

UNIT 4: LEGAL FRAMEWORK OF PUBLIC RESOURCE MANAGEMENT

► **Introduction:**

This unit covers the legal framework for the management of public resources. The unit begins by examining the public finance legal framework. Next we will look at the legal framework of human resource management. Finally, we will focus on the reforms that have been implemented by the Government in relation to public resource management.

PUBLIC FINANCE LEGAL FRAMEWORK

Public finance laws

Public Finance Management (PFM) Act 2012: The objectives of this Act are to promote good financial management at the National and County Government level. This would in turn facilitate effective and efficient use of resources. It also presents one-overarching legislation that is applicable to both national and county governments. Further, it complies with constitutional requirement to enact legislations on public finance listed in the 5th schedule and also mentioned in Chapter 12.

Public Procurement and Disposal Act, 2015: The purpose of this Act is to establish procedures for procurement and the disposal of unserviceable, obsolete or surplus stores and equipment by public entities to achieve the following objectives—

- ▶ To maximize economy and efficiency;
- ▶ To promote competition and ensure that competitors are treated fairly;
- ▶ To promote the integrity and fairness of those procedures;
- ▶ To increase transparency and accountability in those procedures;
- ▶ To increase public confidence in those procedures;
- ▶ To facilitate the promotion of local industry and economic development.

Other laws:

The government has enacted laws for governing the management of public finances which include:

- ▶ The Privatization Act 2005, Public Audit Act 2003
- ▶ The Local Government Act Cap 265
- ▶ The Commission on Revenue Allocation Act 2011
- ▶ The Independent Offices Appointment Act 2011
- ▶ Salaries and Remuneration Commission Act 2011

Role of National Financial officers

- ▶ **Auditor general:** The role of the Auditor General is stipulated in section 229 of the Public Finance Act. The Auditor General is responsible for auditing the accounts of all state organs which include national and county governments, courts, commissions and independent offices, political parties and any other public entity that it can audit under current legislation.
- ▶ **Controller of budget:** The Controller of Budget is appointed by the president and approved by the national assembly. The roles of the controller are:
 - ▶ **Oversight role** – monitoring use of public funds by institutions and reporting to the parliament for any corrective action.
 - ▶ **Controlling role** – authorizing any withdrawal of public funds
 - ▶ **Reporting role** - entails the preparation of quarterly, annual and special reports to the legislature and executive on budget implementation matters of the national and county governments.
 - ▶ **Advisory roles** - involves giving advice to Parliament on financial matters where a Cabinet Secretary has stopped transfer of funds to a State organ or public entity.
 - ▶ **Investigation role** – the controller’s office can conduct investigations on its own initiative or following a complaint made by a member of the public on budget implementation matters.
 - ▶ **Public Sensitization** - the controller’s disseminates of information to the public on budget implementation at both national and county levels as stipulated under section 39(8) of the Public Finance Management Act, 2012.

Roles of national financial institutions

Kenya National Audit office

The functions of KNAO include the following:

- Authorization of Issues from Exchequer Account
- Audit of all Government Accounts.
- Audit of Local Authorities Accounts.
- Audit of State Corporations, Statutory Boards, Courts, Commissions and Bodies.

Central Bank of Kenya:

- ▶ The Central Bank of Kenya is responsible for formulating fiscal and monetary policy, promoting price stability, issuing currency and performing other functions conferred on it by the establishing Act of Parliament. The Central Bank Act (Cap 491) mandates the Bank to undertake the following functions:
- ▶ Formulate and implement monetary policy directed to achieving and maintaining stability in the general level of prices.
- ▶ Foster the liquidity, solvency and proper functioning of a stable market-based financial system.
- ▶ Support the economic policy of the Government, including its objectives for growth and employment.

Salaries and Remuneration Commission (SRC):

The SRC was established by the Constitution under Article 230 with the mandate to set and regularly review the remuneration and benefits of all state officers; and advise the National and County Governments on the remuneration and benefits of all other public officers. The functions of the SRC are as follows:

- ▶ Inquire into and advise on the salaries and remuneration to be paid out of public funds;
- ▶ Keep under review all matters relating to the salaries and remuneration of Public Officers;
- ▶ Advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector;

- ▶ Conduct comparative surveys on the labor markets and trends in remuneration to determine the monetary worth of the jobs of Public Officers;
- ▶ Determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation;
- ▶ Make recommendations on matters relating to the salary and remuneration of a particular State or Public Officer;
- ▶ Make recommendations on the review of pensions payable to holders of Public Offices; and
- ▶ Perform such other functions as may be provided by the Constitution or any other written law.

Public Procurement Oversight Authority (PPOA):

The PPOA has the following functions—

- ▶ To ensure that the procurement procedures are complied with;
- ▶ To monitor the public procurement system and report on the overall functioning of it;
- ▶ To assist in the implementation and operation of the public procurement system and in doing so-
- ▶ To prepare and distribute manuals and standard documents to be used in connection with procurement by public entities;
- ▶ To provide advice and assistance to procuring entities;
- ▶ To develop, promote and support the training and professional development of persons involved in procurement;
- ▶ To issue written directions to public entities with respect to procurement including the conduct of procurement proceedings and the dissemination of information on procurements; and
- ▶ To ensure that procuring entities engage procurement professionals in their procurement units.
- ▶ To initiate public procurement policy and propose amendments to the PPOA Act or to the regulations; and
- ▶ To perform such other functions and duties as are provided for under the Act.

The Public, Procurement Oversight Advisory Board

- ▶ The functions of the Advisory Board are—
- ▶ To advise PPOA generally on the exercise of its powers and the performance of its functions;
- ▶ To approve the estimates of the revenue and expenditures of the PPOA;
- ▶ To recommend the appointment or termination of the Director-General of the Public Procurement Oversight Authority (PPOA)
- ▶ To perform such other functions and duties as are provided for under the procurement Act.

The Public Procurement Administrative Review Board

- ▶ The Public Procurement Administrative Review Board resolves disputes arising from candidates who claim to have suffered or risk suffering, loss or damage due to the breach of a duty imposed on a Procuring Entity by the Public Procurement and Disposal Act and regulations. The Review Board was established to promote and uphold fairness in the Public Procurement system through judicious and impartial adjudication of matters arising from disputed procurement proceedings and as a major alternative to the court system.

International and regional framework of HRM

- ▶ **International Labor Organization (ILO) Employment Policy Convention (No. 122 of 1964):** This Convention requires member countries to prioritize and pursue an active policy designed to promote full, productive and freely chosen employment. In 1999, the ILO launched the decent work agenda whose pillars are employment opportunities, worker rights, social protection and representation.
- ▶ **Millennium Development Goals (MDGs):** In 2000, world leaders committed themselves to achievement of Millennium Development Goals (MDGs) as a way of freeing people from extreme poverty and multiple deprivations. Goal 1 of the MDGs seeks to eradicate poverty and hunger through full and productive employment and decent work for all.
- ▶ **Global Jobs Pact:** In 2009, the ILO member states adopted the Global Jobs Pact to forestall prolonged global increase in unemployment, poverty, inequality and continued distress faced by enterprises.

East African Community (EAC):

Within the East African Community (EAC), promotion of freely chosen employment has been set as a core policy priority. These commitments underscore the need to have a coordinated policy to strengthen efforts for creation of full, productive, sustainable and freely chosen employment that guarantees the rights of workers and employers

National legal framework of Human Resource Management

The Constitution of Kenya:

The Constitution reaffirms the government's commitment to employment issues. Article 41 of the Constitution grants all persons the right to fair labor practices. It also guarantees every worker the right to: fair remuneration; reasonable working conditions; form, join or participate in trade union activities and programs; and undertake strike action. Article 43 of the Constitution provides for economic and social rights, which includes the right to social security. The Constitution also provides for equality in access to employment opportunities. The Constitution, therefore, advocates for decent work, where freely chosen productive employment is promoted simultaneously with fundamental rights at work, adequate income from work, representation and the security of social protection.

Labor laws:

The management of human resources is guided by the following laws

- i. Labour Relations Act, 2007
- ii. Labour Institutions Act, 2007
- iii. Employment Act, 2007
- iv. Occupational Safety and Health Act, 2007
- v. Work Injury Benefits Act, 2007
- vi. Industrial Training Act
- vii. NSSF Act
- viii. Persons with Disabilities Act, 2003
- ix. Children Act No 8 of 2001

Kenya Vision 2030:

Labor and employment sector is one of the foundations or enablers of the Kenya Vision 2030. A strong, dynamic and responsive labor and employment sector is critical in catalyzing and driving the social, economic and political transformations required for the attainment of the goals of the Kenya Vision 2030. The economic, social and political pillars of the Kenya Vision 2030 are anchored on human resource development; enhanced equity and wealth creation opportunities for the poor.

Sessional Paper No. 4 of 2013 on Employment Policy And Strategy For Kenya

i) Policy Objectives: This policy seeks to:

- Promote creation of decent employment opportunities
- Ensure creation of green jobs for sustainable livelihoods
- Build a pool of skilled, adaptive, self-reliant and enterprising labor force
- Pursue short, medium and long-term employment creation and poverty reduction strategies
- Improve labor market efficiency
- Strengthen the labor administration system and social dialogue
- Promote public-private partnership in employment creation

ii) Principles of the Policy: The principles underlying this policy are:

- Employment is multi-dimensional and cuts across all sectors of the country's economy.
- Participation of the private sector is critical for sustainable employment creation, economic growth and development.
- Culture shift from “job seekers” to “job creators” and self-employment.
- Sound collective bargaining, fundamental principles and rights at work, social and solidarity economy and social dialogue.
- Coordinated linkages and dialogue between government, education, research and training institutions and the private sector.
- Effective labor market information system.
- Transition to a green economy as a provider of human well-being, source of new decent jobs and supplier of sustenance for poor households.

Transformative capacity building of institutions and organizations towards

Institutional framework - HRM

- ▶ HRM is managed by the Ministry of Labor, Social Security and Services and various Commissions in the public sector.

The Ministry of labor, social security and Services

- This Ministry was formed as a result of re-organization of Government in May, 2013.
- The Ministry comprises of the former Ministry of Labor and part of the former Ministry of Gender, Children and Social Development. The two former ministries have existed in various forms since independence in 1963.
- Presidential Circular No. 2 of 2013 which effectively constituted the re-organized government placed the following departments under the Ministry; the Department of Labor, Office of the Registrar of Trade Unions, Directorate of Occupational Safety and Health Services (DOSHS), Department of Children Services, Department of Social Development, Social Protection Secretariat, National Employment Bureau (NEB), Productivity Centre of Kenya (PCK) and the Directorate of National Human Resource Planning and Development. Others are the Semi-Autonomous Government Agencies (SAGAs) namely the National Industrial Training Authority (NITA), National Council for Persons With Disability (NCPWD) and National Council for Children Services. The only Autonomous Government Agency (AGA) under the Ministry's mandate is the National Social Security Fund (NSSF).

Public Service Commission

- ▶ The functions of the Commission as set out in Article 234 of the Constitution include the following:
 - Establishment and abolition of offices in the public service;
 - Appointment of persons to hold or act in those offices, and to confirm appointments;
 - Exercise disciplinary control over and remove persons holding or acting in those offices;
 - Promotion of national values and principles of governance; and values and principles of public service;
 - Investigate, monitor and evaluate the organization, administration and personnel practices of the public service;
 - Ensuring that the public service is efficient and effective;
 - Development of human resources in the public service;
 - Reviewing and making recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service;
 - Evaluating and reporting to the President and Parliament on the extent to which the values and principles mentioned in Articles 10 and 232 are complied with in the public service;
 - Hearing and determining appeals in respect of county governments' public service.

Teachers Service Commission

TSC is established under Article 237(1) of the Constitution of Kenya (2010) as a Constitutional Commission and is mandated to perform the following teacher management roles:

- To register trained teachers;
- To recruit and employ registered teachers;
- To assign teachers employed by the Commission for service in any public school or institution;
- To promote and transfer teachers;
- To exercise disciplinary control over teachers; (vi). To terminate the employment of teachers.

► **The functions of TSC as outlined in the TSC Act No.20 of 2012 are to–**

- Review the standards of education and training of persons entering the teaching service;
- Review the demand for and the supply of teachers; and advise the national government on matters relating to the teaching profession.
- Formulate policies to achieve its mandate;
- Provide strategic direction, leadership and oversight to the secretariat;
- Ensure that teachers comply with the teaching standards prescribed by the Commission under this Act
- Manage the payroll of teachers in its employment;
- Facilitate career progression and professional development for teachers in the teaching service including the appointment of. head teachers and principals;
- Monitor the conduct and performance of teachers in the teaching service; and
- Do all such other things as may be necessary for the effective discharge of its functions and the exercise of its powers.

Reforms related to the Management of Public resources

The following are the major reforms related to the management of public resources that have been implemented by the Government:

- ▶ Establishment of oversight bodies: The establishment of key Public Finance Management institutions such as the Public Procurement Oversight Authority, the Kenya National Audit Office and the Parliamentary Budget Office is a key reform in the management of public resources.
- ▶ Integrated Financial Management Information System (IFMIS): This system including the introduction of electronic payments (G- Pay) has eliminated the use of cheques for direct payments to service providers. Cash Transfers from the exchequer to Ministries has also improved due to the Electronic Funds Transfer (EFT) system.
- ▶ Integrated Payroll and Personnel Database (IPPD): The IPPD is a distributed system with each ministry or agency having its own database. This system has improved payroll controls

- ▶ Pension Management Information System (PMIS): This system was developed and implemented in 2009. Currently, all pension payments are done through G-Pay. This has reduced the number of days of processing pension payment claims and transmission of information to pensioners from 90 days in 2006/07, 45 days in 2008/09, 28 days in 2010/11 and 21 days in 2012/2013.
- ▶ Electronic Project Management Information System (E- ProMIS): This system has made it easier to capture development partners' assistance.
- ▶ Modernized tax administration: A key reform measure that earned the Kenya Revenue Authority (KRA) millions in tax revenue was the introduction of the 'Electronic Tax Register' (ETR) in 2006. The register was brought in to enhance VAT administration, check tax evasion and improve the profitability of businesses in Kenya by supporting effective record keeping.

Conclusion

- ▶ In this Unit, we have looked at the legal framework for public resources.
- ▶ We have examined the laws that regulate public finance and public procurement.
- ▶ In addition, we have looked at laws that regulate human resource management.
- ▶ We have ended the unit by looking at various in charged with the responsibility of managing public resources.