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In collaboration with



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We would like to acknowledge the generous contribution of Kios and Misereor towards the production of this booklet

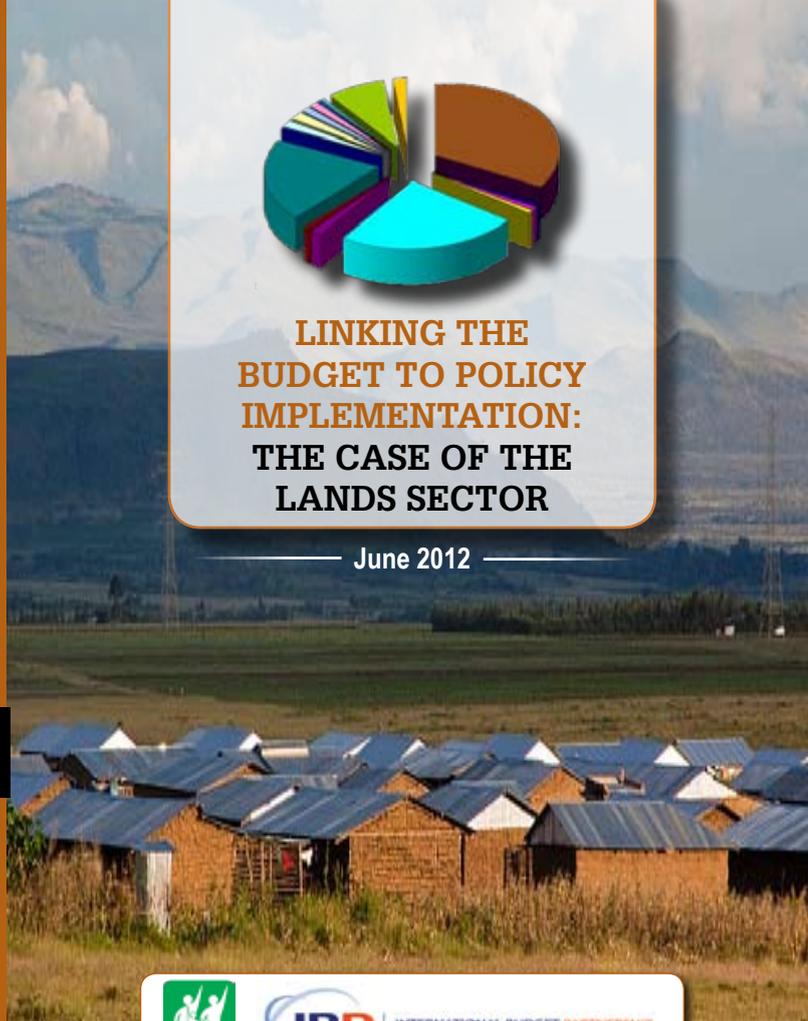


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LINKING THE BUDGET TO POLICY IMPLEMENTATION: THE CASE OF THE LANDS SECTOR

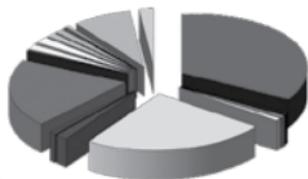
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**LINKING THE BUDGET TO
POLICY IMPLEMENTATION:**

THE CASE OF THE LANDS SECTOR



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LINKING THE BUDGET TO POLICY IMPLEMENTATION: THE CASE OF THE LANDS SECTOR

- 1. The lands sector in general has suffered from a lack of transparency in budgeting that has made it difficult for citizens to participate fully in the sector, or to hold officials accountable for their decisions and use of funds.**

This is not limited to the lands sector; the budget process as a whole in Kenya suffers from a number of deficiencies. First, the budget estimates are not made available to the public in a timely fashion. This year, the estimates were tabled in Parliament at the end of April as per the Constitution, but they have not been made available to the public yet, over three weeks later. The estimates are also bulky and not presented by sector to allow those with a particular interest in an issue such as lands to follow up on only that sector. Purchasing the full estimates when they are available has also been prohibitively costly for most citizens (approximately Kshs 4800 in the past). Once citizens get their hands on the estimates, they will have a difficult time understanding them, as they are not accompanied by any narrative description. It is not easy to find programs in the budget, or to know what activities will be implemented under these programs, and how the citizens' money will be spent. In the case of land resettlement, for example, it is not possible to find information about the use of these funds: who is supposed to benefit,

with how much land, where and when. Neither the budget estimates nor the in-year reports on actual spending provide data which is sufficiently disaggregated to follow a major program, such as land resettlement, and know whether or not the government is meeting its spending targets. The Ministry of Special Programs has made some of this information available on its website, but it is difficult to link the information to the budget. While the new Constitution mandates public participation in the budget process, it is not possible for the public to participate effectively with the limited information available to it.

2. The lands sector has historically fallen short when it comes to budgeting, spending and accounting for resources.

Although there are a number of priorities that are underfunded in the land sector, the Ministry has never fully spent its budget since 2007/2008. On average, it has spent around 88 percent of its allocation during this period. This problem is not unique to the Ministry of Lands, but it is particularly worrying in a Ministry with relatively little development expenditure, which is normally where delays are concentrated across Government. The Ministry has also been cited repeatedly by the Auditor General over the last several years for failing to present accurate financial statements for auditing. And there are rampant unsupported expenditures at the level of district offices, resulting in millions of shillings of spending that cannot be verified. These, and several other areas identified by the Auditor, do not show much improvement over time, indicating

that there are few sanctions for poor financial management in the lands sector. Given the enormity of the tasks ahead, and the likely increase in financing needed to implement land reforms, there is an urgent need to address these persistent weaknesses.

- 3. The Government of Kenya allocated over Kshs 7 billion between 2009 and 2012 for resettlement of internally displaced persons (IDPs) who were affected by the post-election violence in 2007/2008. However, there is little evidence on the exact number of people who were supposed to be resettled, how many have actually been resettled and how these funds have been used.**

What is clear about the allocation of these funds suggests poor planning and opaque management. The total proposed funding for IDP resettlement has grown rapidly since 2010. Yet a large share of these funds were not allocated in the original budget, but were only requested later in the year through a supplementary budget. Supplementary budgets are typically tabled in Parliament in the latter half of the year to allocate funding for unforeseen issues. Yet the IDP issue is not new and was not unforeseen in 2010 or 2011. Moreover, the way in which financing and accounting for IDP resettlement has been handled has tended to weaken transparency. Responsibility for resettlement lies jointly with the Ministry of Lands and the Ministry of Special Programs, but neither of them provide adequate information about their role in the process or their use of funds.

4. Lack of accountability for land resettlement programs is not restricted to the funding set aside for IDPs since 2009.

In fact, the Agricultural Settlement Fund (ASF), which was created to resettle and support small-scale farmers after independence, received Kshs 2.383 billion between 1995/1996 and 2006/2007, but did not provide its financial statements for auditing during that time. Although it then presented these statements in 2009 and 2010, it is unclear whether there was sufficient information to conduct a proper audit. Moreover, the impunity continues: the Fund received over Kshs 5 billion between FY 2007/2008 and 2010/2011, but it has not submitted any additional financial statements since that period. This means that an additional Kshs 7 billion plus allocated for land resettlement over and above the funds for IDPs has not been fully accounted for.

5. The available documentation suggests inadequate planning and budgeting for land reforms mandated by the Constitution, continuing a long trend of poor management in the sector.

The first concern is that the amount budgeted for land has changed by over Kshs 800 million between the 2012 Budget Policy Statement and the 2012 Budget Estimates, even though these two documents were both tabled in Parliament in the last half of April. This raises serious concerns about whether the budget figures Treasury releases to Parliament are credible. Another concern is that the Ministry of Lands

maintains a stable budget (recurrent plus development) in FY 2013/2014 and 2014/2015 even though the National Land Commission should come into effect from next year and begin to take over many of its responsibilities. One would expect the budget specifically for Ministry of Lands to reduce, while the total budget for the sector would increase to provide for new institutions and operations of the same.

6. No-one knows the true cost of implementing land reforms, and there does not appear to have been any effort to develop an updated costing in light of key policy changes over the past several years.

A detailed costing of land sector reforms was carried out in 2005. The global cost of the reforms over a six-year period was estimated at Kshs 10 billion. This estimate is close to the Kshs 9 billion proposed in the National Land Policy document of 2009. However, these figures do not include various costs for which it was impossible to make estimates such as the Land Settlement Fund and the Land Compensation Fund. Neither do they reflect changes in the reform process which are as a result of the implementation of the new Constitution. There has been no attempt to update the estimated costs of reform in light of the foregoing. At the same time, the allocation to the sector is far below that requested by the Sector Working Group: in 2012/13, the sector requested about Kshs 7.5 billion and received Kshs 5 billion. The sector report did not include extensive discussion of the cost of land reforms, either, so it is impossible to know if these have been taken into consideration. In all likelihood, the government has

not set aside sufficient funding for the reforms, but without additional information, it is impossible to know what these will cost.

- 7. There is evidence of increased budget allocation for specific areas within the lands sector that deal with reform, but most of the increased funding is for hospitality, printing and advertising.**

Between 2011/2012 and 2012/2013, the allocation to Land Policy Formulation Programmes (which includes land reforms) increased from about Kshs 244 million to Kshs 309 million. However, the increases included Kshs 43 million for printing and advertising, and Kshs 47 million for hospitality services (there were some reductions as well). These costs could cover training workshops and civic education on the new land laws, but it is not clear from the available information. If this money were for training, it is not clear why there is a separate budget line for training under recurrent expenditures, which is trivial: less than Kshs 500,000 in 2012/2013. Moreover, it is not clear what funding has been allocated for the development of subsidiary regulations, or increased operations to implement the reforms. There is a large increase in the budget for the Ministry of Lands Headquarters, which rose from Kshs 300 million to Kshs 491 million between 2011/2012 and 2012/13. But again, it is not clear why the Ministry of Lands should be vastly increasing the size of its headquarters when many of its responsibilities are being transferred to the National Land Commission. At the same time, the National Land Commission has been allocated only Kshs.125 million under

the consolidated funds services for salaries and allowances. Operations and other costs for the commission have not been budgeted for. In general, the budget books do not provide sufficient narrative or disaggregation to allow the public to understand how the sector is planning and budgeting for reform.

RECOMMENDATIONS

1. The Treasury should write the Budget in a language and style that is easily understood and reader-friendly to facilitate effective and meaningful public participation. The initial attempt to develop the Citizen's Budget in 2011/2012 should be improved to include more information in a systematic manner for all Ministries, Departments and Agencies. The document should also explain technical budget terminologies, be translated into Swahili and provide more specific justification for the various allocations. This will enable citizens to understand the reasons for the allocation patterns.
2. Parliament should urgently enact the law on the right to information and public participation with clear guidelines, in order to address the confusion currently being witnessed as a result of the existing unstructured system of soliciting citizen views and providing the public with relevant information.
3. The Treasury should make the budget estimates available to the public immediately after tabling in Parliament, both at the Government Printing Office and on the Treasury website. The current situation, where these estimates are still unavailable to the public a month after their release, is unacceptable. The public cannot provide comments on documents it does not have access to

4. Parliament should allocate money for the Land Settlement Fund in the 2012/2013 Budget so that the National Land Commission can begin the task of creating a more efficient and transparent settlement programme, including the resettlement of IDPs. The Land Settlement Fund must keep open and well-managed accounts, and these must be presented for audit annually with sanctions in the event of failure to do so.
5. Parliament should provide additional development funds for the immediate operationalization of the National Land Commission. Providing funds only for salaries will compromise the work of the Commission.
6. The Public Accounts Committee should order for a forensic audit to be done on the Agricultural Trustee Fund so that those found culpable for the delays and any misappropriation can be punished.
7. The Budget Policy Statement, which lays out the Government's broad budget plans for the year, should be tabled on time in March, and posted online immediately after it is tabled in Parliament (and no later than seven days after tabling).

8. The Government should set aside adequate funds to retrain the staff of the Ministry of Lands and the National Land Commission on transformation and new management strategies for the Ministry staff. Unless this is done the envisaged land reforms as per the constitution would largely fail. In the meantime, the Ministry of Lands should consider recruiting new staff to spearhead the reforms instead of using its current staff, most of whom may not have the independence to drive the envisaged reforms and improve the absorptive capacity.
9. The Ministry of Lands and the National Land Commission should undertake a comprehensive and urgent review of the costing for land reforms based on the new land laws and institutions.