audited and the funds therein consultatively agreed with the energy sector on the type of petroleum development that is required. This trend has indeed resulted in the proliferation of funds;
- The payment of pending bills over the last 3 to 4 years;
- Purchase of sleek cars for Government official, which were not outlined as a priority for spending, with the Office of the President being reported as the most notorious; and
- Injection of Funds to the National Bank of Kenya without parliamentary approval.

4.7 Shortcomings of Budget Flexibility

a. Poor budget flexibility

The study revealed the limited ability of the budget to accommodate urgent and unforeseen demands for expenditures such as those arising from drought, epidemics, revenue shortfalls etc. without disrupting service delivery or macro economic stability. More often modification of the budget in a bid to accommodate unforeseen emergencies compromises service delivery and some instances triggers off macro economic instability since such funds have to be diverted from other on going programmes.

b. Weak legal and institutional Frameworks

The legal and institutional frameworks governing the modifications to the budget were noted to be weak. Quite often the executive abuses the provisions for enhancing budget flexibility by taking advantage of the existing legal and institutional loopholes and times even outrightly disregarding the existing laws, and thus allowing more room for corruption. This has resulted in the increased number of off-budget transactions, that are not necessarily urgent and unforeseen that have been implemented with prior approval of parliament.

c. Insufficient Checks on budget flexibility

The study revealed that there were limited checks in the contingency fund, public debt, donor support, revised budget and foreign exchange. This has resulted into increased manipulation and misuse of these tools of budget flexibility.

4.8 Recommendations on Budget Flexibility

a. Better planning for emergencies

There is need to plan adequately for emergencies in the budget process. This will ensure that the budget can accommodate sudden changes without disrupting service delivery.

b. Review legal and institutional frameworks

There is need to strengthen the legal and institutional framework to ensure requisite budget flexibility is provide to government while at the same time reducing the susceptibility of the budget flexibility tools to manipulation to facilitate smooth and efficient delivery of government services. Budget flexibility should be given high priority, but where necessary, the flexibility must be subjected to scrutiny by parliament or other independent offices such as that of C&AG. Budget Flexibility needs tight controls and this requires qualified expertise.

c. Institutionalize more checks

There is need to institutionalize more checks on budget flexibility. Budget flexibility should only be allowed where there are strict rules and regulations on disclosures and accountability. An independent monitoring and evaluation (M & E) secretariat should be set aside to do research, critical analysis of the budget and give technical expertise to the relevant government officials, including other interested stakeholders.

4.8 Conclusion

Budget flexibility will remain a useful feature in the implementation of the budget, to accommodate sudden changes not envisaged in the planning process of the budget, while at the same time ensuring continuity in the delivery of government services. Although the budget was noted to have some in built flexibility to accommodate sudden changes, it was noted that this flexibility has often been abused resulting in the increased number of off-budget transactions that would not fall within the realm of what be classified as emergencies. Budget flexibility was noted to have been prone to political influence and at time occasioning macro economic instability like it happened in early 1990s when the government then authorized printing of money to fund electioneering process. The lack of sufficient checks was also notable in management of contingencies fund, public debt, revised budget, and external support while the ministerial tax variation powers were flagrantly abused. Prudent public funds management is therefore critical for the benefits of a flexible budget to be realized.

Section Five: BUDGET ACCOUNTABILITY

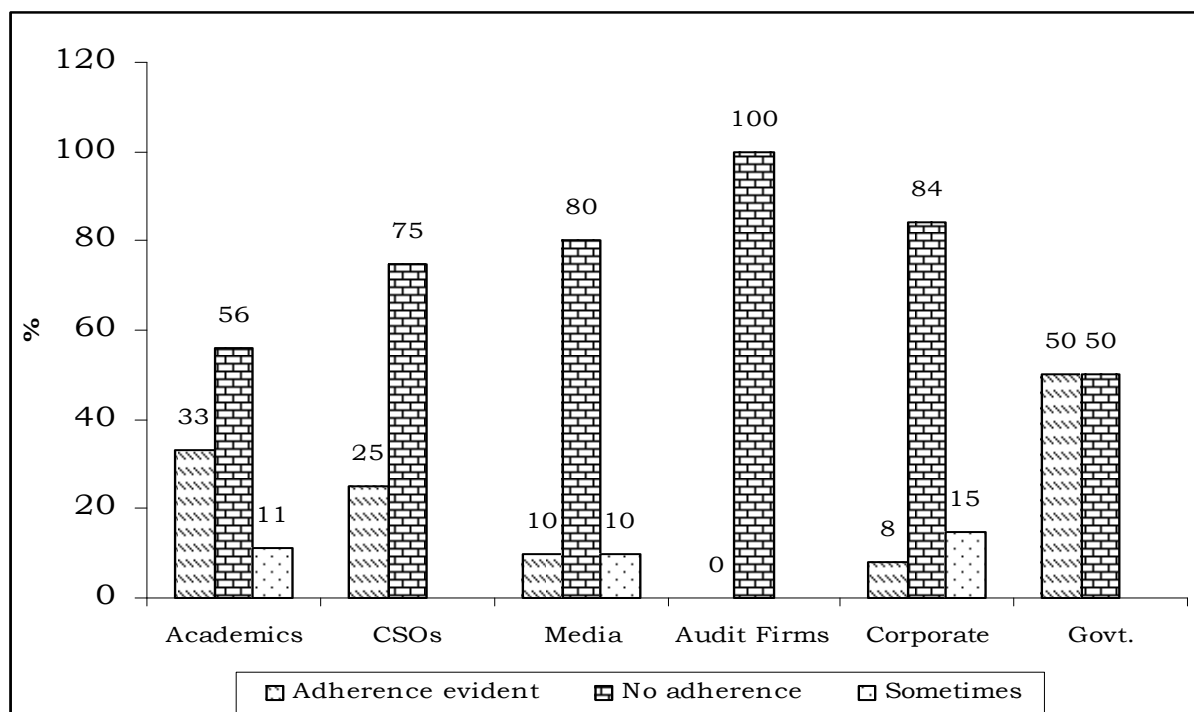
5.1 Introduction

Budget accountability requires that the budget adheres to the policy statements and that there is effective reporting to the stakeholders on the budget process and implementation of budget proposals. This section reviewed the laws and regulations that govern implementation of the budget, budget's adherence to policy statements, MTEF role in linking budget to policy and the effectiveness of government procurement procedures.

5.2 Budget Adherence to Government Policy Statements

The budget adherence to the policy statements was notably low (*Fig. 5.1*). Although there is an attempt to formulate budgets that are in tandem with policy commitments, it was noted that budgets were riddled with many contradictions and inconsistencies. For example the benefits accruing from increased budgetary allocations to certain priority thematic areas, such as the poverty reduction initiatives are quite often wiped away by the high taxes on goods and services consumed largely by the poor. Most respondents noted that although Kenya has had at least 8 national development plans and a different budget theme every year, most policy statements in these plans have hardly been achieved over the years. This can be attributed to the lack of adherence to policy commitments.

Figure 5.1: Budget Adherence to Policy Statements



Most policies are open with no timeframes and are by practice not linked to the budget. The budget is more or less done as a ritual each year with little adherence to policy commitment. It was explained that budget themes changed significantly and quite frequently. Embracing a different theme annually without achieving previous ones was noted as an indicator of lack of focus on policy statements. There is also the tendency of not allowing enough time for the realization of the previously set goals. This problem has been complicated by poor revenue collection arising from economic mismanagement, ambitious policies and inadequate resources to facilitate the implementation of the policy statements. The government policy statements are at times made for political reasons, and the budget as such has been used as a political tool for short-term gains. For example, the PRSP, which is a product of the stakeholders' input and consultations, does not have its priorities addressed in the budget, a trend that can also be attributed to the budget inflexibility arising from e.g. "debt trap". For example, concerns were raised that despite annual increments in public spending, the poverty prevalence levels were surprisingly increasing.

Although the budget proposals are properly articulated, it was noted that public expenditure management was weak. For example, the mid-term reviews and budgetary shifts were seen to be just routine. Most often allocations are made in total disregard of the policies and no changes are experienced in many areas of commitment or allocation. For example, there have been allocations for non-prioritized or non-viable projects. Policies are usually stated loosely with no concrete action plans and strategies for execution. For example, the government has planned the privatization of certain parastatals such as Telkom, Kenya Railways, Kenya Reinsurance etc., which to date has not been realized. There is need for genuine commitment towards growth and poverty alleviation as opposed to popular statements not backed by any commitments. Towards this end, the budget allocations should be in line with the PRSP. However, current allocations do not reflect the PRSP goals. For example, allocations to agriculture, which provides employment to approximately 70 percent of Kenya's labour force, have been consistently low relative to the allocations to other ministries.

5.3 Medium Term Expenditure Framework

The MTEF was adopted in 1999/2000 financial year as a modern approach to budgeting that links policies, planning and budgeting in a rolling three-year horizon. The MTEF is designed to impose discipline in planning and managing national resources by establishing an explicit link between policy framework and the budget process. It attempts to link sector objectives to national priorities and thereby achieve greater result from existing level of resources. The MTEF indicates the size of the financial resources needed during a 3-year period for purposes of meeting the policy commitments and goals determined and approved by the government and the legislature.

MTEF provides government ministries with greater responsibility for resource allocation and use. It is dependent on the establishment of institutional mechanisms to process decisions to balance what is affordable against the policy priorities of the country. It is intended to enhance the predictability of resource flows and policy in the medium and short term. By focusing on the available resource envelop, MTEF should essentially provide realistic projections of what government can deliver effectively and efficiently with the available resources.

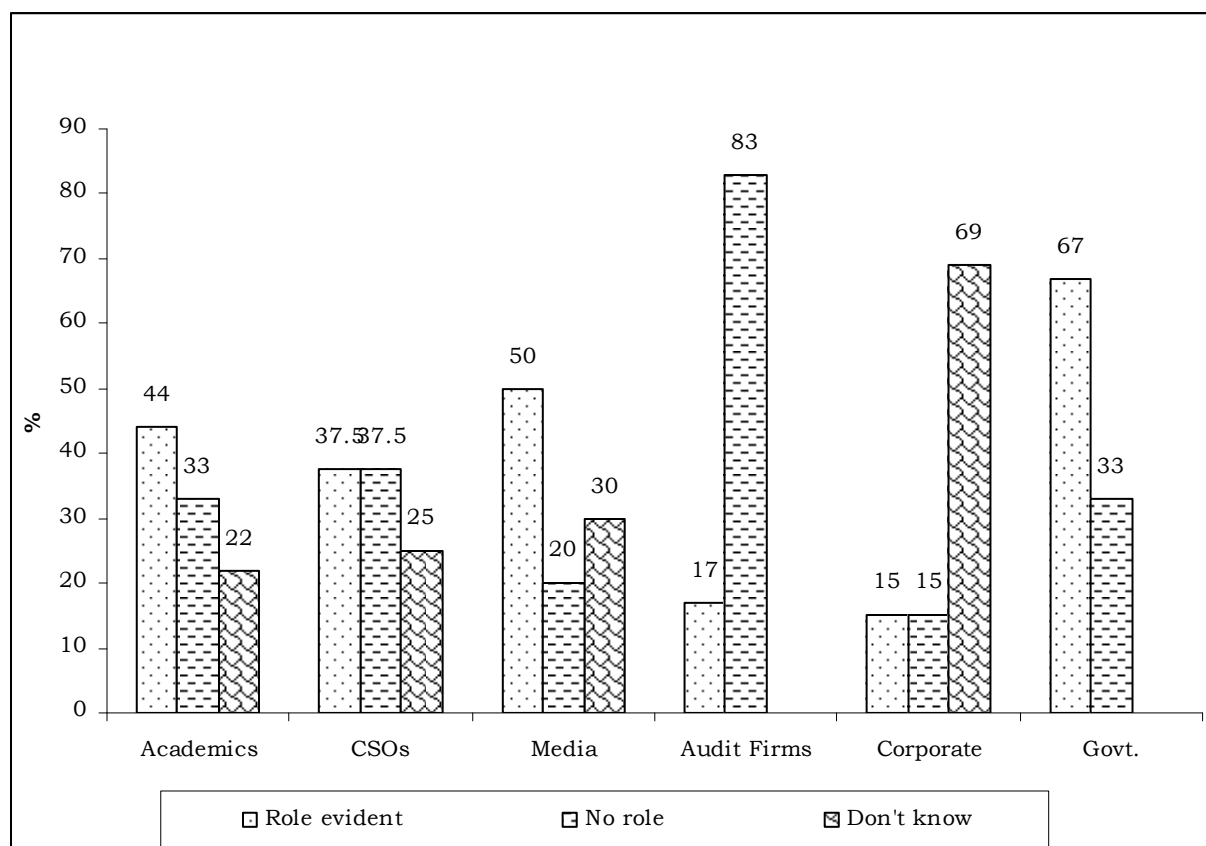
Budget Transparency: Kenyan Perspective

The study sought to find out if the Medium Term Expenditure Framework (MTEF) has played any significant role towards linking budgets to policy. Most of the respondents had mixed feelings on the extent to which the MTEF has played a role in linking budgets to policy. Most of the respondents in the media (50 percent) and government (67 percent) indicated that the MTEF has to some extent played a role while majority of the audit firms (83 percent) felt that this role was not evident. However, a large number of respondents in the corporate sector, media, academics and CSOs did not have the knowledge as to whether MTEF has played any role. The lack of knowledge on the MTEF questions the consultation process used in implementing the MTEF. Respondents indicated that since MTEF was introduced in 1999, its intended purpose has not been actualized. For example, the economy has in recent years recorded dismal performance with economic growth rates of negative 0.2 percent, 1.2 percent and 1.1 percent in the calendar years 2000, 2001 and 2002 respectively. This shows that the efficiency in the utilization of resources has not improved.

Despite having well stipulated approaches to linking policy statements to budget proposals, some respondents felt that the MTEF framework is weak in assessing the impact on budget-policy linkage. A lot of initiatives that aim at linking budget to policy such as the PRSP and the MTEF have not been well coordinated. Much concern was raised about the whole MTEF process being externally influenced, and hence local initiatives on the process is minimal. In addition, it was noted that the process was introduced without capacity building among the stakeholders.

However, most respondents appreciated the MTEF as a great initiative of linking policy to the budget process. The setting up of the eight (8) sectoral working groups was in particular cited as a good check in the development of sectoral policies and objectives, evaluating ministry department estimates submissions and ensuring that the inputs, activities, outputs and outcomes are in line with national objectives. The MTEF has allowed other stakeholders to participate in the budgeting process, and is viewed as a step in the right direction. However, it was noted that the process requires more commitment both from the government and other stakeholders.

Figure 5.2: MTEF Role in Linking Budget to Policy



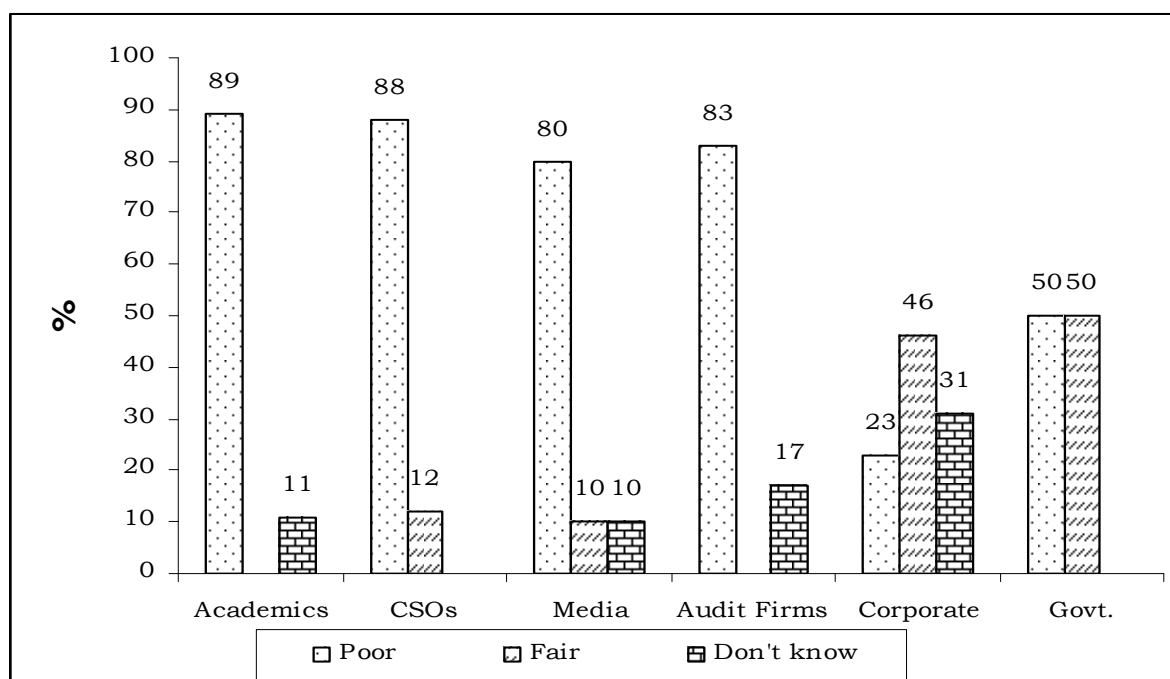
5.4 Government Procurement Procedures

Government procurement and tendering procedures are clearly stipulated in Chapter 17 of the government financial regulations and procedures. Section 17 (1) clearly stipulates that the procurement and tendering procedures should aim at achieving efficiency and ensuring the optimum use of funds and avoid unnecessary delays in procurement. Accounting officers are required to ensure that up-to-date inventory and stock control records are maintained and at no time should stockholdings exceed a maximum of six months consumption, unless stocks are held for specific projects. Tender boards (Central, Ministerial and District) have been established to handle and approve supplies and procurement operations and are responsible to ensure that adjudication of tenders and quotations are strictly processed in accordance with the Laws of Kenya. The procedures require that tenders or quotations must be open and competitive and at least five quotations must be invited for each purchase. It has been stressed that procurement applications resulting from single sources should not be awarded by tender boards unless authorized by Treasury. All tender applications for adjudication are required to be submitted within the first 55 days to the tender board, and the board should not take more than twenty-one (21) days to adjudicate and communicate its decision.

Budget Transparency: Kenyan Perspective

The study revealed that although the legal framework is quite clear on the procurement procedures, the effectiveness of the procurement procedures was poor (Fig. 5.3). The procurement procedures were noted to be ineffective due to lack of transparency and openness. The government has in the past been paying for work not done and continues to pay for stalled projects. For example, there have been cases of shortage of drugs supply in hospitals despite the government having approved and paid for the supply of these drugs, which ended up expiring or going into waste in government warehouses. Many controversial projects have been reported in the media over government tendering systems and some cases have ended up in court. Lack of consultations within the government ministries was also noted to be a major hindrance in implementation of procurement procedures. For example, the P.I.E.A. noted that in the year 2002 the energy consultant studies undertaken by external consultants could have utilized existing technical staff in the ministry.

Figure 5.3: Effectiveness of Government Procurement Procedures



The Government procurement were noted to be riddled with corruption, overpricing and outright theft. This has severely compromised procurement procedures. For example, it was reported that there were cases where permanent secretaries and parastatal heads have had too much discretion in procurement procedures and have ended up awarding tenders to certain favoured firms/individuals. Numerous cases have been cited with government vehicles being grounded for lack of spare parts, and eventually when such spare parts are purchased they are overpriced.

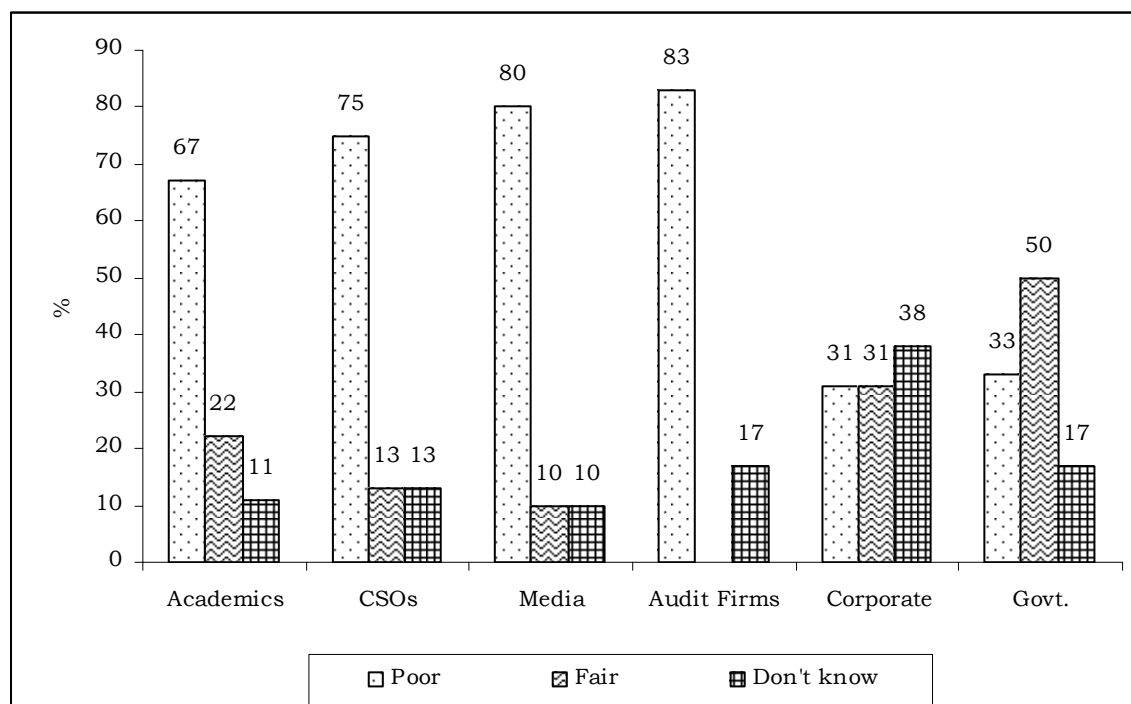
The study revealed that there has been limited control on what is procured, evaluation of the rationality of procurement costs and escalation of bills. This has led to production of poor quality work e.g. the Nithi Bridge under the Office of the President that cost a whopping Kshs. 21 M for renovation and the contract period was for

reasons not known extended. Most respondents indicated that the bidding process was prone to subjectivity. However, it was highlighted that there have been good initiatives with the recent establishment of the directorate of procurement to ensure services are procured at required standards and in good time. In addition, the government has drafted the Public Procurement and Disposal of Government Assets Bill in an attempt to address some of the flaws in the existing laws and regulations.

5.4.1 Adherence to Existing Procurement Procedures

The study revealed minimal adherence to existing procurement procedures. Majority of the respondents (*Fig. 5.4*) noted a general lack of adherence to the existing procurement procedures. The tender boards were noted to have abused their powers in regulating the procurement procedures and have used the process to benefit themselves. The procurement process was noted to be lengthy and cumbersome despite provisions in the procurement procedures that it should not take the tender boards more than twenty-one days to adjudicate and communicate its decisions. Most competitive bids were noted to be very controversial and mostly government officials had colluded with suppliers to influence the award of contracts. The tender boards have rarely followed the laid down procurement procedures, often awarding contracts to unqualified people.

Figure 5.4: Adherence to Existing Procurement Procedures



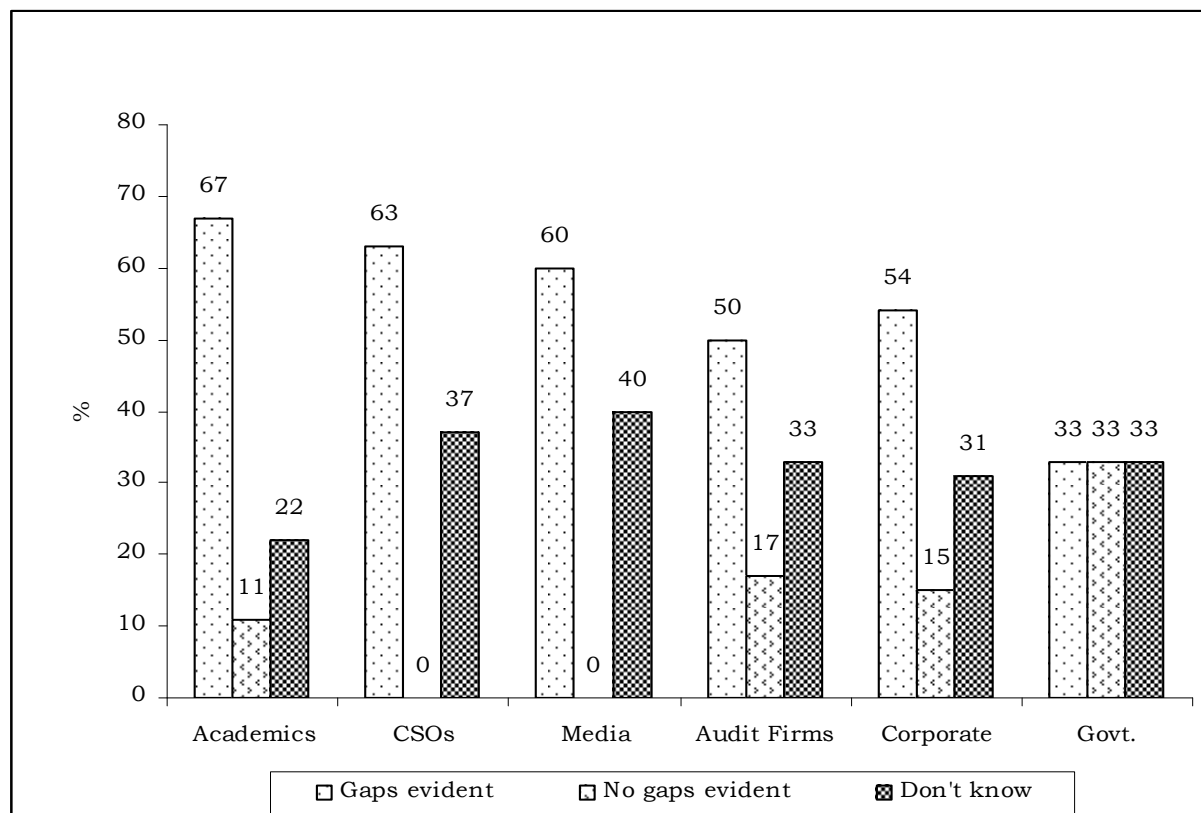
It was highlighted that the procedures have been improved especially with the gazetting of the Public Procurement Procedures that are supposed to be followed by all public bodies and the establishment of the Public Procurement Complaints Review and Appeals Board. The recent initiatives in reviewing procurement procedures deemed wanting and cancellation of tenders deemed fraudulent was also commendable and seen as a great commitment by the NARC government in

mainstreaming the adherence to government procedures. A good example is the recent cancellation of a Kshs. 623 Million cargo scanner tender awarded to a Chinese Firm (DN/18.02.2003) by the Kenya Revenue Authority. The Public Procurement Complaints Review and Appeals Board reported the annulment of the contract over failure by the Kenya Revenue Authority (KRA) to constitute a procurements committee.

5.4.2 Implementation of Government Programmes

The implementation of government programs was noted to be delayed and in many cases hindered by the poor legal and institutional frameworks. Majority of the respondents (*Fig. 5.5*) noted that there were gaps in the legal and institutional frameworks that have hindered the effective and efficient implementation of government programs. The lack of appropriate laws/regulations such as privatization law, lack of investment guide or code has severely affected the implementation process. The lack of an appropriate framework for monitoring and evaluation to scrutinize and follow up the extent to which government projects have been implemented has severely hindered the implementation of government programs. It was noted that there is too much centralization of powers and authority within the government through provincial administration, and line ministries. This makes it very difficult to question the activities of government towards implementation of government programs.

Figure 5.5: Implementation of Government Programs



Outdated laws and regulations on sector operations have resulted in bureaucratic tendencies in implementing government programs. For example, the Petroleum Act is outdated being a 1946 Act (revised in 1972) when the market was price controlled. The current institutional framework within the government to enforce regulations or maintain a dialogue with industries was noted to be weak and inadequate. In addition, most respondents indicated that the enforcement of rules and regulations governing the implementation of government programs is characterized by delays and as such corrupt practices are only discovered post facto. This provides evidence that there is little attempt to institutionalize preventive and corrective mechanisms for malpractice midstream. The security of tenure of the C&AG was also highlighted as a major handicap in implementing government programs.

5.5 Shortcomings in the Procurement Procedures

The study identified a number of shortcomings in the procurement procedures.

a. *Weak tendering process*

Despite having the procurement and tendering procedures clearly laid out, the tendering process including the administration and implementation of the procurement procedures are notably weak. It was highlighted that most of the times the tenders are rarely advertised to reach to most people. Most of the times the procurement process has been bureaucratic and expensive. A good example was the tendering process of the intended sale of the Kenya Reinsurance Corporation (Kenya-Re) in 2002.

b. *Lack of integrity among public officers*

The lack of accountability, transparency and monitoring has compromised the procurement procedures to a large extent. In some cases government officers form companies with their friends to apply for tenders.

c. *Weak internal controls*

The government has weak internal controls regarding procurement. In a number of cases a number of contracts have been approved for goods that were never supplied. The quotation exercise is also one of the biggest hindrances to getting quality products and services that last long e.g. instead of government procuring from reputable firms, purchases are often done from “brief case” suppliers. The existing purchasing and evaluating requirements are flawed and this has often resulted in price distortions. For example, the price referencing that is essential in controlling costs is sometimes not exercised.

d. *Political influence*

There has been a lot of political influence in the award of tenders. The procurement committees are chaired by senior government officials, who are political appointees and who are at times pressurized to award tenders at the whelms of their masters.

e. *Inadequate publicity of the procurement and tendering procedures*

The study revealed that most of the respondents especially the CSOs, media, academics and researchers were not aware of the procurement process. In addition, the advertisement of tenders was noted to be reaching a few stakeholders.

5.6 Recommendations Regarding Procurement Procedures

a. *Review the procurement and tendering procedures*

There is need to review the procurement procedures and identify the underlying problems with a view to streamlining the procurement procedures to seal the existing loopholes. There is need to institutionalize a consultative and transparent criteria in the award of tenders/bidding. In addition, tender committees need to be empowered to be more independent in the execution of their duties and minimize opportunities for manipulation.

b. *Introduce more checks and controls on procurement*

More checks and controls should be introduced to check on the integrity of the tendering system and ensure that it is as open as possible e.g. institutionalizing mechanisms to ensure that price referencing is adhered to. The Public Procurement Complaints Review and Appeals Board needs to be empowered to be more autonomous with authority to blacklist suppliers who in their opinion have grossly flouted the laid down procurement procedures to warrant such treatment. In addition, there should be a rigorous and full proof recruitment process for procurement officers to ensure that only personnel of high integrity are recruited.

c. *Enhance access to information*

There is need to increase access to information by the public on the tenders. For example, the media both electronic and print should be used to widely publicize the tenders. Publish tenders in the media and reasons for rejecting/awarding tenders need to be communicated to all stakeholders and especially the parties who participate in tenders.

5.7 Conclusions

The study revealed that although the legal statutes have outlined systems of accountability of public finances, the level of budget accountability has been limited. The government policy statements were noted to be well articulated, but it was revealed that the budget rarely conforms to government stated policy. Current initiatives such as the MTEF in linking budgets to policy have not achieved much success. The existing procurement procedures and tenders boards are weak and therefore unable to stem the endemic corruption and theft that characterize government procurement services. The biggest challenge therefore remains the review of the legal and institutional frameworks, including mechanisms of information dissemination, controls and the process of recruiting of the relevant staff in order to enhance the budget accountability.

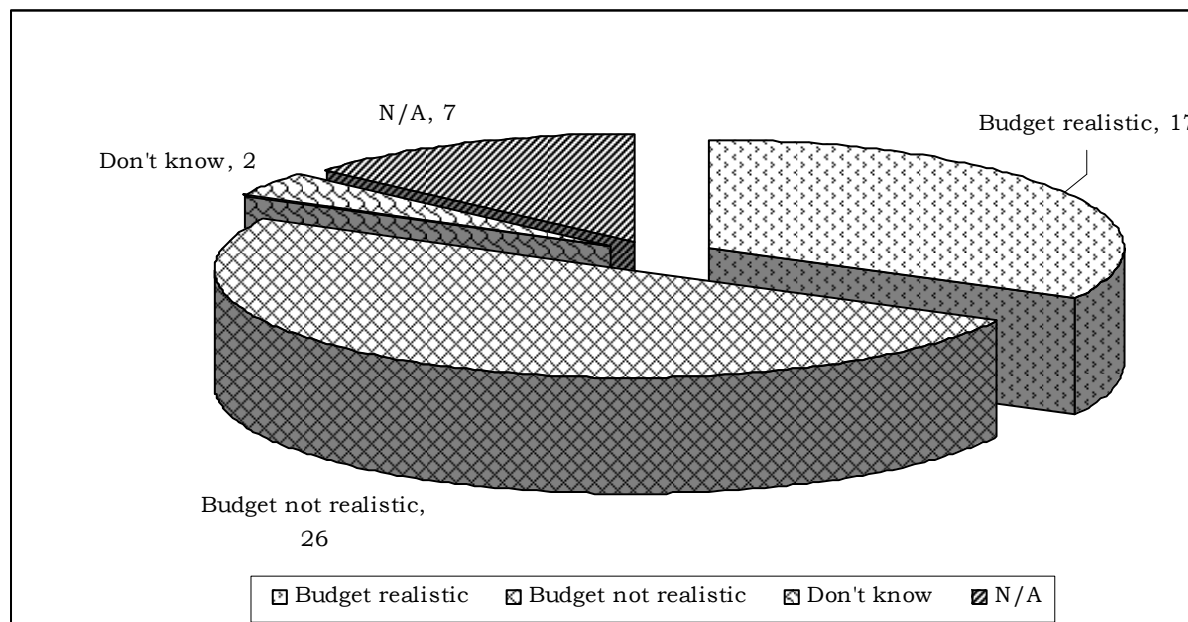
Section Six: REALISTIC BUDGET

6.1 Introduction

Essentially a realistic budget is one that ensures that the budget forecasts and estimates rhyme with the long-term objectives as stipulated in the various government's policy statements and plans.

Majority of the respondents (*Fig 6.1*) indicated that the budget has not been realistic in achieving development goals. The budget is part of long-term economic planning that is supposed to raise standards of living. Most respondents reported that the budget has failed to address the poor economic performance and the country has been experiencing persistent budget deficits over the years. For instance, it was noted that the standards of living in Kenya have been declining over the last decade. Many of the budget optimistic projections never materialize and the situation has been worsened by corruption, inefficiency and lack of political will in the implementation of the programs. The tendency has been to understate the costs at the budget formulation phase in order to remain within the budget ceilings, but this only helps to fuel the growth of the pending bills.

Figure 6.1: Realistic Budget



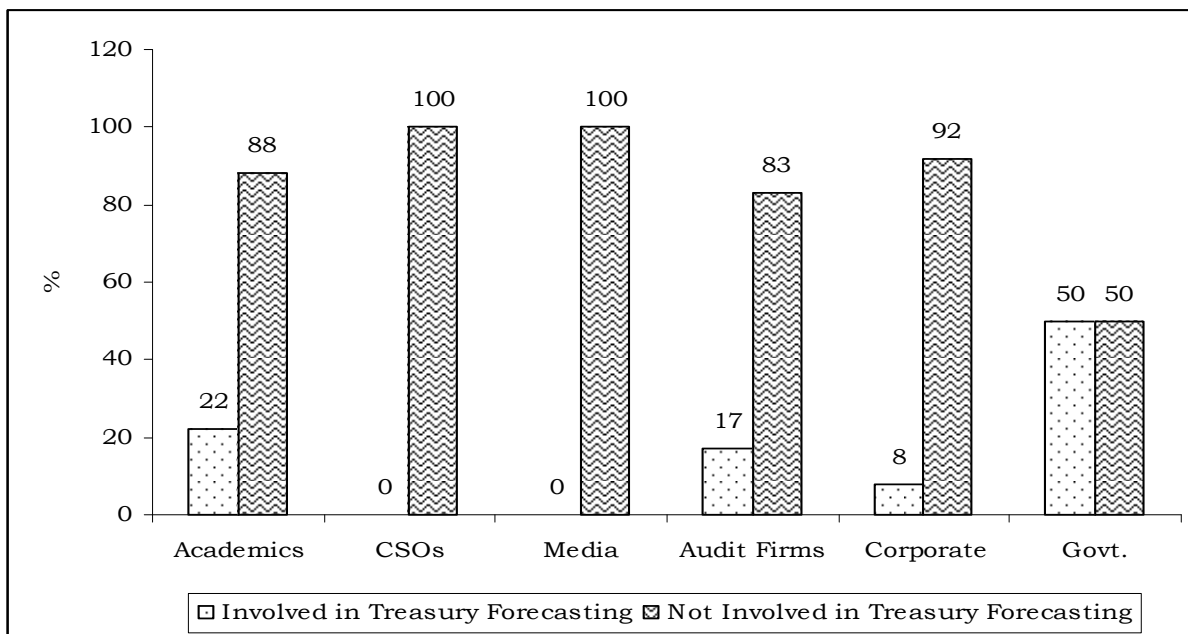
Some respondents (33 percent) indicated that the budget has been realistic mainly because it follows the key macro economic principles of stabilizing interest rates, inflation, foreign exchange rates etc. However, it is important to note that the national budget has other functions other than ensuring macro economic stability, which do not appear to be well articulated.

6.2 Involvement in Treasury Budget Forecasting Process

The study revealed that the government rarely involves other stakeholders in the Treasury budget forecasting process (*Fig. 6.2*). Most of the respondents felt that the treasury forecasting process was restricted to a small section of stakeholders who are mainly government officials. Most of the respondents including the CSOs, media, academics and researchers indicated that the lack of involvement in treasury forecasting has been compounded by the lack of technical capacity in macroeconomic forecasting, inaccessibility of budget information and the general lack of openness in the forecasting process. For example, the nature of contribution in the treasury forecasting process was noted to be limited to economic think tanks such as Kenya Institute of Public Policy Research and Analysis (KIPPRA) and Institute of Policy Analysis and Research (IPAR) and in submission of proposals by institutions such as Kenya Private Sector Foundation (KPSF) and Global Economic Investments and Financial Consultancy Limited (GEIFIC). However, respondents who have submitted such proposals indicated that the subsequent incorporation of such proposals have been poor and felt that the request for proposals is just a formality.

A large percentage of all key groups indicated that they have never been involved by the government in the treasury forecasting process, largely because the Treasury has never invited them. Most of the respondents felt that the forecasting process is characterized by limited public participation. There have been no fora to facilitate involvement or participation by key stakeholders, and most information is treated as confidential. For example, the role of the media was noted to be limited to reporting on the budget, and the forecasting process by the Treasury does not involve the media. The media noted that the lack of involvement of all stakeholders was an indicator of lack of transparency in the budget process.

Figure 6.2: Government Involvement of other Stakeholders in the Treasury Forecasting Process



There has been poor accountability and transparency of what is happening with the budget process. Some respondents expressed frustration in the way the forecasting process was handled as depicted in some of the responses. Below is a verbatim report of the statements made by some respondents:

“The Government has in the past had a poor conception that they know what is good for Kenyans and therefore see no need in consulting the public”

“Policy formulation is treated as the preserve of the executive authority which should not be delegated to any other stakeholder”.

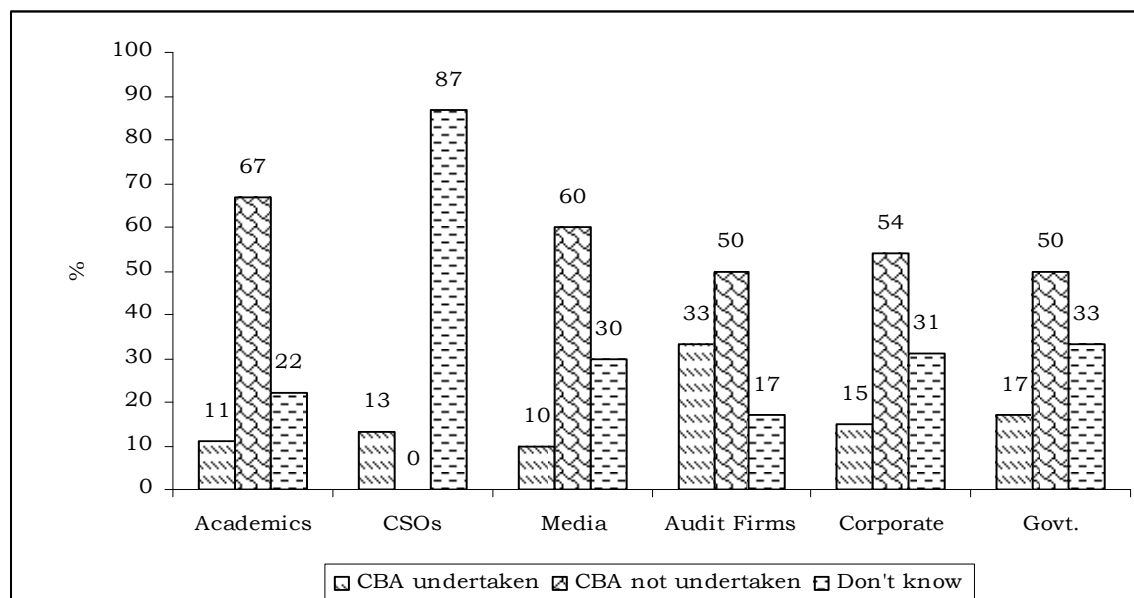
6.3 Cost-Benefit Analysis (CBA) of Policy Statements and Legislation

The study revealed limited undertaking of cost-benefit analysis. Most of the respondents (*Fig. 6.3*) noted that the government has not been undertaking cost benefit analysis on policy statements. Most of the CSOs (87 percent) indicated that there has been no information availed to the public as evidence of such analysis having been conducted and hence could not give an opinion as to whether the analysis has been undertaken or not. It was noted that although there is a policy analysis office, which should carry out the cost-benefit analysis before implementation, it is not clear whether this is ever done. Only a few respondents (less than 20 percent) in all groups reported that they had evidence of cost-benefit analysis having been undertaken. For example, ICPSK indicated that when they submitted proposals in the year 2001, a team of specialists from the relevant ministries evaluated their proposed variations and gave recommendations.

Most of the respondents felt that the government lacks a standardized cost benefit analysis system. This is further constrained by the lack of technical expertise to conduct such analyses. Policy statements and legislations were noted to be governed by political objectives and had no much concern for analysis. As a result, there has been a lot of wastage, which could be avoided if cost-benefit analyses were carried out. Certain policy statements have turned out to be very expensive for the country and similar mistakes have been repeated. For example, the Common Market for East and Southern Africa (COMESA) agreement has not actually favoured the country in terms of imports versus exports e.g. sugar sub-sector.

If cost benefit analysis had been carried out, such considerations would have been taken into account and appropriate actions taken promptly.

Figure 6.3: Cost Benefit Analysis (CBA) of Policy Statements



6.4 Clarity, Practicability and Achievability of Government Policy Statements

Clarity, practicability and achievability of the government policy statements are essential in ensuring that the objectives of government policy statements are realized. A number of respondents noted that although clarity was evident in most government policy statements, practicability and achievability were noted to be a big drawback as the executive focus always shifts. Although policy statements are well written and documented, there seems to be laxity in the implementation. The PRSP was given as a good example that has articulated goals very clearly. However, the achievements up to date are still very minimal.

Selected comments on Practicality and Achievability of Budget Proposals

“Targets are hardly achieved and most of the times the targets are over ambitious”.

“In some cases, policy statements have been donor driven and not in line with the country’s priorities”.

“It is evident that there has been a history of missed targets over the years and economic performance has been deteriorating constantly”.

“The Government policy statements tend to be for gaining political mileage rather than seriously addressing national issues for the good of all Kenyans”.

“A review of policy statements over the years indicates some degree of lack of coherence and at times they have so many gaps”.

6.5 Attempts to Link the Budget to Human Rights

Most respondents (46 percent) indicated that there have been attempts to link budget to the human rights. This was attributed to initiatives such as the PRSP and MTEF that focus on the achievement of the millennium development goals (MDGs) in an attempt to address human rights issues. It was also noted that increased budget allocations to various sectors such as health and education¹⁵ were good indicators of linking budget to human rights. Recently, the government of Kenya has adopted global trends in increasing accountability and transparency in human rights concerns.

However, about 40 percent of the respondents indicated that the linkage of the budget to human rights has just been in paper. In policy papers and other government plans, there is an apparent effort to address human rights issues, but in practice the budget appears to be driven by the ever growing demand for revenues to support government structures and functions. Despite annual budgets focusing on reducing poverty levels, it has been difficult to ring fence budgetary allocations to the pro-poor programmes. On the contrary poverty levels have increased¹⁶ and a big percentage of the Kenya population still does not have access to basic human rights. The costs sharing in education and health have made these vital facilities unaffordable to majority of the population. In the past, allocations to activities such as administration, internal security and defense have been excessive at the expense of crucial sectors such as water and health. The Government's commitments to address human rights has been contradictory for example the purchase of bullet proof apartheid style police trucks from South Africa and the US \$ 50 M on a luxury presidential jet have been incurred at the expense of basic human rights.

6.6 Conclusion

Among the factors that have contributed to unrealistic budgets are lack of consultation and involvement of key stakeholders in budget formulation, inadequate technical capacity, and limited links of the budget to human rights. The study revealed weak and in some cases no cost benefit analyses of government policy statements and plans and as a result most of the policy statements have remained unaccomplished largely due to the high costs involved in the implementation.

¹⁵ Health and Education allocations for the financial year 2002/2003 amounted to 23 percent of total budgetary allocations

¹⁶ Presently the poverty prevalence levels are estimated at 56.8 percent

Section Seven: OVERSIGHT OF THE BUDGET

7.1 Introduction

Budget oversight requires that there is effective surveillance and reporting on the budget implementation to ensure that public resources are utilized prudently. The budget oversight has been done mainly at three levels. First, through the executive controls overseen by the Treasury and secondly, through parliamentary committees such as PAC and PIC in collaboration with the Office of the C&AG. Thirdly, citizens' controls are also evident in the civic lobbies by the CSOs.

The rate of budget oversight effectiveness varied among the key stakeholders (*table 7.1*). However, most respondents reported that there was insufficient information regarding the role played by the various institutions mandated to monitor and evaluate the collection and spending of public funds. This constrained the study in assessing the effectiveness of the institutions that supervise the budget process.

Table 7.1: Effectiveness in the Oversight of the Budget

Institutions	Effectiveness in Budget Oversight				
	Ineffective (percent)	Fairly effective (percent)	Effective (percent)	Highly effective (percent)	Don't Know (percent)
Treasury	10	19	23	4	43
C&AG	10	27	17	4	43
PIC/PAC	8	27	27	4	31
CSOs	10	15	23	2	50
Media	8	25	33	6	29
Corporate Sector	8	15	31	4	43

Among the institutions that were rated highly in supervising the budget process were the Treasury and this was mainly through the role that Treasury plays in ensuring strict adherence to disbursement controls through the exchequer committee. However, it was generally felt that the Executive arm of the government which principally leads the process of budget formulation was not in a position to effectively play an oversight role of a process that it superintends with some reasonable degree of objectivity. The rating of C&AG in respect of their performance in the oversight of the budget was unfavourable (17 percent). This was attributed to a number of factors among them the delay in the production of audit reports¹⁷. The delay in reporting by C&AG was linked to resource constraints, with understaffing topping the list. Some respondents also felt that the recommendations of the C&AG audit reports were hardly acted upon. It was felt that PIC and PAC played an increasingly crucial role in overseeing the budget process as reflected in the findings of the study. A number of factors may explain this. First, it was indicated that PIC and PAC had consistently raised issues arising from the C&AG audit reports with the relevant offices. However, the mandate of the PIC and

¹⁷ At the time of undertaking this study, there was a time lag in reporting by the Office of the C&AG of three years

Budget Transparency: Kenyan Perspective

PAC is constrained by the existing legal and regulatory framework that governs the oversight of public finance management. For example, the PIC and PAC have no authority to prosecute and are only required to recommend the necessary remedial measures to the Attorney General for further action. The situation has been aggravated by a weak internal audit system. It was cited that the magnitude and ease with which the Goldenberg scandal was carried out points to a weak and less transparent internal audit system. Although the Attorney General has been mandated to prosecute wrongdoers the Office has been reluctant to exercise this mandate.

It was noted that the few CSOs that participated in the monitoring and evaluation of implementation of the budget had no formal channel to flag anomalies in the public finance management and therefore their role stopped at a critique with no options for follow up. Similarly, the study found out that the media played a crucial role in highlighting anomalies in the collection and use of public funds, but just like the CSOs, there were no observable mechanisms of follow up on the issues raised.

The role of the corporate sector in budget oversight was evident especially in analyzing the financing of government programs. For example, the audit firms such as PWC, Deloitte & Touche etc. were highlighted as some of the institutions that have contributed enormously in this area. Notably, the corporate sector rarely gives due attention to the mix of public spending.

The study revealed that an effective monitoring and evaluation framework backed by efficient flow of information is very fundamental if the country is to be effective in budget oversight.

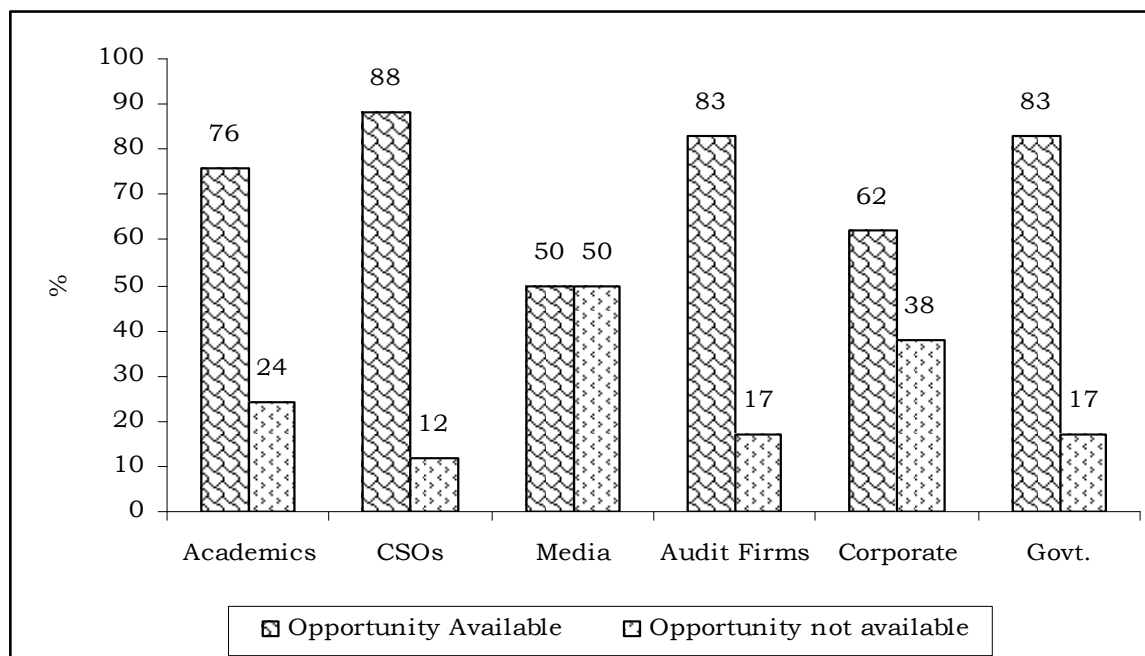
7.2 Role of Networks in Budget Oversight

The study identified that there is a lot of untapped resource, for example, with various organizations that have the capacity and expertise to evaluate and assess the budget performance. The Institute of Economic Affairs was sighted as a good example in its initiatives to organize post & pre budget for a/conferences. Such initiatives were noted as commendable, but should be taken to greater heights to involve all stakeholders to deliberate not only on the budget proposals but also on the implementation of budget proposals. This was seen as a good opportunity of consulting a wide range of stakeholders and ensuring better monitoring and accountability.

The study identified a strong existence of CSOs in Kenya, which can be utilized in policy analysis, monitoring and evaluation. However, the CSOs sighted shortcomings in participating in the budget oversight especially due to lack of a legal mandate in the oversight of the budget, limited technical and financial capacity and poor accessibility to budget information. Partnership between other stakeholders and the legislature in budget oversight was noted to be weak.

It was recommended that there is need to enact laws that could allow the involvement of all stakeholders in the budget oversight. The existence of C&AG offers a good opportunity for developing partnership in budget assessment. Parliament should be empowered to not only pass resolutions but also to enforce compliance.

Figure 7.1: Opportunities for Systematic Assessment of the Budget Performance



7.3 Early Warning Systems

About 25 percent of the respondents indicated that there are early warning systems to detect anomalies in budget implementation. It was explained that there were committees that met frequently to authorize disbursements, review debt position and other crucial functions of the Treasury. In addition, some executive offices maintain disbursement records and minutes of ministerial procurement committees. Furthermore, revenue collection and levels of spending are reviewed on weekly basis. In addition, it was reported that the Treasury and other institutions involved in the budget implementation such as KRA and Central Bank of Kenya (CBK) publish monthly, quarterly and annual reports that were singled out as forms of early warning systems. It was also noted that there is a requirement for Authority to Incur Expenditures (AIEs) holders to report regularly on variance between the budgets and the actuals. Revenue reports that are done quarterly and spending quarterly reports were also singled out as early warning systems. It was also reported that the vote books and monthly ledgers provide expenditure trends, which could signal cost overruns.

About 48 percent of the respondents felt that the systems in place were weak to send early warning signals. For example, it was noted that the scarcity of budget information limits the capacity of the systems in place to flag anomalies in budget implementation in good time. A good number of the respondents (27 percent) were unable to give an assessment of the existence and/or effectiveness of early warning systems, a problem that could be attributed to the scarcity of budget information. In addition, the delay in production and submission of C&AG audit reports further complicates the situation. Even where there exist early warning systems that function,

it was noted that there is a tendency of ignoring such early warning signals as happened with the Goldenberg scandal.

7.4 Mechanisms to Handle Irregularities

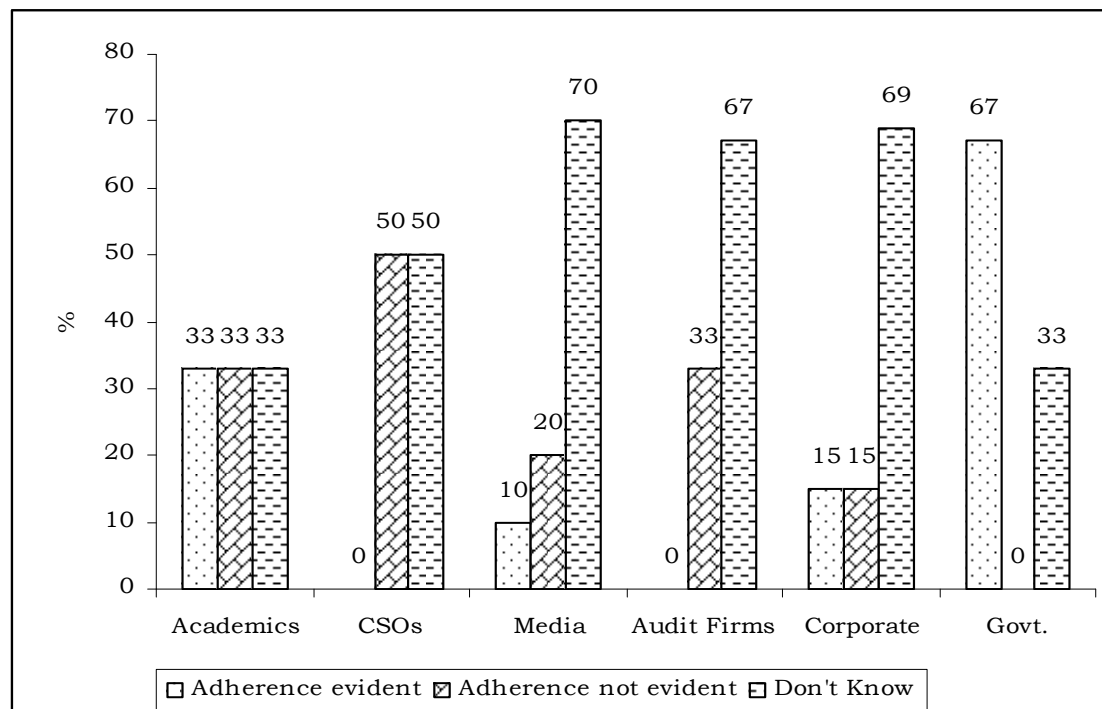
Majority of the respondents (45 percent) indicated that there are mechanisms to identify and penalize those responsible for irregularities. It was observed that the C&AG office plays the role of identifying irregularities and parties involved, while the parliamentary money committees (PIC & PAC) make appropriate recommendations based on the C&AG reports to the relevant offices for action. In addition, the penal code was identified as a good means of dealing with irregularities. However, commitment on the part of the prosecuting arm of the government to implement the recommendations of PIC and PAC was notably lacking. In instances where cases are prosecuted through the Kenya judicial system, they have tended to drag for long, perhaps pointing to resource constraints or mere reluctance on the part of the judiciary to act appropriately. It was also observed that the distribution of power amongst the three arms of government (executive, judiciary and legislature) is highly skewed in favour of the executive¹⁸ and thus creating room for manipulation of particularly the judiciary.

7.5 Adherence of Government Accounts to Generally Accepted Accounting Standards (GAAS)

It is evident that most of the respondents did not actually have any knowledge as to whether the government accounts adhere to the generally accepted accounting standards. This was attributed to lack of access to government accounting procedures and budget information. However, among those respondents who had some knowledge on government accounting, majority reported that the adherence of government accounts to the generally accepted accounting standards was limited (*Fig. 7.2*). The accounting standards require organizations to recognize accruals and contingent liabilities but the Government rarely does this. For example, the civil service pension scheme has remained grossly under-funded. It was pointed out that the C&AG reports have been raising these concerns, but the executive has not acted on the recommendations made in the reports. The government accounting was noted to be based on an income/expenditure basis. Mistakes were evident and at times budget figures do not add up, particularly on public spending. The loose application of the GAAS may explain the problem of recurring pending bills. This calls for the Government to follow cash based system, record all encumbrances and uncommitted funds.

¹⁸ The appointment of judges is done by the President but the mechanisms for petitioning such appointments are cumbersome. This creates room for the executive to influence the operations of the judicial system.

Figure 7.2: Adherence to Generally Accepted Accounting Standards



7.6 Shortcomings of the Oversight of the Budget

a. Weak monitoring and evaluation system

The study revealed weaknesses in the oversight of the budget process by the respective institutions/offices. Despite having a number of institutions/offices and committees mandated with the oversight of the budget process, they were notably ineffective. For example, whereas the C&AG is identified as the auditor of the National Assembly, the Exchequer and Audit Act requires him to submit his report to the Minister for Finance who in turn forwards it to Parliament. This is improper as the Ministry of Finance is indeed one of the Ministries that the C&AG audits. The danger with the provision is that the C&AG has no recourse if the Report he is submitting to the Minister is altered when it reaches the floor of the House. The Act gives the Minister and PS treasury enormous powers without corresponding accountability requirements. Further, the Act also gives responsibility for identifying irregularity but does not grant the office of the C&AG power to stop or punish.

In cases where the Minister fails to submit the audit report to Parliament, the C&AG is required to do so directly but through the Speaker. Given the current parliamentary procedures for electing the Speaker, the governing party is always certain to have its way and therefore their choice will always prevail. And if it is in the interest of the Minister and by extension the government not to table the C&AG report, he may just exercise some influence on the Speaker to delay consideration of a Report. It is not clear why the C&AG report should be channeled through the Minister.

As pointed out earlier, the most mischievous clause of the Exchequer and Audit Act is **Sec. 21 (1)** which allows the Minister for Finance to discard an audit report if so wishes. This provision is open to abuse and makes it easy for Treasury to hide under this provision to shield itself from scrutiny. In a nutshell, the C&AG has primarily concentrated in the performance of its accounts scrutiny function at the expense of control functions. Consequently, funds have been withdrawn from the Consolidated Fund without C&AG approval. The problem is that the office is powerless in law even in the face of such abuses. He can only log the irregularities at the end of the financial year.

In most cases it was highlighted that the parliamentary watchdog committees (PIC and PAC) were not up to date with the review of government accounts since they also received the audited accounts late. The current budget management system does not require accounting officers to account for previous fiscal years allocation before subsequent budgetary allocations are authorized. This opens up the budget process to abuse by way of embezzlement and wastage of public funds. The existing weak internal control system has made the budget process even more susceptible to abuse.

It was also noted that the current audit/M & E system focuses on accounting and less on efficiency (value for money audits) in the implementation of government programmes.

b. Delays and inaccessibility of budget information

It was evident from the study that there were difficulties in accessing budget information and even when it was accessed it was at times too late to facilitate effective decision-making. For example, it was noted that Parliamentarians were inadequately briefed on the budget issues before the formal presentation of the budget in the National Assembly mainly because the voluminous and complex budget documents are presented too close to the budget day. It was also observed that the inordinately long time taken by the executive to implement or even respond to the committees' recommendation has also been a major problem. Due to capacity limitations the C&AG who is established by statutes as an auditor of the National Assembly is unable to deliver the necessary audit reports promptly. The lack of access to budget information was noted to limit stakeholders' engagement in the oversight of the budget.

c. Inadequate human and financial resources

The study revealed that the oversight process has been handicapped by the scarcity of human and financial resources, which has made it difficult for the effective oversight process. This was particularly observable in the C&AG and parliament, which lacks support staff to carry out the back up research to inform their decisions.

d. Limited opportunities for stakeholders engagement in the oversight of the budget

The study revealed that despite the strong existence of CSOs, audit firms, researchers, academics and the media there has been limited opportunities for these stakeholders to participate actively in the oversight of the budget. The lack of a public forum where the stakeholders can make an input into the oversight of the budget was a major handicap. In addition, the absence of an institutionalized monitoring and evaluation

framework, and weak information systems limited the stakeholders' capacity to engage in budget supervision.

e. Seclusion of key stakeholders

The oversight of the budget process was noted to be constrained by the lack of budget transparency. There was an apparent attempt by the executive to exclude key stakeholders by deliberately delaying and discriminately distributing the budget information.

7.7 Recommendations on Budget Oversight

a. Strengthen budget monitoring and evaluation system

There is need to establish a comprehensive and standardized budget monitoring and evaluation system. The respective institutions mandated with the oversight of the budget should be strengthened to ensure that they are able to produce timely budget reports and thus facilitate prompt actions. Furthermore, there is need to review the laws that govern the principle of separation of powers to ensure the independence of the three arms of government in exercising their mandates in budget oversight among other functions.

More specifically, the office of C&AG, which has been undermined by weak constitutional protection of its technical officers (It is not enough that the C&AG himself is protected), limited financial and human resource needs to be empowered to perform its function more diligently.

Parliament should be empowered to be able to petition the prosecuting arm of government, if in its (parliament) opinion the appropriate measures have not been taken. In the absence of this, parliament should be given prosecution powers.

b. Streamline budget information

The government should ensure that the necessary budget information for effective budget oversight is timely and widely disseminated to all stakeholders. In particular, the submission of accounts should be timely and necessary sanctions should be imposed for any delays. For example, budget performance report should be released not later than twelve (12) months following the end budget fiscal year.

c. Institutionalize a more consultative process in budget oversight

There is need to set up a multi-sectoral budget committee that would promote more involvement of all stakeholders in the budget process. More partnership with the corporate, private sector, media, academics, researchers and the CSOs will ensure that weaknesses are identified and recommendations put forward are acted upon.

d. Capacity building in budget oversight

There is need to right-size staff establishment, build competence and professionalism among the executive offices involved in the budget process. In addition, legislators also need professional staff to assist in the analysis of the budget. At the same time, these offices and/or institutions should be equipped with the necessary infrastructure to facilitate the effective participation in the budget process.

e. Establish a Parliamentary Budget Office

The study recommends that a parliamentary budget office be established to assist parliament in the oversight of the formulation, debate and approval, implementation, monitoring and evaluation of the budget process.

f. Review the legal framework

Specifically, there is need to review the existing pieces of legislation that govern the budget process to eliminate the gaps and weaknesses that give room for budget manipulation.

7.8 Conclusion

Although the legal framework has clearly stipulated the oversight of the budget in various statutes, it was evident that the oversight of the budget is still wanting. The various roles of oversight institutions such as C&AG, PIC and PAC have not been satisfactory. There has been limited involvement by the various stakeholders in the budget oversight especially due to their limited opportunity in undertaking a systematic assessment of the budget performance. The lack of adequate financial and technical resources and limited access to budget information has further limited their participation in budget oversight.

Section Eight: CONCLUSION AND RECOMMENDATIONS

8.1 Introduction

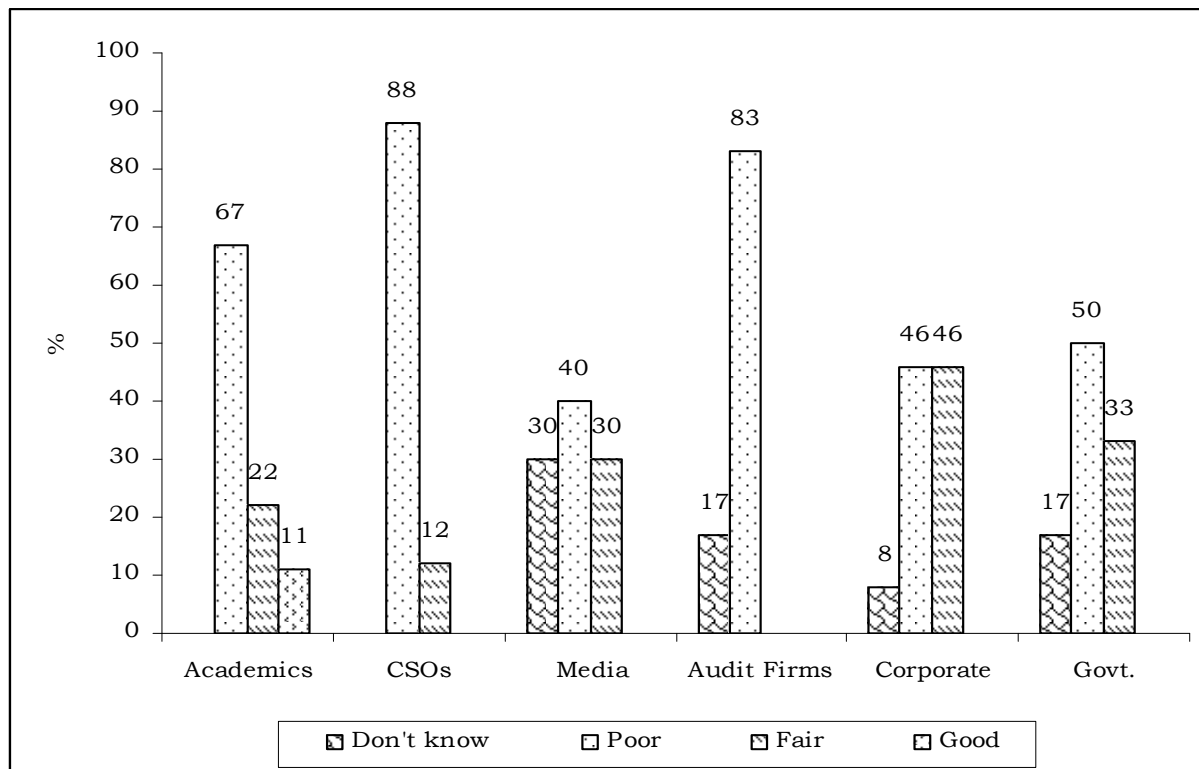
The concluding section offers an opportunity to redress the balance and to bring some of the broader latent themes to the surface and to develop and emphasize some of the points made earlier in the text. This section discusses some of the major conclusions that emerged in the study and summarizes the major recommendations that have been made in the study. The last section discusses the future budget strategic framework.

8.2 Emerging Issues

8.2.1 Budget Transparency

The rate of transparency of the overall budget process was indicated as poor by most of the respondents (*Fig. 8.1*). The most intriguing finding was the poor rating of the overall budget transparency by the audit firms, CSOs and the academics who one would expect to use the budget information widely and engage more intensely in the budget process, notwithstanding the different interests in the budget. This is perhaps a pointer to the fact that a lot needs to be done to open up the national budget process.

Figure 8.1: Transparency Rate of the Budget Process



Although respondents noted that the government transition offers a good ground for promoting transparency, the legal framework for promoting budget transparency was noted to be weak and needs review.

8.2.2 Legal Framework

Kenya's laws provide a detailed legal framework that governs the raising of government revenues, appropriation and management of public resources. This detailed framework is outlined in Chapter VII of the Constitution of Kenya and in the various statutes as discussed previously. However, the legal framework has been weak in ensuring effective management of public resources. For example, the laws confer very limited powers to Parliament in formulating, amending and authorizing the budget and Parliament's role seems to be confined to debate and approval on the vote of account, passing of Appropriation Bill and Supplementary votes. Parliament's input in the Finance and Appropriation Bills is limited by section 48 of the Constitution of Kenya, since it stipulates that Members of Parliament (MPs) cannot substantially increase the taxes or budgetary allocations even when such inaction will have disastrous effect like poor service delivery. The Constitution of Kenya has also failed to address the participation of citizens in the budget process. However, there have been attempts to address participation in the Draft Constitution of Kenya (2002) section 146 (1), where Parliament is being mandated to conduct its business in an open manner and facilitate public involvement in the legislative and other procedures of Parliament and its committees. The study also identified that the Exchequer and Audit Act needs to be reviewed to reduce opportunities for mischief by the executive.

8.2.3 Stakeholders Participation in the Budget Process

The participation of the CSOs, media, audit firms, corporate sector, researchers and academicians has been limited in the budget process. The legal and institutional framework has limited the ability of these stakeholders to participate in the budget process. Although these stakeholders widely rely on the budget information for decision-making, it was felt that their active participation in the budgeting process right from planning to implementation should have been greater than it is presently. For these stakeholders to influence the formulation and implementation of the budget process, an in-depth knowledge and participation in the budgetary process is mandatory. Although opportunities for engaging the public was seen as available, most of the respondents indicated that the legislature and the executive arms of the government have not fully exploited such opportunities. Detailed budget plans were noted to be often formulated without the collaboration of these stakeholders. Although a small percentage of the corporate sector indicated having been requested to submit budget proposals, they were rarely invited for discussions on such proposals. It was also noted that the incorporation of such proposals has also been minimal. Lack of and/or late communication from the Treasury to the stakeholders was cited as a big hindrance to effective participation. In addition, structures and mechanisms for coordination and networking among parliamentary committees and with the executive and other stakeholders was noted to be weak, especially in establishing multidisciplinary budget management committees. It is therefore important that advocacy, capacity building and network development at all levels of the budget phases be given high priority.

8.2.4 Imbalance in the Budget Process

According to the majority of the respondents, the budget starts and ends with the debate and approval in Parliament. In other words, the budget process has put more emphasis on the debate and approval phase compared to other phases. This trend could be attributed to the fact that the activities surrounding the debate and approval are accorded a national approach. For example, the budget day is by practice graced by the Head of State, an approach that is not apparent in other phases of the budget process. In addition, unlike the other phases of the budget process, the debate and approval phase is given wide coverage by both electronic and print media. However, equal treatment of activities across the budget process was not evident. For instance, although the debate and approval phase was given much publicity, the same was not accorded to other phases, thus limiting information flow and by extension the capacity of the stakeholders to participate. The budget process will therefore continue to be non-participatory and non-inclusive unless a more balanced strategy is put in place. Moreover, the benefit accruing from debate and approval may be lost if no comparable support is given to the other phases since the success of the entire budget process is dependent on the success of each and every phase of the budget process. In a nutshell, the success of the budget process is dependent on a balanced and integrated approach in all phases.

Another indicator of imbalance in the budget is in the articulation of gender issues. Mainstreaming gender in the budget process is essential. This notion is based on the need to gain insight regarding firstly, whether the budget attempts to strike a balance in addressing issues of men, women and children and secondly, whether budget resources are being redistributed in favour of the disadvantaged groups. Budgeting should also consider issues regarding who controls resources and the criteria used to guide the allocation of public moneys. Finally, a representation that is reflective of gender balance in respect of participation in the budget process is an important consideration for the future.

8.2.5 Resource Mobilization

The study identified great potential in the untapped resources in the budget process. For example, the strong presence of CSOs, corporate sector and audit firms in Kenya can be harnessed for use in policy analysis, monitoring and evaluation. However, the CSOs sighted shortcomings in participating in the budget oversight especially due to the absence of an institutionalized framework to govern budget oversight and limited technical and financial capacity. It is important that resource mobilization be considered as a key element at all phases of the budget. In particular, the government should spearhead efforts of resource mobilization in order to ensure budget sustainability. Adequate funds to support an all-inclusive participation in the budget process should be sought from multiple funding sources and preferably pooled into a common fund. These funds should be channeled to organized groups engaged in the budget process and drawing members from the various stakeholders e.g. CSOs, researchers, academicians, corporate sector and the media.

8.2.6 Budget Information

The overall assessment of the timeliness and accessibility of budget information was indicated as generally difficult. This has to a large extent affected the decision-making process, participation and inclusion of the key stakeholders. Late audit reports were

noted to be detrimental to the budget oversight. The accuracy of the budget information was generally assessed as fairly accurate, although some of the respondents could not gauge the accuracy of the budget information. This indicated the lack of accessibility to budget information and comprehension of the technical data. The ease of use of the budget information is hindered by the technical language and voluminous data. It was noted that in some cases there are contradictions and inconsistencies in budgetary data such as data relating to pending bills.

The problems highlighted by respondents point to weaknesses in the way Treasury disseminates budget information. For example, no single respondent indicated knowledge of the Treasury website. If Treasury is to better disseminate budget information, there is need to publicize and improve the content of the website.

To strengthen the budget process, there is need to concurrently address the demand side and the supply side issues that limit the access and use of budget information. To begin with, all stages of decision-making process, that is, definition of a problem, identification of objectives for problem resolution and alternative solutions, selection of a suitable strategy, implementation of the strategy and evaluation require information. Furthermore, to take advantage of arising opportunities, then decisions have to be made promptly and this calls for timely information. In this connection, it is imperative that an intensive programme for stimulating production of simple, accurate, relevant and timely budget information be undertaken in the future, to ensure that such information reaches the intended users in a user-friendly format.

8.2.7 Building a Policy Agenda in Budgeting

A policy agenda is an issue (usually subject or problem) that government officials, other influential institutions and people are paying serious attention at some given time. In order for a budget issue to become a policy issue it must receive due attention from government and other influential institutions. Challenges of issue recognition and definition, the formulation of alternative solutions and politics, contribute to an issue to become or not to become a policy agenda. Agenda setting decisions also result more from an analysis of the political cost and benefits of attending to the problem or subject of interest than from the analytical or technical importance of an issue or a proposal alone. In addition, in setting the policy agenda for the national budget, among the critical issues that should be addressed include macro policies, expenditure & tax policy and deficit financing. Furthermore, it is important that policy solutions and alternatives are largely initiated by actors embedded within or intimately tied to government. However, caution should be exercised to avert possible influence by development partners by way of technical inputs. It is therefore important that all the above attributes of transparency, including participation, access to budget information, flexibility, accountability, realism of the budget and oversight be institutionalized to promote budget transparency.

8.3 Future Budget Framework Strategy

This section presents the future budget framework strategy based on four broad recommendations: continuous advocacy and awareness creation; capacity building; integrated approach to budgeting; and sharing of information and resources in budgeting. Although the proposed future budget strategic framework has incorporated

earlier strategies, it envisages a set up where the institutions and the process is organized in an integrated, holistic and networked fashion that shall ensure effective and efficient execution of the necessary actions and the delivery of results geared towards improving the budget process.

8.3.1 Continuous Advocacy and Awareness Creation

Advocacy and awareness creation in the budget process should be continuous in order to guarantee the sustainability and consistency in the planning and implementation of the budget. Increased advocacy should be extended to all key stakeholders, including the policy makers, private sector, CSOs, corporate sector, audit firms, academicians, researchers, training institutions, and beneficiaries. There is need to establish and strengthen current advocacy channels. For example, current pre-budget hearings and post-budget hearings organized by institutions such as I.E.A. should be strengthened and supported to sensitize major stakeholders not only on the budget proposals but also on the implementation of these proposals. Increased and persistent advocacy and awareness on the budget process among the stakeholders will promote stakeholders' understanding of the budget process; facilitate development and adoption of sound budget policies; enhance greater integration of the national priorities and programmes in the national budget; guarantee increased funding to the budget by Governments, NGOs and donors. In addition, it would facilitate wider dissemination of budget information in a user friendly form; enhance accountability, oversight and transparency of the budget process; promote monitoring and evaluation, sustainability and ownership of the budget process right from the local levels to the national levels.

8.3.2 Capacity Building

Capacity building should be comprehensive, encompassing human resource development, institutions and legal framework development and technical support. The success of this strategy is premised on the fact that the three components highlighted above are addressed simultaneously.

- a. **Human resource development** should remain as an important component and basis for capacity building in the budget process. The primary objective here is to develop the knowledge, positive attitude and skills in budgeting. Through training, skills are imparted on stakeholders involved in budgeting. This should be done on the job training and through organization of various targeted training courses. Emphasis should be given to identification of training needs for the national budget programme, development of training curriculum and training materials, Training of Trainers (ToT) and integration of budgeting into relevant education curricula. This will ensure continuity and sustainability in the budgeting process. Training in specific and relevant budgetary matters should also be decentralized to the district and other peripheral training centers to strengthen and promote utilization of capacities at the local level.
- b. **Institutions and Legal Framework development** should focus on strengthening the capacity of institutions involved in the budget process. For example the capacity of the C&AG and other executive offices should be strengthened to ensure that timely audit reports are submitted and recommendations acted upon. In addition, the budget committees specifically the PIC and PAC need to be streamlined and given clearer mandates on budgeting.

- c. **Technical support** should focus on assisting key stakeholders to participate in the budgeting process. This should incorporate the support in developing budget plans that reflect sensitivity to the wider national priorities and policies for development. In this connection, it would be important to consider the feasibility of setting up a center for pooling resources from which government can draw technical support on a need basis on a spectrum of issues.

8.3.3 Integrated Approach to the Budget Process

The budget process should not be an end to itself, but should incorporate an integrated system to budgeting that ensures an interactive approach across all the four phases of the budget process. It is evident that the earlier budget process has been sometimes disintegrated with the consultative process ending at the presentation of the budget speech. Again, think tank institutions have only concentrated on pre-budget and post budget analysis. While such initiatives are commendable, there is urgent need to also focus on what is happening with the implementation of the budget by soliciting for views from the stakeholders and deliberating on such issues. It was noted that limited dissemination of budget information and minimal knowledge of the budget process among the key stakeholders has hampered the participation in the budget process by majority of the stakeholders.

To facilitate the integrated approach to the budget process, the following need to be incorporated:

- a. There should be adequate funding and resources for the budget process to facilitate the consultation, dissemination and oversight of the budget process.
- b. All key stakeholders including the government, private sector, CSOs, audit firms, corporate sector, civil society, beneficiaries and researchers should be involved as much as possible in all the four phases. This will ensure better articulation of national development priorities since it provides mechanisms for checks and balances.
- c. There should be a focus to reduce budget information asymmetry while at the same time ensuring that such information is promptly available to inform decision-making.
- d. Monitoring and evaluation needs to be integrated as a key component in the budget process.

8.3.4 Greater Collaboration and Networking in the Budget Process

Greater collaboration and networking in the budgeting process will facilitate sharing of budget information, human capacity and financial resources, as a key strategy of ensuring budget sustainability. In addition, there will be greater checks on the oversight of the budget in ensuring that actual spending is in line with the approved allocations. Currently, there are many institutions and organizations running budget programmes. However, majority of these initiatives are ad-hoc and uncoordinated. Strong linkages and networks within the country need to be established and strengthened to improve the budget process. To build the envisaged strong and functioning budget networks, the following must be addressed.

- a. An all-inclusive budget committee needs to be institutionalized to facilitate continuous collaboration and networking among the key stakeholders.

- b. Since not all citizens can be accommodated in the budget process, criteria should be established for determining appropriate representative organizations that the government can partner with in the budget process.
- c. Stakeholders should establish mechanisms for pooling together financial and technical support for strengthening in-country networks among the researchers and academicians, media, corporate sector, auditing firms, the executive and legislature arms of the government, and the CSOs.
- d. Current advocacy channels such as the I.E.A. budget consultative fora should be strengthened to provide a link among the stakeholders.
- e. Current exchange of budget experiences by institutions such as IDASA of South Africa, Transparency International, Action Aid, I.E.A. and others need to be extended and shared by all stakeholders.

8.4 Operationalisation of the Future Budget Strategy

In order for the above recommended future budget strategy to be operational, the study has identified a number of issues that are critical.

8.4.1 *Decentralization of the Budget Process*

Decentralization involves the devolution of responsibilities, authority and concomitant resources (funding, personnel, etc) from the regional level to the national and sub-national level of government. The rationale for such initiatives is that it is desirable to move the level of decision-making closer to those most directly involved and affected by the budget process. This will also promote ownership of the budget process at the local levels because budgeting can be linked to the planning process.

8.4.2 *Information systems*

Demand and supply of budget information requires the existence of functional information systems. Routine utilization of budget information systems need to be incorporated at both the operational and policy levels. Strong horizontal and vertical linkages should be established in information dissemination. There should also be a central database for accessing budget information and increased use of on-line libraries.

8.5 Proposed Action Plan

STRATEGY	HOW	BY WHOM
Continuous advocacy and awareness creation	Formulate & disseminate guidelines on participation in the budget process.	Treasury in collaboration with other stakeholders
	Consultative budget fora, barazas & workshops; pre-budget hearings	Private sector, CSOs, academics, researchers, Research and training institutions, policy makers, development partners, Audit firms, and Media
	Organize in-country annual budget days'	Institutions such as I.E.A., Action Aid, KIPPRA, Research and training institutions; Treasury other related government ministries; universities; CSOs, parliament, media, audit firms
	Call for budget proposals e.g. formal proposals as required by MTEF and allow sufficient time for effective engagement by all stakeholders.	Treasury
	Invitations to deliberate on budget proposals.	Treasury
	Development and dissemination of budget information & guidelines.	Treasury in consultation with other stakeholders
	Capacity building in advocacy (simple interpretation of data, funding and skills building)	Governments' (specific budgetary allocation); collaborating partners and donors; training institutions such as universities; Institutions such as I.E.A, Action Aid etc.
Streamline budget information	<ul style="list-style-type: none"> • Management of information-collection, analysis & dissemination. • Timely information. for meetings, debate, & audit. Need for sufficient information & time for meetings (Parliament has no privileged access to Printed Estimates (PE) - receive PE 1 wk before budget day- Vote on A/c takes a day- no leeway to correct irregular expenditures in between. Scrutiny powers granted by SO 151 are watered down • Simplify Presentation i.e. both language & contents • Ensure accuracy of budget information e.g. GDP vs. tax collected • Streamline Treasury website 	<ul style="list-style-type: none"> • Establish information management secretariat • Parliamentary reform – Standing Orders & relevant legislation, including institutional capacity to empower parliament to effectively oversee public finance.

Budget Transparency: Kenyan Perspective

STRATEGY	HOW	BY WHOM
Capacity Building	<p><i>Human Resource Development</i></p> <ul style="list-style-type: none"> • Identification of training needs for the national budget programme. • Development of training curriculum and training materials • Training of Trainers (ToT) • Integration of budget training into relevant education curricula. • Decentralize training in specific & relevant budgetary matters to the district & other periphery training centers 	<p>Research and training institutions; collaborating partners/donors; GOK</p>
	<p><i>Institutional & legal framework development</i></p> <ul style="list-style-type: none"> • Establish an independent Parliamentary Budget Office • Decentralization of the budget process • Review legal frameworks to incorporate an inclusive participation in all phases of the budget; C&AG act • Institutionalize more checks on budget flexibility e.g. to minimize pending bills; procurement procedures • Streamline & strengthen the budget M&E • Staff establishment – right-sizing, build competence & professionalism 	<ul style="list-style-type: none"> • Parliament • District agencies; research and training institutions; focal points/units • Treasury
	<p><i>Technical support</i></p> <ul style="list-style-type: none"> • Support to key stakeholders to participate in the budget process. • Support to develop budget plans that reflect sensitivity to the wider national priorities and policies • Support in utilizing budget data. • Feasibility of setting up a centre for pooling resources from which government can draw technical support and reduce the dependence on external technical support. 	<ul style="list-style-type: none"> • Treasury • Treasury, Research Institutions & Development partners
Integrated approach to the budget process	<ul style="list-style-type: none"> • Develop adequate mechanisms and structures in all the budget phases to facilitate effective participation of all. • Involve all the key stakeholders in all phases • Information dissemination. information is a critical ‘thread’ that needs to be intertwined in all budget activities • M&E should be integrated as a key component in the budget process 	Treasury & development partners

Budget Transparency: Kenyan Perspective

STRATEGY	HOW	BY WHOM
Greater Collaboration and Networking	<ul style="list-style-type: none">• <i>Institutionalize</i> an all-inclusive budget committee.• Establish mechanisms for pooling together financial & technical support in establishing and strengthening in-country networks & linkages.• Facilitate sharing of budget information, human capacity & financial resources.• Better Coordination current budget programmes run by various institutions.• Increased exchange of experiences by institutions such as IDASA of South Africa, T.I., Action Aid, I.E.A. etc. need to be extended & shared by all stakeholders.	Treasury & stakeholders

Section Nine: REFERENCES

Centre for Governance and Development (2001), *A Survey of Seven Years of Waste*. Nairobi, Kenya.

Center on Budget and Policy Priorities (2002), *Budget Transparency in Latin America: A Measurement Effort to Improve the Transparency of Budgets*.

Central Bank of Kenya, *Kenya Monthly Economic Review*,

Ernest & Young (2001), *Kenya Budget Review 2001: A Synopsis and Commentary on the 2001/2002 National Budget Presented by the Ministry for Finance on 14th June 2001*.

Government of Kenya (2002), *Draft Bill of the Constitution of Kenya Review Commission*.

Government of Kenya (2001), *Kenya's Budget for the Financial Year 2001/2002*, June 2000.

Government of Kenya (1998), *The Constitution of Kenya*. Government Printers Nairobi.

Government of Kenya (1989), *National Assembly Standing Orders*. Government Printers, Nairobi.

Government of Kenya (1980), *The Exchequer and Audit Act Cap 412*, Government Printers, Nairobi.

Government of Kenya (1979), *The External Loans and Credits Act Cap 422*, Government Printers, Nairobi.

Government of Kenya (1979), *The Internal Loans Act Cap 420*, Government Printers, Nairobi.

IMF (1998), *Manual on Fiscal Transparency*.

Institute of Economic Affairs (1998), *Our Problems Our Solutions: An Economic and Public Policy Agenda for Kenya*. Wamuyu Gatheru & Robert Shaw (eds), Nairobi.

Njeru Kirira & Sam Mwale (2002), *Kenya. Budget Transparency and Participation: Five African Case Studies*. Alta Fölscher (eds), Idasa, Cape Town, South Africa.

Wagacha, Mbui (2000), *Review of Kenya's Budget and Fiscal Strategy: 2000/2001*. Institute of Policy Analysis and Research, Nairobi.

World Bank (February, 1996), *The World Bank Participation Sourcebook*. Available at <http://worldbank.org/wbi/sourcebook/sb0100.htm>

Budget Transparency: Kenyan Perspective

Institute of Economic Affairs (2002), Public Finance in Kenya: A General Survey of Laws and Institutions (Unpublished Paper).

Section Ten: ANNEXES

Table 10.1: Annual Budget Programme

Main Activity	Details/Sub-Activity	Deadline	Responsible Actors
1. Fiscal Strategy Paper (FSP)	<ul style="list-style-type: none"> • Confirmation of changes in the FSP • Consultative meetings of key Treasury Department to discuss FSP. 	April	Macro working groups, BSD, BMD, FMAD, MTEF Secretariat & AG
2. Issue of MTEF guidelines	<ul style="list-style-type: none"> • Prepare/develop guidelines • Issue MTEF guidelines to Ministries, Departments and Districts 	March	MTEF Secretariat, BMD, BSD, FMAD & ERD
3. Sector working groups meetings	<ul style="list-style-type: none"> • Prioritization, costing of activities, projects and programmes 	March	SWGs, MTEF secretariat, BSD, FMAD and line ministries
4. Finalization of the Fiscal Strategy Paper	<ul style="list-style-type: none"> • Finalize the Fiscal Strategy Paper • Discuss FSP with stakeholders 	April	Macro department
5. Tax Analysis and Revenue Forecasting	<ul style="list-style-type: none"> • Undertake tax analysis and revenue forecasting 	March	FMAD, KRA
6. Finance Bill	<ul style="list-style-type: none"> • Receiving submissions from stakeholders for Finance Bill. • Analyze issues for the Finance Bill. • Meet the stakeholders to discuss their submissions on Finance. • Budget technical team to clean and firm up proposals for submission to Financial Secretary (FS), Permanent Secretary (PS) & Minister for Finance (MF). • Hold meetings with FS, PS & MF on proposals to secure approval. • Commence technical drafting of Finance Bill. • Lawyers from AG chambers to review Finance Bill. • Review of the draft Finance Bill. • Final review of Finance Bill with FS, PS & MF. 	February March March April April April April May June	FMAD Attorney General FMAD
7. Computer program for	<ul style="list-style-type: none"> • Develop and install computer 	April	IT department & BSD

Budget Transparency: Kenyan Perspective

Draft Estimates	<p>program for draft estimates in BSD and line ministries.</p> <ul style="list-style-type: none"> • Training programme for draft estimates. 	April	IT department, BSD & line ministries
8. Sector hearings	<ul style="list-style-type: none"> • Comments, proposals etc 	April	MTEF secretariat
9. Sector ceilings	<ul style="list-style-type: none"> • Setting up of sector ceilings 	April	BSD, MTEF secretariat & ERD
	<ul style="list-style-type: none"> • Consultation with accounting officers on sector ceilings 	April	PS/Treasury
	<ul style="list-style-type: none"> • Consultation with cabinet sub-committee on economic management on sector ceilings. • Communication of sector ceilings to Ministries. 	April	PS/Treasury
10. Resource Bidding Process	<ul style="list-style-type: none"> • Line ministries to justify and compete for the available resources 	April	MTEF, BSD, sector conveners, line ministries
11. Ministerial ceilings	<ul style="list-style-type: none"> • Consolidation and compilation of the outcomes of the bidding process. • Communication of ministerial ceilings. 	April	BSD, MTEF secretariat
		April	PS/Treasury
12. Ministerial submissions of draft estimates to treasury	<ul style="list-style-type: none"> • Ministries/departments to submit their itemized draft estimates proposals for review by Treasury 	April	PS/Treasury
13. Draft Budget Speech	<ul style="list-style-type: none"> • Gathering information for the budget speech 	April	FMAD
	<ul style="list-style-type: none"> • Initiate draft budget speech • Discuss the draft budget with FS, PS & MF 	April May	
14. Draft estimates review meetings	<ul style="list-style-type: none"> • Review of the itemized budget to confirm that priorities and ceilings have been adhered to 	May	BSD, ERD, MTEF secretariat, BMD, sector conveners and line ministries
15. First edition of the draft estimates	<ul style="list-style-type: none"> • Editing, inputting and formatting of the draft estimates into the parliamentary format 	May	BSD
16. Approval of the draft estimates	<ul style="list-style-type: none"> • Presentation of draft estimates to MF, PS and FS for approval 	May	BSD, FMAD, ERD, MTEF secretariat and BMD

Budget Transparency: Kenyan Perspective

17. Submit final draft estimates to economic sub-committee of cabinet	<ul style="list-style-type: none"> • Submit final draft estimates to cabinet for approval 	May	PS/Treasury
18. Financial statement	<ul style="list-style-type: none"> • Commence preparation of the financial statement 	May	FMAD & accountant general
19. Revenue estimates and statistical annexes	<ul style="list-style-type: none"> • Firm up revenue estimates, statistical annexes 	May	FMAD
20. Final printing of the draft estimates	<ul style="list-style-type: none"> • Printing of the annual estimates by the government printer 	June	Government printer
21. Submission of draft estimates to parliamentary committee on finance and trade	<ul style="list-style-type: none"> • Discuss finance bill and other budget documents with parliamentary committee on finance and trade 	June	PS/Treasury
22. Laying of the printed estimates book before parliament	<ul style="list-style-type: none"> • Submission of the printed estimates books to parliament 	June	BSD
23. Print budget documents	<ul style="list-style-type: none"> • Budget documents 	June	FMAD
24. Budget speech	<ul style="list-style-type: none"> • Presentation of the budget to parliament 	20 June	Minister for Finance

Budget Transparency: Kenyan Perspective
Table 10.2: Information Accessibility by Type of Respondent

Data	Rate	Respondent					
		Academics/ Researchers (%)	CSOs (%)	Media (%)	Audit (%)	Corporate (%)	Government (%)
Macroeconomic	Don't	22	-	20	-	-	-
	Know	34	100	50	50	-	17
	Poor	22	-	30	33	69	33
	Average	22	-	-	17	31	50
	Easy						
Public Spending	Don't	22	-	10	17	-	-
	Know	44	75	60	50	62	33
	Poor	34	25	30	17	38	33
	Average	-	-	-	17	-	33
	Easy						
Revenue Collection	Don't	11	13	10	-	-	-
	Know	33	63	30	50	54	33
	Poor	56	25	50	33	46	67
	Average	-	-	10	17	-	-
	Easy						
Public Debt	Don't	11	13	-	-	-	-
	Know	44	75	60	67	77	50
	Poor	33	13	30	17	23	17
	Average	11	-	10	17	-	33
	Easy						
Policy Statements	Don't	11	13	10	-	-	-
	Know	33	38	40	33	69	-
	Poor	56	50	50	50	31	67
	Average	-	-	-	17	-	33
	Easy						
Contingent Liabilities	Don't	22	25	10	17	-	-
	Know	67	75	90	67	100	67
	Poor	11	-	-	-	-	17
	Average	-	-	-	16	-	17
	Easy						
Audit	Don't	22	-	-	-	-	17
	Know	33	25	-	83	85	33
	Poor	44	63	80	-	15	33
	Average	-	13	20	17	-	17
	Easy						
Pending bills	Don't	22	25	10	17	-	-
	Know	67	63	90	67	85	83
	Poor	11	13	-	-	15	-
	Average	-	-	-	17	-	17
	Easy						
Extra budgetary	Don't	22	13	10	17	-	-
	Know	67	75	90	67	92	83
	Poor	11	13	-	-	8	-
	Average	-	-	-	17	-	17
	Easy						

Table 10.3: Information Accuracy by Type of Respondent

Data	Rate	Respondent					
		Academics/ Researchers (%)	CSOs (%)	Media (%)	Audit (%)	Corporate (%)	Government (%)
Macroeconomic	Don't Know	22	50	20	-	38	17
	Inaccurate	11	13	20	33	15	-
	Fairly accurate	67	38	50	67	46	83
	Accurate	-	-	10	-	-	-
Revenue collection	Don't Know	22	50	20	-	38	-
	Inaccurate	-	13	20	17	15	-
	Fairly accurate	11	37	50	67	31	67
	Accurate	67	-	10	17	15	33
Public debt	Don't Know	22	63	20	-	31	-
	Inaccurate	22	-	20	33	8	-
	Fairly accurate	33	38	40	33	46	83
	Accurate	22	-	20	33	15	17
Policy statements	Don't Know	33	63	20	-	31	-
	Inaccurate	11	13	20	-	15	-
	Fairly accurate	67	25	60	83	46	100
	Accurate	-	-	-	17	8	-
Audit	Don't Know	33	63	20	-	38	-
	Inaccurate	22	13	40	17	23	-
	Fairly accurate	22	25	30	67	31	50
	Accurate	22	-	10	17	8	50
Contingent Liabilities	Don't Know	44	63	-	50	77	17
	Inaccurate	22	25	-	33	-	-
	Fairly accurate	33	13	80	17	15	83
	Accurate	-	-	20	-	8	-
Pending bills	Don't Know	33	63	20	33	54	50
	Inaccurate	33	13	50	50	31	17
	Fairly accurate	33	25	30	-	15	33
	Accurate	-	-	-	17	-	-
Extra budgetary	Don't Know	56	63	30	67	69	50
	Inaccurate	33	25	50	33	23	17
	Fairly accurate	11	13	20	-	8	33
	Accurate	-	-	-	-	-	-

Budget Transparency: Kenyan Perspective examines by way of a survey, the laws, institutions and processes applied in budget management in a bid to provide an understanding of the degree of transparency exercised in the management of public finances in Kenya. This book takes the reader through the main phases of the budget and points out constraints in the existing laws, institutions and the processes that have limited openness in the public finance management.

The study reveals that the budget formulation, debate and approval, implementation and oversight have been jeopardized in Kenya owing to weak institutions and laws and procedures that are occasionally flouted with impunity by the legitimate authority. Finally, the study makes recommendations on how to enhance transparency in budget management in Kenya.

Institute of Economic Affairs

The Institute of Economic Affairs (IEA) is a civic forum that seeks to promote pluralism of ideas through open, active and informed debate on public policy issues. The IEA is independent of political parties, pressure groups, lobbies and any other partisan interests. The IEA is Kenya's first public affairs dialogue forum.

The IEA's mandate is to promote informed debate on key policy issues both economic and political and propose feasible policy alternatives in these areas. In addition, the Institute provides research backup to policy makers including Members of Parliament. Through its work, the IEA provides alternative public policy choices and addresses the legal and institutional constraints to economic reforms and growth.

ISBN: 9966-9805-1-2



Institute of Economic Affairs