Somewhere along the bumpy road: democratizing public finance in Kenya

By Dr Jason Lakin

The promulgation of the Constitution of Kenya, 2010 ushered in an era in which Kenya began devolving a number of functions and national revenues to counties. Out of these reforms, financial decision-making should come closer to the people on the ground, and lead to more efficient and effective allocations of public resources.

Form without substance. It is one of the most ancient of shell games.

We now have fancy words for it, like “isomorphic mimicry” (Andrews, Pitchott, and Woolcock 2012). But it is essentially the same tale. It is easy enough to alter the superficial aspects of what governments and societies do. Politicians and even ordinary people will in fact change the way that they talk and look in order to command respect or legitimacy if the right amount of pressure is applied. But changing the core of what people believe and how they act is not so easy.

Public financial management reform has this property globally, and the last few years have seen plenty of it in Kenya too. Counties now regularly produce documents with names like “County Integrated Development Plan,” “County Fiscal Strategy Paper,” and “Program-Based Budget.” They do so because that is what the law requires and because it is ultimately fairly easy to copy-paste a few things from here and there, and put together a few tables, and slap some comforting words on the front that will satisfy the Controller of Budget or the County Assembly or other constituencies that will not look too carefully between the sheets.

But the production of documents was not meant to be an end in itself: these documents are meant to reflect a new way of doing business. I will refer to this new way of doing business, embodied in the 2010 constitution and further elaborated by the Public Finance Management Act 2012, as the democratization of public sector decision-making. This term is apt because the new approach is modeled on a conversation with various actors, each of which must make inputs and justify inputs over time, and each of which should receive some kind of feedback on whatever inputs they have made. This is all intended to promote deliberative democracy, a philosophy of governance that is “organized around an ideal of public justification” (Bohman 1998).

So where are we today? Are we in the realm of empty isomorphism or the realm of robust deliberation? I believe we are somewhere in between. Signs of form without substance abound, but there are also promising signs of democratization. As we navigate this transitional moment, it is for ordinary citizens to decide in which direction we will move. Will we move toward the democratization promised by the constitution? Or will we settle for old chang’aa in new bottles?

The problem begins with planning.

There is a strong perception in Kenya that the country has a high capacity to plan but a poor capacity to implement. This view animated the drafters of the County Governments Act (CGA) and the Public Finance Management Act (PFMA), which endeavor to force counties to create a series of plans and then to follow them. The CGA is often cited in this regard, as it creates “an obligation to plan by the county” and then creates a requirement that budgeting be linked to those plans. “No public funds shall be appropriated outside of a planning framework.” (CGA 14)

While it is hard to fault the intention here, it is not clear that the law goes about encouraging planning in a particularly effective way. Let us look at what it requires of counties. The CGA requires counties to prepare five year County Integrated Development Plans (CIDPs), 10 year sector plans, 10 year spatial plans, and finally urban plans to be reviewed every five years. The PFMA requires counties to prepare Annual Development Plans in addition to those in the CGA. That is five plans of differing timesframes with no further guidance on how they are to relate to one another.

The direct link to the budget is the Annual Development Plan (ADP), which must be tabled in September every year. Logically the ADP should be a one year version of the CIDP; it must extract from the five year plan the priority items to be taken up in a given year.

The requirements for the ADP in the law are quite onerous, however. The ADP is supposed to contain all major programs and capital investments for the year, with a description of key goods and services, and measurable indicators of progress, plus a summary budget at the program level. This is essentially asking government to prepare a draft budget in September, seven months before the budget proposal actually has to be tabled.

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After preparing this detailed ADP and sending it to the assembly for approval, the county is then required a few weeks later to start the budget formulation process by preparing its County Budget Review and Outlook Paper (CBROP), giving its view of how money should be divided between sectors (health, education, etc.). These are then discussed through a series of sector boards, involving the public, and firmed up in February in the County Fiscal Strategy Paper. After this, money is distributed to programs and capital projects through this budget estimates.
Now, if we take seriously the process of developing a provisional sector distribution, holding hearings, refining the sector distribution, and then allocating funds at the program and project level, why would we develop a draft budget the ADFP a few weeks before we undertake this extensive set of activities?

A reasonably intelligent county officer cannot take seriously both of those requirements. Either the ADFP is not important, and we focus on the annual sector process, or we take the ADFP very seriously and not the sector hearings. It is not possible to do the same thing twice in succession. Our obsession with planning has actually led us to encourage form without substance. In a situation where the planning framework is contradictory, plans will be produced to meet legal requirements, not to facilitate decision-making.

The easiest resolution to this problem, in my view, is to eliminate the ADFP. The law could be amended to force counties to link their CBBROPs directly to their CERPs, using the CBBROP as an opportunity to provide a justification for sector ceilings based on the relevant parts of the CERPs to be implemented in a given year. This would eliminate one of the planning documents and at least one incentive for isomorphism.

The broader point is that the multiplication of documents and forms does nothing, on its own, to encourage proper planning or to force counties to implement their plans through the budgets. If anything, it tends to create opportunities for confusion and contradiction, as many county documents appear to diverge from one another in respect of priorities and justifications.

While the legal morass around planning has contributed to the malaise, the deeper problem is one of supply and demand. The new budget process demands of citizens that they, and their elected representatives in the assemblies, engage with budget documents. In the absence of such demand, there is unlikely to be much supply. Or rather, the supply we will get will be of the type adequate to satisfy the bookkeeper, but not of the quality necessary for proper deliberation.

I can demonstrate this with national budget documents, which are theoretically more sophisticated and more open to public scrutiny. Consider the 2015 national Budget Policy Statement. Arguably, this is the single most important budget document in the new budget cycle. Produced in February, it is the moment when Treasury proposes and Parliament modifies the total size of the budget (total revenue, total spending, and deficit) and the sector distribution of that budget. The final ceilings set in this document are meant to be fixed as the budget enters its final stage.

You would expect, then, that the document would dwell on the justification for the sector distribution of the budget. To the contrary, this 150 page document has exactly one page that discusses the sector distribution of the budget. And what does that one page say? The first thing it says is that the “critical social areas” will get the bulk of the budget. This apparent enthusiasm for the social sector does not actually match the proposed budget, however. Instead, the proposed share of the budget going to education is dropping from 26.1 to 23.3% in 2015/16. The proposed share of the budget for health is also slightly falling, from 4.0 to 3.7%, and the medium term projections show it continuing to fall to 3.3% in another two years. The IFS also emphasizes energy and infrastructure as a priority sector, and proposes that its share of the budget will continue to rise over the medium term. The 2015/16 ceilings show an increase from 21.7 to 27.6%.

The point I want to make is not about the choices themselves. The point is rather that the fuzzy, weighty, decision in reducing spending on education and health in favor of infrastructure receives no explicit justification in the document. And the narrative in the document is simply mistaken about what is happening even to infrastructure over the medium term. How is it possible that such a key document contains effectively no credible explanation of the choices proposed?

The lack of any sort of justification for these choices (and many others) is an affront to the notion of deliberative democracy in the realm of public finance. This is a weakness because there is no serious attention paid to the contents of the Budget Policy Statement. Where the demand is low, but the supply is guaranteed by law, we can expect that supply to be of correspondingly low quality.

Unfortunately, you cannot legislate quality. You cannot put into the law what constitutes a justification and what constitutes adequate deliberations. These things must be defined through active engagement between citizens and their governments. The constitution gives us that responsibility. Are we ready for it?

Returning to the counties, we may ask whether the role of public participation, so frequently cited in the constitution and in the PFM Act, is also a victim of the isomorphism we have described.

Our consideration of this issue reveals that even what can be legislated cannot be enforced without active citizen engagement. Recall that under the previous dispensation, there was a fairly elaborate scheme of participatory budgeting at the local authority level. This scheme, known as the Local Authority Service Delivery Action Program, was itself a good example of isomorphic mimicry. On paper, it was a Brazilian import, closely modeled on the Brazilian participatory budgeting approach, with a certain share of the capital budget set aside for citizens to decide how to spend. In practice, LASSAP was thought to be fairly ineffective, in spite of the fact that it was bolstered by a grant from the Local Authority Transfer Fund that was conditional on its functioning.

In the new constitution, out with local authorities and LASSAP. Those were replaced by vague exhortations to public participation at both national and county level, but no equivalent structures. However, there is one formal legal body created by the PFM Act for budget participation: the County Budget and Economic Forum. This forum is barely elaborated as LASSAP, but its role is to facilitate public consultation on key budget documents, like the Fiscal Strategy Paper. It is meant to have as members the county executive plus an equal number of non-state actors representing specific interest groups, such as women, professionals, business, labour...

The availability of budget documents over time

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Source: Open Budget Survey 2015, International Budget Partnership

Nairobi County Assembly Members engage in a threefold fight on the floor of the House over county leadership decisions on March 10, 2015, and so on. The law provides minimal guidance on how it is supposed to work, but with specific membership requirements and specific documents to review, there is certainly enough to get started.

A year after the counties had come into being, most still had not set up these forums. Another year later, most had set them up, but they were not meeting regularly. Indeed, when the Commission on Revenue Allocation (CRA) issued CFEF guidelines in March 2015 and then visited over 30 counties to share them, many counties were forced to organize their very first CBF meeting to host the commissioners from CRA. In a few counties, they have still refused to constitute the CBF to this day.

I do not claim that CBF is a panacea...
In spite of all of this, the inability to gain meaningful control over the power of the executive branch remains a significant challenge. The constitutional provisions that have been put in place to limit the power of the executive branch have not been effectively implemented. The lack of transparency and accountability in the budget process, coupled with the executive branch's ability to veto legislation, continue to undermine the effective functioning of the legislative branch.

The centrifugal force of the constitution, which has set in motion the dispersion of power outward from the old centers of power, has almost entirely diluted the power of the president. Furthermore, the power of the executive branch has been eroded through a series of constitutional amendments, which have weakened the president's ability to serve as a check on the legislative branch.

The current political climate, characterized by a high degree of polarization and gridlock, has further reinforced the centrifugal forces at play. Political parties are more divided than ever, and their ability to work together on behalf of the country is significantly diminished. The result is a system where the executive branch is able to act with relative impunity, as the legislative branch is too divided to effectively hold it accountable.

Despite these challenges, there are reasons for optimism. As public awareness of the need for reform grows, so too does the political will to address these issues. The pressure on elected officials to address the excesses of the executive branch is increasing, and there are indications that a new wave of political leadership is emerging that is committed to reversing the tide of executive power.

The path to reform is not easy, but it is necessary. The future of the country depends on our ability to overcome these challenges and restore the balance of power that was envisioned in the Constitution. The road ahead will be long and difficult, but the stakes are too high to ignore the issue any longer.
And where is the money that has gone to the country?

In 2014/15, the country spent KShs 258 billion out of the KShs 262 billion released to it by the Controller of Budget, a spending rate of 98.4%. This is a very high spending rate, which indicates that the country is not able to save any money despite the high revenue collected. The high spending rate is also a result of the country's inability to control its expenditure. The country's expenditure is driven by the need to meet the basic needs of the population, including education, health, and infrastructure. However, the country's ability to generate enough revenue to meet these needs is limited by the low level of tax collection. The country's tax system is characterized by low tax rates and high exemptions, which makes it difficult to generate enough revenue. The country's expenditure is also driven by the need to service its debt, which is one of the highest in the world. The country's debt is mainly funded by external loans, which are expensive and lead to a high burden on the country. The country's ability to reduce its debt burden is limited by the need to service the debt, which requires a large amount of money. The country's debt burden is also a result of the country's poor economic performance, which has led to a low level of investment and growth. The country's economic performance is characterized by high inflation, low savings, and low investment, which make it difficult for the country to generate enough revenue to meet its needs.