


REVIEW ESSAY

# Enhancing procedural fairness: a critique of the open and inclusive approach to health financing decisions

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(Received 14 May 2024; revised 13 January 2025; accepted 17 January 2025)

## Abstract

This article is a critique of a report, *Open and Inclusive: Fair Processes for Financing Universal Health Coverage*. The report proposes a framework that is meant to improve procedural fairness and how decisions in financing of health care can be fairer. The author of this article argues that while procedural fairness and the proposed framework are an important step in improving equity in health sector financing, the report falls short on several aspects of achieving the set objectives. First, the report does not place emphasis on the role of civic education as an important component of public education building on access to information. Therefore, there should be caution in assuming that improved dissemination of information will lead to increased civic action. Secondly, the author proposes that the report include principles that should guide how decisions are made in public deliberations when consensus cannot be achieved. Lastly, the framework in the report does not speak to the complexity of the trade-offs that have to be made between health and other sectors. The author argues that a key area of deliberations in health financing is understanding how practitioners in the sector can argue for better funding against other competing sectors such as education and agriculture while still finding complementarities.

**Keywords:** fairness; public deliberations; public finance; health financing; budget transparency

## 1. Introduction

Advocates for fairer decision-making recognise that governments, acting alone, may not always prioritise inclusivity. Expanding participation to non-state actors can bring fresh perspectives and expertise, leading to more equitable outcomes. This is the subject of a new report by the World Bank, the Norwegian Institute of Public Health, and the Bergen Centre on Ethics and Priority Setting. The report proposes a framework and procedures that countries and other actors working on universal health coverage can use to make fairer decisions to arrive at more just policies. This paper evaluates this report that is titled ‘Open and Inclusive: Fair Processes for Financing Universal Health Coverage’ with a focus on public finance and practice concerning decisions in the health sector. The report’s focus on procedural fairness is a positive and necessary step in a context where trust in government is low (Trithart and Case, 2023). Open and inclusive processes in health financing decisions increase the chances of citizens seeing more responsiveness from their governments in the journey towards universal health coverage.

It may be easier to focus on substantive fairness due to its visible net results in different spheres of service delivery and the common measure of ‘value for money’. This has included the ever-complex criteria and formulas to share public resources and the generation of progressive taxation regimes. In addition, the goal to cushion poor households has also seen similar efforts on how to identify households that should benefit from cash transfers. However, no matter how equitable or

fair such decisions may be, if the processes by which they were arrived at are seen not to be fair, then the trust and credibility in their outputs can be questioned or rejected altogether.

This is not to suggest substantive fairness should not remain an important subject of focus, just that both procedural and outcome aspects should be considered together. In fact, some studies show focusing on procedural fairness on its own does little to negatively affect outcome fairness. While in some instances there may be trade-offs to be made between the two forms of fairness, often they will be congruent or complementary. Generally, the focus on procedural fairness is made with an assumption that the costs to substantive fairness will at most be limited (Grgjć-Hlača *et al.*, 2018).

Therefore, from an overall perspective and drawing from more than a decade of working on public budgets and decentralisation with local communities on influencing government public finance policy, this focus on fairness in the process is a welcome step. My own country, Kenya, is going through a rapid reform process to align its health and public financial management (PFM) laws to the goals of universal health coverage. Its success will in part be determined by how open and inclusive these reforms are perceived to be. This is exemplified in Kenya's universal health coverage reforms that saw the courts rule that the Parliament must repeat a public participation process in the enactment of new health laws in 2023. In the view of the court, 'Parliament ought to undertake sensitization, adequate, reasonable, sufficient, and inclusive public participation under the Constitution before enacting the said Acts' (Kenya Law, 2024). While the laws were necessary and generally accepted as a key step in the realisation of robust primary health care and social insurance, the courts pronounced the need for the process to be fair and inclusive of the voices of citizens.

Therefore, the effort to generate a framework on procedural fairness is an important reminder that without fair processes there is a risk of losing legitimacy and trust in even the most well-intentioned health financing decisions and policies. This approach provides an opportunity to have a structured way to include citizens' voices with an aim to ensure decisions are fair and governments are accountable for them.

That said, I shall argue that the report does fall short in several ways. First, its conceptualisation of the role of citizens and other organised non-state actors, and the incentives they face to engage and to seek consensus are too simplistic. Second, the report falls short on the principles that would guide decision-making, which is probably the most critical part of deliberations. Thirdly, there is a gap in the definition of the funding processes because they are rarely siloed to the health sector. The report does not outline the aspects of the criteria that would change or be affected by the competition for resources with other sectors, which is the norm, rather than the exception in PFM processes.

First, the report makes an implicit assumption that the availability of information leads to a well-informed citizenry and civil society in its wide definition. But the relationship between information and action is not one of cause and effect. There is reason to believe that information provided without context and some level of facilitation could end up confusing or overwhelming the citizens and thus limiting the quality of their participation (Gastil and Levine, 2005). Government transparency does not guarantee that the information will be contextualised, understood, and acted on by citizens. To explain this further in the budgeting process, this would include for example additional explanation of processes, actors, and decisions made at different stages of budgeting. This will help citizens know when certain information can be used, for what decisions, and to which offices they can direct their advocacy.

While providing justifications is an important component for fairer decisions, it can create an illusion that everyone understands the information that is provided including people who may be new to the process and the context. However, this may favour those already in the know if the information is not explained by a facilitator and put in the right context which includes an explanation of the decision at hand. Transparency is meant to ensure there is equity in access to information. However, equity may not be achieved if the value of that information is not fairly

understood across the population which leads to decisions that are based on an imbalanced foundation.

Therefore, there must be an effort to carry out some continuous form of civic education that will help the public make sense of the continuous flow of information. However, civic education goes beyond building knowledge to also helping citizens grow in their confidence to engage (Gaventa, 2010). In Kenya, civil society organisations like Bajeti Hub have developed platforms known as budget cafes that provide spaces for local organisations and citizens to continuously learn on how to engage with government (Bajeti Hub, 2021). This example from Busia in Kenya is an indicator of the need for continuous civic education that improves the capabilities of communities to understand their rights and exercise their agency in deliberations with government whether formal or informal. Gaventa highlights further examples from South Africa, Brazil, and Bangladesh that stress the value of consistent and long-term investment in learning in areas from health to women rights.

This still raises a question about who should be held responsible for carrying out this public education role. Some studies argue that this should be the role that is facilitated and funded by the government because market forces (non-state actors including the media) cannot sustainably play that role (Delli Carpini, 2000). These studies conclude that it should be the government's role to provide platforms for learning with an appreciation that citizens and other stakeholders walk into these spaces at different levels of understanding. They also conclude that the definition of public participation should be expanded to have this public education/civic education as the connection between access to information and reason-giving. The proposed framework in the article would further strengthen this component with funding for continuous civic education as a foundational requirement for fairness. This should include departments or directorates for public participation and civic education that have that primary role throughout the decision cycles.

However, I submit that this should be taken with caution, because civic education is not a one-way communication from the government to citizens. In a fair learning process, government should also receive information on local knowledge and experiences and should form part of a bottom-up civic education as part of deliberative processes. This is particularly important for lower-level government bureaucrats who have regular engagement with communities at the grass-root level. In addition, the development of information packages that are shared with citizens should be done in more consultative ways. For example, in the development of Citizen Budgets on climate change in Nepal, the government prepares the document with input from civil society actors (Freedom Forum, 2017). This collaborative approach can help reduce the risk of the government conducting civic education in a way that favours its preferred outcome.

Secondly, one of the most critical parts of the procedures of fairness is the element of decision-making. When citizens have the platforms, the information and clarity on what is expected of them, the final step is that they make decisions. In some situations, well-informed citizens when in discussion with their government and supported by good justifications will arrive at a consensus. In some contexts, and society consensus is actively sought as part of deliberations. For example, this is also common in traditional African governance structures that are still used in rural Africa, where more than 40% of the population lives, and aligned to local customs. Deliberation spaces such as Barazas in East Africa, Baito in Eritrea, and Kgotla in Botswana are structured as consensus geared processes (Mengisteab, 2019). This is to avoid adversarial discussion especially in societies where there are regions, ethnic or political divisions exist. This is noted in the work of scholars such as Jones (1994); his article 'A Comparison of Consensus and Voting in Public Decision Making' makes the argument for consensus and even lays out ways that this can be achieved. Other scholars have also argued that successful deliberations are based on an assumption that all participants are 'reasonable' and can arrive at a consensus (Friberg-Fernros and Schaffer, 2017). This is not always the case, and it can negatively affect the objectives of public deliberations and the ultimate goal of arriving at fair decisions. This is another example that should prompt the inclusion of options for decision-making and the role that a good facilitator should play in supporting that process.

However, arriving at a consensus in a fair process may not always happen. Information asymmetry, differing principles, and power dynamics make consensus a difficult objective to achieve. This is a critical part when thinking of a framework that can inform decision-making in health financing.

How should decisions be made when there is no consensus? The focus on consensus often disguises the diversity of views and in other cases wholly ignores the political nature of decision-making in deliberations (Stilgoe *et al.*, 2014). We need a strong focus on decision-making principles. This may include:

- (i) Decisions are made on merits of arguments from different positions rather than majority rules. This approach would mean going past initial disagreements and giving a voice especially to minority or underserved groups that would otherwise be left out by going to a voting option.
- (ii) A balance of fairness on final decisions means having a focus on equity in opportunity, decisions that are mainly driven by the weight of reasons given for specific arguments and levering on mini-public when the goal of equity may not be achieved in a large plenary.
- (iii) A clear layout of potential impact of decisions on underserved groups and aspects such as privacy and anonymity when the context requires it.

The framework should go a step further and provide a clear direction or options on how decisions can be made with an appreciation of the political implications of the process is what builds a strong connection between procedural and substantive fairness. Does the process lead to a decision that is agreeable to everyone? For example, did the justifications convince some of the stakeholders, including the government, to change their positions and make a different decision? Was the information provided good enough to help people understand what was at stake? By widening the criteria to address the 'how' of decision-making, there is an opportunity for justifications to be viewed on their merit in a comprehensive presentation of the final decisions (IBP, 2016).

The report places the changes in processes of decision-making under organisational arrangements in its proposed policy instruments with a focus on having predictable and sustainable structures that support decision-making (World Bank, 2023). However, the blind spot is focusing on the 'what', which is the organisational structures of decision-making rather than the 'how'. This focus on structures may underestimate the tensions and human complexity in decision-making that can affect the process and final decisions made through deliberations. The structures of participation are important to ensure there is a fair set of guidelines on accountability and responsibility for the decisions. At a minimum the framework can benefit from having a set of principles that outline conditions that can facilitate fair decision-making during deliberations. For example, if citizens opt to use voting as a method to decide on their health priorities what would need to be in place for it to be fair. Overcoming this blind spot also requires a focus on the facilitation of deliberations and the level of learning that participants go through to properly internalise the decision at hand and the potential implications of the different choices.

Thirdly, there is an assumption running through the proposed criteria in the report that public deliberations on health financing decisions are unique processes that tend to be independent of other service budgeting or financing decisions. In practice, budgeting decisions that are open for citizen input are often held along a budgeting cycle that is often a whole budget debate that includes other sectors such as agriculture and education as well. This means that when striving for fair decisions in health financing for primary health care and maternal health, it will often be done in the same space as other sectors.

Therefore, the fairness of the process is not limited to within boundaries of what priorities are to be funded in the health sector but what justifications can be given to argue for health funding

as opposed to other sectors. This means that the role that citizens are expected to play requires them to not only have a good grasp of health-related information but also the other sectors to help them make reasonable decisions and trade-offs. A unique opportunity to strengthen the framework is a focus on the learning phase of deliberations which would provide knowledge on how to ensure there is financing for health in a debate with other sectors.

Many countries today run medium-term expenditure frameworks that have expanded the processes of budgeting and made them multiyear in scope. A study in Kenya found that public participation in governance (mostly budget and development of laws) in Kenya's national and sub-national levels was relatively high at 70% but that drops to 32% for those who have ever attended a health focused public policy discussion (KIPPRRA, 2018). This example is an illustration of the often-wider budget engagements compared to single-sector financing public deliberations. Therefore, a framework on fairness in matters related to financing has to consider the complexity of a full budgeting process in which fairness is evaluated. This starts at the very foundational level when defining the decision at hand and providing information that not only helps supporting priorities for health but also the potential trade-off with other sectors.

Generally, the criteria proposed can make a better effort to remove the gap between health financing and PFM systems. In my opinion, this gap does not exist when it comes to government-funded health care components. PFM by definition stretches all the way from when the sector is planning and setting its strategies, carrying through to defining the allocations, development of detailed programme or performance budgets, definition of performance makers, implementation, monitoring of execution and audits. Therefore, the report should not box the proposed criteria as one that will or can be used only when it is a health stakeholders' deliberation but one that will often be tested in broader budget and financing discussions.

## 2. Conclusion

The framework proposed through the report should be a useful guide for any government looking to improve the process of fairly sharing resources for Universal Health Coverage (UHC) in the phase of limited resources and ever-growing priorities. The primary goal of an inclusive process should be to give voice, choice, and space to citizens to influence processes and decisions. This objective can be achieved by strengthening the proposed framework with additional considerations such as the civic education of citizens, facilitators that can support end-to-end deliberations and clear and prompt feedback loops that can help build trust between citizens and their governments. The issues covered in this paper can help strengthen the proposed framework in ways that support the meaningful inclusion of citizens and other non-state actors.

**Acknowledgements.** I wish to express my sincere gratitude to all those who contributed to the writing of this critique. Special thanks go to colleagues at Bajeti Hub Kipkorir Biegon, FaithAnn Kinyanjui and Cuba Houghton for their support in providing critical insights into civic education and public participation based on years of lessons working with communities on public budget engagement. Additionally, I would like to appreciate the team of authors from the World Bank, the Norwegian Institute of Public Health, and the Bergen Centre on Ethics and Priority Setting for publishing the report, 'Open and Inclusive: Fair Processes for Financing Universal Health Coverage'. This report presents a compelling case for fairness in health financing and served as the foundation for this critique.

**Financial support.** I declare that no financial support or funding was received for the publication of this article. No specific financial grant was provided for this work and therefore no financial interests influenced the arguments or conclusions presented in this work. All views expressed in this critique are solely those of the author and are not influenced by any external organisation or interests.

**Competing interests.** None.

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