FACTSHEET

09

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

Role of The National Assembly in the Budget Making Process

2nd Edition

Factsheet No. 9

ROLE OF THE NATIONAL ASSEMBLY IN THE BUDGET MAKING PROCESS

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The Clerk of the National Assembly
Parliament Buildings
Parliament Road
P.O. Box 41842-00100
Nairobi, Kenya

Tel: +254 20 221291, 2848000
Email: clerk@parliament.go.ke
www.parliament.go.ke

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Prepared by:

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Purpose and Acknowledgment

This Factsheet is part of the Kenya National Assembly Factsheets Series that has been developed to enhance public understanding and awareness, and to build knowledge on the work of the Assembly, and its operations. It is intended to serve as a guide for ready reference by Members of Parliament, staff and the public. The information contained here is not exhaustive and readers are advised to refer to the original sources for further information.

This work is a product of the concerted effort of all the Directorates and Departments of the National Assembly and the Parliamentary Joint Services. Special thanks go to the members of the *National Assembly Taskforce on Factsheets, Speaker's Rulings and Guidelines,* namely, Mr. Kipkemoi arap Kirui (Team Leader), Mr. Rana Tiampati, Mr. Kennedy Malinda, Ms. Anna Musandu, Mr. Samuel Kalama, Mr. Salem Lorot, Ms. Fiona Musili, Mr. Benson Inzofu, Ms. Laureen Wesonga, Ms. Anne Shibuko, Mr. James Maina Macharia, Mr. Morrice Shilungu, Mr. Finlay Muriuki, Ms. Rabeca Munyao and Mr. Stephen Omunzi.

FACTSHEET NO. 9

Role of The National Assembly in the Budget Making Process

The Treasury Cabinet Secretary, Hon. Ukur Yatani (Centre) poses with the Chairperson of the Departmental Committee on Finance and National Planning Hon. Gladys Wanga (left) and her Budget and Appropriations Committee counterpart Hon. Kanini Kega just before the CS presented the 2022 Budget Highlights to the National Assembly.

1.0 Introduction

The Constitution of Kenya, 2010 enhanced the power of the National Assembly in the approval and oversight of the Budget, which comprises approval of expenditure allocations to national government departments, approval of taxes and other forms of revenue including loans raised for purposes of funding development projects. This far-reaching role is critical to Members of Parliament (MPs) since it enables them to assess, review and make changes where necessary to the amounts earmarked or proposed to be allocated to certain programmes in a particular financial year. In essence, it is the National Assembly that approves spending requests and particular projects or activities for the three arms of government: Executive (including Commissions and Independent Offices), Parliament and the Judiciary.

2.0 "Budget Making in the National Assembly"

The National Assembly's function of budget making is unambiguously provided for in various Articles of the Constitution. Primarily, Article 95 sets out the functions of National Assembly in budget making as:

- **Determining the allocation of national revenue** between national and county governments;

- **Appropriating funds** for expenditure by the national government and other national State organs, and
- Exercising **oversight over national revenue and its expenditure.**

These functions are expounded below.

2.1 Revenue Sharing

Allocation of revenue is done through the approval of bills highlighted in Article 218 of the Constitution, namely the Division of Revenue Bill and the County Allocation of Revenue Bill, subject to Article 202 on conditional and unconditional grants, the criteria for revenue sharing in Article 203 and recommendations of the Commission on Revenue Allocation. The Division of Revenue Bill is originated in the National Assembly whereas the County Allocation of Revenue Bill is introduced in the Senate.

2.1.1 The Division of Revenue Bill

The Division of Revenue Bill is the mechanism for sharing of the revenue raised by the national government, primarily from ordinary taxes, between the National and County governments. The division takes into account the criteria in Article 203(1) which includes consideration to fund national interests, debt payments, national government expenditure, development needs of counties, financing of county functions, among others.

Every financial year, counties are entitled to receive at least 15% of the nationally raised revenue calculated on the basis of the most recent audited accounts of revenue approved by the National Assembly. By practice, the National Assembly has enacted Division of Revenue Bills every financial year as required by the Constitution with counties getting in excess of the minimum threshold of 15% of revenue as stipulated under Article 203(2). In addition, counties may also be issued with additional funds from the National Government's share of revenue in form of conditional or unconditional grants in accordance with Article 202(2).

2.1.2 The County Allocation of Revenue Bill

The National Assembly equally participates in enactment of the County Allocation of Revenue Bill. The County Allocation of Revenue Bill is the mechanism for sharing the revenue allocated through the Division of Revenue Bill among the 47 counties. The County Allocation of Revenue Bill sets out the revenue allocation per county from the amount allocated to county governments in the Division of Revenue Act. Each county is allocated its revenue amount based on the basis or formula approved in line with Article 217. In line with Articles 203 and 217, and in consideration of recommendations from the Commission on Revenue Allocation, this includes sharing revenue among counties on the basis of their share of population, land size, poverty rates, a developmental index, and a component for equal share. Typical conditional grants may include allocation for Level Five hospitals, maternal health care, among others.

2.1.3 The Equalization Fund

Article 204 of the Constitution provides for the Equalization Fund which is intended to provide for basic services and infrastructure necessary in certain marginalized areas to bring them at the level generally enjoyed by the rest of the nation. The Equalization Fund comprise half percent (0.5%) of revenue collected by national government each year, calculated based on the most recent audited accounts of revenue as approved by the National Assembly.

2.2 Appropriation of funds for expenditure

The role of the National Assembly in appropriation of funds for expenditure by the national government and all its organs is explicitly provided for in Article 221. Every financial year, the Cabinet Secretary for the National Treasury and Planning, the Registrar of the Judiciary and the Secretary to the Parliamentary Service Commission are required to submit estimates of revenue and expenditure of the National Government, the Judiciary and the Parliamentary Service

Commission respectively for tabling in the National Assembly at least two months before the end of the financial year. This translates to a day not later than April 30 of each financial year. The estimates are scrutinized by respective departmental committees and the report submitted to the House for approval through the Budget and Appropriations Committee. In consideration of the estimates the Budget and Appropriation Committee is required to take into account the representations of the public on the budget in its report to the House for approval. This is actualized through public hearings which entail outreach to obtain views from the public on budget and economy, and any matter affecting them and which may be addressed through the annual budget.

According to the Standing Orders of the National Assembly, the budget is first committed to the Departmental Committees for review in line with their respective mandates. Committees have 21 days to review the estimates in consultation with relevant government departments under their purview and prepare their respective reports. The recommendations by Departmental Committees are then considered by the Budget and Appropriations Committee, which, after consultations with the Cabinet Secretary for the National Treasury, prepares and tables a report with recommendations on the budget. The Committee may propose reductions or increases of expenditure, particularly at the program or departmental level often without causing the need for additional resources. This approach ensures that the budget is well funded or that the government can raise the money required for the approved expenditure.

2.2.1 Committee of Supply

Upon adoption of the Report of the Budget and Appropriations Committee on its consideration of the estimates and the recommendations therein after a General Debate in the House, the estimates are considered in the Committee of Supply. A Committee of Supply is a Committee of the Whole House that considers and approves state expenditure for a particular financial year on a programme by programme basis. The procedure and sequence in Committee of Supply is similar to a Committee of the Whole House on a bill. Votes are considered and a decision taken on them beginning with the calling out of the total sum allocated to the respective Votes, followed by the sums allocated to the specific Programmes under the Vote Heads including amendments if any. Finally, the gross sum approved for the particular Vote is called out and a decision taken on it. After consideration of all Votes and Programmes in the Committee of Supply, the Committee reports its consideration of the estimates to the House in a similar manner to reporting of bills to the House by a Committee of the Whole House. The Motion herein is couched as follows:

> *That, the Committee do report to the House its consideration of the budget estimates for the financial year….. and the estimates of expenditure from the Equalization Fund and the allocations to the respective votes, and its approval thereof with/ without amendments.'*

Following the resumption of the House (in Plenary), consideration of estimates in the Committee of Supply is reported as follows:

> *Hon. Speaker, I beg to report that the Committee of Supply has considered the Budget Estimates for the FY ……, and approved the same with amendments and pursuant to the provisions of Article 221 of the Constitution of Kenya, section 39 of the Public Finance Management Act, 2012 and Standing Orders 240, approves the issuance of a sum of Kshs…………………from the Consolidated Fund to meet the expenditure during the year ending 30th June 20… in respect of the Votes as approved in the Schedule and that necessary adjustments be made to programmes amended in the Committee of Supply.*

The House subsequently votes on the motion for approval of the estimates. This resolution forms the basis for the Appropriation Bill.

2.2.2 Appropriation Bill

An Appropriation Bill authorizes withdrawal, from the Consolidated Fund, of the amounts needed for expenditure approved in the estimates. It is thus introduced in the National Assembly and ought to be passed before the beginning of the financial year to which it applies. In the event that the bill has not been assented to or is unlikely to be assented to, the National Assembly may authorize withdrawal of half the amount required for expenditure for that financial year. This instrument is called the Vote on Account. This expenditure is later included in the Appropriation Act as necessary during its approval.

The appropriating role of the National Assembly also includes consideration and approval of Supplementary budgets and appropriations whenever needed in accordance with Article 223 of the Constitution, the Public Financial Management (PFM) Act and the attendant Regulations. Supplementary estimates seek the approval of the National Assembly for expenditure of monies which had not been appropriated, where the initially approved appropriations were insufficient or where new expenditure requirements have been identified. This means approval of use of public monies for purposes that were unforeseen at the time of approving the initial estimates.

2.3 Financing the Budget

The National Assembly approves measures intended to be used by the national government to raise revenue to finance the Budget as contained in the Appropriations Bill. The budget is normally financed through taxes collected from persons and businesses, grants and loans borrowed from the private sector inclusive of individuals, corporations and various financial institutions including banks, as well as from development partners.

When the Cabinet Secretary for the National Treasury tables the expenditure estimates, the estimates of taxes, loans and grants are also part of the budget for consideration by the National Assembly. The estimates outline the projections for tax collection for the year, grants expected for the year, expected borrowing and debt repayments within the year.

If the financing of the budget requires some changes to the existing tax laws in order to improve attainment of the tax collection target, the Cabinet Secretary for the National Treasury submits to the National Assembly a Finance Bill providing for changes to taxation and its administration in a bid to help the government raise adequate taxes to fund the approved budget. The Finance Bill is submitted during the presentation of the Budget Highlights to the House as required under section 40 of the PFM Act and Standing Order 241. Section 39A of the PFM Act requires the National Assembly to consider and passes the Finance Bill by 30th June each year.

Collection of taxes is undertaken within a framework of tax laws on income taxes, capital gains tax, excise duties, customs duties and value added taxes. The main tax laws include: The Income Tax Act, Excise Duty Act, Value Added Tax Act, Miscellaneous Fees and Charges law, and Tax Procedures Act.

2.4 Oversight of Expenditure

Article 95(4)(c) of the Constitution empowers the National Assembly to exercise oversight over national revenue and its expenditure. Expenditure oversight refers to review, interrogation, investigation, and holding to account government agencies on their expenditure. Oversight therefore relates to how national government agencies and state organs apply funds appropriated by the National Assembly for expenditure. Committees and Members of Parliament may on their own initiative cause investigations, or invite relevant agencies to give information on matters under their purview. Expenditure issues relevant for such investigations may include suspected fraud, over expenditure or under expenditure, performance information and non-attainment of targets or set outputs of the agencies among others. While a Committee may undertake inspection visits to public-funded projects to ascertain value for money, they can alternatively invite Cabinet Secretaries and accounting officers to meetings within the precincts of Parliament to account for the use of funds allocated to them.

The mainstay of Parliamentary expenditure oversight is exercised by two watchdog Committees, Public Accounts Committee and Public Investments Committee. The Public Accounts Committee primarily uses the reports of the Auditor General to review and recommend appropriate action on any unlawful use of public resources. The National Assembly has three months upon receipt of the audit report from the Auditor General to debate and take appropriate action. The Public Investments Committee mainly focuses on the investment activities of state agencies funded by the national government. If the reports are expedited in a timely manner, the findings of these oversight committees of the Assembly can help inform budget allocation in the next budgeting cycle.

Oversight usually requires receiving and interrogating reports on the budget implementation. These include the following:

- Reports from the Controller of Budget on the implementation of the budget;
- Quarterly Budget and Economic Review reports;
- Annual reports of various state agencies.

The Controller of Budget's report is a constitutional report on implementation of budgets of national and county governments which is required to be submitted to Parliament every four months. Given the Controller of Budget's primary role is to oversee the implementation of the budgets by authorizing withdrawals from public funds (Article 204, 206 and 207), this report captures crucial information on how government releases appropriated amounts for expenditure. The National Assembly uses the report to interrogate implementing agencies on any spending gaps, including any over-expenditure. Unlike audits, these reports can be used by the National Assembly for rapid interventions if something is going wrong in the budget implementation for development and for operations within the financial year.

The Quarterly Budget and Economic Review prepared by National Treasury generally reports on overall economic performance, tax collection, expenditure, and debt repayments. This report helps National Assembly discern emerging problem in the economy, for example if inflation or interest rates are getting out of hand, whether the pace of tax collection is adequate to meet the cash flow requirement of the government, etc. Similarly, the report captures information on accumulation of new debt and debt repayment levels every quarter.

The two reports often give Committees and Members of the National Assembly information needed to monitor quarterly performance of government departments. Whereas these reports may lack audit information which could help reveal in detail how the money is actually being spent, including status of ongoing projects, they are helpful in enabling the National Assembly to undertake oversight of budget implementation.

2.5 National Assembly and the economy

Approval of expenditure and revenue estimates does not happen in a vacuum. The state of the Kenyan economy at the time of the budget can possibly affect revenue collection and the implementation of the budget. A set of factors such as how fast prices of goods and services are rising (inflation), or how expensive bank loans are (interest rates) can directly affect cash flow and the actual implementation of the budget by state departments. For instance, high inflation can reduce the reach of government services due to high costs of goods (e.g. books, equipment for road construction) and services.

Thus, National Assembly, in the course of budgeting, considers macroeconomic factors such as the rate of growth of the whole economy, level of prices, cost of loans or interest rates, and the value of the Kenya shilling compared to foreign currencies. The National Assembly may also deliberate on the conditions and effect of regional economic arrangements such as the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA) on the budget for any particular financial year. Global or regional economic conditions can have a direct or indirect effect on Kenya's cost of borrowing, strength of Kenya shilling exchange rate, among other effects.

The primary macroeconomic policies are considered by the National Assembly during the review and approval of the Budget Policy Statement (BPS) in February every financial year. The policies on inflation, economic growth, interest rates and exchange rates should be consistent with expenditure and financing (revenue raising) policies to ensure stability in the economy.

2.2 Other Budgetary Roles of the National Assembly

The role of National Assembly is not limited to estimates approval and appropriation bills, but equally on regulating introduction of “money bills” in the Assembly. Money bills are bills, motions, or amendment bills containing provisions on expenditure, financial matters, and the economy. As defined in Article 114 of the Constitution and the National Assembly Standing Order 114, a money bill is a bill or a motion that deals with the following:

- Taxes, including rates, fees, and charges
- Variation of charges on public funds.
- Appropriation, custody, receipt, investment, issue of public money
- Loans and guarantees

The Division of Revenue Bill and County Allocation of Revenue Bill are excluded from the definition of a money bill. Additionally, any bill which concerns the application of taxes and money raised by a county may not be defined as a money bill. Some money bills may contain vast consequential implications on the economy, government borrowing, and may therefore directly affect various provisions in Chapter 12 of the Constitution, including Articles 203, 210, 211, 212, 221, among others.

Thus, Article 114 deals with bills which may impinge on or change government expenditure and revenue (taxes and borrowing, public money), and which may have other economic effects. To complete the expenditure and financing loop, the National Assembly considers and approves certain money bills such as the finance bills, annual and supplementary appropriation bills, repeal and amendment of tax laws, and any bills and motions for approval of government borrowing and debt repayment.

PFM Act and regulations expound the roles of National Assembly in a more practical way. For example, the PFM Act, Section 7 defines the functions of the Committee of National Assembly contemplated in the Article 221(5), which in this case is the Budget and Appropriations Committee. The Committee has the following functions in accordance with the PFM law:

- Review Budget Policy Statements and budget estimates and make recommendations to the National Assembly;
- Provide general direction on budgetary matters including examining budgetary, debt, and financial reports tabled in the National Assembly;
- Monitor and report on functions and matters under the purview of the National Assembly in the PFM law;
- Monitor adherence to the principles of public finance in the Constitution including fiscal responsibility principles across the entire national government;
- Consider money bills in line with Article 114,
- Review Division of Revenue Bills; and,
- Introduce Appropriations Bills;

The PFM law also sets out particular National Assembly roles in the budget process itself and in making various approvals throughout the approval, review and implementation of the budget. For instance, the National Assembly approves the Budget Policy Statement and the Medium Term Debt Strategy including setting ceilings on expenditure through a resolution of the House which is communicated to the National Treasury. The Act also defines how the House may amend the BPS and the budget so as to keep financing and expenditure balance intact without unduly taking away the budget-making power of the National Assembly. Other roles of the National Assembly include approving borrowing, debt service reports, approving loans and loan limits, among others.

4.0 Budget Cycle and the role of National Assembly

Every financial year the National Assembly participates in the various critical activities in the budget cycle, from the beginning of the financial year through to the next financial cycle. The budget process starts through issuance of budget preparation circular by the National Treasury by end of August in every financial year followed by various steps within the Executive. The cycle is superimposed with Auditor General's audits and budget implementation review reports by the Controller of Budget. This ensures regular feedback throughout planning, budgeting and implementation of the budget.

The major milestones, policy documents, laws and activities in the budget process requiring important input by the National Assembly are represented in the following table:-

National Assembly Budget Calendar: key timelines and activities

Key date	Activity	Remarks
August 30	Issuance of the budget circular by the National Treasury for preparation of next financial years' budget.	The circular sets off the budget process for the next financial year.
October 21	Submission of the Budget Review and Outlook Paper to Parliament.	The paper provides review of previous budget and economic framework and the macroeconomic and resource framework for the next financial year. The National Assembly through the Budget and Appropriations Committee may study the report but no particular action may be taken.
October 31	Submission of the first quarterly report of the Controller of Budget on the implementation of the budget of national and county governments.	The National Assembly through its committees and Budget and Appropriations Committee discusses and considers the report and may make recommendations on the implementation of the budget for necessary action. The other reports are submitted by January 31, April 30, and July 31st.
December 31	Submission of the Auditor General's report on the financial and expenditure of public funds allocated to national government entities.	The Constitution requires that the report be submitted six months after the end of the financial year. The Constitution requires that the National Assembly debates, considers the report and takes necessary action. The audit reports are submitted to the Public Accounts Committee for review and preparation of report and recommendations for discussion by the full House.

December 31	Submission of the Commission on Revenue Allocation recommendations on the Division of Revenue Bill and County Allocation of Revenue Bill.	The National Assembly needs to ensure that the two bills contain a summary of how the recommendations of the Commission on Revenue Allocation were taken into account.
February 15	Submission of the Budget Policy Statement, Medium Term Debt Strategy, and draft Division of Revenue Bill and County Allocation of Revenue Bills by the National Treasury.	The Budget Policy Statement, Medium Term Debt Strategy should be considered and adopted by the House within 14 days. The Division of Revenue Bill should be introduced in National Assembly by March 10.
April 30	Submission of the annual estimates of revenue and expenditure of the national government, and estimates of Parliamentary Service Commission and the Judiciary.	After tabling of the estimates, the estimates stand committed to the departmental committees in line with their respective mandates. The committees have 21 days to submit report to Budget and Appropriations Committee. The Budget and Appropriations Committee prepares a report for approval of the estimates by the House.
May 15	Submission of the National Treasury comments on the budgets of Parliament and Judiciary	
Mid-May	Conduct of public hearings by the Budget and Appropriations Committee	Public representations on the budget are to be taken into account before the committee tables the report on the estimates for approval by the House.
May 21	Submission of the reports and recommendations of departmental committees on the estimates to the Budget and Appropriations Committee	
Mid-June	Pronouncement of budget highlights and revenue raising measures by the Cabinet Secretary responsible for Finance.	The Finance Bill and budget related bills are introduced after the pronouncement on the revenue raising measures.

June 30	Deadline for the approval of the Budget and Appropriations Committee report on the annual estimates, introduction and approval of the Appropriations Bill.	The report of the Committee is approved by the House, followed by the Appropriations Bill about mid-June. The House may approve a vote on account if the Appropriations Bill is unlikely to be assented to by the President before June 30. However, during an election year, the Budget Pronouncements are made in April.
June 30	Deadline for the approval of the Finance Bill.	The Finance Bill should be approved by June 30th

Source: The Parliamentary Budget Office

5.0 Institutions and Stakeholders in the Budget Process

The National Assembly is at the center of budget approval and oversight during the annual budget process. The National Assembly works with a host of institutions and the public to expedite its mandate of budget making, oversight of expenditure, and representation. Some of the major institutions include the following:

- **The National Treasury:** Prepares and submits the annual estimates of revenue and expenditure of the national government, draft Division of Revenue Bill and County Allocation of Revenue Bill and the Budget Policy Statement and Medium Term Debt Strategy; Implements the resolutions of the House on various reports on budgetary matters; coordinates implementation of the budget across government departments after approval and assenting of the appropriation bills; manages Exchequer releases or release of funds to agencies for expenditure, public debt and its repayments, and economic growth including overseeing the financial markets; provides the National Assembly with regular reports on revenue performance among other financial reports required under the PFM Act or attendant regulations.

- **Government departments, ministries, and state agencies:** Prepare budgets for approval by Parliament, implement the budgets and report to the National Assembly. During oversight of their budget and budget implementation, these agencies may be called to appear before relevant committees of the National Assembly.

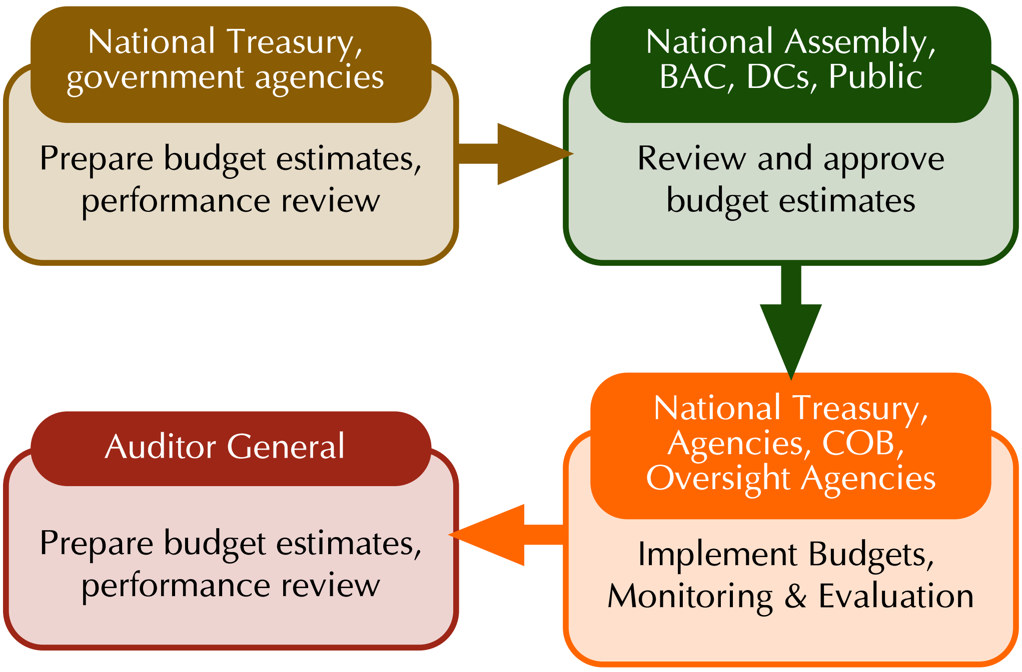
- **Auditor General:** Audits and prepares reports on all national government agencies that receive public money. The audit report is submitted to the National Assembly six (6) months after the end of the financial year.

- **The Commission on Revenue Allocation**: Submits recommendations on the division and sharing of revenue between the level of government and among county governments to Parliament. The Commission also makes recommendations on the basis for sharing revenue among counties and on the identification of marginalized areas with regard to the Equalization Fund.

- **The Controller of Budget:** Submits reports on the implementation of the budgets for consideration by the House every four months.

- **Other stakeholders:** Other agencies with close roles in the budget include the Central Bank of Kenya, the Kenya Revenue Authority, Retirements Benefits Authority, Council of Governors, Insurance Regulatory Authority, Capital Markets Authority, among others.

The role of the various stakeholders can be summarized as indicated in the following diagram:-



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- National Assembly Standing Orders 2021

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The Clerk of The National Assembly
Parliament Buildings,
PO Box 41842 - 00100,
Nairobi, Kenya.

Email: clerk@parliament.go.ke
Tel: (254-2) 222 12 91 or 284 80 00
Fax: (254-2) 224 36 94
Website: www.parliament.go.ke