

KENYA DEVOLUTION

WORKING PAPER 5

FEBRUARY 2015

One Year On: Review of County Initiatives in Public Participation in the Roll Out of Devolution

OBJECTIVE: *This paper reviews initial county initiatives on public participation and possible interventions to improve the overall design and implementation of participatory systems going forward.*

1. Introduction

The roll-out of devolution has been formally underway since March 2013 when county governments were established under the 2010 Constitution. County governments have since completed the first full budget cycle (fiscal year 2013-2014), and it is useful to take stock of their progress and challenges in institutionalizing public participation in their systems and structures; especially as relates to their public financial management and planning processes. The objective of this working paper is to summarize learnings from the first year, and identify emerging practices, lessons and challenges that can inform central and county government officials, CSOs, and partners as they continue to support the implementation of devolution.

The period under review is April 2013 to June 2014, which enables observations of public engagement in preparation of the 2013-2014 county budgets (between April-June 2013) and the 2014-2015 county budgets (between September 2013-June 2014). The paper appreciates that much of what can be assessed is the process and nature of efforts towards public participation and not necessarily the outcome, although effort is made to establish any such outcomes.

This working paper is based on various sources of information, including observations from field visits and interactions with various counties, especially on capacity-building and support for public participation. It draws on several pieces of analysis and information from civil society, development partners and official reports.

1.1 Overview of emerging good practices

Kenyan policy makers, national and county government authorities, and civil society organizations have sought to enhance public engagement in multiple ways. A key focus by these actors has been to operationalize the policy, legal and regulatory framework on transparency and public participation into practical and effective mechanisms that engage citizens, particularly at the county level. A positive factor is the political will—from county governors and their staff, as well as central government authorities—to inform the public on county development initiatives and to enlist their support and contributions.

There have been a number of noteworthy interventions for enabling public engagement at both national and sub-national levels. At the national level, the Ministry of Devolution and Planning has launched the National Capacity Building Framework (NCBF) for strengthening the capacity of counties in public financial management, human resource management, integrated development planning and performance management. These interventions to develop county systems and capacities are critical for enabling participation. The Constitution Implementation Commission (CIC), which has the overall mandate to monitor, facilitate and oversee the development of legislation and administrative procedures to implement the Constitution, has

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Ministry of Devolution
and Planning



Kenya School of Government

put in place a mechanism for monitoring the progress of counties in implementing devolved governance, including citizen engagement. The monitoring report identifies the high cost of participation, lack of administrative capacity and lack of national guidelines on participation as key hindrances to effective citizen engagement. However, there are efforts by counties to put in place participatory structures; 36 out of 47 counties have websites in place, 26 have established citizen forums, and 22 have put in place county communication frameworks.

There are also notable innovative initiatives from individual counties. There are good case examples of collaborative engagements between civil society and county governments to improve participation including joint mobilization strategies, for example, in Taita Taveta and Homa Bay counties, and development of citizen friendly budgets in Nakuru County.

1.2 Overview of challenges

County governments continue to face immense challenges as they seek to put in place effective systems and institutional capacity, and at the same time deliver services and visible investments. Counties had to quickly assume major responsibilities and funding for delivering health, agriculture, urban services, and local infrastructure. The early months of the devolution roll-out were characterized by intense bargaining between county and national governments, leading to an accelerated devolution timetable—with the Central Government transferring functions faster (in the first six months of devolution rather than over the three-year transition period), and increased funding (over 30 percent of national revenue rather than 15 percent) than the minimum thresholds set under the Constitution. County governors were under pressure to deliver results and also faced huge challenges of putting in place basic government structures and mechanisms.

Translating legal provisions on governance, participation and transparency into actual practice at county level is not an easy task. On one hand there is strong constitutional and legal emphasis on transparency and citizen participation in county development, high expectations from citizens, and strong interest from some county governors. On the other hand, initial citizen engagement efforts have been hindered by compressed devolution timetables, lack of dedicated county staff and resources, and lack of frameworks/guidelines to guide county governments and citizens. It is useful to take cognizance of the complex political economy within which devolution and public participation are situated to appreciate the challenges that the counties face.

1.3 Learning from other decentralized contexts and Kenya's past experience with local governance

Several of lessons and experiences from other decentralized contexts have resonated with Kenya's own experience over the last year. Comparative global research indicates that confusion in roles and responsibilities among the relevant decentralized bodies and actors adversely impacts accountability structures.¹ Therefore, it is critical for governments to clarify roles and responsibilities between national and sub-national entities. Additionally, external public participation mechanisms by themselves have been found to be resource-intensive, often dependent on external partners, and difficult to sustain. Consequently, integrating mechanisms for participation and transparency into government systems is essential. Assessing and building local institutional capacity to engage citizens is a fundamental prerequisite for successful decentralization reforms. Lack of capacity, in addition to lack of incentives, is a huge constraint to well-designed decentralization. Similarly, past experience with public participation in local governance provide important lessons for institutionalizing new systems.

¹ A World Bank report - *Local Government Discretion and Accountability: Application of a Local Governance Framework (2009)* - that reviewed decentralization and social accountability in 10 countries concludes: "An effective implementation of decentralization reforms requires a strategy to give discretionary power to local governments and strengthen their accountability towards citizens."

It is useful to establish the state of affairs before county governments were established in order to assess the extent to which public participation is institutionalized in devolved governments. The previous Constitution was silent on public participation, but there existed some mechanisms largely based on legislation and ministerial circulars, for example, guidelines on the Local Authority Service Delivery Action Plans (LASDAP) of 2009, and the Constituency Development Fund (CDF) Act of 2003². However, these frameworks were weak because they were not anchored in the Constitution. Even so, there is evidence of positive citizen engagement under the LASDAP and CDF due to collaboration between government and civil society in mobilizing citizens and managing expectations, increased awareness on citizen participation, involvement of citizen groups in oversight of local development projects, among others. Public engagement in local governance was largely driven by civil society organizations, and efforts to hold office bearers accountable were constrained by challenges in accessing information. While the current Constitution places emphasis on access to information, the envisaged law on Freedom of Information that would provide a framework to implement this constitutional requirement is yet to be passed.

2. Assessing the state of public participation: milestones, lessons and challenges

In the first year of devolution both state and non-state actors have prioritized the setting up of structures and putting systems in place. However, the experience of counties suggests that while a lot has been done, there is still considerable progress to be made.

On the whole, county governments have embraced provisions on public participation.³ However, proper and adequate mechanisms provided for in the Constitution and County Government Act to facilitate these principles are yet to be put in place to ensure structured engagements with the public. Furthermore, the requisite budget and capacity to institutionalize the minimum standards for participation are largely not in place across the 47 counties. For purposes of this brief, the state of public participation will be assessed by the progress of counties in relation to legal requirements under: Access to Information; Capacity Building and Civic Education; and, Public Consultation, considering that effective public engagement requires that these three related aspects are in place.

- (a) Access to Information ensures that the public has the right information at the right time to enable them to engage appropriately.
- (b) Capacity Building and Civic Education enables the public to be effective in their engagement by providing them the requisite skills, knowledge and attitude.
- (c) Public Consultation through a structured framework accords the public the opportunity to engage in decision making in a well-defined process.

2.1 Access to Information

2.1.1 Legislative Requirements

Access to Information is the foundation to meaningful public engagement in local governance. Article 35 of the Constitution of Kenya provides that the State is to make all information public. The first principle of participation in county governments is “timely access to information, data, documents, and other information relevant or related to policy formulation and implementation” (Section 87 (a), CGA 2012). Part IX of the County Government Act 2012 provides for Public Communication and Access to Information. The CGA thus provides for multiple channels through which the county government should communicate public information including television stations, information and communication technology centers; websites; community radio stations; public meetings; and traditional media. The law specifies that counties shall encourage and facilitate other means of mass communication. Of interest is that the law requires access to information to be applied as a means of ensuring inclusion and integration of marginalized and minority groups. Counties are further required to designate an office for purposes of ensuring access to information and enact legislation to ensure access to information for which reasonable fees may be imposed.(CGA, 96 (2),(3)).

² The Act was amended in 2007 and 2013

³ See Working Paper 2. What are the basis requirements for Social Accountability in Kenya's Legal Framework.

2.1.2 What has been the experience in the first year?

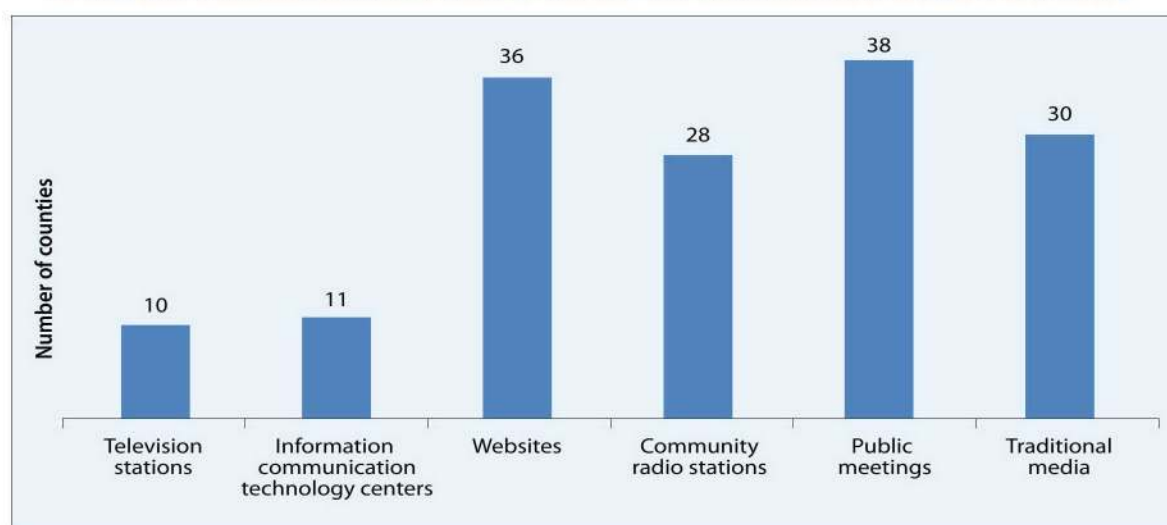
Across the 47 counties, there has been varied progress with different approaches and initiatives to facilitate public communication and access to information. The study by the CIC⁴, established that while 22 of the counties had a county communication framework, only four had enacted county legislation on access to information, and 16 counties had a strategy for inclusion and integration of marginalized and minority groups (see Table 1). The findings indicate that while some counties have taken steps towards putting in place communication frameworks, there is generally a low level of implementation of sections of public communication and access to information as required by the law. Communication plays a key role in enabling the county governments to disseminate decisions and information on policy and legislation, civic education, public participation and debate for both the County Executive and Assembly. Without proper communication frameworks in place key county processes such as budgeting and planning cannot take place effectively. In the first year CSOs have reported challenges in accessing key documents, final budgets, CIDPs and other documents needed to enable them monitor participation processes.

TABLE 1: FRAMEWORKS TO FACILITATE PUBLIC COMMUNICATION AND ACCESS TO INFORMATION		
A framework to facilitate public communication and access to information	Number of Counties	Percent
A county communication framework	22	47
A county government legislation on access to information	4	9
A strategy for inclusion and integration of minorities and marginalized groups in county development and governance	16	34

Source: Commission for the Implementation of the Constitution (CIC) 2014

Counties appear to be putting in place mechanisms for facilitating public communication and access to information that work well within their local context. According to the CIC (2014) study and as shown in Figure 1, the most established mechanisms are public meetings (38 Counties), followed by websites (36 Counties), traditional media (30), community radio stations (28), Information and Communication Technology Centers (11) and Television Stations (10). Most counties have opted to use public forums, traditional media and vernacular (community radio). An online validity check showed that 40 counties have accessible websites while seven have no websites. The seven counties that do not have websites are in rural regions. It is a legal prerequisite that counties have an accessible website, however, counties have recently been reporting low uptake of information posted on their websites, particularly those with high rural populations. Social media such as governors' official face-book page appear more popular. Most counties are yet to develop more elaborate structures, such as ICT centers, with only 11 counties having established them.

FIGURE 1: MECHANISMS ESTABLISHED BY COUNTIES TO FACILITATE PUBLIC COMMUNICATION AND ACCESS TO INFORMATION



Source: CIC, 2014

4 The CIC assessment covered all counties based on face to face interviews with the officials in each of the counties and document reviews.

2.1.3 Milestones, lessons and challenges

In assessing the progress counties are making towards putting in place mechanisms for facilitating public participation, it is important to recognize that the law specifies use of media with the highest public outreach. This may partly explain disparities between the use of television and community radio, with more citizens having access to radios than television. The cost of using some platforms may also be a contributory factor. In a world driven by technology, the laws on devolution envision counties that utilize Information and Communication technology effectively. While there are approximately 40 county websites, many of them do not provide key budget documents on time and sometimes carry outdated information. The counties contend that regular website updates are not prioritized because of the low uptake of website information by the public. However, majority of the counties do not have freedom of information laws that would require provision of timely information. From prior experience, it is possible that some public officers are reluctant to share information with the public as it may expose weaknesses.

Information availed online through county websites is varied. Legally, counties are required to make public all the information that relates to policy process. With regard to public finance planning and management, the key documents to be made public include: the Budget Circular, Annual Development Plan, County Integrated Development Plan (CIDP), County Spatial Plans, County Sectoral Plans, Urban Area Plan (Cities, Municipality or Towns), County Budget Review and Outlook Paper (CBROP), County Fiscal Strategy Paper (CFSP), Approved Budget for 2014/15, Revenue Estimates, Appropriations Act, Finance Act, Debt Management Strategy, Budget Implementation Reports, Tender Advertisements and Contracts and various call and notices for Public Participation. However, a survey of the 40 county websites showed that very limited information from the above is available online. Annex 1 shows the information available on county websites as of September 15, 2014. Few counties have posted their county budgets 2013-14 online. Anecdotal evidence from CSOs reveals that budgets can be accessed from the County Executive, but there is no systematic way for the public to access them. Nakuru County is an exception: both the Fiscal Strategy Paper 2014 and County Budget 2014 are posted online, and the county has worked with civil society organizations to develop popular versions of its budget and County Integrated Development Plan.

Beyond the mechanisms proposed in the legislative framework, counties have utilized other varied means of mass communication for effective public outreach. County experiences as shared during regional training workshops on promoting accountability in the preparation of the CIDPs, reveal a number of innovative approaches for communication.⁵ These cut across the use of brochures, newsletters and handouts (in Eldoret, Kitui, Nyeri and Nakuru counties); key opinion leaders to pass information to their communities (known as Drivers of Public Participation—DRoPPS—in Embu and Nyeri counties); and, Bungoma County where talking points on pertinent issues are shared with local leaders to be passed on to the community); roadshows, music, art and sports (in Kakamega and Homa Bay counties); live talk shows on community radio to simplify contents of the budget to citizens by county executive members of Finance (in Nakuru, Embu, Nyeri and Bungoma counties); and, use of official county face book pages, governors or speakers face book pages and tweeter handles, where the online conversations and feedback on legislation and even budget priorities are usually consolidated and addressed at formal meetings (in Laikipia, Machakos, Eldoret and Kiambu counties). While these are a few of the highlights, they underscore the argument that different methods work differently in different settings based on their backgrounds and can be used in combination to develop a holistic approach to information sharing. Table 2 is a sample of a diagnosis used by one county to determine which methods work best for different target audiences.

⁵ The workshops are held by the Kenya Municipal Program, a collaborative initiative between the Ministry of Lands, Housing and Urban Development and Development Partners (France Agency for Development, Sweden and World Bank). The project aims at improving local governance and improving service delivery in urban municipalities.

TABLE 2 : HOMA BAY COUNTY: ENGAGEMENT METHODS

Other methods	Work	Do not work	Yet to be tested	Comments
Public barazas	✓			Works better with the elderly.
Social media	✓			Works better with the youths.
County website		✓		It is erratic.
Print media			✓	Yet to be explored (no vernacular newspapers).
Road shows	✓			Appeals to the general public.
Electronic media	✓			Effective (vernacular radio stations).
Exhibitions and shows	✓			Has been used successfully.
Briefings	✓			Passes information and feedback through key representatives of stakeholders.
Fact sheets			✓	Requires regular updating to be up to date.
News/press Conferences	✓			
Telephone hotlines			✓	
Informal clubs/forums		✓		Chamaa, funerals, fundraisers.
Information and documentation centres	✓			Library of official public documents open to public any day.
Shop fronts			✓	Initiate informal chat to tap thoughts from the public.
Suggestion boxes		✓		Prone to abuse Unstructured feedback.
Complaints/compliments register	✓			

Source: Integrated Development Plan (IDEP) 3 Accountability Training Interim Report –unpublished

2.2 Capacity Building & Civic Education

2.2.1 Legislative Requirements

A key function of the county government is capacity building of the people to engage in local governance. Function 14 of the County Government (CoK, 2010 Schedule 4 (2)) is: "Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level". Counties thus have an obligation to facilitate capacity building of the public through training and opportunities for engagement in local governance. Part X of the County Government Act, 2012 provides for civic education under the three principles of empowerment and enlightenment of citizens and government; continual and systemic engagement of citizens and government; and values and principles of devolution in the Constitution. The law states that the purpose of civic education is to have an informed citizenry that actively participates in governance affairs of the society on the basis of enhanced knowledge, understanding and ownership of the Constitution. The National and County government have the mandate to provide civic education based on a national design and framework that will prescribe the content. Section 100 requires that each county shall implement an appropriate civic education program and establish a civic education unit and that the design and implementation of county civic education programs shall involve the participation of registered non-state actors as may by regulations be prescribed.

2.2.2 What has been the experience in the first year

National level frameworks, curriculum and content on capacity building and civic education are at various stages of development. Without guidance on standards and content on civic education, counties have faced various challenges in putting in place frameworks and programs that would standardize the approach to civic education. The Ministry of Devolution and Planning jointly with the Transition Authority, CIC, Ministry of Justice and Constitutional affairs and civil society organizations that have been active in civic education (such as URAIA and Amkeni Wakenya) have jointly been working together to develop the curriculum and content. The curriculum is now complete and the team is embarking on developing the content, which will be rolled out nationwide to citizens at the county level.

Most counties are yet to put in place the framework for civic education and programs for both county officials and the public. In the absence of the national framework for civic education and against more pressing demands of service delivery there has not been much progress in this among counties. The study by CIC (2014) shows that only six counties—Kirinyaga, Meru, Makueni, West Pokot, Trans Nzoia and Vihiga—had established a civic education unit. Seventeen (17) counties indicated they had not established any mechanism for civic education while those that indicated they had, could not differentiate between civic education and public participation frameworks.

At the national level, the National Capacity Building Framework (NCBF) for devolution was developed by the Ministry of Devolution and Planning and adopted by the Devolution Sector Working Group in November 2013 to ensure coordination and harmonization of capacity building on devolution. The NCBF aims at strengthening the capacity of counties in public financial management, human resource management, county integrated development planning and performance management. These interventions are focused on strengthening county systems, which are a prerequisite for enabling public participation. There are several activities by various actors streamlined under the framework that are targeted at building the capacity of county executives and assembly staff members. Under the NCBF, the Kenya School of Government (KSG) has the responsibility for training of executive staff. KSG is in the process of establishing a Center for Devolution Studies to coordinate and serve as a repository for devolution related training, research and knowledge resources. The Centre for Parliamentary Studies and Training (CPST) coordinates training for county assembly staff and is working jointly with CSOs such as State University of New York (SUNY–Kenya) in this venture. Other initiatives are being undertaken by CSOs such as Westminster Foundation, International Republican Institute, UN Women, among others, coordinated under the Parliamentary Working Group.

2.2.3 Milestones, lessons and challenges

There are considerable efforts being undertaken in planning for and putting in place sustainable frameworks, structures and programs to facilitate sustainable civic education. As discussed national level actors responsible for civic education are putting in place the preparatory steps to roll out civic education support to the counties. As counties await guidance from national level for the framework on civic education, in addition to establishment of civic education units, there are commendable good practices that have been initiated by individual counties to improve the quality of citizen participation. Box 1 highlights some of the initiatives undertaken by Nakuru County to improve the engagement of citizens in devolved governance.

BOX 1: NAKURU COUNTY INITIATIVES ON CIVIC EDUCATION

- Organized a County Public Service week to commemorate the first year of devolution under the theme; One year into devolution, celebrating the milestones and confronting the challenges. The Public service week was aimed at heightening the community's awareness of what the county does by way of delivering infrastructure and services.
- The preparation of 2014/15 finance bill entailed a structured awareness exercise where a local radio station was contracted to deliver standard messages on the content of the bill and what was expected from the public with regard submission of memoranda.
- The CEC finance held a live radio interview where listeners got an opportunity to ask questions on the finance bill and other related issues.

The Budget & Economic Planning office in partnership with an NGO prepared a popular version of 2014/2015 budget as well as the popular version of the CIDP.

There are multiple knowledge resources from CSOs and government institutions on thematic topics of citizen engagement on devolution in Kenya. These resources, in the form of guidebooks, posters and checklists, inform citizens on the basic principle and structure of devolution, the roles of county executive versus county assembly, the budget process and how they can engage in it. Many of these resources have been produced and distributed by organizations like Uraia, International Budget Partnership (IBP), TISA and several others. The Transition Authority, CIC and MODP have also produced guidebooks, some in partnership with the civil society. However, there are limited print runs, limited number of trainings, lack of a central platform to access such information and no standardization of the content being used for civic education. The civic education framework once finalized will contribute to streamlining the activities of the different actors.

CSOs need capacity building to improve their engagement both with the counties and citizens on devolution-related issues. County-level community based organizations, in particular, require support to guide substantive public participation on the technical aspects of the budget making process, analysis of county revenue projections and integrated development planning. In Taita Taveta County, for instance, there has been active engagement by the International Budget Partnership to educate citizens on budget analysis. However, overall CSOs have not adequately supported the effective engagement of citizens by bringing critical issues such as unrealistic revenue estimates to the attention of citizens. Unrealistic revenue estimates can undermine the entire budget process, and should therefore be a point of focus during public consultations. If not addressed there is the risk that public participation could have negative effects, such as incentivizing unrealistic budgets that promise to deliver unaffordable outcomes.

2.3 Public Consultations

2.3.1 Legislative Requirements

Public participation is a principle that has been given prominence in the Constitution of Kenya (CoK) 2010 and specific laws on devolution, including the County Government Act, the PFMA, the Urban Areas and Cities Act. The public is expected to participate and be involved in the legislative and other business of Parliament and its committees (Article 118 CoK). Section 201 of the CoK states that there shall be openness and accountability, including public participation in financial matters. The PFM Act Section 137 mandates counties to establish County Budget and Economic Forums (CBEF): "The purpose of the Forum is to provide a means for consultation by the county government on—(a) preparation of county plans, the County Fiscal Strategy Paper and the Budget Review and Outlook Paper for the county; and (b) matters relating to budgeting, the economy and financial management at the county level." Section 115 of the CGA mandates public participation in county planning. Part VIII section 91 of the County Government Act, 2012 and Section 22 of Urban Areas and Cities Act, 2011 provide for the establishment of modalities and platforms for public participation which include citizen fora, town hall meeting, representation in boards, development project site announcements among other. According to section 92 and 135 of the County Government Act (2012) there are regulations that are to be developed to give full effect to provisions on public participation (Part X of the CGA, 2012).

2.3.2 What has been the experience in the first year?

Counties are seeking to operationalize the provisions for public participation under the law, but have faced significant challenges cutting across inadequate planning, budgeting and staffing; compressed time schedule; limited knowledge of participation by both government officials and the public; lack of guidelines; and *ad hoc* structures that fail to provide for inclusive governance. Many counties acknowledge that they are fulfilling the minimum legal requirements for participation, but could improve on the quality of their participation processes through a structured format by which they can get citizen input on budget estimates and county plans as well as make these processes more inclusive.

While there are numerous provisions in the new legal framework on transparency and public participation, in most cases detailed regulations or guidelines are yet to be developed. Most counties are yet to develop county specific public participation legislation and/or frameworks. A few counties (less than 10) have enacted county specific legislation on public participation, but majority still do not have a legally mandated framework in place to guide public participation. The national level regulations and guidelines on public participation are also not in place, which are essential to provide the minimum standards and model for counties. Work has however commenced by the Ministry of Devolution and Planning (MoDP) with support from the World Bank to develop the national guidelines with input from county governments that have successfully put such frameworks in place, CSOs and other government institutions. Once finalized and effectively implemented, these guidelines can greatly improve the success of participatory processes. If not addressed, limited understanding and capacity both within the County Assembly and Executive may however undermine effective implementation of the frameworks and guidelines.

Civil society and development partners have been working with counties to support the development of frameworks. They have been collaborating with counties to ensure that the mechanisms of public participation are established and implemented. This effort has been supported by different initiatives such as the development of a model law and policy on public participation by Transparency International-Kenya, The Institute for Social Accountability and World Vision-Kenya; World Bank-support to Laikipia County to review its draft bill on public participation; provision of technical assistance and training on transparency and accountability in budget preparation by International Budget Partnership-Kenya, Institute of Economic Affairs-Kenya and their partners; and provision of support on developing access to information legislation by Kenya Mpya and Mars group.

Most counties have not established County Budget and Economic Forums (CBEFs) to guide the means of consultation on county plans and budgets. The Public Finance Management (PFM) Act 2012 provides for the establishment of a CBEF in each county to guide means of consultation on the preparation of the County Fiscal Strategy Paper, the Budget Review and Outlook Paper and other budgetary matters. The vast majority of counties are yet to put in place the CBEFs and a study done by IBP indicates that only 4 counties—Elgeyo Marakwet, Bungoma, Taita Taveta and Machakos—have CBEFs in place. Even in these counties with operational CBEFs there are still a number of challenges that have limited them from functioning effectively. These include composition and capacity of the non-state members, inadequate resources to facilitate convening public forums at ward level, lack of clarity on mandate of the CBEF and lack of coordination with the County Assembly.

Counties have established different structures to facilitate citizen participation in government programs. These structures are based on the framework and guidance provided for in the County Government Act, 2012 (Section 91). These include a mix of ICT platforms, town hall meetings, budget preparation and validation for a, notice boards, MCAs, citizen fora, etc. Table 3 shows the structures established so far (CIC, 2014).

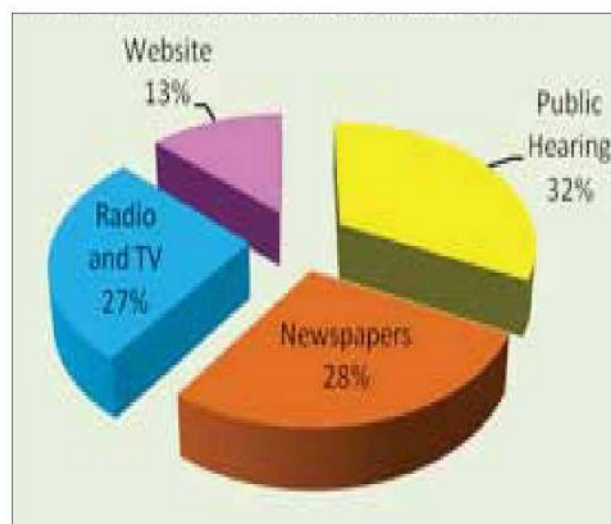
TABLE 3: STRUCTURES ESTABLISHED TO FACILITATE CITIZEN PARTICIPATION

Structures established to facilitate citizen participation	Number of Counties	Percent
Information communication and technology based platforms	34	72.3
Town Hall meetings (structured meetings)	32	68.1
Budget preparation and validation fora	37	78.7
Notice boards; announcing jobs, appointments, procurement, awards and other important announcements of public interest	40	85.1
Development projects sites	33	70.2
Avenues for the participation of peoples' representatives including but not limited to members of the national assembly and Senate	35	75.5
Establishment of citizen for a at county and decentralized units (Also in section 22(1) of the Urban areas and Cities Act, 2011)	26	55.3

Source CIC, 2014

Counties have employed a number of mechanisms on public participation in order to meet the legal threshold. According to a study carried out by ICPAK (2014), public hearings are ranked as the highest medium employed when reaching out to the citizens. Newspapers are ranked second despite their low circulation and reach among the rural population and urban poor. However, counties preferred newspapers because they are seen as an easy means of meeting the legal threshold. Bomet County has made strides in this regard by establishing a hotline for getting feedback on service delivery, which enhances participation within the county. Figure 2 shows the mechanisms for public participation counties have used. Twenty seven percent (27%) of the counties utilized national and local TV and radio stations (especially vernacular radio). However, there are concerns with this as vernacular radio stations limit access for residents who do not understand the language, particularly in cosmopolitan counties.

FIGURE 2: PUBLIC PARTICIPATION MECHANISMS USED



Source: Institute of Certified Public Accountants of Kenya (ICPAK) 2014

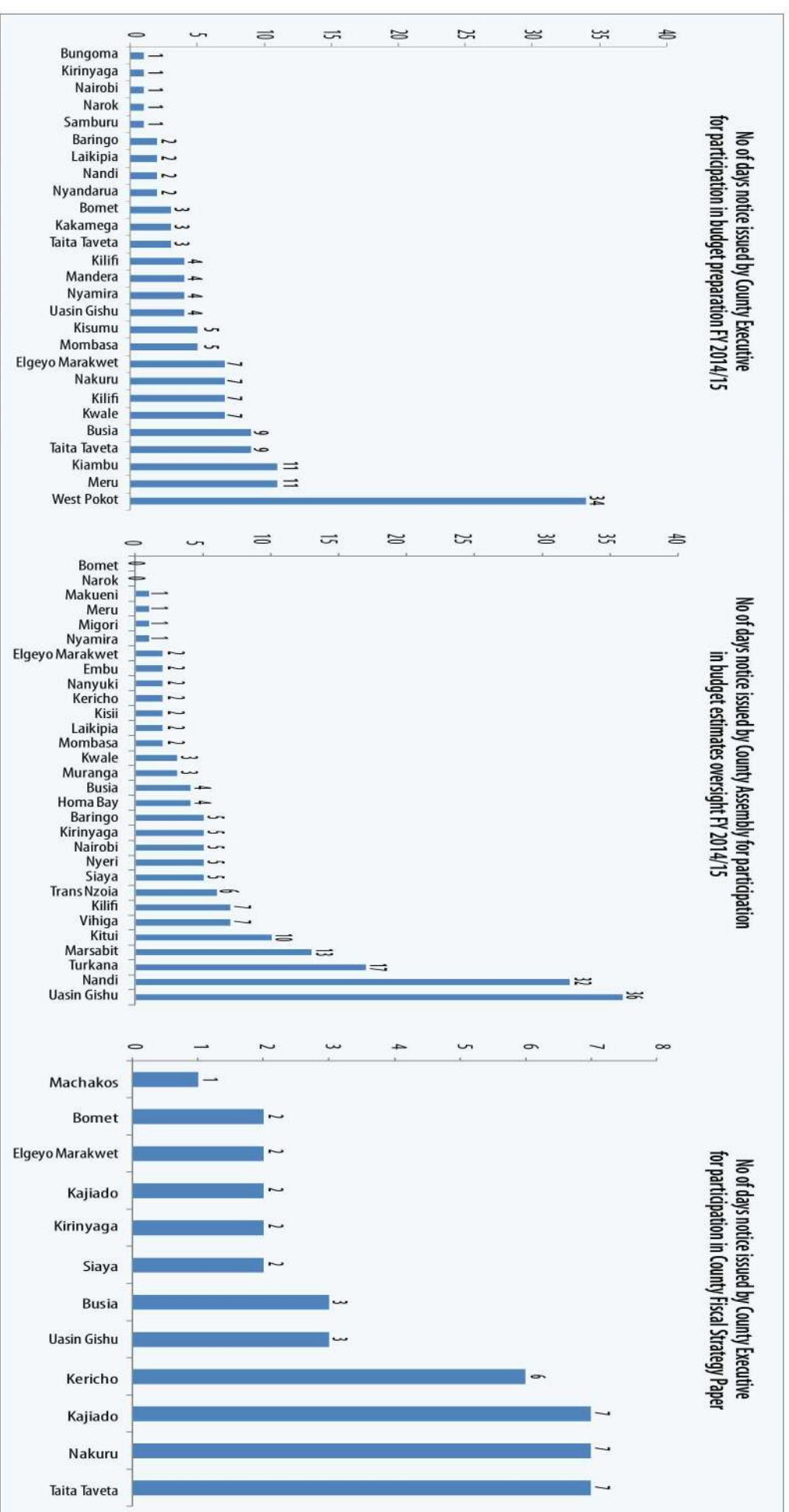
2.3.3 Milestones, lessons and challenges

Participation is happening on most of the key documents required by law though in unstructured arrangements by both County Executive and County Assembly. In most counties there has been public participation in the development of CIDPs, CFSPs, Budget Estimates, Finance Bill and other key laws. A survey by Ministry of Devolution and Planning (2014) indicates that 95 percent of the counties involved the public in consultations on the budget. The survey showed that 87.5 percent of the counties involved the public in integrated development planning, while only 52.4 percent involved the public in the preparation of fiscal strategy papers. Participation was largely ad hoc and done predominantly at the county and sub-county levels, rather than cascade budget consultative meetings to the village level. This has meant that participants had to travel long distances and demanded to be given transport allowances to be able to attend. This approach has locked out many people who should and could have been involved. In counties where local leaders were engaged in mobilization, they did so with persons and networks affiliated to them, compromising the quality and inclusiveness of the participation. Furthermore, participation has been seen to be a mechanism for getting wish lists as there is no organized format for discussing priorities, or any realism around the resources likely to be available after fixed costs are paid.

Limited notice of meetings and failure to make available budget documents prior to forums continue to compromise the quality of participation. In most public participation arrangements, counties have preferred face-to-face meetings. Unfortunately, the notice given was too short and sometimes only given through media such as newspapers that most citizens, especially in rural areas, do not access. In most consultative forums, the public was only able to see the agenda documents at the meeting and sometimes in highly summarized or bulky reports that were not citizen friendly. According to Civil Society reports,⁶ only Nairobi County's Budget 2013/14 contained a narrative description. Efforts to simplify budgets and CIDPs have thus been more recent. Figure 3 shows that less than 10 counties out of 27 gave more than 7 days notice for participation in the preparation of the 2014/2015 budget. As for the County Fiscal Strategy Paper, only 3 out of 12 counties gave a notice of seven days for participation.

⁶ International Budget Partnership, The Institute of Social Accountability, Institute of Economic Affairs, Article 19, I Choose Life, Water and Livelihood Network (2013) *Learning by Doing: Towards Better County Budgets in 2014/15*.

FIGURE 3: DURATION OF NOTICE FOR PUBLIC PARTICIPATION IN BUDGET PREPARATION



Source: World Bank (2014) Computations & analysis by Beryl Kenya and Amette Ombio

Initial county efforts to solicit citizen views in the development of County Integrated Development Plans (CIDP) and budgets 2013/14 were constrained by a compressed time schedule and limited resources and capacity. Often citizens perceived certain public forums to be tokenistic in nature, especially in cases when information was not provided in advance in user-friendly formats, their input was not taken on board and when feedback was not provided on how decisions were made. Counties came into office in March 2013, had to set up systems and structures as well as assume responsibility for devolved functions faster than anticipated. This had to be balanced with engaging citizens in the budget and CIDP process. Counties may thus have grappled with planning effectively for the budget consultations. Citizens dissatisfied with the consultation process in one county on the Finance Bill, took court action to challenge the enactment of the Bill. Some of their key grievances were that they were not given sufficient notice of the meeting to enable them scrutinize the bill prior, their contributions were not taken on board and no further consultations were held on the revised bill that was enacted. The urgency to have inclusive and effective processes for public participation heightened after the High Court nullified the Kiambu County Finance Act for 2013/2014 due to failure to meet the public participation threshold (see Box 2). As a result, counties are seeking to ensure that they target different stakeholders in budget consultations for more representative forums and using broader methods of sharing information as discussed in the earlier section on access to information. The Kiambu Finance Bill ruling is an important reference for defining public participation as it sets precedence for what constitutes quantitative and qualitative participation

BOX 2: CASE STUDY

The nullification of the Kiambu County Finance Act 2013 set precedence for public participation in county policy making. On April 17, 2014, the High Court Judge Hon. George Odunga nullified the Kiambu County Finance Act 2013 on the grounds that its preparation had not met the thresholds of public participation. In giving the verdict the judge indicated that the information on public participation and the actual facilitating was limited and thus locked out alternative views from the public. He specifically indicated that:

- a) Crucial information going out to the public should be clear and not have any ambiguity;
- b) members of the public cannot participate meaningfully if they are given inadequate time to study bills, consider their stance and formulate representations. The newspaper advertisement was published on 17th August for a meeting to be held on 20th August.
- c) The mode of advertisement did not lend itself to a proper avenue for communication in a largely illiterate and poor community. The county Assembly should in such circumstances exhort its constituents to participate in the process of the enactment of such legislation by making use of as many fora as possible such as churches, mosques, temples, *barazas*, national and vernacular stations and other avenues.
- d) There was need for further consultation on the revised Bill, which did not take place. This is necessary to deter a County Assembly from rejecting bills that have gone through public participation and substituting them with bills of their choice, thus defeating the purpose of public participation. The objective in involving the public in the law making process is to ensure that the legislators are aware of the concerns of the public. This awareness promotes the legitimacy and thus the acceptance of the legislation.

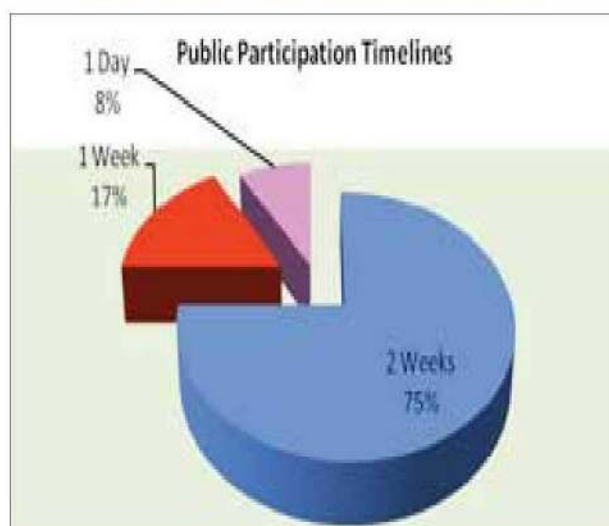
Timelines for feedback in public participation processes are varied between counties. The ICPAK study showed that in terms of timelines set when calling for public participation, input or feedback, (75 percent of counties set a timeline of two weeks to receive public input while 17 percent gave only one week for feedback (See Figure 5). This was definitely not sufficient for effective public participation considering the size of the documents requiring input and the need for the citizens to interrogate the documents. The participants were expected to read the documents and provide feedback at the forum. There were no other established mechanisms for citizens to give input as feedback was sought only in the meeting. Rarely is a reliable email or physical address provided where the public could provide further input within an agreed timeframe. As a result, constructive, genuine informed feedback was limited at best.

Feedback to citizens on the outcomes of their contributions remains inadequate. While the public have been mobilized to give their input on various policy proposals, rarely were they provided feedback on how their contributions influenced the decisions made and the rationale supporting the final decisions. This lack of feedback often results in public participation being viewed as a mere public relations exercise with little genuine intent. This also has the potential of discouraging future participation.

There is an increasing danger of participation fatigue if the consultation process is not well coordinated. The budget preparation cycle runs from August 30 to June 30, with a number of documents that the public is to be consulted

on, both by the Executive in formulation and the Assembly for oversight. Over and above the budget documents, the law requires public consultation on all laws and policies that the counties are to develop. While this is critical, it is emerging in some cases that the County Executive and Assembly prefer to use separate frameworks for participation, and even within the Executive each department prefers to carry out their own separate participation processes. Previous experience with Kenya's decentralized funds established that citizens had difficulty understanding and participating in local development initiatives due to different guidelines, procedures and implementing agencies of the more than 10 funds. The same could happen if participation is not streamlined using standard frameworks and coordinated procedures with the role of the Assembly and Executive clearly distinguished.

FIGURE 5: COUNTY PUBLIC PARTICIPATION TIMELINES



Source: ICPAK, 2014

3. Lessons and Recommendations

It is clear that the first year of devolution in Kenya has been one of setting structures and putting systems in place. Key efforts have been made in this direction by both state and non-state actors. However, the experience of counties suggests that while a lot has been done, there is a long way to go.

3.1 Key insights from one year on

- i. *Legal compliance will take place incrementally.* The legal requirements for public participation are quite extensive. Counties may not adhere to all the provisions instantaneously as envisaged under the legal framework. While this entails setting up systems and structures, it will also need patience and a change of attitude towards public participation. Small gains need to be considered and appreciated. Further, changing 'compliance only' attitudes amongst government officials towards participation will also require patience. The often minimalist approach to engaging the public where all efforts are only towards complying with the law need to be slowly replaced with deliberate efforts to seek and genuinely incorporate public views in key policy processes. This will require capacity building, but can be accelerated by demonstrating the benefits of effective public participation from experiences of others.
- ii. *Capacity-building is needed not just for citizens and other non-state actors, but also state actors.* While it is broadly recognized that citizens require support to effectively engage in key budget and planning processes, the capacity of state to effectively engage with citizens also needs to be supported. Especially as both have complimentary roles in strengthening public participation at the local level.

- iii. *Participation should be coordinated amongst the executive, assembly and other institutions to enable the effective engagement of citizens.* Structures of engagement can be designed and operationalized in ways that are predictable and coordinated so it is clear as to what the public is being asked to engage on and when and where they are expected to participate to prevent public fatigue. Targeting all citizens on all decisions while desirable is impractical. Mechanisms for effective representation of all voices can be put in place, but not everyone needs to be consulted on everything. Different approaches can be considered such as targeting citizens and stakeholders based on the specific sector and/or interest areas.
- iv. *Providing monetary allowances to citizens for participation is unsustainable.* Counties have been providing allowances to the public for participation on the grounds that the poor whose views are critical cannot afford travel costs to meeting venues. While this may be a stop-gap measure, alternate approaches can be considered in which the officials come closer to the people as opposed to transporting people from various villages to a central point of meeting. This approach would overall be more cost-effective and enable broader representation of the public.
- v. *While the outreach of Member of County Assemblies (MCAs) is effective, additional means of reaching out to the public can also be explored.* MCAs are often used to facilitate mobilization, but this has the resultant effect of limiting participants to political supporters. Although this approach is advantageous as it ensures the elected representatives play a leading role in ensuring public participation, alternate approaches can also be considered, such as radio, community notice boards, and other approaches that make information accessible to broader groups including persons with disability and marginalized groups in the community.
- vi. *Though planning and budgeting is a technical exercise, the political economy of resource allocation needs to be appreciated.* That came to bear in a few counties where it was observed that each ward wanted projects done in their areas. MCAs often pushed for more allocation of funds and projects for their wards, which didn't represent value for money nor economies of scale.⁷

3.2 Recommendations

The above lessons and experiences from the first year of devolved government in Kenya provide important insights for recommendations to improve the quality of public participation in county budgeting and planning going forward. While the recommendations below apply broadly to the variety of stakeholders engaged in devolution, Box 4 provides summary specific recommendations for governments (national/county), civil society actors and development partners.

Specifically:-

1. National guidelines or standards to guide public participation and access to information at both the national and county level need to be developed.

National guidelines and standards will help to ensure that while counties prepare their own frameworks there is observance of minimum standards that give all citizens equal opportunity of engaging across the country. The guidelines should also help clarify the respective roles of County Executive and Assemblies with respect to facilitating public participation. These should also include rules and guidelines for citizens including representation of women, youth, people with disabilities and other vulnerable and marginalized groups, while allowing flexibility to deal with the specific contexts such as needs and challenges faced by people from different geographic regions. Such a framework should seek to institutionalize an integrated three-strand system of access to information, civic education and public participation based on already developed minimum standards. While there are various proposals by both state and non-state actors, none has yet been adopted as the national framework and none has interwoven the three-strands above.

⁷ Abraham Muriu Rugo, *Reflections on Social Accountability in County budgeting and Planning*, January 22, 2014.

2. **Clear framework should be in place at the county level to guide citizen participation (incorporating the minimum standards required by law).**

County specific public participation frameworks should be developed and adopted in every county, clearly outlining the structure and process for engagement of the public to ensure clarity on when and how participation will take place in the county. This will enable the public to have a recourse measure should participation not take place as per the legal requirement.

3. **Capacity of public servants and civil society needs to be strengthened to facilitate effective public participation, access to information and deliver civic education.**

Counties need to build civil service capacity and provide financial and technical resources to support public participation in county planning, public financial management, and performance monitoring. The key aspect of achieving effective public participation is in attitude change and capacity strengthening of both state and non-state actors. This will enable them appreciate their complimentary roles. There is also need for sustained and coordinated support to counties as the devolution promise will take time to realize.

Efforts should be made to ensure citizens understand the roles, functions, responsibilities of new county assemblies, executives, and service delivery entities. A useful tool for citizens would be a citizen's handbook on civic engagement in devolved government that pulls together information from key laws and regulations and explains entry points for citizens in national and county policy making, planning, budgeting, performance monitoring in simple, user-friendly formats. Such a handbook can consolidate work that is already being done to explain the public financial management system, function assignments, and county planning among others.

4. **Effective County Budget and Economic Forums (CBEFs) should guide participation.**

Counties need to be supported to make the CBEFs operational and to design and structure effective participation forums around their budgets and plans. The structures developed should provide a clear mechanism for: communicating agenda for consultations and timeline of when and where consultations should take place; dissemination of key documents (budgets, plans, implementation reports) to the public; clarity on what citizens are being asked to comment on, with public notices and invitations clearly providing a summary of the resource envelope, proposed summary expenditures and targeted revenues; simplified feedback tools that make public input easy to incorporate especially where submissions are provided for; systematic procedures for conducting the forums with designated facilitators; and use of different media for communicating to the public.

5. **Effective public participation requires adequate budgeting and planning in advance.**

Counties need to plan, budget and staff public participation processes as part of the overall budget formulation and consultative processes. Ad hoc engagement can only be addressed with proper planning. As such collaborative efforts should be sought between state and non-state actors in each county so as to pool resources and expertise.

6. **CSO initiatives to support participation, transparency and civic education are better if aligned with government systems and processes in order to ensure sustainability and institutionalization.**

Local government and civil society actors can be jointly trained on the rules, opportunities and mechanisms for citizen participation in local service delivery. This will depend on large-scale outreach, training and mobilization efforts, which in turn will require human and financial resources. Case studies document how CSOs and other third-party non-state actors can play an important role in training and assisting both local officials and citizens to design and roll-out county planning, budgeting, and performance monitoring systems that enable effective public participation. While their roles may be different, coordinating training and tools would support linking supply and demand side participatory processes.

Kenya has good examples of citizen mobilization, but even successful initiatives have rarely been incorporated into government standards, systems, and capacities. Without a good enabling environment, civil society-led initiatives will continue to face challenges of sustainability and impact. There is need to build the capacity of CSOs and media to strengthen their role as intermediaries and watchdogs between government and citizens.

7. Shared platform with information and data on devolution can support effective coordination and decision-making and guide people's priorities.

A collaborative effort is needed between counties, national government and civil society actors around data collection and provision that enables effective decision making. Data in simplified formats can help guide people's wish lists into priorities.

There is need for a one-stop platform that provides county disaggregated data and documentation of best practice or models of participation that are working and sharing the lessons learnt amongst counties. While the progress in institutionalizing public participation is varied in different counties, the gains and failures need to be documented and shared. This would provide counties and the public a point of reference in the future.

8. A county performance measurement system needs to be established with specific indicators for measuring the extent of public participation in the county.

A performance measurement system would facilitate the assessment of the kind of frameworks and systems counties have put in place to ensure there is transparency and access to information and structured participatory processes. The performance management plan in section 47 of the County Government Act provides such an assessment framework and should be used going forward.

A county by county assessment of the level of institutionalization of public participation frameworks would provide a basis for further structuring of the county participation processes. This will enable systematic measurement and comparison of county government performance and citizen satisfaction across counties and service delivery units. This information should be made public in order to serve as an incentive to improve service delivery performance.

There are efforts currently underway, led by Council of Governors with support from the World Bank, to develop a county performance measurement system, which is currently being piloted in Bomet, Kiambu and Mandera. The World Bank is also leading a joint effort with CSOs develop a set of indicators or metrics on county public participation performance, in line with the above assessment areas. These indicators will then be assessed using existing data sources and surveys, such as the annual NDI survey on citizen perceptions of devolution. Depending on whether or not existing data sources can provide the quantitative and qualitative information required for the assessment, a decision will be made as to whether a new survey instrument/data collection tool is required.

Developing a common set of indicators around county public participation performance can ensure that there is annual tracking of progress. Such an assessment framework will not only be of benefit to county governments and citizens, but enable civil society and development partners to better align and prioritize areas for support under their respective public participation initiatives.

9. As devolution continues to unfold, there is likely to be continued good progress, alongside a continued myriad of challenges. In order to better target areas for support and capacity building, it will be important to develop a system of assessing how counties are progressing and in which thematic areas. Such an assessment may include several areas of county performance, but key to assessing the state of specifically public participation year on year would be in the following spheres:

BOX 3: PROPOSED FRAMEWORK FOR ASSESSING THE STATE OF PUBLIC PARTICIPATION IN COUNTIES**Are the Systems and Structures in place for effective public participation?**

1. Is there a public participation framework in place in the country?
2. What level of operationalization has the county reached in the PP framework? (i.e. Does the county have an implementation plan, do they allocate resources to participation, and do they report regularly on what is going on?)
3. Is the CBEF Operational? (i.e. Is it structured according to the law?)
4. Is there a citizen window at the county government? (Is it adequately staffed? Does it have information available for the public?)
5. Is there a grievance recourse mechanism available to citizens in the county government office?
6. Are public forums held for key budgeting and planning processes?
7. What is the state of public petitions to the county assembly on the performance of the county executive?
8. Is there a mechanism for continuous civic education established?

What is the state of civic education in the county?

9. What is the level of citizen awareness of relative roles and responsibilities of county vs. national government?
10. Do citizens know what their county priorities are as reflected in the CIDPS? (roads, health, agriculture, etc.)

What is the level of access to information in the county?

11. What are the key documents available on the county website?
12. Are the key budget and planning information/documents available in user-friendly formats?
13. Are they made available online in a timely manner?
14. Is information in user-friendly formats made available to citizens in advance of public forums?

What has been the impact and result of public participation?

15. What is the level of public participation as a result of the structures operationalized?
16. Do citizens feel their input has been taken on board?
17. What has been the influence and results of public participation on decisions made in the county? (i.e. what has been the impact of public participation on the key budget and planning decisions?)

Perspectives from national government, Counties, and the civil society

"The constitutional 'promise' of transferring power, responsibilities and resources and delivering a more devolved government that is closer and more responsive to the people, in reality, is still facing considerable constraints. These include, the political and administrative complexity and magnitude of the devolution process, uncoordinated and fragmented approach to capacity building, duplication of capacity building efforts and resources between various stakeholders and inadequate time and financial resources."

- Anne Waiguru, Cabinet Secretary, Ministry of Devolution and Planning, GoK, 2014

"Devolution is working. Roads are being graveled, hospitals are being rehabilitated and equipped, water is being supplied to the villages and the government is being felt in the villages and hamlets, but most importantly, the people are being involved, as a matter of legal requirement, in the decision-making processes of County developments. In this regard it should be supported."

- Laikipia County Finance Chief Officer

"We need to engage the public to identify their needs and not projects. We are now dealing with an informed citizenry aware of its rights. There has got to be a shift in the way we do our politics, instead of standing on a podium telling people you are going to build a bridge when you know you don't even have a river."

- Deputy Governor Embu

BOX 4: SPECIFIC RECOMMENDATIONS FOR GOVERNMENT, CIVIL SOCIETY AND DEVELOPMENT PARTNERS**Are the Systems and Structures in place for effective public participation?****Government**

- Existing champions in government can promote the benefits of citizen state engagement.
- Government at all levels could effectively engage citizens in ways that are efficient and cost-effective.

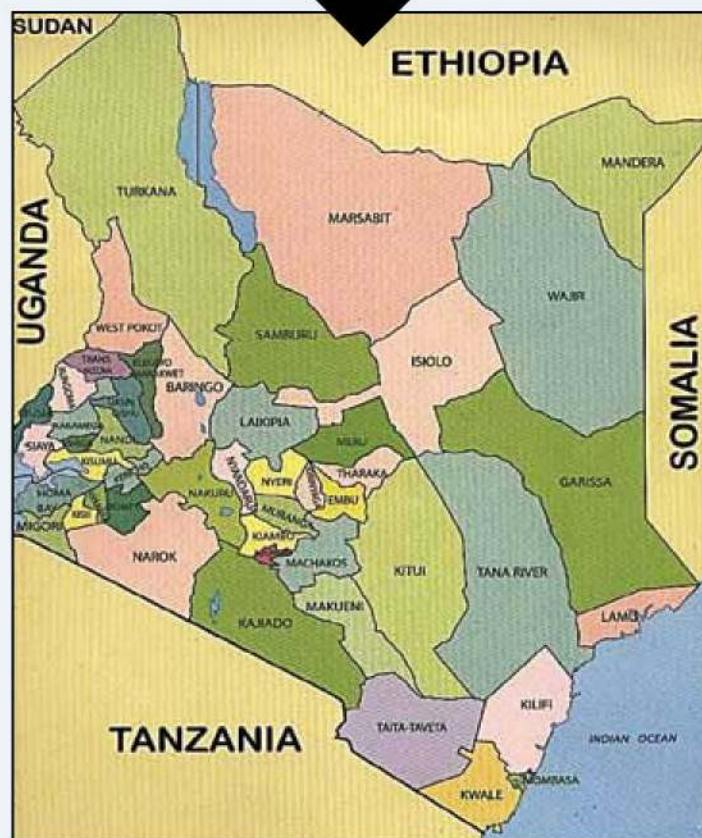
Civil Society

- CSOs can use citizen networks and coalitions to develop and advocate for minimum standards of transparency and participation in government planning, financial management, and performance monitoring;
- CSOs working at the county level could expand their focus (from service delivery, rights and advocacy based work) to include public participation in budget planning, monitoring and evaluation. CSOs could mobilize citizens to engage with the 'supply side,' to understand the budget process and their role in it; and
- Develop a citizen's handbook on civic participation in devolved government.

Development Partners

- Donors can better coordinate their support to county governments and civil society;
- Donors can focus on supporting networks that bring together CSOs working on devolution;
- Donors can provide and align support to key government institutions including key training institutes;
- Donors can place increased priority on proposals from civil society coalitions to advocate for county governments to put in place minimum standards of transparency, participation, and accountability in planning, budgeting, and monitoring systems; and
- Expose county government and civil society actors to the rules, opportunities and mechanisms for citizen participation in local service delivery.

MAP OF KENYA COUNTIES



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Abbreviations and Acronyms

CPST	Centre for Parliamentary Studies and Training	DRoPPS	Drivers of Public Participation
CDF	Constituency Development Fund	ICPAK	Institute of Certified Public Accountants of Kenya
CIC	Constitution Implementation Commission	IBP	International Budget Partnership
CGA	County Government Act	LASDAP	Local Authority Service Delivery Action Plans
CoK	Constitution of Kenya	MCAs	Member of County Assemblies
CBEFS	County Budget and Economic Forums	MoDP	Ministry of Devolution and Planning
CIDP	County Integrated Development Plan	NCBF	National Capacity Building Framework
CBROP	County Budget Review and Outlook Paper	PFM	Public Finance Management
CFSP	County Fiscal Strategy Paper	SUNY	Kenya State University of New York
CSOs	Civil Society Organizations		

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