

Without a Will, Is There a Way? Kenya's Uneven Journey to Budget Accountability

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INTRODUCTION

This study seeks to explore one area of recent work by the International Budget Partnership (IBP) and our partners in Kenya and suggest some lessons that can be drawn from these experiences. We will examine some elements of the work being done on the ground, with a focus on efforts at the county level. In addition, the contributions these experiences make to our emerging understanding of the “accountability ecosystem” in Kenya will be explored, along with the implications for IBP going forward. This is part of the ongoing effort of IBP to reflect on our work, to ask ourselves tough questions, to advance our thinking, and to improve our practice.

This piece draws extensively from a report commissioned by IBP and written by Jillian Larsen and generally covers IBP's engagement in Kenya from 2014 to mid-2016.

CONTEXT

Following the post-election violence in Kenya in 2007, the country underwent a reform process which included the development and passage of a new constitution in 2010. This reform included a major decentralization effort through the creation of a two-tiered system of government designed to promote democratic and accountable governance, ensure the equitable sharing of national and local resources, and enhance the balance in the separation of powers. Under this structure, 47 new county units of government were created at the subnational level. These new counties began operation following the March 2013 elections.

This shift created new spaces and processes for citizen engagement in governance, in particular for decision making about public resources, for example, through the new mechanism of the County Budget Economic Forum (CBEF). The CBEF provides a legally mandated space for

government to consult with citizens and civil society groups on budget planning and management. Thus the new structure has created an important opportunity for public engagement to influence resource distribution.

Taking a step back and looking at the wider evidence, it's clear that decentralization reforms such as Kenya's have not automatically strengthened democratic and inclusive local governance.¹ Rather, they generally have led to a diversity of outcomes, often depending on local context, with some cases of meaningful citizen engagement and others of "islands of authoritarianism." Furthermore, the expansion of formal participatory mechanisms around the globe has produced similar insights: new spaces for engagement often reproduce existing exclusionary power dynamics and frequently lead to superficial citizen involvement rather than meaningful influence.² Thus, although the new decentralized structure and formal spaces like the CBEF provide an important opportunity for significant public participation in budget processes and in the best cases have led to important new public resources being made accessible to poor and marginalized groups, this outcome is in no way guaranteed and requires strategic engagement by organized civil society.³

OVERVIEW OF IBP WORK IN KENYA

Under IBP's Catalyst program, our Kenya team has sought to promote more open, inclusive, and equitable budget processes, with efforts at the national level reinforcing work in several new counties. This work has focused on multiple and reinforcing areas, among them IBP's county-level efforts to bolster and leverage local budget processes (including the CBEF) and to maintain and even enhance resources for service delivery. This effort to make county budget processes work better is reinforced by analysis, support, and advocacy at the national level.

National-level engagement and county budgets. Some important highlights from IBP's national-level efforts that support county budget engagement include:

¹ See for example, Merilee S. Grindle, *Going Local: Decentralization, Democratization, and the Promise of Good Governance* (Princeton, N.J.: Princeton University Press, 2007).

² Andrea Cornwall and Vera Schattan P. Coelho, eds., *Spaces for Change? The Politics of Participation in New Democratic Arenas* (London: Zed Books, 2007).

³ John Gaventa and Gregory Barrett, "So What Difference Does It Make? Mapping the Outcomes of Citizen Engagement," IDS Working Paper 347, Institute for Development Studies, Brighton, U.K., October 2010, 1-72, available at http://onlinelibrary.wiley.com/doi/10.1111/j.2040-0209.2010.00347_2.x/abstract (accessed on 27 September 2017).

- collaborating with the Commission on Revenue Allocation (CRA) to create of a set of “Guidelines on the County Budget and Economic Forum” to be sent to all county executives;
- joint training with CRA and other partners in some 30 counties on how the CBEF works;
- producing research and training materials that analyze county budgets and promote public deliberation;
- training of civil society organizations (CSOs), journalists, and other stakeholders in budget analysis and other methods of monitoring and engaging in local budget processes; and
- hosting national meetings for CBEF stakeholders from the county and national level to discuss issues and experiences for ensuring an effective CBEF.

IBP’s Kenya office has been deeply engaged in creating dialogue and providing resources in support of open budget processes at the county level. Nevertheless, as we will see below, the actual functionality of mechanisms such as the CBEF remains quite low. This suggests that, while visibility and support at the national level are important, it is the political dynamics at the county level that play the biggest role in shaping budget processes in practice. Engagement at the county level is thus critical to ensuring that these are meaningful spaces for public participation and inclusive resource distribution.

Capacity building and work with CSOs. IBP has worked to build the capacity of CSOs in several counties to enable them to undertake effective engagement in local budget processes and to support wider public involvement as well.

For example, in Nyeri County, IBP supported the regional chapter of the National Taxpayers Association (NTA). IBP and NTA have been mainly engaged in training and capacity building of CSOs and the county assembly, in particular the clerks and members of the Budget Committee. NTA coordinates CSOs to undertake budget analysis and provide input on the budget formulation process. They also help to organize and mobilize citizens to participate in the budget-making process.

Similarly, in Uasin Gishu, IBP provided technical assistance and capacity building to the Kerio Center to improve their budget analysis work. IBP also provided them with a small grant for institutional strengthening. The Kerio Center, with support from the IBP team in Kenya, undertook the training of CSOs on the budget process, as well as the training of members of the county assembly. As discussed below, IBPK specifically supported groups representing persons living with disabilities in their engagement with county actors.

BUDGET ENGAGEMENT BY IBP PARTNERS

At the county level, IBP and its partners seek to support inclusive engagement in the budget process through the CBEF and other mechanisms of participation. Yet outcomes have been mixed, as government actors have shown only limited receptivity to CSO engagement in budget processes. This has forced IBP's civil society partners to learn and adapt their approaches, sometimes after having invested significant time and effort in a seemingly promising avenue of engagement. Such is the case with the Kerio Center in Uasin Gishu. Kerio has been working to ensure the inclusion of resources for persons with disabilities in the county budget. At first, this case seemed to lead to a success, but subsequently it has devolved into a contentious legal battle.

In May 2015 Kerio noted in its review of the county budget estimates that there was no budget to provide services for persons living with disabilities. Separately, organizations of individuals living with disabilities also noted the same challenges and took a variety of actions to reach out to decision makers in the county executive branch and in the county assembly.

As a result of this advocacy, the county assembly held a town hall style budget consultation in June 2015 to discuss the budget with the Uasin Gishu Disability Forum, an organization of people living with disabilities and their supporters. Based on the outcomes of this meeting, Ksh. 20 million was allocated for programs to support this population. This seemed like a great success for civil society, which had identified this gap in the budget, undertaken advocacy to get the attention of government decision makers, and ultimately ensured substantial resources for this underserved group.

At the time of the allocation, however, the county government and civil society had not decided how the money would be spent. According to one government official, the Department of Social Services was asked to determine how the money should be used. That department said that it first needed to collect information to determine the unmet needs in the county by conducting a

mapping exercise. The individuals for whom these resources were to be spent wanted to participate in the process of determining priorities for these funds, but they were never given the opportunity to do so.

In August 2015 the Kerio Center began reaching out to the Uasin Gishu Disability Forum and organized a meeting to discuss the situation. The group selected a set of individuals to continue to engage the government with regard to the new resources, and the Kerio Center agreed to facilitate a meeting of the group, as well as to provide ongoing technical support to train them on budget issues and provide assistance in drafting budgets, determining priorities, and writing letters and memoranda.

By this time, members of the Uasin Gishu Disability Forum started hearing rumors that the county planned to carry out its mapping exercise. The process was to include many county government staff members, who were to receive additional allowances for their participation. Meanwhile, members of the forum considered these expenses, coupled with the continued lack of representation of or consultation with affected individuals, to be unreasonable. Furthermore, for purposes of budgeting, the CSOs felt as though the government could do what it does for any other program: use existing data to make projections and generate priorities. The mapping exercise seemed frivolous and exclusionary.

In order to prevent the county from spending these funds without proper consultation with the people they were intended to serve, the Uasin Gishu Disability Forum decided to try to engage the county assembly directly. In October 2015 representatives of the forum wrote a letter to the Speaker of the Assembly. This letter asked the county assembly to prevent the county departments that dealt with education, culture, youth affairs, and social services from spending the KSH 20 million allocated in the budget for programs for people living with disabilities, because the intended recipients had yet to be consulted about how the money would be spent. The letter was delivered as per standard operating procedure to the Clerk of the Assembly and was stamped by his office. It was also copied to all of the relevant stakeholders in the assembly, as well as to the county coordinator of the National Council of People with Disability, the Regional Association of Persons with Disability, and the county departments affected. The assembly leadership did not respond to the letter.

As a result, the forum met again, and, with the support of the Kerio Center, decided to take the proactive step of discussing and deciding what their own priorities would be for the KSH 20 million disabilities budget item. They prepared a second letter, with a detailed memorandum

proposing how they wanted the money to be spent and presenting the proposals of the affected population. This letter was prepared with the support of the Kerio Center and included a detailed budget and outlined the programs and activities that they would prioritize. This was done to spark a discussion on how the funds should be spent and to initiate a dialogue with the government. This letter was also sent to the above-mentioned stakeholders and was received and stamped by the Clerk of the Assembly. Still, no response was forthcoming.

The Uasin Gishu Disability Forum sent a final letter in late 2015 as a follow up to the first two. This letter asked the county assembly to act upon the first communication and asked for feedback. It also made clear that, if this too was ignored, “we will assume the government is not interested in our views, and therefore we shall . . . devise our next course of action without notification.” Around this time, they also met with the ombudsman’s office to explore what role they might play with regard to these issues.

Despite all of these efforts, the forum was not able to get a response from the county executive, county assembly, or any of the relevant departments. Therefore, in February 2016 they filed a constitutional petition in the High Court of Kenya, in which they claimed that “by failing to subject the specific budgetary allocation to public participation and in particular consulting the Applicant/Petitioner, there is grave likelihood of an infringement of constitutional rights of the Applicant/Petitioner.” This court case has not yet been resolved.

This case shows the uncertainty of progress on issues related to the governance of public resources. At first, it appeared that the county assembly backed the demands of the people living with disabilities and their supporters by including the KSH 20 million for support for this population in the 2015/16 budget. This seemed like a clear victory. However, since then, all the relevant county government stakeholders have been totally unresponsive to the requests that the Uasin Gishu Disability Forum be allowed to participate in planning how to spend the allocation. Members of the county assembly, the clerk to assembly, and members of the finance and budget team in the county executive’s office all denied that they had ever seen any letter from people with disabilities, despite the fact that the letters had been officially received and stamped.

Members of the forum also claim to have sought the engagement of their representative in the county assembly, but they report that they have not had any meaningful interactions. In a follow-up interview, the assembly member pled ignorance of the letters and claimed to be “shocked” to hear about the court case, since no one from the forum had communicated this to her.

Judging by the evidence shared by the Uasin Gishu Disability Forum, it seems they did indeed try to follow procedures and make requests through official channels, but the county government completely ignored their requests and attempts to engage in further dialogue. This issue will now need to be settled in court, but it shows the kind of challenges faced by citizens and CSOs in Uasin Gishu and other counties.

Civil society in Uasin Gishu has had to adapt its strategies by pursuing more confrontational approaches, such as litigation. Other means to gain attention, such as mobilizing people for protests or demonstrations, are also being considered. Moving forward, the Kerio Center plans to continue to support these efforts. Their own strategy is also evolving to seek grassroots support at even lower levels, with the hope of mass mobilization of youth and other constituencies on key budget issues that impact people's lives. Meaningful budget participation will likely need to involve applying pressure on the county government through collective voice and action. This points to the challenge of mobilizing citizens to engage with the budget process more broadly, rather than to focus on specific issues that directly affect their daily lives.

DEMOCRATIZING COUNTY BUDGETS AND THE ACCOUNTABILITY ECOSYSTEM

The counties in Kenya are a new governance structure that were empowered to make decisions on spending, planning, budgeting, revenue generation, and resource allocation. They are also responsible for service delivery in many areas. Ideally, this new level of governance was supposed to make government more responsive and equitable because it would be closer to the people governed. Furthermore, the new constitution and other legislation require citizen participation in budgeting and guarantee access to information. Only three years have passed since this new level of governance took shape, and the technical capacity of counties and non-state actors at the county level remains weak. However, the capabilities of county governments are growing relatively rapidly. Meanwhile, CSOs have low levels of capacity — more generally and with specific respect to budget work — and are struggling to engage at the county level, where they are often weak and fragmented.

The budget process — formulation, approval, execution, and oversight — remains a complex and highly technical one that few county-level officials, let alone non-state actors, have a firm understanding of. Many rules and regulations are still being clarified at the national level and through litigation, since key areas of budgeting — such as setting budget ceilings, county-level

borrowing, and the use of county development funds — remain contentious. This suggests the need for competent civil society actors to engage in these spaces as these processes evolve.

Across the three counties where IBP's Kenya team has been engaged, county governments appear to be taking concrete steps to fulfill their legal obligations to encourage citizen participation. For example, in Uasin Gishu County, the government was able to produce minutes from ward-level budget consultations, which provided documentary evidence that they did engage citizens across the county on the budget ceilings and priorities. The clerks to the county assembly documented those findings and — according to them — analyzed the information, which resulted in some changes to budget allocations based on citizen preferences. This meets many of the requirements and seems in line with the intention of the law, which aims for citizens to be engaged in the budget process.

Despite these efforts, virtually all organized interest groups and CSOs in the region argued that the Uasin Gishu government is averse to engaging civil society, does not provide sufficient quality or timely budget information, and does not act upon their inputs or feedback. Uasin Gishu was not alone. Across all three counties, civil society and organized citizen interest groups reported that the methods used by county governments for public consultations are not “meaningful” and that there is a lack of political will for gathering citizen input. The specific experience of people living with disabilities in Uasin Gishu is a good example of the gap between organized citizen interest groups and the county government. Initially productive and successful engagement hit a wall and forced citizens to pursue legal recourse (and potential direct mobilization) when they had exhausted all available official channels.

This contradiction — that county governments can widely consult the public and fulfill many of the legal requirements of the law, while also choosing to close the door to more meaningful engagement — is at the crux of the problem in the counties. Even if a county were to alter budget priorities as a result of citizen consultations, these changes are on the margins, for example, increasing money for water projects in a particular area or removing funds for a project already completed. These are modest changes that leave the fundamentals of the budget content and the process of formulation and implementation unaffected and unexamined. To date there are few meaningful ways for citizens to engage in more in-depth budget discussions or to participate in the rest of the budget cycle. CSOs, which may have the technical skills and knowledge to interrogate the budget and ask informed questions, report being politically excluded from the budget process. Where they have raised questions, they generally cannot get answers or information.

One of the key mechanisms that was designed to provide citizens with a meaningful opportunity for engagement throughout the budget cycle — the CBEF — suffers from serious structural deficiencies. The county government influences the selection of representatives for the CBEF, and the governor chairs it. The county government controls what information the CBEF members can access and how frequently they meet, if they meet at all. (Withholding funds or not fully constituting the committee are easy ways to ensure it does not meet.) This means that a functional CBEF can only exist where the county executive is genuinely interested in meaningfully engaging organized civil society, remains open to potentially hard questions, and can actually allocate sufficient funds for the CBEF to operate effectively. These conditions are not met in the three counties where the efforts of the IBP Kenya team were focused from 2014 to 2016. Thus the CBEFs are either not functional or not fulfilling their mandates. Even where the county executive seemed amenable to engagement with organized civil society (for example, in Taita Taveta in 2015), resources for civic education related to the budget process were slashed two years in a row by the county assembly. Such actions highlight the need for broad government support for meaningful public engagement.

Furthermore, the CBEF structure assumes a level of organization within civil society that does not currently exist. For example, the CBEF gives a space to representation of women, as an interest group. Yet there was no real agreement about who (an individual or organization) could credibly fulfill this role nor about how they would “represent” their constituency, particularly given the opaque appointment processes. Thus formal civil society organizations often question the legitimacy of these constituency-group representatives. More broadly, citizen interest groups and membership-based organizations are often perceived, by both civil society and government, as too disorganized to credibly represent their constituency or too partisan in their political relationships and affiliations. Thus a crucial vehicle for social organization and political representation is unable to fulfill its role in county governance.

Yet formal advocacy-oriented CSOs suffer similar weaknesses and challenges. In many cases, CSOs in the counties have very few staff members (offices of one or two are not uncommon), and they may be from outside of the county and supported with external (even international) funding. The organizations may have technical savvy in budget analysis, but they lack a local constituency or sometimes even mechanisms of public consultation. Questions naturally follow: Who do they speak for? Why should elected officials listen? Should these organizations have any influence in the budget process? Ultimately, CSOs will remain easy to dismiss or ignore as long as they lack a local base to legitimize their advocacy and provide the means to make it effective.

CSOs at the county level are in the early stages of trying to engage grassroots stakeholders. For example, in Uasin Gishu, the Kerio Center is beginning to work with organizations of farmers, and in Taita Taveta IBP trained civil society and citizens across ward and county levels. But work of this kind often starts from zero and so takes time to build. In the interim, small CSOs lack the legitimacy to influence budget outcomes. This finding in Kenya is in line with the broader discussions of accountability at the global level that recognize the need to build alliances between technically proficient CSOs and other forms of citizen organizing and mobilization.⁴

Developing this level of engagement by civil society is challenging and resource-intensive in Kenya's new counties. In most cases, the broader public has low levels of education and civic knowledge. Similarly, most membership or community-based organizations lack basic capacities for engaging in complicated budget processes. Thus, in order to build a strong grassroots presence in a county that would enhance their political legitimacy and increase their influence, CSOs need to have long-term engagement strategies that deepen and widen their engagement and build capacity across diverse groups in the civil society ecosystem in each county. IBP's work in Taita Taveta suggests the benefits of building a countywide network of citizens and interest groups ready to engage in budget work. But it will take long-term investment to begin making impacts on budget processes and outcomes.

A further complicating factor is that the experience of county-level engagement demonstrates that it is easier to mobilize people around issues that directly and immediately affect them, such as taxes or service delivery, than around the budget and its associated processes themselves. Thus CSOs face the challenge of leveraging existing budget processes, but doing so in a way that engages thematic issues that most directly affect people's lives. It may also allow them to more easily build networks with grassroots citizens' movements or organizations. In Uasin Gishu, the revised strategy of the Kerio Center has adopted this approach. They are now planning to engage with a wider group of youth stakeholders in the agricultural sector. They hope this broader grassroots mobilization of citizens will increase their collective voice and add to the strength of their demands.

This discussion highlights the long road to opening up budgets in a way that allows for meaningful citizen engagement and influence that will ultimately lead to more inclusive budgets and more

⁴ See Brendan Halloran, "Time to Get Political: Why the Open Governance Community Needs to Start Engaging with Grassroots Movements," International Budget Project, Washington, D.C., October 2016, available at: <http://www.internationalbudget.org/2016/10/why-open-governance-community-needs-grassroots-movements/> (accessed on 27 September 2017).

effective public services. Formal processes exist, but the incentives and capacities for ensuring that they are open and participatory are uneven. This context and the initial efforts of IBP and its partners, with their varying degrees of success, offer important insights about the budget accountability ecosystem at the county level in Kenya. This in turn suggests which approaches might hold the most promise going forward.

Insights on the budget accountability ecosystem. Fundamentally, the budget accountability ecosystem — defined as the actors, mechanisms, and other dynamics related to ensuring responsive budget processes and outcomes — is weak at the county level in Kenya. This should come as no surprise, given the recent structural changes that created the county governments, as well as the underlying political economy of governance in the country. Despite impressive formal advances, including the creation of the CBEF, the relationship between state and society is still only partially based on democratic and inclusive principles and practices. At the county level, there are few real checks on government power, and legal mechanisms may exist only on paper. Citizens and civil society have to rely on the good will of key actors in the county government if they are to have meaningful opportunities for collaboration in the budget process. Even when such cooperative relationships emerge, they provide limited influence and can quickly be reversed, as the Uasin Gishu case demonstrates. Thus strategies for navigating the accountability ecosystem that rely to a large degree on formal participatory mechanisms are inherently fragile, due to lack of interest by government actors in truly open and inclusive processes and their ability to subvert legal rules when they choose.

Exacerbating this challenge is the weakness of organized civil society at the county level. IBP has helped build up the capacities of several CSOs to engage in the budget process, as well as to facilitate broader public engagement. Yet formal CSOs and organized constituency groups continue to face a range of challenges, and their credibility is often called into question by both government and other civil society actors. CSOs are often dismissed as lacking legitimacy and representativeness, and government actors feel they can ignore them with little or no political cost.

Weaknesses abound across the accountability ecosystem, in state institutions as well as organized civil society. Initial assumptions about how to have an impact on county budget spaces and processes have been tested, and these mechanisms have not yet proved to be meaningful opportunities for opening budgets to citizen engagement. Likewise, IBP's initial experiences with CSOs and organized interest groups have revealed both deep structural weaknesses in local civil society and a need to rethink approaches to civic engagement.

CONCLUSION AND LESSONS LEARNED

In many ways, the experiences described and issues explored here, as well as the lessons drawn from them, have already been taken on board by IBP and its partners. Nevertheless, it is worth articulating some of them explicitly and challenging ourselves to reflect on their full implications. The clear insights that emerge are:

- *Budget processes.* Although formal spaces and processes do exist, there are few government actors interested in seeing these become meaningful spaces for participatory engagement by citizens and organized civil society.
- *Relationships with government.* These relationships have been prioritized by IBP and civil society, but they are fragile. When they exist, they allow some entry point, but they can shift quickly, and doors can easily be closed. Across most of the counties that were the focus of IBP's efforts, the existing configurations of formal spaces and relationships have proved generally insufficient to provide a real avenue for change.
- *Organizational capacities.* Technical and organizational capacities are generally weak across civil society. IBP has focused on technical capacities and strengthening linkages, but this effort is hampered by the limited penetration of budget-focused CSOs into the deliberations of government, as well as by challenges in working with less organized interest groups.

In order to navigate the budget accountability ecosystem at the county level more effectively, basic capacities for organizing citizens need to be strengthened. This means engaging, as IBP has begun to do, much more intensively with existing civic organizations that are capable of credibly representing citizen priorities and exercising the countervailing power of collective political agency at the county level. This will mean drawing on lessons about the need to bolster organizing capacity to support meaningful citizen engagement in formal governance spaces, such as the CBEF and the budget process more broadly. It also reflects the experiences in the counties in which IBP and its partners have worked of citizens mobilizing in response to tangible problems, such as seemingly unfair taxation or a breakdown in water service, and creating pressure leading to government responsiveness. The goal must be to move beyond such one-off protests toward strengthening the organizational and representational capacity of civil society in order to level the playing field in their engagements with government actors.

This does not suggest that there is no need to work to strengthen the government's capacities to manage public engagement in budget processes and to produce information about the budget that is necessary for meaningful civic engagement. But it recognizes that, at present, there are very few incentives for government actors to democratize budget processes. Although more organized and meaningful public participation featuring a diversity of formal CSOs and other citizen groups could provide more effective and credible partners for government actors, in some ways this could undermine the political control exercised by party elites at the county level. Indeed, a fragmented civil society is more susceptible to patronage-based political strategies that may favor current political actors. The challenge for IBP and its partners is to navigate these political dynamics in a way that strengthens citizen organizing and public engagement but prevents charges of bias or partisanship. This is fundamentally political work. But approaching it in an open and collaborative way may preserve opportunities for constructive engagement in budgets and all aspects of governance.