

Deliberating Budgets

How Public Deliberation Can Move Us Beyond the Public Participation Rhetoric

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TABLE OF CONTENTS

Executive Summary	3
1. Introduction.....	4
2. Defining Public Deliberation.....	5
3. Deliberative Standards in Practice: Kenya’s Draft Budget Policy Statement 2016	8
3.1 Total Size of the Budget.....	8
3.2 Distribution of Budget Across Sectors (Sector Ceilings)	10
4. Deliberation in the Counties.....	11
4.1 Distribution of Water Projects.....	12
4.2 Beyond Water: Sector Distribution in Three Counties	15
5. Conclusions and Recommendations	16

EXECUTIVE SUMMARY

Over the past several years, Kenyans have engaged in a vibrant debate about the meaning of public participation in government decision-making, particularly with respect to the budget process. This debate has taken place amidst widespread disappointment with the quality of public participation as it is currently practiced at both national and county levels.

In this paper we argue that the concept of public participation needs to be refined. We propose that the concept of public deliberation is more useful and, ultimately, offers more specific guidance for thinking about how the public engages with budgets. Drawing on the concept of deliberative democracy, we argue that it requires government to make proposals, justify those proposals, and create space for not just the proposals but the justifications to be debated. The proposals and justifications must be relevant and plausible, must be open to change, and must be based on broad concepts of public welfare, such as equity and fairness, and not reducible to self-interest.

The paper proceeds to investigate whether Kenya's national and county budget documents produced since 2013 meet these standards. It finds that in most cases they do not. Many of these documents are not readily available to the public, and those that are often lack basic descriptive information about the government's proposals (such as specifics about the location of projects). Those that do have detailed descriptive information often lack relevant justifications for the decisions they contain. Where there has been an attempt to offer justifications for the decisions made, they are often too vague to actually explain these decisions.

The paper concludes by arguing that we should assess all government documents and government "participation" processes by the exacting standards of public deliberation, using existing laws to do so. The biggest impediment to public deliberation in Kenya today is not the absence of law, but the lack of sufficient demand from organized citizen groups for greater transparency and more serious deliberation in the budget process.

1. INTRODUCTION

Over the past several years, Kenyans have engaged in a vibrant debate about the meaning of public participation in government decision-making processes. This has largely been triggered by attempts to implement the participation requirements of the 2010 constitution. While this debate touches on all forms of decision making, it has been particularly heated in relation to the public's role in the new budget-making process. This is unsurprising, given how important resource sharing was in the drive for the 2010 constitution, and citizens' high hopes for enhanced development through fiscal devolution.

The participation discourse has focused on trying to define public participation and on debating the structures needed to make it effective. Equally critical questions have been asked about its content and purposes: participation for what and in what? The debate has taken place amidst widespread disappointment with the quality of public participation as it is currently practiced at both national and county levels.

In this paper, we argue that the concept of public participation needs to be refined. We propose that the concept of public deliberation is more useful and, ultimately, offers more specific guidance for thinking about how the public engages with budgets. Public deliberation may at first appear to be as broad and as vague a notion as public participation. Drawing on the concept of deliberative democracy, however, we argue that it provides firm and specific guidance on how to run a budget process in a participatory manner.

This paper proceeds as follows. We first define deliberation and give it specific meaning in the context of budget-making. We then consider what deliberation would require, using an example from the national budget process in Kenya. Next we turn to an assessment of county budgets against our criteria, drawing on research that we conducted in 2015 that looks at how counties have (or have not) used budget documents to explain decisions about how they are distributing resources. We conclude with recommendations for how to begin making budget deliberation a reality in Kenya.

2. DEFINING PUBLIC DELIBERATION

Our concept of public deliberation emerges from the literature on deliberative democracy and from moral philosophy. It is grounded in a deep respect for reason and reasoning as essential aspects of human identity and behavior. Proponents of deliberative democracy argue that the legitimacy of decision making in democracies must be based on public justifications for action and on public reasoning about those justifications.¹ As government decisions “bind people other than the decision-makers themselves,” making those decisions without public reasoning “conveys disrespect for citizens.”² Public reasoning must involve members of the public directly—as well as through media, and through their representatives—deliberating on the reasons for decisions that will affect their lives.

Proponents of deliberative democracy have emphasized that public reasons must meet exacting standards. One such standard is that the reasons people give for decisions must be subject to scrutiny and further refinement. A reason is the beginning of conversation, not the end. A related standard is that reasons given must be reasonable to others, and not only to the person or institution putting them forward. Reasonableness does not imply that everyone will always agree with a particular position, but everyone should be able to agree that a position rests on relevant, plausible ideas. It also means that views cannot simply be excuses for advancing the interests of a particular group or individual, but must speak to higher principles of public interest, such as equity and fairness.

This is closely related to how moral philosophers think about decision-making. John Rawls developed the theory of the “veil of ignorance,” which requires us to make decisions without knowing how they will impact on us directly, as a tool for ensuring that our reasons are guided by the public good and not vested interests alone.³ Amartya Sen, drawing on Adam Smith, contends that we must make arguments that would be acceptable to an impartial observer, even one from a different society. This distinguishes the idea of rationality, which may be self-interested, from public reasoning and ethical behavior. As Sen argues, “taking serious note of critical scrutiny from the perspective of others must have a significant role in taking us beyond rationality into reasonable behaviour in relation to other people.”⁴

To be considered public, a reason must be explicitly provided to the public before a decision is made and must be done so in a manner that allows it to be questioned. Furthermore, a reason can only be

¹ Bohman, J. (1998) “The Coming of Age of Deliberative Democracy,” *The Journal of Political Philosophy*, 6(4).

² Gutmann, A. and Thompson. D. (2004) *Why Deliberative Democracy?* Princeton University Press, Page 22.

³ Rawls, J. (1971) *A Theory of Justice*, Harvard University Press.

⁴ Sen, A. (2009) *The Idea of Justice*, Harvard University Press, page 197.

questioned if it is adequately detailed. For example, a government may say that it took a particular action because of “equity” or “efficiency” or, as is becoming increasingly common in Kenya, because of “public participation.” These reasons are shallow, however, if they do not provide additional details. Equity alone is not a reason, since people have very different views of what is equitable. If a decision was taken because of equity, there must be sufficient detail to understand the conception of equity at play. For example, is the decision equitable because it looks at the different needs of people and then allocates more to those that are neediest? That would ground the term “equity” in a sufficiently clear process of reasoning that could be debated publicly.

Similarly, while public inputs into a process are important, not all of them are going to be taken into account and not all are equally “reasonable.” There must be an explanation of the process by which public inputs are filtered and selected for this to be an adequate justification or a public reason. Imagine two individuals that both participated in a public consultation and made inputs. Only the inputs of one of the two ultimately finds its way into a government plan, budget, or policy. If the reason given for this is “public participation,” there is effectively no reason given to the second participant whose input was ignored. This cannot be an adequate public justification.

The standards of public deliberation require that decision makers provide justifications for all major decisions. This is quite an exacting standard compared to the requirements of public participation. Participation only requires that the public be consulted about major decisions. Participation requirements might be met by having an open public meeting where people talk about the challenges they are facing in the community or provide a list of development projects they would like to see implemented. Even if some of these projects are eventually adopted by government, this process would not satisfy the requirements of deliberation. To satisfy these requirements, the government would have to prepare a set of proposals and justifications for such a meeting, lead a deliberation over those proposals, and then provide reasons for supporting or rejecting public views on those proposals.

Suppose that the government wanted to consult the public on the national Budget Policy Statement (BPS, often referred to internationally as the Pre-Budget Statement). In the Kenyan budget-making process, this document is mainly designed to 1) set overall targets for revenue and spending and 2) to set the distribution of the budget across key sectors (e.g., agriculture, health, etc.).

The standards of deliberation would require the government to present a draft document, or at least a structured proposal, explaining the overall budget and sector distribution for the coming year. This proposal would need to be provided to the public in a way that allowed them to understand it before

giving their feedback. It would also need to be based on a set of justifications that would answer such questions as:

- Why is the budget going to grow by X percent?
- Why is projected revenue increasing by Y percent?
- Why is health taking a larger share of the budget than agriculture?
- Why is the share of the budget for infrastructure decreasing this year relative to last year?

The forum itself would have to be organized so that people were given both reasons and decisions, and then asked to comment on these. Reasons or decisions that were found to be inadequate after deliberation would then have to be revised. Note that this does not mean the government's budget proposal would necessarily change. It might only be the *reasons* for that proposal that would change. What matters is that the proposal is open to change to accommodate reasons provided by the public.

One of the principles of deliberation is that political leaders are more accountable for the reasonableness of their decisions than their actual decisions.⁵ No decision will satisfy everyone, nor will reasonable decisions always turn out to be correct in hindsight. But the public should feel that a reasonable process was followed for arriving at a decision. That process must be open and transparent. Equally importantly, it must be based on public reasons. And, while reasonable people may disagree on the decision itself, they must be able to agree that the reasons given for the decision are legitimate. Accountability for reasonableness also involves other procedural requirements, such as opportunities for redress ("revisability"). When decisions are not aligned with what members of the public believe is reasonable, there must be a way for these decisions to be reviewed. This is partially accomplished in Kenya through the separation of powers, which allows the legislature, after consultation with the public, to amend the executive budget.

One criticism of deliberative democracy and of deliberative theories of justice is that not everyone is reasonable. This can make reasoned public deliberation difficult. Rawls tried to restrict his theory of justice to reasonable actors. Sen has also noted the importance of education (so that citizens form

⁵ For more on the idea of accountability for reasonableness, see Norman Daniels and James Sabin, *Setting Limits Fairly: can we learn to share medical resources?* Oxford University Press, 2002.

“tolerant values” and a “free, energetic and efficient media” to ensure a certain level and quality of reason.⁶

It is true that not everyone is reasonable and not every reasonable person is reasonable at all times. This is equivalent to the observation that not everyone is democratic. Some people will vie for elected office only to pursue an anti-democratic agenda. But these are not arguments against democracy or deliberation. They are arguments in favor of certain provisions to ensure that deliberative democracy can function: education; a vibrant media; legal restrictions on incitement; ensuring that reasons are not overly-complicated, but explained simply to promote deliberation; and so on. While everyone may not be reasonable all the time, representative democracy relies on people generally having the capacity to reason. Deliberative democracy builds on this general premise.

3. DELIBERATIVE STANDARDS IN PRACTICE: KENYA'S DRAFT BUDGET POLICY STATEMENT 2016

To understand what deliberative standards would require, it is useful to return to the example of the BPS and assess whether it meets the standard of public deliberation. This year, Treasury released a BPS for public discussion prior to tabling it in the National Assembly. By releasing a draft document in advance, Treasury took a step toward enhancing public deliberation by providing the public with an opportunity to debate the document prior to finalizing its contents. However, do the contents of the document meet the standards of public deliberation?

To look at this question, we need to ask what decisions are meant to be made in the document and then whether the decisions are justified. We focus on the two main decisions in the BPS mentioned above: the total size of the budget, and the distribution of funds across sectors.

3.1 TOTAL SIZE OF THE BUDGET

The size of the budget (revenue, expenditure, and deficit) is described on pages 38 and 39 of the draft BPS. The document states that total revenue will increase from Ksh 1.31 to Ksh 1.51 trillion; total expenditure will increase from 1.91 to 2.07 trillion; and the deficit will decrease from Ksh 596 to 561 billion. Inclusive of grants, the deficit in 2016/17 is projected to be 6.9 percent of GDP compared to 8.1 percent in 2015/16.

⁶ Sen, A. (2009) *The Idea of Justice*, Harvard University Press, 337.

What is the justification provided for these shifts? The document mentions that the fiscal policy for 2016/17 “indicates our deliberate convergence path towards the East African Community Monetary Union (EAC) protocol’s fiscal targets.” This protocol includes the requirement to have a “deficit inclusive of grants of 3.0 percent of GDP by 2020/21.” No further justification is provided for the revenue, expenditure, or deficit targets.

The declining deficit as a share of GDP is in line with the justification provided. However, this does not adequately explain how the size of the total budget was decided. After all, a deficit of a particular size can be achieved by many different combinations of total revenue and total expenditure. What remains to be explained is the particular size of the revenue and expenditure targets chosen here.

What would constitute an adequate public justification in this case? The expected growth in revenue depends on the projected increase in the size of the economy and the expectations of performance of various revenue sources. These expectations in turn would normally be based on performance information from the last couple of years and the first half of 2015/16. Given a specific revenue projection and a deficit target, expenditure would then follow naturally.

Does the BPS provide this information and is it used to justify projections? Economic growth is expected to be 6.1 percent in 2016/17, compared to 5.8 percent in 2015/16. The document does not clearly explain what impact this should have on revenue. It does indicate that revenue performance in the first half of 2015/16 has been “weaker than expected.” This has led to a decline of Ksh 47 billion in the target for the 2015/16 budget year (see page 14 of the BPS).

No explanation is provided for how the 2016/17 projection has been derived. Using the revised target for 2015/16, revenues for 2015/16 are projected to grow by nearly 19 percent over 2014/15, while revenue for 2016/17 is expected to grow by only 15 percent.⁷ This may reflect more modest revenue targets in line with the “weaker than expected” performance in 2015/16, but this is speculation. No justification in line with the performance information is actually provided.

Have we been given a deficit target? Only for 2020/21. There is no specific explanation of why the deficit target this year is 6.9 percent of GDP. Any amount less than 8.1 percent and greater than 3.0 percent could be justified by the logic of EAC convergence.

⁷ Authors calculations based on Annex Table 2 of the Budget Policy Statement 2016.

In summary, while there are some parts of what could constitute a public justification for the total size of the budget in 2016/17, there is no comprehensive explanation for the decisions proposed.

3.2 DISTRIBUTION OF BUDGET ACROSS SECTORS (SECTOR CEILINGS)

We turn now to the issue of how much will go to each sector. This is detailed in Table 5.2 on page 42. It is possible to observe a number of important changes in the sector distribution between 2015/16 and 2016/17. For example, the agriculture, energy/infrastructure, and public administration sector shares of the budget are declining, while education, governance, and environment are increasing their shares. There is no change in social protection, and a very marginal increase in health.

What is the justification provided for these shifts? Page 41 of the BPS provides an explanation of priorities immediately prior to Table 5.2, stating that the budget will “focus on” social sectors (education, health, and social protection) and that the second major priority area is the energy/infrastructure sector. Security, youth, and agriculture are also singled out as priority areas and social protection is mentioned a second time as a priority.

The only sentence in this section that could be viewed as an explanation refers to energy/infrastructure: “This reflects the priority assigned capital investments in our growth objectives.” This may mean that the sector is seen as particularly important for achieving high economic growth, though there is no further elaboration.

However, none of this information provides any public rationale for the actual choices we described above. There is no explanation of why, for example, in spite of the priority assigned to social protection, its share of the budget is remaining the same. Agriculture and energy/infrastructure are both identified as priorities even as their shares of the budget are declining. In the latter case, this may be due to the decline in one-off expenditures associated with the single gauge railway, though it is not possible to be certain. Large increases in the governance and environment sectors are also not justified.

The only other explanation provided for sector distributions is on page 39 of the document, where it states that the ceilings for “goods and services” are the same as in 2015/16 with adjustments only for one-off expenditures and inflation. As there are no further details provided about the one-off expenditures, and as ceilings are not broken down into categories such as “goods and services” this does not provide much guidance. In sum, there is no public justification for the changing sector

shares of the budget that would permit deliberation on the proposals from the National Treasury in this document.

Therefore, the draft BPS does not meet the standards required for public deliberation. Were such a document to form the basis of a public forum, the forum would also fall short of the requirements of budget deliberation.

4. DELIBERATION IN THE COUNTIES

Last year, we undertook a review of available county budget documents—County Integrated Development Plans (CIDPs), Annual Development Plans (ADPs), Budget Review and Outlook Papers (BROPs), and budget estimates—to see if they met the standards of public deliberation. We asked a very specific question about the distribution of the development budget across sub counties and wards. We did this because most citizens view development projects as particularly important, and also to limit the scope of the analysis.

In the absence of predetermined criteria for sharing resources within counties, the distribution of development spending requires clear and relevant justifications. While the constitution mentions “equitable development,” and emphasizes special consideration for marginalized areas, it does not prescribe how counties should allocate resources to achieve equity or reduce marginalization.

We undertook two types of analysis. First we looked at how resources in the water sector were distributed in all 47 counties. We checked what information about the distribution was included in publicly available documents and looked at whether they contained reasons for the distribution. Second we investigated how three counties (Nakuru, Kisumu, and Elgeyo Marakwet) approached distribution overall, not just for the water sector. In both studies, we relied heavily on publicly available budget documents. In the second study we also carried out some interviews and accessed some additional documents. The full papers documenting our findings will be published on IBP’s website later in 2016.

We found that, in many cases, it is not possible to know the proposed distribution of resources within a county. While projects in some wards or subcounties are highlighted, the information availed is not comprehensive. Where information on distribution was available, the quality of the public reasons given for the distribution were low in most cases. We highlight a few exceptions to this and propose improvements.

4.1 DISTRIBUTION OF WATER PROJECTS

Collecting comparable information across counties in Kenya is a major challenge. Many county websites provide limited or no county planning or budget documents at all. There is also no central repository of such data at any national institution, such as the Controller of Budget or the Ministry of Devolution and Planning. As a result, it is simply not possible to do a comprehensive analysis without physically visiting all 47 counties (even then, much information is unavailable).

As of January 2015, only 18 counties published CIDPs on an official county website. As of June 2015, only 14 counties had their 2014/15 budget proposals online. And as of January 2016, only nine counties had their 2015 Budget Review and Outlook Papers online.⁸

In undertaking our analysis of how the budget was distributed in 2015, and justifications given for that distribution, we found less than half of the county documents we were looking for were published online. In some cases, we were able to access these documents through other means, however. In what follows, we will make reference to the documents that were available, highlighting the documents we did not access wherever we did not have them from all 47 counties.

WHAT INFORMATION DID WE FIND ABOUT DISTRIBUTION OF FUNDS FOR WATER PROJECTS?

We sought to establish whether we could identify the location and cost of water projects in key budget documents from the 47 counties. We found CIDPs from 44 counties. Of these, 24 contain information on the geographical location of proposed projects at the ward or subcounty level as well as information on their costs, and 12 contain information about location of projects but not the cost.

We were only able to access Annual Development Plans (ADPs) from 17 counties for either 2014/15 or 2015/16 (or both) for this analysis. Of these, only seven counties provide locations of projects and their costs in at least one of their ADPs, while another four provide locations but no costs (in at least one available ADP).

We were able to access 2014/15 budget estimates from 40 counties. Of these, 24 did not provide any information on the location of projects; 12 had both location and cost information. For 2015/16, we

⁸This data is drawn from biannual reviews conducted by IBP Kenya. See <http://www.internationalbudget.org/budget-work-by-country/ibps-work-in-countries/kenya/understanding-county-budgets/tracking-county-budget-information-kenya/>

were only able to access 30 documents; only 10 had both location and cost information for water projects.

WHAT JUSTIFICATIONS DID WE FIND FOR THE DISTRIBUTION OF WATER PROJECTS?

Most of the CIDPs we reviewed refer to “public participation” as the source of the projects in the CIDP. This was also the case in the six ADPs we reviewed that have explanations (the others do not). In general, it is impossible to know what this means. No information is provided about what proposals were given to the public and how they responded to these. If no proposals were made, and the public was simply asked to list projects, this would not be consistent with the principles of deliberation. If the projects listed were exhaustive, meaning no filtering was done and no projects were deemed irrelevant for inclusion in the CIDP or ADP, then it would be appropriate to say that the justification for inclusion was “public participation.” CIDPs have been treated in many counties as comprehensive wish lists of projects, so this is possible. In the case of the ADP, however, which must contain a more realistic assessment of the projects for a given year, it is difficult to believe that no projects were eliminated from the final document after they were proposed by the public.

It is impossible to know whether the public suggested any projects that were not included in the CIDP or the ADPs from available documentation. In most cases, there is no independent record of what people said during CIDP consultations. If there were any projects that were not included, then the justification of “public participation” would be inadequate, as it would not provide any explanation for what was included and what was left out. In the few cases where participation reports are available from CIDP consultations (such as Migori and Kisumu), the presentation of projects in the two sources differs in ways that make it difficult to know whether they refer to the same things or not. For example, the Kisumu CIDP provides for countywide improvement of basic education, with 3.1 billion allocated for construction and improvement of Early Childhood Development (ECD) centers. The public participation report suggests that the public requested specific ECD centers throughout the county and a number of citizens requested one for each primary school. It is unclear whether the general allocation in the CIDP caters for some or all of the specific ECD centers proposed in the public participation report. In the case of the ADPs, there are no records of public inputs and how these were treated.

One exception to the above is Elgeyo Marakwet, which introduced legislation to regulate the distribution of funds across wards. The Equitable Development Act (EDA) 2015 uses a formula to

share resources, and the county's 2016/17 ADP refers to this legislation in justifying the distribution of resources.

The use of a formula to distribute funds can serve as a mechanism for ensuring that there is a reasonable justification for distributive choices. However, this is not automatic; it depends on the justification for the underlying formula. In the case of Elgeyo Marakwet, the formula borrows heavily from the Commission on Revenue Allocation (CRA) formula for sharing resources across the 47 counties. While this formula has been justified in various CRA documents as equitable due to its focus on need, it is not immediately clear that it can be applied to ward level distribution. For example, no explanation is provided of what "fiscal responsibility" means at the ward level, given that wards do not manage finances. There is arguably limited justification for the formula in Elgeyo Marakwet legislation or related policy documents. For example, the EDA 2015 requires 60 percent of development funds to be distributed equally among the wards, more than double the equal share in the CRA formula. What is the justification for this high equal share (explicitly recognized in the law as "equal" but not "equitable")? No justification is provided in the legislation.

In the case of budget estimates, the general pattern that emerges is of reference back to previous documents, like the CIDP and ADP, in some cases sector plans, and to public participation. Given the weakness of the justifications we found in CIDPs and ADPs, these do not provide reasons for later choices. The few sector plans we reviewed also fail to provide substantive justifications for distributional decisions. Budgets do in some cases provide additional general criteria for distribution. For example, the 2014/15 budget in Busia refers to "demand," "community involvement," and "participation" as the criteria for distribution of rural water projects. Aside from the fact that these all plausibly mean the same thing, there is no way to know how they actually influence decisions in the budget.

Other criteria, such as the need to complete ongoing projects, or the decision to derive projects from lists provided by county assembly members, do not really solve the problem of regress: rather than providing actual explanations, they make references to other sources which also lack clear justifications. The need to complete ongoing projects is surely legitimate, but why the project was chosen in the first place and why it was not already completed remain unanswered questions. Projects suggested by a member of the county assembly (MCA) are important, but do not constitute a proper explanation of distributional choice, especially where every MCA is pushing for more projects for their own ward with limited total resources available. How is the decision taken about which wards get which projects?

4.2 BEYOND WATER: SECTOR DISTRIBUTION IN THREE COUNTIES

The three counties we examined in more detail—Nakuru, Kisumu, and Elgeyo Marakwet—provide a fair amount of information about the distribution of development funds compared to other counties. In Elgeyo Marakwet, this information is primarily contained in planning documents and, as mentioned above, is now heavily determined by the EDA. In Nakuru and Kisumu, this information is contained in the budget estimates. While to a certain extent it is acceptable for counties to differ in the stage at which they provide more detailed information, it is important to have a breakdown in the approved budget. This is the final decision about distribution and needs to be clearly stated.

Even in these relatively transparent counties there are quite a number of cases where projects are described as “countywide,” “all wards,” or “various wards,” even when these are divisible projects that will be located in specific places. In some cases “all wards” projects may not be implemented in all wards or may not be implemented equally in all of them; for example, some urban wards may not benefit equally from livestock extension services. This problem is common in the agriculture and roads sectors. For example, construction of 25 bridges “approximately one per ward” (Nakuru ADP 2015/16 p.23), construction of “motorable bridges” countywide (Nakuru PBB 2015/16 p. 228), or development of irrigation schemes countywide (Kisumu PBB 2015/16 p.245). This presentation makes it difficult to track funding to each ward and whether they are all truly benefiting. It is important to note that counties very legitimately invest in flagship or countywide projects that are not divisible and benefit the county as a whole. However, there are many projects that are targeted to specific locations and this should be clear.

All three counties distribute part of their development budget equally across the wards. Interestingly, although Elgeyo Marakwet has the most sophisticated formula for distribution, it also has the highest “equal share” (60 percent of development funds distributed equally by law, compared to roughly 40 percent in Nakuru and 7 percent in Kisumu in 2015/16), which is the most inconsistent with equity considerations and is further evidence of the limitations of a formula. While it theoretically can ground distribution in well justified principles of equity, this is not intrinsic.

HOW IS DISTRIBUTION JUSTIFIED IN THESE THREE COUNTIES?

As in our wider sample of counties for the water sector analysis, these counties often justify their decisions in terms of “public participation.” However, there is the same lack of evidence of public input, how it was filtered, and whether it was utilized. Kisumu does have public participation reports available to document public inputs in its CIDP. However, the Kisumu report demonstrates the

weakness of using public participation as a justification. Some wards have no projects in the participation report because, in some cases, Kisumu conducted public forums at the subcounty level and people from distant wards were not able to attend and give their input. This highlights a potentially perverse impact of public participation: that it may actually deny projects to parts of the county that are not able to participate. If this were the case, it would likely lead to a less equitable result than if the county had proposed a distribution based on more objective criteria and then opened the decision to public debate, as public deliberation would require.

The most recent budgets from the three counties tend to justify distribution on the basis of general statements (if they justify it at all). Kisumu mentions public participation and the role of the County Budget and Economic Forum. Elgeyo Marakwet mentions “social equity and participatory development.” It is not possible to link these general concepts to specific principles or data used to actually make decisions. They therefore constitute very weak public reasons. It is also the case that both the executive and the assembly make different choices in preparing and amending the budget, but both refer to public participation as the basis. This points to yet another limitation of participation as a public reason.

As would be expected, county executives retain some discretion to pursue projects that they believe are technically needed in the county but that the public may not prioritize. This might include things like maintenance, equipment, and research studies. While this is entirely legitimate, budget documents rarely provide a justification for these expenditures. Although county officers often claim that sector plans provide these justifications, our review of a sample of plans in Kisumu and Nakuru suggests otherwise.⁹ There is no clear justification in any document we have seen for these choices.

5. CONCLUSIONS AND RECOMMENDATIONS

The specter of public participation is beginning to haunt us. Everyone claims to be pursuing participation, yet most feel that they are not participating. We argue that, particularly in the budget realm, this reflects the fact that public participation is a vague and indeterminate concept. We have proposed that public deliberation is helpful because it focuses on the roles of reason and justification in budget decision-making. It puts exacting standards on government, which must create conditions

⁹ Kisumu’s strategic plan for the water sector does mention equity and provide some data on water access, but does not provide a justification for any specific investments in terms of equity considerations. See County Government of Kisumu, “Kisumu Water and Urban Sanitation Country Strategic Plan 2015-2019,” April 2015.

for deliberation by providing information, reasons for decisions, and space for choices to be discussed.

Our review suggests that most national and county budget documents fall short of providing the information required to meet the standards for deliberation. Many lack basic information about how decisions are made and the descriptive information needed to discuss these decisions. Their most significant deficiency, however, is the lack of serious public justification for the choices they contain. For the public to debate these choices, they must know what the choices are, but also what the reasoning behind those choices is supposed to be.

In our view, the role of the public is to demand the information it needs to give informed input. This includes transparent documentation of decisions and the reasons for them. It is unlikely that reason can be legislated. While public participation legislation may help to create certain structures and minimum standards to facilitate engagement between government and citizens, it is active deliberation itself that will establish what the public needs and what government must provide.

We conclude with three recommendations:

1. All budget documents at both levels of government should contain reasons for major decisions. These reasons must be sufficiently clear, detailed, and data-driven to permit deliberation and disagreement.
2. When assessing the quality of public participation, whether through open government forums, private forums, focus groups, the media, etc., the standard that should be used is public deliberation: the quality of reasons and the degree of deliberation about the justifications given for decisions made.
3. Citizens should use opportunities in existing legislation to insist on transparency and on proper justifications for government decisions. They should organize and inform themselves to demand better quality deliberation in existing forums. We believe that the gap here is a demobilized citizenry more than a lack of legislation.