

# Constituency Development Fund disappoints hopes for community-based development



The creation of the Constituency Development Fund was welcomed by Kenyans as a means of focusing national budget expenditure on the specific development needs of local communities. In practice, however, it appears to have served more as a political tool for members of Parliament than a genuine instrument for community-based development.

## Social Development Network (SODNET)

Edward Oyugi / Ayoma Matunga

Southern and Eastern African Trade Information and Negotiations Initiative (SEATINI) Kenya

Oduor Ong'wen

Kenya Land Alliance

Lumumba Odenda

Kenya Debt Relief Network (KENDREN)

Njuki Githethwa

MDG campaign KENDREN

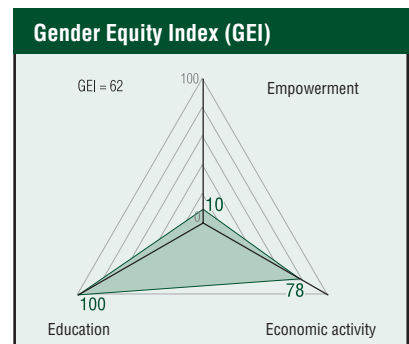
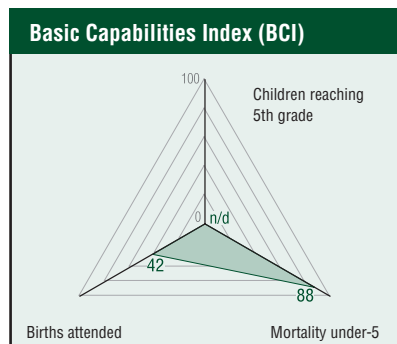
Wahu Kaara

DARAJA

Andiwo Obondo

Undugu Society of Kenya

Alloys Opiyo



Aid and debt, the twin curses of the African political economies, have increasingly alienated financing for development from the domain of national economic planning. It was therefore a refreshing relief when the current Kenyan parliament passed a law establishing the Constituency Development Fund (CDF).<sup>1</sup> Its main objective was to open a new window of opportunity for the promotion of social development at the constituency level and, therefore, to lend reality to the imperative of subsidiarity as a *global* response to sub-national demands for development policy attention. Following closely on the heels of an aborted constitutional reform effort aimed at economic devolution and deconcentration of political power, many Kenyans felt that for the first time in post-colonial history, the execution of the budget process would once and for all be freed from the dictates of the Executive.

Until now, budget allocation for development has always been carried out in the shadow of executive manipulation. For decades, budget planning has been held hostage to the monopolistic whims of the Executive as long as it continued to provide the pork barrel for rewarding and punishing political cronies and adversaries, respectively, through the provision or non-provision of resources for their constituencies. Whereas for many the CDF was devolution by default, for others it heralded an opportunity for local development needs to find unmediated resonance with national budget allocation.

However, a closer and critical analysis of the statutory architecture of the law and the institutional frame-

work for its implementation evokes a rude reminder that the CDF is not the panacea for rural development challenges that the Kenyan rural poor had anxiously been waiting for. The democratic wirings and the legislative machinery meant to deliver the economic benefits to the rural poor are increasingly appearing to be prone to short-circuiting, and therefore open to abuse by those who gave them the force of law – namely, the members of the National Assembly or Parliament. With that realization, the prospect of a genuine devolution seems to be turning into a top-down replication of the centralizing tendencies that many had hoped the CDF would free them from.

Decentralization offers opportunities not only for the expansion of democratic space and the active engagement of the people in development endeavours, but also for effective and efficient delivery of public services. Like all processes of social engineering, its benefits come with strings attached: it can lead to fragmentation if not properly balanced with the necessary retention of reasonable power at the centre. It is not intrinsically democratizing. A trigger is needed to put its benefits within reach of the various critical stakeholders. As critics point out, devolution in the hands of democratic pretenders can add layers of local bureaucratic authority to those that already saturate the political centre. This makes the nexus between decentralization and popular participation a not-so-straightforward matter.

## The statutory architecture of the Constituency Development Fund

In the recent past, Kenyans have been treated to an intense debate concerning the political integrity and possible abuse of an instrument of governance whose

fundamentals still need much more comprehensive articulation: the newly established Constituency Development Fund, which acquired the force of law through an Act of Parliament on 31 December 2003.

The Act in question places at the disposal of members of parliament, through a Constituency Development Committee (CDC), financial resources equal to no less than 2.5% of all the Government's ordinary revenue collected in every financial year and any monies accruing to or received by the National Committee from any other sources. The fund is supposed to be administered through a wide range of statutory bodies and processes, a good number of which add to or overlap with existing public finance management systems. The management of the fund has kicked off controversies that touch on:

- the conflict of roles of the main executors of the policy – the members of parliament
- the democratic integrity of competitive politics at the constituency level
- resource allocation efficiency
- multi-jurisdiction overlaps in the management of the fund

The CDF purports to enlarge and deepen strategic options for entrenching the principle of subsidiarity in financing for social development. By that very token, it seeks to bypass the state-bureaucratic machinery through which traditional budget allocations are processed into legitimate expenditures. It does this by virtue of targeting the constituency and community development initiatives therein as the focus and site of state expenditures.

<sup>1</sup> Constituency Development Fund Bill (2003). *Kenya Gazette Supplement* No. 30 (Bill No. 13).

The principal organ through which development projects are identified, prioritized and adopted as undertakings deserving CDF support is the Constituency Development Committee. In between are several bureaucratic agencies and processes which are provided for in the Act for the purpose of overseeing or monitoring the implementation of the projects in question. These range from the District-Based Development Committee and project-relevant local and central government departments to the National Constituency Development Fund. At stake in this long chain of CDF execution, which encompasses implementation, monitoring and control, is the larger question of conflict of interest as it is likely to infringe on the delicate issue of the imperative of relative jurisdictional sovereignty within the budget process. And this has been the bone of contention since the CDF was enacted into law in Kenya almost three years ago.

There is no question that the democratic integrity of the governing authority in question largely determines the relative importance of an efficient and transparent execution and monitoring system for budget implementation. Such monitoring needs to recognize that implementing the budget calls for striking a delicate balance between responding to changing political exigencies and strict adherence to the corresponding statutory structures. At the same time, it needs to be understood that in many countries – Kenya included – both the Executive as well as the Legislature have exceeded their mandates in not abiding by budget laws.<sup>2</sup>

### Delimitation of the controversial issues involved

Generally, when public budgeting is considered from the legal point of view, the critical issues seem relatively straightforward. A clear distinction is presumed between “material” and “formal” budgeting laws. The former provides that in a given budgetary year, specific quantities of monetary units are expected to be collected from the various sources and may be spent for specific purposes as determined by the finance bill. On the other hand, formal budgetary law spells out procedures in the four principal phases of budgeting, which are drafting, voting, execution and accountability/auditing. These presuppose the underlying principle of separation of jurisdictional powers between legislation, execution and adjudication. The following questions are important for a comprehensive picture of budgetary law:

- The stages and the time-table for the drafting of the budget estimates
- The role and powers of the corresponding ministerial portfolio
- The stages and time-table for debating and voting on the budget estimates in parliament
- The extent to which parliament is aware of details and its powers to amend the draft
- Procedures in the event that the appropriations bill is not passed in time

- The introduction of provisions to ensure proper execution of the budget

Finally, there is the overarching question as to which specialized authority will audit the execution of the budget, and that authority’s relationship with the other organs of the State, particularly the Parliament.

On the other hand, when the public budget is considered from the good governance point of view, the issue of proper and prudential management and fair distribution of public resources brings up a host of broader, deep-rooted questions of democracy as it relates to the imperative of good governance in the management of public resources. Some of the more specific questions that arise have to do with the extent to which the required amount of detail in the budget estimates is provided by the relevant arm of the Executive, and whether or not Parliament can exercise effective control over budgeting as a critical economic governance instrument.

The CDF as a budget allocation instrument is supposed to be informed by the Economic Recovery Strategy for Wealth and Employment Creation.<sup>3</sup> This government strategy is centred on enabling existing and newly identified actors to create wealth with the potential for a “trickle down” effect on poverty reduction, through micro-economic levers firmly placed in the invisible hands of the market. As controversial as the underlying assumption may be, we are mainly interested here in the governance implications of the CDF, rather than in the putative strategic linkage with the policy framework that informed its articulation and subsequent enactment.

### The political and institutional framework for the budget process

There is no doubt whatsoever that the proper functioning of a budget system is to a large extent determined by the institutional and political framework conditions within which it operates. From the perspective of the capacity of all the legitimate actors engaged in the budget process to decide on the outcomes to be sought, probably the most important feature of the framework is the creation and observance of the legitimate jurisdictional boundaries that will serve as the basis to determine who does what, when and how. A framework with a clear demarcation of jurisdictional powers and delineation of functional roles is more conducive to an effective budget process than one in which confusion of roles and overlaps of jurisdictions are the order of the day.

Another important factor that can adversely affect a country’s budget system is the jurisprudential quality of a particular budget law. When a budget process undergoes a significant modification, it is important that the legislature adopts a comprehensive appreciation of the need for checks and balances that help in the regulation of procedures for budgeting, economic reporting, auditing and so forth. In this particular respect, the CDF falls far short of meeting these criteria.

Since its inception, the CDF has attracted controversy from a wide range of social actors, especially competing political interests at both the national and local levels. The Act is relatively clear on the constitution and role of the principal organs charged with the responsibility of managing the Fund. Apart from underscoring that no political bodies should benefit from the allocation of any of the Fund’s resources, the Act also stipulates that the projects to be supported by the Fund should be community-based. All of this is good governance from a rhetorical point of view. The political reality underlying the implementation of the Fund is quite a different ball game.

For some time now, the Kenyan media – both print and electronic – have been awash with all manner of complaints, accusations and counter-accusations regarding the implementation of the Fund. Generally, they all point to obfuscation of the principle of separation of powers between the three arms of a democratic government. Underlying these controversies are the dual and conflicting roles that the legislative arm of the State has arrogated: legislative and executive. The political implication of the arrogation of conflicting mandates undermines the integrity of the political process in general, and the principle of representation and its underlying democratic assumptions in particular. In the majority of cases, incumbency has been used to give unfair advantage to sitting members of parliament: they are more than likely to stack the constituency committees with their supporters, excluding actual or potential adversaries from the social development process. All too frequently, incumbent members of parliament will give priority attention to projects that will benefit and possibly reward their political allies in the constituency. This will no doubt unduly influence their popularity as far as electoral politics in the constituency are concerned. The fact that 75% of the funds are allocated equally to all the electoral constituencies in the country hardly ensures a fair distribution of public resources, given the unequal levels of development among the various regions of the country, a legacy of the poor distributive capacities of the colonial and neocolonial states. The remaining 25% that is supposed to take care of such inequalities is far too inadequate to make any meaningful difference.

In view of the complaints arising from every sector of society on the implementation of the CDF, something will clearly have to be done to address the emerging image of the Fund as yet another parliamentary misuse of its special role in the budget process. This perception is shaped by what appears to many observers as parliamentary abuse of good governance in public finance, backed up by the plethora of cases of direct misallocation of CDF money. In this particular sense, the statutory integrity of the parliamentary Public Accounts Committee (PAC) remains hugely compromised and saddles the role parliamentarians play with the dual and conflicting responsibilities of making and executing a law, when they should more appropriately be keeping an eye on its implementation on behalf of the taxpayers. ■

2 Falk, S. and Shapiro, I. (1999). *A Guide to Budget Work: A Systematic Overview of the Different Aspects of Effective Budget Analysis*. Center on Budget and Policy Priorities.

3 A creative strategic modification of PRSP in the era of the NARC government.