COUNTY GOVERNMENT OF NAIROBI CITY

NAIROBI CITY COUNTY ASSEMBLY

EIGHTH REPORT OF THE BUDGET AND APPROPRIATIONS COMMITTEE

ON

THE WORKSHOP HELD AT SIMBA LODGE, NAIVASHA, KENYA

Thursday 13th – Sunday 16th March 2014

With the Support of the Parliamentary Strengthening Program of the State University of New York (SUNY-Kenya)

BACKGROUND

The Constitution of Kenya, 2010, which gave birth to the devolved system of government, also brought to the fore new mechanisms of public finance management. Article 201 of the constitution outlines that among others the principles of public finance shall revolve around; prudent and responsible use of public money as well as responsible financial management and clear fiscal reporting. The Public Finance Management (PFM) Act, 2012 which gives life to the financial aspects of the constitution gives the County Assembly enormous responsibilities in the budget process. With the new scope that has transformed legislatures/county assemblies into budget making institutions, the importance of having well equipped Members of the County Assembly cannot be gainsaid. The Budget and Appropriations Committee is however cognizant of the fact that this work cannot be well carried out if either arm of government is doubtful over its respective roles in the budget process.

In this regard, the Nairobi City County Assembly working together with the County Treasury aims at being on the forefront in ensuring that its members and officers clearly understand what is expected of them during this intricate procedure to ensure that the Article 201 of the Constitution become part of the order in financial management. Standing Order 187 which sets up the Nairobi City County Budget and Appropriations Committee empowers it to interrogate all matters related to budget making, budget implementation and budget oversight.

It is from this knowledge that the Committee approached the State University of New York (SUNY-Kenya) to facilitate a workshop which would be instrumental in helping both the County Treasury and County Assembly avoid the debutant mistakes and upheavals experienced during the processing of the 2013/14 budget. The training workshop helped to build capacity of both arms of government on not only what each of them ought to do but also what they ought to do together.

Official Opening and Introductory Remarks

The workshop was officially opened by the Chairman of the Budget and Appropriations Committee. The opening remarks were made by development Partner SUNY Kenya represented by Roselyn Mungai while Philomena Nzuki issued the opening remarks on behalf of the Clerk of Nairobi City County Assembly.

a) Opening Remarks by Roselyn Mungai , SUNY KENYA

She welcomed the participants to the workshop, noting that SUNY Kenya was a friend of the County Assembly and was proud of the milestones that the County as a whole had managed to cover under the difficult transitional period. She pointed out that SUNY Kenya was ecstatic at the proposal by the Budget and Appropriations Committee to be the first to hold a joint training workshop with the formulators of financial policies, the County Treasury. She emphasized that as a long standing advocate of legislative progress, SUNY Kenya remained interested in ensuring County Assemblies started on the right footing on all aspects. She was categorical that the work of the Budget Committee was core to the smooth running of the County as proper management of finances is integral to any progressive society.

She concluded by reminding those present that SUNY operates on a demand driven platform in a collaborative manner with Legislatures. She explained that it was the County Assemblies to identify their needs and SUNY would provide the requisite support.

b) Opening Remarks, Clerk of the County Assembly (presented by Mrs Philomena Nzuki)

She started by delivering apologies from the Clerk whom she said would have wished to attend but had been held up with many pressing and urgent matters. She said the workshop was important in enabling the Budget and Appropriations Committee and the County Treasury foster a good working relationship that emphasized on objectivity and proper information. She said the budget is an important tool for implementing the county agenda. She explained that the two arms were responsible for ensuring that the county's budget adheres to public finance management provisions and best practises. She noted that these are critical times as demands are high and there are high expectations from everyone. The Committee working together with the County Treasury should therefore ensure prudence in resource use and equity.

Topic1: Paradigm Shift in Management of Public Finances in Kenya

Presenter: Mr. Gilbert Kirui- Assistant Director, Policy and Performance Management, Judiciary

The finance expert took participants through the systems as had been occasioned by the Constitution of Kenya 2010 and how the ways of public finance management had evolved over the years. He reminded those present that a budget simply implied a plan of raising revenues and how the public resources would be spent in a financial year while a budget process revolved around three key questions:

- What services are to be provided by the government
- How these services are to be provided
- How to pay for these services

It was emphasized that the legislature remained the key institution through which the electorate hold governments accountable and the powers of such legislatures are derived from the Constitution, Conventions, Ordinary legislation and other rules of procedure.

The core principle of fiscal policy is to ensure that revenues generated exceeded or cancelled out with the expenditure figures. It was reported that the main work of the Budget Committee is to balance revenue and expenditures and by extension use the budget as a policy tool. Members were informed that legislatures had to have a role in budgeting because of four broad reasons:

- The Power of the Purse
- Checks and Balances
- Openness and Transparency
- Participation and Consensus Building

The participants were taken through a parallel comparison of Westminster and Congressional system of legislatures. In this regard, it was noted that Westminster system has weak ex-ante review, has no powers to amend the budget, limited time to consider the budget and strong ex-post review. On the other hand the Congressional system has strong ex-ante review, legislatures have unlimited powers to change the budget and weak ex-post review.

On the changes that had been brought forth by the Constitution of Kenya 2010, it was explained that the new system had given the County Assemblies and Parliaments powers to introduce changes in the budget, enacted principles to govern public finance, equitable sharing of revenues between national and county governments and earmarked areas for taxation for the two levels and measures for debt management. Further, the new system had empowered the

Commission on Revenue Allocation to recommend how to share the national revenue, set deadlines for submission of various budget related documents and established institutions and independent offices to ensure prudent management of public resources.

In conclusion, the Committee was reminded that Public Finance Management has shifted to a mix of the Westminster and Congressional systems. To this end, there is need to promote greater public disclosure of budget information, promote information sharing and strengthen capacity of counties.

(See Annex 2 for the detailed presentation)

The following issues were raised during Plenary:

- **How the Budget and Appropriations Committee should react when their resolutions are not implemented:** Members of the Budget Committee were concerned that some of their resolutions had not been implemented to the letter by the County Executive. There was consensus that both the Executive and the Budget Committee had to take responsibility for the poor implementation of approved budgetary resolutions.

- **Who has more power in budgeting between the Assembly and the Executive**: Participants enquired on whom among the two arms namely; the County Treasury and the County Assembly had more latitude with respect to the budget process. It was explained that the Constitution gave each arm her own distinct roles that could not be duplicated. To this end therefore, the arm which is right and empowered by the prevailing legislation to perform a particular function has more powers with respect to that particular function.

- **The effect of the Legislation to be passed by the Senate aimed at increasing County development budget to 60%**: It was felt that the proposed law that would direct counties to spend 60% of revenues on development if passed by the Senate would deter the smooth transition of Nairobi County. It was agreed that there needed to be County specific SWOT analysis of that legislation before it is passed.

Topic 2: Understanding Public Finance Management (PFM); the Constitutional Provisions

Presenter: Mr. Gilbert Kirui- Assistant Director, Policy and Performance Management, Judiciary

The participants were taken through the Constitutional provisions that had highlighted measures of public finance management and how they related to county assemblies and county executive. The presenter gave a detailed review of Chapter Twelve of the Constitution which contains the principles of public finance, ways of sharing revenue as well as allocation of powers to various arms and levels of government with respect to financial control and processes.

It was noted that the Constitutional provisions informed the formulation of the Public Finance Management Act, 2012 which give life to the various financial provisions in the Standing Orders and in turn provide basis for legislatures to set precedents, customs traditions and procedural dogmas.

(See Annex 2 for the detailed presentation)

The following issues were raised during Plenary:

- **What constitutes effective public participation as required by the Constitution:** Members were concerned that there had been no set threshold that determined how to incorporate the public views in matters related to budgeting. It was explained that the work of coming up with parameters for effective public participation had to be set up by the county since there had been no national policy to that effect. Further, the County Treasury was called upon to work harmoniously with the Commission on Revenue Collection who has the mandate to advise counties on how to improve revenue collection.

- **Effect of the Office of the Controller of Budget (CoB) Approving more than is appropriated:** The participants wanted to know if there was a possibility that the CoB could approve more than is indicated in the Appropriations Act and the net effect of such over-authorization. On this it was reported that the CoB approved withdrawals based on the strength of the cash plan presented. Such approvals most of the times are based on vote by vote analysis hence the amounts for individual items could be overlooked leading to excess withdrawal for the specific item. However, it remains the work of the County Executive Member for Finance to ensure that the Appropriation Act is fully complied with and that Section 135 (7) of the PFM Act, 2012 is complied with. Further Section 109 (5) of the PFM Act, 2012 decree that the County Treasury needs to ensure that at no time is the Exchequer Account overdrawn.

- **Who should be the custodian of County Assets**: The meeting was informed that in line with provisions of Section 104 (g) of the PFM Act, 2012 all county assets needed to be at the behest of the County Treasury. That notwithstanding, it was agreed that there needed to be consultations and understanding from the County Treasury and County Assembly with respect to the custody and management of county assets. However, during the transition period it was reported that the Office of the Auditor General had set up measures to audit and report on all county assets.

- **Possibility of having different accounts for the County Executive and County Assembly:** Members of the Budget Committee were concerned that the single account had slowed down the forward progress of the County Assembly. To this end, the meeting was enlightened that as per Section 109 of the Public Finance Management Act, 2012 the responsibility to set up public funds remained fully with the County Treasury hence any separate account for the Assembly had to be permitted by the same County Treasury.

Topic 3: The PFM Act- Applicability at the County Level

Presenter: Mrs. Muthoni Waigumo- Expert in Public Finance

The presentation began by taking participants through the objectives of the PFM Act, 2012 which were highlighted to promote good financial management at the National and County level which would in turn guarantee effective and efficient use of limited resources. The PFM institutional framework rotated around County Assemblies, County Executive Committee, County Treasuries, county Executive Member for Finance, Accounting Officers for County Governments, receivers and collectors of revenue for counties, County Budget and Economic Forum, Boards of Cities and Municipalities.

The meeting was reminded of the fiscal responsibility principles as enumerated in Section 107 (2) of the PFM Act 2012 and the changes that had been occasioned by the new legal provisions. In this regard, the new system had given birth to Programme Based Budget, measures of division of revenue between the two levels of government and how to review budget estimates.

While taking participants through the roles of various stakeholders in the budget process, the presenter took members through the responsibilities of the County Executive Committee, County Executive Committee Member for Finance, the County Assembly, the County Treasury, the Accounting Officers and the Receivers and Collectors of Revenue.

With regard to public participation it was noted that various provisions of the PFM Act 2012 provide for public participation in public finance management and in particular the County Fiscal Strategy Paper, the budget estimates and county planning and budgeting. On enforcement, the meeting was informed that any offence under the Act attracts imprisonment term of up to 5 years or a fine of up to KSh.10 million.

(See Annex 2 for the detailed presentation)

The following issues were raised during Plenary:

- **How to deal with missed deadlines:** The Committee sought to know whether the Assembly had any remedy with respect to missed deadlines for submission of various documents to the Assembly and/ or missed deadlines for passage of such documents by the Assembly. On this, the Committee were advised to invoke the provisions of Section 90 of the PFM Act, 2012 which allowed any house of Parliament to extend the deadline for submission of statements or documents under the Act. It was explained that the Section applied together with Standing Order No. 1 would provide the remedy.

- **Possibility of having more Accounting Officers:** There was concern that the County Executive Committee Member for Finance had not designated Chief Officers as Accounting Officers in line with the law. The treasury representatives explained that the issue was under deliberation and comprehensive report would be delivered to the Committee as soon as practicable.

Topic 4: The County Budget Process

Presenter: Mr. Gilbert Kirui- Assistant Director, Policy and Performance Management, Judiciary

Participants were first reminded that the government is the principal mechanism through which government translates policy intentions into actions and promises to reality. The budget process must recognize competing claims and aim to focus on improved services, faster growth and poverty reduction.

On the budget documents that had to go through the County Assembly and by extension the Budget and Appropriations Committee, the presenter informed members that these include:

- The County Integrated Development Plan (by 1st September);
- The Budget Review and Outlook Paper (by 30th September);
- The County Fiscal Strategy Paper (by 28th February);
- The Budget Estimates (by 30th April);
- The Appropriations Bill (by 30th June); and
- The Finance Bill (by 30th September).

With regard to the Budget Review and Outlook Paper it was noted that the Assembly did not have to act on the document as it was only submitted for information purposes.

The County Fiscal Strategy Paper (CFSP)

The meeting was taken through a detailed analysis of the County Fiscal Strategy Paper as presented by the County Treasury. In this regard, the presentation covered the legal basis for the preparation of the CFSP and the process through which it had to cover in order to become policy to guide the budget process. On the Macroeconomic Policies and Outlook the document was noted as having failed to discuss the Nairobi economy and how the positive prospects in the national outlook would influence if at all the forward growth of the city. It was highlighted that the focus was too general with no specific actions that would guarantee targets.

On the fiscal policies that were identified by the County Treasury the presenter informed members that they were too general and whereas the fiscal risks were rightly identified, it was noted that similar zeal of accuracy did not go to the subsequent mitigating measures. The revenue targets in the paper were identified to be too abstract and ambitious while adherence to the fiscal responsibility principles appeared to be only for expedience sake.

The meeting was informed that the PFM Act required that the CFSP highlights a number of strategies that the county would aim to pursue going forward. This it was noted had been done, though the specific strategies were too broad, Medium Term Expenditure Framework priority areas were unclear and the some had no accompanying resource allocation. Further the document had failed to discuss debt issues, how to roll out the program based budgets as required by the Second Schedule Section 12 of the PFM Act, 2012. The participants were also enlightened that the paper focused too much on the next Financial Year instead of aligning itself to the Medium Term requirements in addition to having no proposal on the sharing of resources between the two arms of government. It was emphasized that what could not be measured must not be identified as a target.

As a way forward the Budget and Appropriations Committee and County Treasury were advised to work together and include in the document sector ceilings that would inform resource allocations by the sectoral committees. Further the Budget Committee was told that it needed to include in its report the ceilings for the two arms of government apart from holding further discussions with the CEC Member for Finance on the identified gaps.

(See Annex 2 for the detailed presentation)

The following issues were raised during Plenary:

- **Deadlines for submission of County Fiscal Strategy Paper (CFSP) and Budget Policy Statement (BPS)**: There were sentiments to the effect that whereas Section 117 (2) required that the CFSP be aligned to the national objectives in the BPS the BPS was still unfinished document since it was still under review by the National Assembly and it was bound to change. On this there was agreement that the National Assembly though had the legal mandate would hardly adjust the broad national objectives captured in the BPS.

- **Implications of Section 104 of the County Governments Act**: Clarification was sought on the effect of the provision of the Act in light of the fact that the Assembly had not disposed of the County Integrated Development Plan as required by law. To this end there was consensus that during the transition period some of the provisions of the law had to be overlooked.

Topic 5: Program Based Budgeting (PBB) under MTEF

Presenter: Mr. Martin Masinde- Senior Deputy Director- Parliamentary Budget Office

The presenter began by highlighting the objectives of the MTEF which he noted included to facilitate political decision making, introduce strategic basis in budget preparation, focus on performance, and provide medium term expenditure control among others. He also highlighted to participants the process involved in MTEF and PBB as enumerated below:

Steps involved in MTEF and PBB

MTEF	PBB
a) 3 year macroeconomic framework	i. Identification of strategic outcomes for current and future years
b) 3 year preliminary ceilings set by the Executive	ii. Development of programs and sub-programmes relating to the outcomes
c) Preparation of budget proposals based on strategic plans	iii. Definition of initial goals within each sub-programmes and eventually within each programme
d) Departmental and ministerial hearings	iv. Identification of suitable outputs and performance measures
e) Preparation of 3 year PBB estimates	v. Distribution of revenues and expenditures according to programmes, sub-programmes and activities
f) Finalization and approval of 1st year estimates by the National Assembly/County Assemblies	vi. Development of multi-year PBB projections

The participants were informed that PBB is embedded in a three year process that involves policy and planning, performance and budget. To ensure that the programme based budgeting does to fail it was noted that it had to be followed with continuous monitoring and evaluation.

(See Annex 2 for the detailed presentation)

Topic 6: Budgeting in Kenya

Presenters: Mr. Martin Masinde and Mrs Muthoni Waigumo

The finance experts took participants through a detailed report on the process of estimating the budget and how to establish the resource envelope at the county level. It was noted that the process starts from the launch of sector working groups which are followed with review and update of strategic plans. After the review then there is review of programmes of outputs and outcomes. This it was highlighted happens at around September where there is concurrent events when progress report on MTP implementation are generated, annual work plans are prepared and County Development plans to County Assembly are developed.

On the determination of fiscal framework it was noted the process involves estimation of the resource envelope which may comprise of potential external support, domestic revenue and county share of national revenue. The estimation of resource envelope is followed with the determination of policy priorities, preliminary resource allocation to sectors and preparation of draft budget bills and submission of the same to Parliament for approval. The subsequent processes, it was noted included preparation of MTEF proposals, preparation of draft Budget Policy Statement, preparation and approval of final Ministries Departments and Agencies (MDAs) Programme Budget , considerations of the estimates, issuance of speech on revenue raising measures by the Cabinet Secretary for the National Treasury and Passage of the Appropriations Bill.

This procedure, the experts explained, applies to the County level with the necessary modifications.
(See Annex 2 for the detailed presentation)

The following issues were raised during Plenary:

- There was general concern that the County Treasury had over-relied on the Finance Act, 2013 as a basis of estimating the County's resource envelope. The Treasury explained that the many bottlenecks that had slowed down the smooth implementation of the revenue raising measures in the Act would be overcome and eventual intentions realized in the next financial year. However, it was noted that not all the intended objectives of the act could be achieved due to non-compliance and disincentives.
- **The County Treasury taking too long to pay for services**: The Members of the Budget and Appropriations Committee decried the snail pace within which various suppliers and service providers were paid their dues by the County Treasury. The County Treasury blamed the delays on

the apparent weaknesses within the Finance Department which they assured participants was being addressed.

Topic 7: Engagement between the Budget and Appropriations Committee and the County Treasury

Presenter: Mrs. Muthoni Waigumo- Expert in Public Finance

It was reported that the engagement between the two would mostly be depicted due to the various documents that are received by the Assembly from the County Treasury. Such documents include the Budget Review and Outlook Paper; the County Fiscal Strategy Paper; Budget Estimates among others. The Budget Committee was hence urged to stay alert to ensure that there is a clear understanding between the directions of key programmes and projects to be implemented in the budget. It was noted that the work of the Budget and Appropriations Committee was to ensure that there is linkage between the various budget documents that come to it for approval. The importance of basing sector ceilings on the cost of service delivery was underscored and the Committee reminded of the need to give other sectoral committees clear direction on how to review budget documents.

(See Annex 2 for the detailed presentation)

CONCLUSION

The Chair of the Budget and Appropriations Committee while offering the concluding remarks thanked SUNY Kenya for having invested massive resources to ensure that the County got it right on matters budgeting. He was categorical that such trainings needed to be undertaken jointly so as to address the challenges that either arm of the government may have. Finally he summarized the following as action points:

- The need to organize for a consultative forum with the Office of the Controller and the Commission on Revenue Allocation.
- The County Treasury working together with a finance expert and the Clerk Assistant of the Budget and Appropriations Committee mandated to review the County Fiscal Strategy Paper and come up with a report for consideration by the Committee.
- Further consultations on how to undertake effective public participation
- The County Treasury mandated to report on the County Assets as soon as possible.

ANNEX 1: LIST OF PARTICIPANTS

Participants

Members of the Budget and Appropriations

i.	**Hon. Michael O. Ogada, MCA**	**Chairman**
ii.	**Hon. George O. Ochola, MCA**	**Vice- Chairman**
iii.	Hon. Osman O. Ibrahim, MCA	
iv.	Hon. Kenneth T. Muroki, MCA	
v.	Hon. David N. Kairu, MCA	
vi.	Hon. Petronilla Nafula, MCA	
vii.	Hon. Herman Azungu, MCA	
viii.	Hon. Emmaculate Musya, MCA	
ix.	Hon. Joash Omwenga, MCA	
x.	Hon. Kennedy Oduru, MCA	
xi.	Hon. Ngaruiya Chege, MCA	
xii.	Hon. Samuel Irungu, MCA	
xiii.	Hon. Victoria Alali, MCA	
xiv.	Hon. Maurice O. Akuk, MCA	
xv.	Hon. Isaac N. Ngige, MCA	
xvi.	Hon. Alfred Ambani, MCA	
xvii.	Hon. Oscar Lore, MCA	

Officers from the County Treasury

i.	Ms. Nancy Kiruri (Budgeting)	Head of County Treasury
ii.	Mrs. Esther Ndegwa	
iii.	Mr. Joseph K. Ndungu	

Staff of the County Assembly

i.	Mrs. Philomena Nzuki	Principal Accountant
ii.	Mr. Fred Macharia	Senior Finance Officer
iii.	Mr. Erick Otieno	Clerk Assistant
iv.	Ms. Mercy Senewa	Clerical Officer