



IGRTC

INTERGOVERNMENTAL
RELATIONS TECHNICAL
COMMITTEE

Consultation, Cooperation & Coordination in Devolution

**THE STATUS
OF
PUBLIC PARTICIPATION
IN
NATIONAL AND COUNTY GOVERNMENTS**

LIST OF ABBREVIATIONS

CDF	Constituency Development Fund
CDWs	Community Development Workers
CEC	County Executive Committee
CEO	Chief Executive Officer
CIC	Commission on the Implementation of the Constitution
CIDP	County Integrated Development Plan
CJPC	Catholic Justice and Peace Commission
CRC	Citizen Report Card
CRE-CO	Constitution and Reform Education Consortium
CSOs	Civil Society Organisations
DDC	District Development Committee
ICCPR	International Covenant on Civil and Political Rights
IEA	Institute of Economic Affairs
IGRTC	Intergovernmental Relations Technical Committee
KEPSA	Kenya private sector Alliance
LASDAP	Local Authority Service Delivery Action Plan
LATF	Local Authority Transfer Fund
MCAs	Member of the County Assembly
MODP	Ministry of Devolution and Planning
NEDLAC	National Economic Development and Labour Council
NSAs	Non State Actors
PFMA	Public Finance Management Act
PMC	Project Management Committees
PPPs	Public-Private Partnerships
PSC	Public Service Commission
RGB	Rwanda Governance Board
SCEC	Sub County Civic Education Coordinators
SID	Society for International Development
SRDP	Special Rural Development Program
TA	Transition Authority
TISA	The Institute for Social Accountability
UNCAC	United Nations Convention Against Corruption
UNECE	United Nations Economic Commission for Europe
USAID	United States Agency for International Development
WPPF	Ward Public Participation Facilitators

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FOREWORD

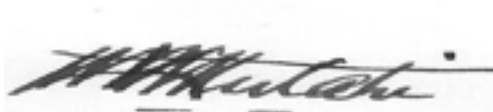
The Constitution of Kenya 2010 (CoK 2010) places great emphasis on public participation in the national development process as a means to ensure relevance in public investments. Constitutional provisions on public participation are clearly spelt out in Articles 69 (1) (d), 118, 174, 184, 196, 201 (a), 221 (5), and 232 (1) (d) among others. I am therefore grateful that the Intergovernmental Relations Technical Committee (IGRTC) which, with the assistance of our stakeholders and development partners, has developed a document that clearly presents the current status of public participation under the devolved system of government and also gives recommendations for the way forward.

This document presents a baseline from which the IGRTC and its partners will leverage their efforts for improved participation of members of the public in deciding the courses of actions in all matters relating to public investments. As such, the major objective of preparing this document was the need to assess the status of public participation in the country and identify the challenges, threats and opportunities for the members of the public to play their roles in deciding how they are to be governed. The provisions for public participation were necessitated by the fear that the old order, which gave a top-bottom approach to governance where the leaders would prescribe what they thought was good for the public, would continue to hinder the realization of rapid and relevant development.

The old order led to resource wastage as some public investments were made in areas or on facilities that were not viable. This document thus presents experiences across the globe as well as locally to enrich our understanding and appreciation of the need to embrace inclusivity in the management of public affairs. It features case studies that will be of great help to all those interested in ensuring relevance in national development through effective and meaningful public participation. It analyses a number of legal provisions derived from the Constitution that support the essence of public participation and, in addition, recognizes several initiatives by different actors in public governance that are aimed at entrenching and strengthening the process of public participation.

It is worth noting that the document identifies critical decision points where the public views are indispensable, which include the budgeting cycles, construction of infrastructural facilities, and representation of the people among others. It identifies the core of public participation principles to include right to participate, responsiveness, accountability, acknowledgement of interests, inclusivity and affirmative action. The other key tenets are consultation, transparency, flexibility, accessibility, integration, trust, commitment and respect for other people's rights and views. By embracing these values, the members of the public will be able to enjoy the full benefits of governance at both levels of government. This will be mediated through a leadership is responsive to the needs of the public and that benefits from tapping a wide range of skills and experiences from the citizenry.

As we launch this important document, I wish to appreciate the efforts of some of our counties that were found to have actively embraced public participation in their development initiatives. These counties have made great strides in making the public an integral part of their decision-making structures and thus enhanced local ownership of public programmes. I congratulate those that have succeeded in this endeavor and advise those that are still searching ways and means of enhancing public ownership to make full use of this document, which we intend to widely distribute. Further, we stand ready to offer assistance to those who may need any further input from us.



Prof. Karega Mutahi, CBS
Chairman
Intergovernmental Relations Technical Committee

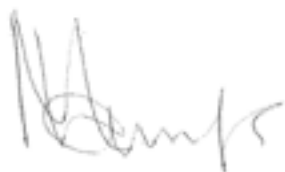
ACKNOWLEDGEMENT

The Intergovernmental Relations Technical Committee is grateful for the invaluable support it received from our key stakeholders and partners throughout the process of conceptualization, development and publication of this report. A wide range of interest groups, individuals, governmental and non-governmental institutions contributed to the development of this document. To all those who spent their valuable time and resources in order to make our project a success, we say a big ‘thank you’.

IGRTC wishes to specially thank the USAID-AHADI for the financial and technical contributions which enabled us to hire a consultant to research and prepare the various drafts that resulted in this document. We wish to assure USAID-AHADI that their support will go a long way in helping Kenyans to make devolution deliver quality services to Wanjiku.

We are most grateful to our consultant, Mr. Gichira Kibara for the excellent work he did to produce a well-articulated status report on public participation. We appreciate the leadership and guidance of our Chairman, Prof. Karega Mutahi. We appreciate the efforts of our champion, Dr. Raymond Nyeris who spearheaded the process of developing the document. We acknowledge and thank all the respondents who took part in various information gathering and validation processes. The views and experiences expressed by the many patriotic Kenyans form part of this document. The Committee is highly indebted to both national and county government institutions that supported this initiative. Finally we thank all the non-governmental institutions which readily offered their support towards the success of this initiative.

To all members and staff of the IGRTC, it is a big thank you for your selfless efforts that inspired and ensured completion of the work on this important subject.



PATRICK KARANJA
Ag. CEO, INTERGOVERNMENTAL RELATIONS TECHNICAL COMMITTEE

EXECUTIVE SUMMARY

Background and Context

Around the world, there is increasing recognition that democracy requires much more citizen participation in governance than is ordinarily possible through representation by elected officials. Direct participation in the policy-making, law-making and implementation of development programmes is an essential part of modern democracy. It is with this recognition that most democracies have embraced various systems, processes and mechanisms to enhance citizen participation in governance, particularly in the decision-making processes. Among these mechanisms is devolution/decentralization of government functions; policies and laws that impose mandatory consultation of the public; more inclusive electoral representation and greater access to public information.

The Constitution of Kenya, 2010, heralded the recognition and institutionalization of public participation in Kenya. The Constitution establishes the normative framework for public participation, makes it mandatory for policy and law-making processes, establishes the key institutions for public participation and directs the establishment of statutory bodies and enactment of legislation for effective participation. Various state agencies at both the national and county levels of government have made efforts to comply with the constitutional edicts for public participation with limited success. Among the factors that continue to hinder public participation include lack of enabling policy, legal and institutional frameworks; deficient civic education; lack of capacity; inadequate resources, and; inimical cultural attitudes and practices.

Objectives

This report seeks to assess the status of public participation in Kenya under the devolved system of government. This involves: reviewing constitutional and legal provisions on public participation; assessing the nature, types/forms and levels of public participation; identifying opportunities, challenges, and lessons learned, and; making recommendations on the way forward. The purpose of this public participation status report is to pave the way for development of a framework of public participation at both levels of government.

Main Conclusions

There is general consensus that the nature and extent of participation contemplated by the Constitution and the laws have not been achieved at either level of government. While a lot of public participation efforts have been made in both levels of government, there is no clarity on what constitutes adequate participation, the nature of the participation that meets the constitutional threshold, or the most effective mechanisms for public participation. Studies/surveys of public participation reveal that some form or other of public participation is taking place in most of the processes in the devolved system of governance at both levels of government. The form, nature and levels of public participation are however unsatisfactory in both the national and county governments, either levels of which is yet to develop effective frameworks to facilitate public participation. Although most of the counties have developed and enacted legislation on public participation, very little has been done to operationalise the legislation by developing regulations, setting up relevant institutions/offices, systems, guidelines and procedures or providing adequate budgetary provisions for public participation. The national government is operating largely the way it operated before the constitutional requirements for public participation were adopted, thus ensuring that public participation remains peripheral and perfunctory.

Civic education has not been carried out by either level of government in any significant manner. Access to public information in a timely, inexpensive manner has not been achieved in either level of government. There are however emerging good practices in some of the county governments such as Makueni County, which has wholeheartedly embraced public participation and established a citizen-led public participation framework going all the way to the village level. Among the key enduring challenges to effective public participation therefore include: lack of a national policy setting out the norms and standards for effective public participation; lack of public awareness due to failure to provide adequate civic education; lack of access to critical information; inadequate public participation infrastructure; and lack of funding for public participation.

Key Recommendations

From the examination of literature, key informant interviews and expert discussions, it is clear that the following interventions are necessary to enhance public participation:

1. There is general consensus that there are no clear norms or standards for effective public participation. Both levels are constantly wondering whether they have met the threshold for public participation. A national overarching policy providing for the norms and standards for effective public participation should be developed through a process that involves all key stakeholders, including the national and county governments. The policy should among other provisions provide for a holistic definition of public participation, the values and principles of public participation, key elements of effective public participation, infrastructure for public participation and the resourcing of public participation.
2. Effective public participation requires enforceable norms and standards. Therefore, there is need for legislation to define and enforce standards across the public sector. A national public participation legislation that sets parameters for public participation should be enacted to implement the national policy on public participation. This legislation should be binding on both national and county governments. It should set clear minimum standards for effective public participation to be observed by all state institutions, state officers and public officers with defined consequences for non-compliance.
3. Public participation guidelines for the national government similar to those recently launched by the Ministry of Devolution for county governments should be developed urgently. Although the guidelines for public participation cited above are relevant to the national government, there is need for guidelines that specifically address the context, scope and issues of service delivery at the national level.
4. Public participation requires adequate citizen awareness. A comprehensive and adequately funded civic education programme based on a national curriculum should be launched and sustained over a period of at least five years. The civic education programme should be provided for in both the national and county budgets as a governance and development initiative and not as an incidental expense.
5. Enabling legislation to facilitate access to information for effective public participation should be enacted. This includes the Freedom of Information Act and legislation to empower non-state actors and the media to access planning and budget information in a timely and easy to understand form.
6. For effective public participation to be mainstreamed, institutionalised, developed and sustained, there is need to invest both time and resources to this important facet of governance and development. Dedicated offices/officers to facilitate public participation should therefore be established or designated at the national and county levels. The offices should develop the infrastructure for public participation, including: information centres, public communication frameworks, modalities and platforms for participation, petition procedures, referenda guidelines and public complaints systems.
7. A key consideration in public participation is the value added by the participation to the decision-making process. Public participation must therefore be able to reach the affected persons as well as those who can provide critical information for the decision-making. A comprehensive stakeholder mapping for the purposes of public participation should therefore be developed by all state institutions and agencies, identifying categories of stakeholders, stakeholders' capacity, interest and influence and the means of engaging them.
8. The adequacy of planning and budget sectors as public participation mechanisms should be reviewed to ensure adequate public participation as opposed to elite sector participation (and possible capture). Inclusion of more non-state actors in the budget Sector working Groups should be considered.
9. A major challenge to effective public participation is the tight budget deadlines at both levels of government, which often lead them to public engage in tokenistic and perfunctory participation processes geared to satisfy statutory demands will little or no impact. The budget timelines should be reviewed to increase the time allocated for public participation.

10. A major challenge to public participation is the ability of the public to access documents relating to the budget easily and in a form that they can understand. Measures should be taken to enhance budget transparency to improve public participation.
11. Public participation is not new in Kenya, but the approach to public participation under the Constitution of Kenya 2010 is different. It provides for participation founded on citizen empowerment rather than patronage. There are however good practices emerging from past public participation processes which should be distilled and institutionalised to enhance public participation. The LASDAP elaborate public participation guidelines, the HIV/AIDS and the family planning campaigns provide useful lessons and good practices that can benefit public participation for the current initiatives.
12. A major challenge to public participation is the capacity or lack thereof of both the national and county governments to facilitate effective participation. The capacity to facilitate public participation should be enhanced in both levels of government through a partnership between the governments, non-state actors and development partners.
13. Low levels of public participation and the prevalent expectation of payment by members of the public to be paid for attending public forums are major contributing causes of ineffective public participation. A culture of civic engagement should be encouraged by both levels of government through civic education. Citizen apathy and expectation of financial reward for participation in public forums should be discouraged through creation of civic duty awareness.

CHAPTER ONE

INTRODUCTION

1.1 Background

Public participation is one of the national values and principles of governance under the Constitution of Kenya 2010. This is in keeping with the national aspirations expressed into the preamble to the Constitution in which Kenyans commit themselves to establishing ‘*a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law*’. Such a government would not be possible without public participation. Under the Constitution, the relationship of the people and the state has been redefined. The Constitution clearly states that all sovereign power belongs to the people and can be exercised by them directly or through their democratically elected representatives. The Constitution further states that the power exercised by state agencies is delegated and can only be exercised in accordance with its provisions.

Public participation is now considered a critical pillar of what has been variously described as ‘participatory democracy’¹, deliberative or discursive democracy² and even ‘radical democracy’.³ There is increasing recognition that democracy requires much more citizen participation in governance than is ordinarily possible through representation by elected officials. Direct participation in the policy-making, law-making and implementation of development programmes is an essential part of modern democracy. It is with this recognition that most democracies have embraced various systems, processes and mechanisms to enhance citizen participation in governance particularly in the decision-making processes. Among these mechanisms is devolution/decentralization of government functions; policies and laws that impose mandatory consultation of the public; more inclusive electoral representation, and; greater access to public information.

1.2 Historical Context

Kenya has a long history of centralised governance. Centralisation is more pronounced in planning and allocation of resources. The centralised system of governance is to a large extent a legacy of the colonial state, which had developed highly centralised, exploitative and hierarchical governance structures⁴. Although attempts to dismantle this system were made in 1963 through the independence Constitution, the effort was frustrated by the politics of the time. The Constitution provided for devolution of power and resources through the creation of seven (7) fairly powerful regional governments and the Nairobi region. It was later amended to strip the regional governments of their essential powers, deny them financial support and eventually abolish them in 1966⁵.

Public participation has also been undermined over the years by constrained democratic governance structures particularly during the single party period. During this period, basic liberties and freedoms including freedom of information, association, press freedom and political participation were all under several limitations. Effective public participation is not possible under those circumstances. There have been some clear successes in public participation in some social programmes including the family planning campaigns in the 1970s/80s and also the anti-AIDS/ HIV campaign in the 1990s/2000s. In these programs, which were heavily supported by development partners, community initiatives and participation was encouraged with very good results.

1 See Second series of the *Devolution Working Papers* (February 2015): *Basic Requirements for Public Participation in Kenya's Legal Framework*. This form of democracy emphasizes more and wider participation of the people who are represented by elected persons as well as greater political representation

2 See Gutmann, Amy, and Dennis F. Thompson. *Why Deliberative Democracy?* Princeton: Princeton UP, 2004. This is a form of democracy in which genuine deliberation on issues is the source of legitimacy for decision not just voting. It is applicable both to elected bodies which allow genuine deliberation before making decisions and to instances of direct citizen participation in the decision making process.

3 See Cohen, J. and Fung, A., 2004, ‘Radical Democracy’, *Swiss Political Science Review*, Vol. 10, No. 4. Pp. 23-34. This form of democracy emphasizes the fact, that in a democracy, there are differing societal interests with some being oppressive of others and there is need to recognize the difference to allow for accommodation and negotiation and altering of power relations. Thus differences and dissent are an essential part of democracy.

4 See final report of the *Taskforce on Devolved Government*.

5 See PLO Lumumba, “A journey through time in search of a new Constitution”. In PLO Lumumba et al, *The Constitution of Kenya Contemporary Readings*, Law Africa, 2011.

There was however, always recognition of the need for decentralisation in the planning and allocation of resources. In fact, many efforts were made over the years to decentralise planning. It was also recognised that public participation can best be facilitated through a decentralised system of government. No less than former President Moi appreciated the need for decentralisation and articulated its benefits. Referring to the District Focus for Rural Development, he observed that the strategy:

'Makes districts the centres for planning, implementation and management of rural development has several positive dimensions ... first, the people will be directly involved in the identification, design, implementation and management of projects and programmes. This will make development to be more consistent with the needs and aspirations of Wananchi. Secondly, the decision making structure will centre around the districts themselves. This will minimise the delays that often characterised centralised decision making systems. Thirdly, and most fundamentally, the allocation of resources will be shared more equitably, by being directed to the areas of most need'.

The efforts to decentralise and facilitate public participation have however not been very successful whether we consider the initial attempts at decentralised governance through the Special Rural Development Program (SRDP) of 1967⁶, the District Focus for Rural Development (1983)⁷, the Local Authority Transfer Fund (LATF/ the Local Authority Service Delivery Action Plan (LASDAP))⁸ or the Constituency Development Fund (CDF)⁹. These decentralisation efforts all fell short of effective public participation resulting in public apathy and low levels of engagement and had limited impact on citizen empowerment and development.

Centralised planning in Kenya had various negative impacts leading to a clamour for decentralisation that culminated in the current Constitution¹⁰. The primary impact was the marginalisation of the public in decision making. This is not unique to Kenya. Writing about Zimbabwe, one writer notes that *'centralised planning largely left grassroots leaders and local communities playing an insignificant role in decision-making and implementation of planned development projects. Consequently, beneficiaries have for the most part been passive as opposed to active partners in development which has given rise to heightened dependency'*¹¹.

The key obstacle to effective public participation has been over-concentration of power at the centre, rendering any attempts at public participation tokenistic and inconsequential in the ultimate decision-making process¹². The Constitution of Kenya 2010 seeks to reverse the situation by devolving both power and resources to county governments. It also provides for public participation both as a national value and as a mandatory requirement. Over the last three years, various measures in terms of policies, laws and institutions have been put in place to meet the constitutional imperative for public participation.

Although both levels of government have embraced public participation in governance and made efforts towards facilitating public participation, it is now generally acknowledged that effective public participation in governance has not been achieved at either level of government due to various factors and constraints. It is also acknowledged that a national framework setting out the norms and standards for public participation at both levels of government has not been developed. There are however various laws/bills in the counties providing

6 The SRDP was a pilot in six selected areas. It piloted planning at the local level involving the local central government officers, the line ministries and the community but failed mainly due to lack of commitment by the government officers and poor coordination among the donors supporting it.

7 The District Focus for Rural Development Strategy involved identification of development projects at the district level through District Development Committees (DDCs) assisted by District Development Officers. The strategy also had a Rural Development Fund (RDF) to facilitate local development. Although the DFRD socialized the idea of community identification of projects, the failure by the government to relinquish real decision-making power to the local community meant that the decentralization was merely deconcentration rather than devolution. The provincial administration remained firmly in control of the final planning and spending decisions. In fact, the decentralization was largely a patronage system by national executive and tended to marginalize elected leaders in favour of the provincial administration as noted by Barkan and Chege in the article cited above.

8 The LASDAP: Introduced through a ministerial circular, LASDAP was intended to improve planning and service delivery through a bottom-up project identification/prioritization. It involved local authorities interactions with stakeholders at the community level to plan, implement and monitor poverty alleviation projects.

9 The Constituency Development fund (CDF) is a development fund initiated by Parliament to support the Members of Parliament in funding development at the local level. Its biggest challenge has been that it interferes with the doctrine of separation of powers between the two levels of government by giving Members of Parliament executive powers. It has also largely been used as a patronage fund and in many cases, MPs have bullied the Executive to be allocated the funding even where no economic justification can be given. The fund has however had considerable impact in providing some basic infrastructure at the local level- schools, bridges, repair of roads, etc. With the coming of devolved governance, Parliament has been at pains to justify the fund after it was ruled unconstitutional.

10 See the final report of the Constitution of Kenya Review Commission, CKRC, 2005, p.227.

11 Jacob Tagarirofa, Bernard Chazovachii. "Exploring the politics of local participation in rural development projects: small dams' rehabilitation project in Zimbabwe".

12 Joel D Barkan and Michael Chege in their article titled, *Decentralizing the state: District focus and the politics of reallocation* discuss the challenges of decentralizing without giving real authority to the grassroots. They posit that the district focus for rural development though creating more opportunities for public participation further strengthened the central government at the grassroots level and alienated the elected representatives of the people. It was deconcentration, not devolution.

for public participation and the Ministry of Devolution and Planning has recently developed guidelines for public participation for county governments and non-state actors have also developed various guides for public participation including model legislation for public participation. Currently there is no assessment of the nature and extent of participation across the two levels of government. Experiences, good practices and challenges have not been adequately documented.

It is with this understanding that the Intergovernmental Relations Technical Committee (IGRTC) seeks to establish the status of public participation in both levels of government with a view to facilitating the development of appropriate policy, legislation and regulations to govern public participation in the future. While public participation is widely accepted in Kenya and other countries, effective public participation is difficult to achieve and many countries are struggling to improve or enhance public participation. Considerable progress has however, been made in the promotion and institutionalization of public participation through constitutional provisions, policies and legislation as well as the creation of dedicated /specialized institutions for public participation. Norms and principles of public participation have also emerged at the regional and international level.

The Constitution of Kenya, 2010, heralded the recognition and institutionalization of public participation in Kenya. The Constitution establishes the normative framework for public participation, makes it mandatory for policy and law making processes, establishes the key institutions for public participation and directs the establishment of statutory bodies and enactment of legislation for effective participation. Various state agencies at both the national and county levels of government have made efforts to comply with the constitutional edicts for public participation with limited success. Among the factors that hinder public participation include: lack of enabling policy; deficient legal and institutional frameworks; lack of capacity; inadequate resources, and; inimical cultural attitudes and practices.

This report seeks to assess the status of public participation in Kenya under the devolved system of government. This involves reviewing constitutional and legal provisions on public participation, assessing the nature, types/ forms and levels of public participation, identifying opportunities, challenges, lessons learned and making recommendations on the way forward. The purpose of this public participation status report is to pave the way for developing a framework of public participation at both levels of government. As noted in the report, there are on-going efforts towards developing frameworks for public participation, including the Ministry of Devolution and Planning public participation guidelines for counties, the Office of Attorney-General and Department of Justice's efforts to develop a policy for national government public participation and various NSA efforts. There is however need for a holistic approach to the efforts which the IGRTC seeks to catalyze.

1.3 Methodology

The status report was developed in a participatory manner to ensure it reflected the real situation across the national and county government. The methodology involved:

- a) Literature review - review of relevant literature on public participation both locally and internationally, including constitutions, legislation, policies, scholarly articles and reports.
- b) Key informant interviews with both county and national government officers. Due to various constraints, not all counties were involved in the interviews. A sample of 9 counties was selected to represent the counties. The counties were selected on the basis of their representativeness in terms of geographical regions, economic status and the rural /urban divide. Counties sampled were: Nairobi, Kisumu, Mombasa, Vihiga, Samburu, Wajir, Nyeri, Bomet, and Tharaka Nithi. The interviews targeted the persons responsible for public participation in the county. Officers responsible for public participation in both the Senate and the National Assembly were also interviewed. The Chief Executive Officer of the Council of Governors (CoG) was also interviewed. A list of interviewees is attached as *Annex 4*.
- c) Two expert forums - one bringing together IGRTC and MODP experts and another that brought together experts from institutions working on devolution were held. The list of participants of the forums is attached as *Annex 5*.
- d) A validation workshop that involved stakeholders in public participation in devolved government drawn from the two levels of government, IGRTC, Council of Governors and NSAs.

1.4 Limitations

Unfortunately due to various constraints, it was not possible to physically visit the counties and hold public hearings on the nature and extent of public participation. It was also not possible to undertake case studies or a national survey. The report has however benefited from various case studies and surveys conducted in the counties by non-state actors which are duly acknowledged. The report is not an in-depth study of public participation but a general review of the nature and extent of public participation with a view to identifying issues for public policy intervention by both government and non-state actors.

1.5 Definition of Public Participation

As noted earlier, public participation is now a central pillar of democratic governance. In seeking to understand and define public participation, the starting point must therefore be: what form of democracy does the Constitution provide for? The answer to the question can be found in a purposive interpretation of the Constitution. The Constitution provides the principles for its interpretation in Article 259, which provides that the *‘Constitution shall be interpreted in a manner that: promotes its purposes, values and principles; advances the rule of law, and human rights and fundamental freedoms in the bill of the rights; permits the development of the law and contributes to good governance.*

The Constitution declares Kenya a sovereign republic, which is a multi-party democratic state founded on the national values and principles in Article 10¹³. Sharing and devolution of power, democracy and participation are some of the values and principles in Article 10. In both Articles 20 (4) and 24(1), the Constitution is clear that state authorities whether courts, tribunal or other authorities must interpret the constitution in accordance with *‘the values of an open and democratic society based on human dignity, equality, equity and freedom’*. Thus the people of Kenya have by adopting the Constitution chosen to be governed in an open and democratic system. Article 232 (d) expressly provides that the people shall be involved in policy making. It is against this normative framework that public participation should be defined. Various definitions of public participation have emerged over the years both locally and internationally. Some of the more relevant ones are:

- a) Ghai describes public participation as *“a vision of democracy in which citizens are active in public affairs, promoting their notion of justice and good policies, and engaging in dialogues with the legislature and the executive and in these ways enhancing public deliberation and democracy. It is a means of bringing people’s preferences and aspirations onto the agenda of the state. And it is seen as relevant to accountability.”*¹⁴
- b) The *Sessional Paper on Devolved Government under the Constitution of Kenya, 2012* defines public participation as *“an open, accountable process through which individuals and groups within selected communities can exchange views and influence decision-making”*.
- c) In the guidelines developed by the Ministry of Devolution and Planning for public participation in counties, *Public Participation Guidelines for County Governments*, public participation is defined as *‘the community-based process where people organize themselves and their goals at the grassroots level and work together through governmental and nongovernmental community organizations to influence decision-making processes in policy, legislation, service delivery, oversight and development matters’*.
- d) In the draft public participation policy being developed by the Attorney-General and Department of Justice, public participation is defined as, *‘the process in which sections and groups within society, and the public more broadly, are engaged in understanding and contributing to decisions. These decisions may relate to policy making, law making, policy implementation, including service delivery, and monitoring. The participation is carried on in an inclusive way, with the encouragement and facilitation of the public bodies charged with making the decisions’*.
- e) Sherry Arnstein¹⁵, in the *Ladder of Citizen Participation*, defines citizen participation as the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future.

¹³ Art.4 of the Constitution of Kenya 2010

¹⁴ Prof. Yash Pal Ghai is the leading Kenyan constitutional law expert. He chaired the Constitution of Kenya Review Commission of Kenya (CKRC). These views are expressed in an article in the Star newspaper of JUNE 15th 2013.

¹⁵ Sherry Arnstein served as a social worker in San Francisco during a period of radical reform of many aspects of public life in the USA. In 1969, she published the article for which she is still remembered and respected: *A ladder of citizen participation* (1969).

- f) The International Association for Public Participation defines public participation as the “*means to involve those who are affected by a decision in the decision-making processes. It promotes sustainable decisions by providing participants with the information they need to be involved in a meaningful way, and it communicates to participants how their input affects the decision.*”¹⁶
- g) The Kosovar Civil Society Foundation¹⁷ defines Participation in decision-making processes to mean “*the possibility for the citizens, civil society organizations (CSOs) and other interested parties to influence the development of policies and laws, which affect them*”.¹⁸

1.6 Values /Principles

The values and principles of public participation have gradually emerged as the concept of public participation has developed. There is therefore no exhaustive list of values of public participation. However, there are generally agreed norms for effective public participation that seek to secure effective participation, which actually influences decisions as opposed to token or ineffective participation. The core values for public participation include:

- *Right to participate*-recognizing the rights of those affected by policies, laws or projects to participate in decision-making processes in regard to them;
- *Responsiveness*-ensuring participation will influence the relevant decision;
- *Accountability*-giving feedback to the participants on their contribution and providing regular progress reports;
- *Acknowledgement of interests* - recognizing and communicating the interests of all participants, including decision-makers;
- *Inclusivity* -ensuring all the affected are involved including those who have disabilities that limit their capacity to participate the poor, children, women (in some cultural set-ups), minorities and PLWDs;
- *Affirmative action*–for the marginalised and minorities;
- *Consultation* -seeking input of the affected in designing the process of participation;
- *Transparency* – timely disclosure of all necessary information to participants for meaningful participation. The timelines given should be adequate to ensure meaningful participation.
- *Flexibility*–community requirements and needs should be taken into consideration. Such considerations include the language (including sign language) and time when most people are available.
- *Accessibility* – public consultations to be conducted at accessible venue taking into consideration persons living with disabilities.
- *Accountability*– regular report back meetings to ensure everyone is up to date.
- *Trust, Commitments and Respect* –everyone should be part of the process and be included at all levels of decision-making.
- *Integration*– public participation should be part of the policies and not just an afterthought to pacify the public.¹⁹

¹⁶ Available at: <http://www.iap2.org/> . (Accessed on 8th March, 2016)

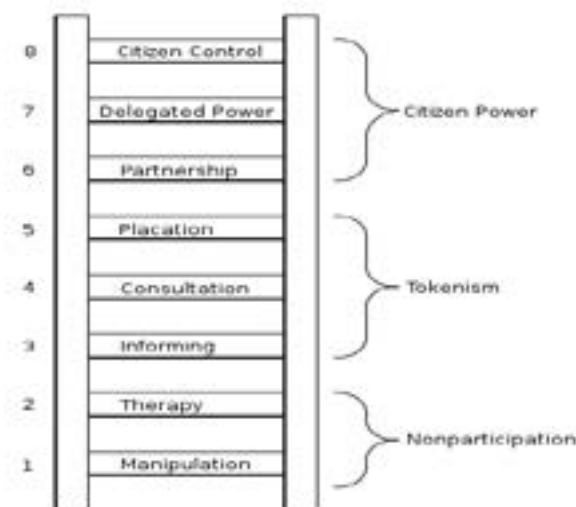
¹⁷ Kosovar Civil Society Foundation (KCSF) is an independent, not-for-profit organization focused in supporting local civil initiatives leading to a strong civil society movement that promotes a democratic culture and is responsive to the socio-economic needs of Kosovo.

¹⁸ Citizen participation: Best practices in the Western Balkans and the European Union, October 2011.

¹⁹ *Policy Statement and Guidelines for Public Participation*: Department of Justice, Canada. <http://www.justice.gc.ca/eng/cons/pol.html> (Accessed on 29th March 2016). See also Ministry of Devolution and Planning & Council of Governors, *County Public Participation Guidelines*, 2016.

1.7 Levels of Public Participation

Public participation happens at different levels and for different reasons. It can be substantive or merely formalistic or token. Arnstein²⁰, in the *Ladder of Citizen Participation* depicts the relationship between the citizens and the government by using a ladder as a metaphor for increase in access to decision-making power.



Arnstein explained the eight rungs as follows:

- i. According to Arnstein, Rungs 1 (Manipulation) and 2 (Therapy) describes levels of “non-participation” that those in leadership design with a view to circumventing genuine participation. They seek to avoid participation by enabling those in power to “educate” or “cure” the participants, which basically means patronizing them.
- ii. Rungs 3 (Informing) and 4 (Consultation) progress to levels of “tokenism” that allow the have-nots to hear and to have a voice. Citizens are given the chance to give input on the understanding that it is not binding on the decision makers. They are also given information on what the decision maker intends to do.
- iii. Rung 5 (Placation): This is considered a higher level of tokenism. Here the participants have room to advice on the issues but no power to decide. This is essentially designed to make participants happy that they have been heard with no intention of those in power being bound by their input.
- iv. Rung 6 (Partnership): This enables the citizens to *negotiate and engage* in trade-offs with the power-holders. At this level the public has real influence on the decision –making process.
- v. Rungs 7 (Delegated power) and 8 (Citizen Control): These two levels allow the have-not citizens to be in charge of their affairs.

1.8 Benefits of Public Participation

Apart from being mandatory under the Constitution and being a requirement for good democratic governance, public participation has many direct benefits for the decision maker and the public. These include²¹:

1. It helps the leadership to respond to the needs of the community rather than imposing its ideas on the public.
2. It helps in tapping of the wide range of skills and experience of the members of the public. The local people have real knowledge based on a contextual and experiential understanding of the issues and can greatly enrich the decision making process.
3. The members of the public get to own the projects being implemented thus greater care is taken by the public to guard the projects. Public ownership ensures sustainability of the projects and enhances chances

²⁰ Sherry Arnstein worked as a social worker in San Francisco during a period of radical reform of many aspects of public life in the USA. In 1969, she published the article for which she is still remembered and respected: *A ladder of citizen participation* (1969).

²¹ Bastidas Stella Bastides -She is an International Environmental Law and Policy Consultant with the Canadian Institute for Environmental Law and Policy- CIELAP.

of success.

4. Improves accountability of the leadership/management.
5. The public gets to understand the objectives of the projects being implemented.
6. Public participation helps to improve credibility between the members of the public and the leadership. Involvement enables the public to understand the issues at hand, including the reasons for resource allocations, constraints, benefits, prioritisation and other considerations which reduces conflicts between the public and the leadership

1.9 Key Areas for Public Participation

The Constitution and the laws emphasize participation in a number of critical governance areas, including:

- Public finance management- preparation of the budget, development of finance bill and expenditure
- Planning - both long term (CIDP, sectoral and spatial plans) and short term (Annual Development Plans)
- Performance management
- Development of policies and legislation
- Implementation of the Bill of Rights, and
- Service delivery

1.10 Challenges to Public Participation

Effective public participation requires an open, accountable and structured process where the public can interact and influence decisions. However, various challenges exist that hinder public participation. They include:

- i. *Cost of public participation:* resources such as finances, human resources and time are required to have meaningful public participation. These are always in limited supply. .
- ii. *Lack of time:* people spend most of the time in earning a living. Thus, it becomes a challenge to have them attend public forums.
- iii. *Accessibility:* Meeting venues at times may not be accessible especially by people living with disabilities and or due to geographical distance may require people to spend money for public or own transport.
- iv. *Lack of trust:* Members of the public may have no confidence in those in leadership positions leading to lack of interest when meetings are planned.
- v. *Diversity:* Members of the public are diverse with different opinions, interests, and perceptions. This may create conflict as the public may not agree on the position to take.
- vi. *Elite capture:* A few individuals in the society of a superior status in terms of economic, cultural, political or educational attainment may at times usurp the process and instead impose its ideas on the community and call this public participation.
- vii. *Lack of national policy or legislation:* Setting enforceable norms and standards for public participation is more difficult in the absence of such frameworks.
- viii. *Political competition:* The elected leaders are often uncomfortable with prominent persons or professionals who engage the public on public issues due to political insecurity. They always feel that these people are political competitors.
- ix. *Expectations of compensation for participation:* The public often expects to be compensated for their time and makes demands for allowances to attend the forums.
- x. *Lack of adequate civic education* on the importance of participating in matters affecting the public.
- xi. *Lack of or inadequate funding* for public participation both at the national and county governments has hindered effective public participation.
- xii. *Lack of a framework for public participation*, including structures, procedures and systems
- xiii. *Manipulation of public participation forums* by diverse interests.

CHAPTER TWO

POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK

The Constitution of Kenya, 2010 establishes public participation as one of the national values and principles of governance (Article 10). It also makes it mandatory for the state to facilitate public participation in the policy making and governance process. To implement the constitutional provisions, various policy and legislative measures have been taken. Below we examine some of them.

Table 1: Constitutional Provisions on Public Participation

Article	Provisions
Article 1: Sovereignty	All sovereign power belongs to the people of Kenya and may be exercised by them directly or through their elected representatives.
Article 10: National Values and Principles of Governance	10(2) (a) —The national values and principles of governance include— Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and <i>participation of the people</i> .
Article 33: Freedom of Expression	Every person has the right to freedom of expression—the right to receive and impart information or ideas except for ideas that propagate war, violence, advocate hatred or constitute hate speech.
Article 34: Freedom of Media	The state shall not control or interfere with public or dissemination of information or penalise persons for holding opinions or views.
Article 35: Access to Information	35 (1) (a) —Every citizen has the right of access to information held by the State. 35(3) – The state shall publish and publicise important information.
Article 69: Obligations in respect of the environment	69 (1) (d) —The State shall encourage public participation in the management, protection and conservation of the environment.
Article 118: Public Access and Participation	Provides for public access and participation in sittings of Parliament and of its committees.
Article 119: Right to Petition Parliament	Provides for the right of anyone to petition parliament.
Article 129: Principles of Executive Authority	Provides that Executive authority derives from the people of Kenya.
Article 159: Judicial Authority	Provides that judicial Authority is derived from the people of Kenya.
Article 174: Objects of Devolution	174(c) —To give powers of self-governance to the people and <i>enhance the participation of the people</i> in the exercise of the powers of the State and in making decisions affecting them. 174(d) —Empowers communities to manage their own affairs
Article 184: Urban Areas and Cities	184 (1) (c) —National legislation shall provide for the governance and management of urban areas and cities and shall, in particular, provide for participation by residents in the governance of urban areas and cities.
Article 196: Public Participation and County Assembly Powers, Privileges and Immunities.	196 (1) (b) —A county assembly shall-facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

Article 201: Principles of Public Finance	201 —The following principles shall guide all aspects of public finance in the Republic— (a) there shall be openness and accountability, including public participation in financial matters;
Article 221(5): Budget Estimates and Annual Appropriation Bill	221 (5) —In discussing and reviewing the estimates, the committee shall seek representations from the public and the recommendations shall be taken into account when the committee makes its recommendations to the National Assembly.
Article 232: Values and Principles of Public Service	232 (1) (d) —The values and principles of public service include involvement of the people in the process of policymaking.
Fourth Schedule Part 2	The functions and powers of the county governments are— 14. 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.

2.2 Legal Provisions

i) The Public Finance Management Act, 2012

The Act provides for mechanisms on how citizens can engage the two levels— national and county Governments—on matters relating to finance. Section 10 (2) of the Act provides that the Parliamentary Budget Office in carrying out its work as provided for in Section 10(1) of the Act shall observe the principle of public participation in budgetary matters.

At the County level, the Act in Section 137 provides for the establishment of the County Budget and Economic Forum for County budget consultation process. The purpose of the Forum is to provide a means for consultation by the county governments on preparation of county plans, the County Fiscal Strategy Paper and the Budget Review and Outlook Paper for the county and matters relating to budgeting, the economy and financial management at the county level²². The Act also provides for the Budget making process that allows for public participation²³.

ii) The County Governments Act, 2012

The Act provides for public participation at the county level. Several sections of the Act provide for both the principles and processes of public participation at the county level. Part VIII of the Act is entirely on Citizen Participation. Key provisions in the Act include:

Section 87- provides for principles of public participation in counties. The Principles are:

- a. Timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;
- b. Reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;
- c. Protection and promotion of the interest and rights of minorities, marginalized groups and communities and their access to relevant information;
- d. Legal standing for interested or affected persons, organizations, and where pertinent, communities, to appeal from or review decisions, or redress grievances with particular emphasis on persons and traditionally marginalized communities, including women, the youth, and disadvantaged communities.

²² Section 137(3) of the Public Finance Management Act, 2012.

²³ Section 175(9) of the Public Finance Management Act, 2012.

- e. Reasonable balance in the roles and obligations of county government and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide complementary authority and oversight;
- f. Promotion of public-private partnerships, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development, and;
- g. Recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight.

Section 88 of the Act gives Citizens the right to petition and challenge the County government on any matter under the responsibility of the County.

Section 89 obligates the County Government to respond expeditiously to petitions and challenges from the citizens.

Section 90 sets out the procedure for local referenda.

Section 91 of the Act provides for the establishment of modalities for citizen participation. Some of the modalities include:

- information communication technology-based platforms;
- town hall meetings;
- budget preparation and validation forums;
- development project sites;
- Notice boards: announcing jobs, appointments, procurement, awards and other important announcements of public interest.

Section 92 provides that the Governor shall submit an annual report to the County Assembly on citizen participation.

Section 94 obligates the county to use the media to create awareness on devolution and governance, promote freedom of the media and undertake advocacy on issues such as agriculture, education, health, security, environment and economics.

Section 95 – requires counties to establish communication mechanisms to facilitate public access to information and outreach including community radios, websites, ICT centres and traditional media.

Section 96 – provides for citizens access to information held by county government on request. Counties are required to establish offices to provide the information and enact legislation to ensure access to information.

Section 97 requires county governments to ensure integration of minorities and marginalised groups. They are required to promote effective participation of marginalised groups and minorities in public and political life.

Sections 98 and 99 – set out the principles of civic education which include empowerment and enlightenment both of citizens and government in order to create a citizenry that is informed and actively participates in the governance of society.

Sections 100 and 101 – make provision for civic education by national and county governments mandatory and require national standards for civic education to be established and institutionalised through county legislation.

Section 114 provides that whenever there is a nationally significant development project, there must be public hearings in all the affected counties and approval or rejection of the projects by the relevant county assembly.

Section 115 makes public participation mandatory in county planning.

iii) Urban Areas and Cities Act, 2012

This Act gives effect to Article 184 of the Constitution of Kenya, 2010²⁴. The Act also provides for public participation in several sections. Some of the key provisions are:

- a. **Section 3** on Objects and Purposes of the Act provides for participation by the residents in the governance of urban areas and cities²⁵.
- b. **Section 11**— principles of governance and management of Urban Areas and Cities provides for institutionalized active participation by its residents in the management of the urban area and city affairs.
- c. **Section 21**— powers of boards of cities and municipalities; also provides for participation of the residents in decision-making in its activities.
- d. **Section 24**— management of information and publicity provides that the board shall publicize and publish important information affecting the city or urban area.
- e. **Second Schedule** of the Act provides for the rights of and participation by residents in affairs of their City or Urban Area.

iv) Intergovernmental Relations Act, 2012

The Act establishes mechanisms for consultation and co-operation between the national and county governments as provided for by Articles 6 and 189 of the Constitution of Kenya, 2010. The Act provides for instances of public participation as summarized below:

- a) **Section 3**— Objects and Purposes of the Act, provide for consultation between the two levels of government on matters affecting them. Participation may be through the elected representatives of the people who must also consult widely with the masses before advancing their positions.
- b) **Section 4**— Principles of intergovernmental relations: Section 4 (b) provides for inclusive and participatory governance as one of the principles of intergovernmental relations. Section 4 (c) goes further to provide for promotion of national values and principles of governance provided under Article 10 of the Constitution of Kenya, 2010; which Article provides for public participation as one of the national values and principles of governance.
- c) **Section 5 (d)** on the objects of intergovernmental structures, provides that one of the structures is a forum for sharing and disclosing of necessary data and information, which is an aspect of public participation.
- d) **Section 20(g)** mandates the Council of Governors to consider matters referred to it by members of the public.
- e) **Section 29**— requires the development regulations to provide a framework for public participation in the transfer or delegation of powers, functions or competencies by either level of government.
- f) **Section 38**— empowers the Cabinet Secretary to make regulations for public participation

2.3 Case Law on Public Participation

Many cases have been brought before the Courts on public participation since the promulgation of the Constitution of Kenya, 2010²⁶. More than 50 cases have been filed in the Kenyan courts challenging lack of public participation in appointments, legislation, budgets, development projects and impeachments, among others. The filing of these cases shows that many Kenyans appreciate the need for public participation in governance. The Courts have also emphasized on the importance of public participation and have begun

²⁴ Urban Areas and Cities: Article 184 (1): National legislation shall provide for the governance and management of urban areas and cities.

²⁵ Section 3 (c) of the Urban Areas and Cities Act, 2012.

²⁶ This is evidenced by the number of cases filed in the Courts on lack of public participation as is shown in the records of www.kenyalaw.org (accessed on 21/03/2016).

to grapple with the nature and extent of public participation contemplated by the Constitution.²⁷ The courts have made significant determinations on public participation, such as the threshold for public participation, timelines, who is responsible for public participation, and impact of lack of public participation among others. The decisions have indeed affirmed that public participation is a constitutional right that cannot be wished away. The courts are supportive of public participation and have generally given a purposive interpretation of the right to public participation. The need for public participation has been emphasized in the many cases that have challenged the enactment of laws at the National and County governments, development plans, and decisions by several organs of government devoid of public participation. The Judiciary has also set the same standards for public participation including a requirement that the participation must be ‘reasonable’ and not just tokenistic or formalistic (Kiambu case). It has also rejected attempts to impose unreasonable demands for public participation where the interests of those challenging the decision do not seem substantial (Salaries Commission, SACCOs cases). The following cases demonstrate the trend in the development of jurisprudence on public participation:

Cases Involving National Institutions:

1) *The Salaries and Remuneration Commission case*

Petition No. 284 of 2013: Kenya Union of Domestic, Hotels, Education and Allied Workers (KUDHEHIA WORKERS) vs. Salaries and Remuneration Commission and the Attorney-General: the Petitioner’s case was that the Salaries and Remuneration Commission did not ensure public participation when coming up with the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers Regulations, 2013). Justice Lenaola, however, dismissed the petition but said the following concerning public participation, *“looking at the law as expressed above, it would be expected that just like the Legislature, any other body empowered to make law including County Assemblies and Commissions must engage the public before enactment of the law.”* He went further to state that, *“while therefore agreeing with the Petitioner that public participation is a principle that must generally be adhered to, I do not think that lack thereof in the present case should cause their invalidation at the instance of the Petitioner”*.

2.) *County Development Boards case*

The Council of Governors and three Kenyans filed two petitions in Nairobi and Bungoma Courts respectively challenging the legality of the County Governments Amendment Act, 2014 that introduced the County Development Boards chaired by Senators (*Petition No. 381 of 2014—The Council of Governors v The Senate, The National Assembly, the Senators of 47 Counties and the Attorney-General filed on 12th September 2014* and *Petition No. 430 of 2014—Barasa Kundu, Albert Simiyu and Philip Wanyonyi Wekesa v the Speaker of the National Assembly and Others (formerly Bungoma High Court Petition No. 11 of 2014)*).

The Consolidated petition was successful and section 91A of the amended County Governments Act, 2014 which established the County Development Boards in each of the 47 Counties in Kenya and to be chaired by the Senator of the County was declared null and void.

Aspects of public participation in the Petition:

- i. The 47 speakers of the County Assemblies who were interested parties in the petition submitted that the amendment altered the structure of devolution without subjecting it to a referendum as required by Article 255 of the Constitution of Kenya, 2010. Referendum is a form of public participation. They were supported by Commission for the Implementation of the Constitution (CIC), which submitted that there was insufficient public participation in the enactment of the Act and which rendered the law unconstitutional. This was objected to by the respondents submitting that the public were invited to contribute to the Bill vide Kenya Gazette of 16th August, 2013 and Daily Nation of 11th October, 2013. The question that begs was whether this constituted adequate public participation.

²⁷ Chapter 13: Nyabira B. C. (2015). “Kenya’s emerging judicial interpretation of public participation and the devolved system of government”. In C. Bosire, W. Gikonyo (Eds), *Animating devolution in Kenya: The role of the judiciary* (pp. 266-291). Rome: International Development Law Organization. Available : <http://www.idlo.int/publications/animating-devolution-kenya-role-judiciary> (accessed on 25/07/2016)

- ii. The Senators had submitted that the amendment created a forum for them to obtain firsthand information at the County level; which information would enable them to know the financial requirements of the County to help them have input into the Division of Revenue Bill and County Allocations Bill in the Senate.

Coalition for Reforms and Democracy (CORD) & Another v Republic of Kenya & Others [2015] eKLR: Petition No.s 628 and 630 of 2014 also challenged the Security Laws (Amendment) Bill 2014 that among other grounds it lacked sufficient public participation. The court observed that although participation was inadequate, it was not necessary to nullify the legislation on the basis of participation.

Cases Involving County Governments

1) Nairobi government case (SACCOs case)

Nairobi Metropolitan PSV Saccos Union Limited & 25 Others v County Government of Nairobi & 3 others [2013] eKLR: The petition was in respect of Clause 6.1 of the Nairobi City County Finance Act of 2013 which authorized the County Government to charge motor-vehicle parking fee of KES 140 which the petitioners claimed to be oppressive and enacted in violation of the principle of public participation. Justice Lenaola ruled that indeed there was public participation. He had the following to say, “*It is clear that the 1st and 2nd Respondents (County Government of Nairobi & Nairobi City County Board) involved the public in the process leading to the enactment of the Nairobi City County Finance Act of 2013. They engaged those who would be affected by their decisions and the latter were given details of the proposals and an opportunity of stating their objections if any. The process was highly public as there were public forums, meetings with stakeholders, media reports and even lobbying and an opportunity to make written representations through written memoranda*”. He went further to state that, “*It does not matter how the public participation was effected. What is needed is that the public was accorded some reasonable level of participation*”.

In the case below, Justice Odunga ruled that there was no public participation in the enactment of the County legislation:

2) Kiambu government case

Robert N. Gakuru & Others v Governor Kiambu County & 3 Others [2014] eKLR: The petitioners were seeking a declaration that the Kiambu Finance Act, 2013 gazetted vide Kiambu County Gazette Supplement No. 8 (Act No. 3) violated the various provisions of the Constitution of Kenya, 2010 and other legislations on public participation. Justice Odunga made a very important observation, which I hereby quote, “*In my view to huddle a few people in a 5 star hotel on one day cannot by any stretch of imagination be termed as public participation for the purposes of meeting constitutional and legislative threshold. Whereas the magnitude of the publicity required may depend from one action to another, a one day newspaper advertisement in a country such as ours where a majority of the populace survive on less than a dollar per day and to whom newspapers are a luxury leave alone the level of illiteracy in some parts of this country may not suffice for the purposes of seeking public views and public participation*”. Justice Odunga concluded by saying, “*having considered the foregoing, the inescapable conclusion I come to is that there was no public participation as contemplated under the Constitution and the County Government Act, 2012*”.

3) Murang’a Government case

Thuku Kirori & 4 others v County Government of Murang’a [2014] eKLR: Petition No. 1 of 2014: The petitioners filed a petition in the High Court at Murang’a seeking among other declarations: the declaration that proper governance and constitutionalism requires the participation of the people and stake holders consultation in matters affecting them directly both at the National and County levels of government. Although the Judge dismissed the petition, he said the following on public participation, “*My understanding of the concept of public participation as contemplated under articles 10 and 174 of the constitution is that the participation of the public in affairs that*

concern them should not be narrowly interpreted to mean engagement of a section of people purporting to be professionals who are out to reap maximum profits out of services for which they are neither registered nor qualified to offer; the ultimate goal for public engagement as envisaged in the constitution is for the larger public benefit. In my view such benefit would include a county government's provision of the basic infrastructure at a minimum cost for the economic empowerment of its people; this is certainly consistent with the national values and principles of governance enshrined in article 10 2 (d) of the Constitution and the actualisation of the promotion of social and economic development which the same Constitution subscribes to in article 174 (f) thereof."

4) Embu case

Andrew Ireri Njeru & 34 others v County Assembly of Embu & 3 others [2014] eKLR: Constitutional petition No. 8 of 2014: the petitioners challenged the impeachment of the Embu Governor on grounds that among other things there was no public participation. It was argued that since the electorate had delegated the deliberative and other tasks to the members of the County Assembly, the actions taken by the members of the County Assembly constitute or reflect the will of the people. This cannot be an acceptable argument in light of the clear and explicit constitutional provision requiring public participation and involvement in the legislative and other processes in the assembly. The Judge said the following, "From the principles that are disclosed in the foregoing discussion, I have come to the conclusion that on the basis of the material presently before me, a prima facie case has been established for a finding that there was scant public participation in respect of the removal of the Governor and that the Petitioners' rights were violated."

2.4 Policies on Public Participation

The need for national policy and legislation to provide norms and standards for public participation has been recognised for some time now. The conference on public participation held in 2012²⁸ hosted by CIC recommended the development of a national public participation framework, which would among other things provide for:

- i. a framework for action;
- ii. a guide to help county governments in development of legislation on public participation;
- iii. clarity for engagement;
- iv. standards for public participation engagement; it will define participation in different areas and also define what will constitute sufficient public participation;
- v. thematic issues that are involved and provide direction for sectoral legislation;
- vi. identifying gaps in various sectors, and areas which have insufficient public participation;
- vii. be a means of monitoring the implementation of public participation;
- viii. address the efficiency and quality of public participation
- ix. how the issues of inclusivity, fairness, address issues of gate keepers, mitigate against elite capture of citizen spaces;
- x. the tapping of local information and knowledge, and;
- xi. a policy that is flexible and not prescriptive.

Various stakeholders including state and non-state actors have also developed various policy proposals and guidelines. Some of the notable proposals include:

²⁸ Report of the conference on development of a public participation framework. file:///C:/Users/HP/Downloads/Report_on_Development_of_a_framework_on_public_participation.pdf

a) Ministry of Devolution and Planning: Draft Devolution Policy, 2015

The Ministry of Devolution and Planning has in consultation with stakeholders developed a draft national policy on devolution²⁹, which provides policy direction on the implementation of devolved government under the Constitution of Kenya, 2010. The Policy identifies six (6) pillars that will guide the effective implementation of devolution. Among the pillars is '*public participation and informed citizen engagement*'. The pillar addresses public participation, public communication and civic education in both levels of government. Under that pillar, key policy measures to promote public participation include:

- i. Operationalization of Part VIII of the County Governments Act, 2012 on Citizen Participation.
- ii. Enactment of legislation on public participation both at the National and County level.
- iii. Development and implementation of guidelines and thresholds for public participation;
- iv. Development of strategies to facilitate citizen's participation in governance;
- v. Development of platforms for information sharing and consultation with the public;
- vi. Development and maintenance of databases on stakeholder analysis to enable targeted public participation; and
- vii. Development and implementation of monitoring and evaluation systems to track the implementation of public participation.

b) Public Service Commission: Guidelines for Public Participation in Public Policy Formulation, 2014

The Guidelines were developed by Public Service Commission (PSC) of Kenya³⁰ and apply to all Ministries, State Departments, State Agencies, State Corporations and any other State or public body or their representatives or assigns when developing public policy on public participation. The policy seeks to address the emerging issues on the implementation of devolution since public participation is core to its effective implementation at both levels of government.

The objectives of public participation according to PSC are to:

- provide the public with balanced and objective information to assist them in understanding the problem, alternatives and opportunities and/or solutions;
- obtain public feedback on analysis, alternatives and/or decisions;
- work, directly with the public throughout the process to ensure that the public concerns and aspirations are consistently understood and considered;
- partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.

The guidelines address issues of identification of the relevant stakeholders in public participation, planning for participation, and provision of feedback and monitoring and evaluation of the process.

c) Public Participation Guidelines for County Governments

The Ministry of Devolution and Planning has through a participatory process developed guidelines to guide public participation in county governments. The guidelines provide the rationale for public consultations, the constitutional and legal foundations, the institutional framework for effective public participation and the modalities for undertaking public participation forums. The guide outlines the generic stages in the public participation process; public participation process in policy and legislation development; planning and budgeting processes at the county level; in the delivery of services and in performance management, and; in monitoring and evaluation. The Ministry has not yet developed guidelines for the national government

²⁹ Ministry of Devolution and Planning, Kenya: Draft Devolution Policy (2015).

³⁰ Public Service Commission Guidelines for public participation in policy formulation file:///C:/Users/HP/Downloads/GUIDELINES%20FOR%20PUBLIC%20PARTICIPATION%20IN%20POLICY%20MAKING.pdf

although many of the principles, processes and modalities outlined in the guide can apply to both levels of government. The guide provides very useful norms, parameters and modalities for public participation. It is hoped that a similar guide will be developed for the national government which properly needs it more than county governments given the greater complexity of its processes and the scope of its coverage.

d) Office of the Attorney-General and Department of Justice's efforts to develop a national policy for public participation in the national government

The OAG-DJ has been spearheading efforts to develop a national policy on public participation for some time. The efforts started under the defunct Ministry of Justice, National Cohesion and Constitutional Affairs and were spurred by the CIC and NSAs. Unfortunately the process has been very slow and stakeholder involvement is inadequate apparently due to funding constraints. The policy appears to be geared towards public participation in the national government.

e) Kenya School of Government / World Bank Devolution Working Papers

The Kenya School of Government³¹ has established the Centre for Devolution Studies (CDS) to coordinate, capture, organize and store devolution capacity building activities which includes training, research and consultancies. The Centre in collaboration with the World Bank has produced several working papers³² on devolution including:

- a. *Building Public Participation in Kenya's Devolved Government (2015);*
- b. *Basic Requirements for Public Participation in Kenya's Legal Framework (2015);*
- c. *Participation in Kenya's Local Development Funds: Reviewing the Past to Inform the Future (2015);*
- d. *Integrating Social Accountability in Healthcare Delivery: Lessons Drawn from Kenya (2015);*
- e. *One Year On: Review of County Initiatives in Public Participation in the Roll out of Devolution Working Paper and Practical Approaches for County Governments to Facilitate Public Participation in the Planning and Budget Process (2015).*

These papers provide critical insights into the public participation process under the devolved system of government. The papers review key provisions on transparency, accountability, and participation in the emerging legal framework. The papers highlight the experiences /lessons from public participation in LATF and CDF and identify issues, challenges and opportunities. The working papers also provide international best practices in public participation. The Papers recommend:

- i. the development of clear guidelines for citizen participation at national and county levels;
- ii. building the capacity of county government service providers to involve citizens in service delivery;
- iii. development of county government systems to facilitate participatory processes;
- iv. expanding civil society partnerships to help counties build effective systems and processes for participation, transparency, and mobilization, in addition to carrying out their own participation and monitoring activities;
- v. donors to support civil society organizations to help build responsive and accountable county institutions, in addition to traditional monitoring activities among other measures.

Devolution Working Paper 2 (February 2015): *Basic Requirements for Public Participation in Kenya's Framework* tabulates the various budget documents and timelines for public participation in the county budget process (see Annex 1).

³¹ The Kenya School of Government was established by the Kenya School of Government Act, No. 9 of 2012. It is a State Corporation established to offer management training, research, consultancy and advisory services to the public sector.

³² The Working Papers on devolution are being developed in partnership between the Centre for Devolution Studies (CDS) - Kenya School of Government and the World Bank.

2.5 County Laws and Institutional Mechanisms for Public Participation

Paragraph 14 of part 2 of the Fourth Schedule to the Constitution of Kenya, 2010 and part VIII of the County Governments Act, 2012 require that the County Governments establish modalities and platforms for public participation in the governance of the County. The provisions of the Constitution are reiterated in various county laws.

Many of the 47 Counties in the Republic of Kenya have developed bills on public participation, some of which have been enacted into law. To facilitate the development of county legislation on public participation, the Kenya Law Reform Commission developed a model participation law—the *County Public Participation Bill*—which has been adopted by most counties as the template for their laws (Annex 1). The Institute for Social Accountability (TISA) has also proposed model legislation on public participation (*Annex 2*). The two model laws provide for officers responsible for public participation in the County, the tools for public participation and the levels of participation.

The main provisions in the two model laws are:

- *Dedicated institution for public participation*—the two model laws recognize the need for a dedicated institution responsible for public participation. The Kenya Law Reform Commission Model law in part II provides that there should be an office of public participation in the Counties. The TISA model provides for roles and responsibilities of county government officers as far as public participation is concerned. It also provides for a County Executive Committee Member in-charge of public participation. The TISA model emphasizes that every officer in the County should ensure that there is public participation in all matters in the County.
- *Public Participation Forum* — both models provide for the various forums through which the citizens can participate in the County Affairs. The Kenya Law Reform Commission model provides for forums from the County level to the Village level. It also provides for a Citizen Initiative forum where the citizens can initiate their engagement with the County government. The TISA model provides for 14 days' notice before the citizen forum is held. It also provides for a clear reporting framework. The County Governor is required to submit an annual report to the County Assembly on the status of public participation in the County.

Some of the counties that have enacted public participation laws include Nairobi, Laikipia, Busia, Wajir, Nyeri, and Elgeyo-Marakwet. Most of the Counties have also drafted bills which are pending debate in the county assemblies. Although most counties have developed or enacted laws on public participation, implementation of the laws is dismal for various reasons as we shall see later (See Annex 3 for County public participation legislation status). However Makueni County stands out for effective and innovative public participation. It has developed and rolled out an elaborate public participation framework which involves the establishment of citizen-centred and focused structures for public participation from the county level to the village level. The county forums at the county, sub-county, wards and village level are empowered to facilitate effective public participation through resource provisions, clear structures of management and political support at the highest level.

Annex 3 summarises the status of public participation laws in the counties.

Table 2: Extracts from County Public Participation laws/Bills in the various counties:

No.	County	Name of Bill	Key Provisions on Public Participation
01.	Nairobi City County	<i>The Nairobi City County Public Participation Act, 2015</i>	<ul style="list-style-type: none"> Section 5 (2) - provides for the Governor to designate a member of the County Executive Committee to be in-charge of public participation in the County. Part III of the Bill provides for community participation and involvement. Section 7 provides for forms of public participation. Section 10 of the Bill provides for the County Citizens' participation forum. Section 11 of the Bill provides for the Sub-county, city and urban area citizen participation forum. Section 12 provides for ward or village citizen participation forum. Section 13 of the Bill provides for Citizen Initiative forum.
02.	Marsabit County	<i>The Marsabit County Civic Education and Public Participation Bill, 2015</i>	<ul style="list-style-type: none"> Part II of the Bill provides for the establishment, composition and functions of the <i>Office of Director of civic education and public participation</i>. Part III provides for civic education and citizen participation forums. Such forums include: village civic education forums, ward civic education forums, village citizen participation forum, ward citizen participation forum, sub-county citizen participation forum, and County citizen participation forum.
03.	Laikipia County	<i>The Laikipia County Public Participation Act, 2014.</i>	<ul style="list-style-type: none"> Part II of the Bill provides for coordination of public participation in the County Assembly. Section 5 provides for the establishment of an office to be known as the <i>Public Participation Office</i> which is an office in the County Assembly Service. Part III on the other hand provides for coordination of public participation in the County Executive. Section 9 provides for the establishment of a department to be known as the <i>Department of Public Participation</i>, which shall be an office in the County Public Service. Part IV of the Bill provides for public participation process. Section 12 provides for a public participation advisory committee. Section 14 provides for <i>citizen forums in the County, Sub-county, ward, villages and towns</i>. Section 18 provides for public participation methods.
04.	Busia County	<i>The Busia County Publicity and Public Participation Act, 2014</i>	<ul style="list-style-type: none"> Section 5 of the Bill provides for an Executive member to be responsible for the overall policy on public participation and its implementation in the County. Section 6 (1) of the Bill provides for other persons' responsibility on public participation. The section reads, "every governance organ, institution, public officer and person in the County charged with responsibility for decision-making in which a right or interest of the public may be affected shall ensure that the public is involved and participates in the process". Part IV provides for public participation forums. Part V provides for communication and public participation. It establishes the <i>Directorate of Communication and public participation</i> responsible for the facilitation, coordination and communication of public involvement and participation in governance and decision-making in the County. The Director shall report to the <i>Executive member responsible for public participation</i>.
05.	Elgeyo-Marakwet County	<i>The Elgeyo-Marakwet County Public Participation Act, 2014</i>	<ul style="list-style-type: none"> Part II- provides for the establishment, composition and functions of the office of public participation. Section 5- the office shall be known as the <i>Office of Public Participation</i>. Section 6- the office shall be headed by a chairperson appointed by the Governor and approved by the County Assembly. Part III provides for citizens' participation forums. The public forums run from the County to the village level. Section 25 provides for affirmative action programmes. It provides that the Office of Public Participation shall ensure that the County Government and its entities put in place affirmative action programmes to ensure that minorities and marginalised groups <i>inter alia</i> participate in all matters that affect them and are represented in governance.

2.6 Mechanisms for Public Participation

Effective public participation requires the establishment of mechanisms that facilitate consultations between state organs and the public. Around the country, various mechanisms have been identified. They include:

1) Community Forums

The community members have standing meetings or associations that can be used for interaction with government including religious gatherings, school meetings, cultural gatherings, *chamas*, cooperatives and professional associations. These forums are often used to provide information and give feedback on issues such as legislation, development plans and the county budget. The forums help to deepen community ownership as the citizens feel that they matter.

2) Town Hall Meetings

These meetings will ordinarily be convened to facilitate consultations, discussion or dissemination of important information. Members may be invited individually or through public media. They provide an opportunity for the public to engage the state on the policies, programmes, development programs it intends to pursue.

3) Media

The mainstream media (both print and electronic) provide a media for state and citizen interaction. Social media has also opened new opportunities for the state to engage with the public.

4) Public Barazas

Public meetings convened to provide opportunities for public interaction with those in authority. The most common are chief's *Barazas*.

5) Bunge Mashinani

This is an initiative where members of the public interact with the members of the County Assemblies to deliberate on issues affecting the County.

6) Petitions

Both the Parliament and County Assemblies have provisions in their standing orders allowing for petitions by the public on important issues or against public/state officers. Article 119 of the Constitution of Kenya, 2010 provides that every citizen has a right to petition the Parliament on any matter within its authority. The County Governments Act, 2012 in section 15 provides for a petition to the County Assembly. A petition is a request for an action or inaction. It should be well documented and supported by members of the public who signify their support by appending their signatures. The petition should have vital information that include: the subject matter, whether there have been efforts to have the relevant authority solve the complaint, any response from the relevant body, whether there is any issue pending in court; the petition should form a clear, proper request that is signed by the petitioners. Most of the Counties in Kenya have provisions on petitions included in their various legislations on public participation.

7) Parliamentary Committee /County Assembly Committee Hearings

Parliamentary and County Assembly committees provide access for members of the public to participate in matters before them. Members of the public are also given access to their sittings in order to follow the proceedings.

8) Written and Oral Submissions:

Whenever the Executive (at both levels of government), Parliament or County Assemblies develop or consider any Bill or Budget estimates, any conduct or any matter, they usually place a notice requesting for any member of the public to present submissions either orally or in writing. Most of the notices are placed in the press or communicated through the various channels such as county notice boards, *Barazas*, etc.

9) Referenda

Both the Constitution and County legislation provide for the holding of referenda in matters of great public interest. This is an important mechanism for public participation.

10) Performance Surveys, Social Audit Reports

Performance reviews of state agencies by independent agencies provide an important avenue for public participation. Through the process of performance review opportunities for government citizen engagement arise. Accountability is also enhanced through the reports.

11) Impeachment/ Recall Proceedings

Public participation avenues under the Constitution and the law include impeachment proceedings for senior state officers and recall proceedings. These are accountability mechanisms that secure the sovereignty of the people and enhance accountability for elected officers.

12) Sector Working Groups

Sector working groups provide an important avenue for public/government engagement particularly in the budgeting process. Sectors are clusters of government Ministries, Departments and Agencies (MDAs) working in a related area of service delivery. Though primarily comprised of MDAs, there is room for non-state actors to participate in sector working groups.

13) Commissions/Taskforces/ Working Committee

Occasionally the state sets up commissions or taskforces to inquire into a specific matter of public interest.

14) Constitutional and Statutory Bodies

Chapter 15 of the Constitution of Kenya, 2010 provides for Constitutional Commissions and Independent Offices in Kenya. Art 249(1) of the Constitution tasks Constitutional Commissions and Independent Offices with; protecting the sovereignty of the people; securing the observance by all State organs of democratic values and principles; and promoting constitutionalism. To discharge their constitutional mandate, these commissions must ensure effective public participation in their work.

Statutory bodies should also ensure that public participation is adhered to as they execute their mandate as this is a constitutional requirement that applies to them too. Some commissions and statutory bodies have elaborate provisions requiring public participation in their work. On the whole, however, constitutional commission have encouraged public participation and are responsive to public input. Some commissions however have very limited public participation provisions, preferring to shroud their work in secrecy citing security concerns, or the need for privacy to protect those involved in their investigations.

The Commission on Administrative Justice (CAJ) provides a good example of the level of public participation expected of constitutional commissions and statutory bodies. It applies multiple strategies to reach out to the public and provide mechanisms for public participation. The Commission is established by Article 59(4) of the Constitution of Kenya, 2010. Among the functions of the Commission is to promote public awareness of policies and administrative procedures on matters relating to administrative justice³³. Among CAJ's strategies are: county visits, community initiatives and media-based advocacy³⁴. It has established ombudsmen committees in informal settlement to enhance accessibility. This has encouraged the community to be active and demand accountability from local officials. The commission also uses radio talk shows especially in local languages to engage the public as well as social media platforms.

Regional/ International Instruments on Public Participation:

The importance of public participation has been emphasized in many regional and international instruments. Some of the regional and international instruments with public participation provisions include:

1) The International Covenant on Civil and Political Rights (ICCPR)

It provides safeguards to public participation—

- **Article 25³⁵**- provides that every citizen shall have the right and the opportunity, without unreasonable restrictions to:
 - a) take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b) vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
 - c) have access, on general terms of equality, to public service in his country;

2) United Nations Convention Against Corruption (UNCAC)

Article 13 of the Convention provides for participation of the Society in the fight against corruption. It provides, *“Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.”*

3) The African [Banjul] Charter on Human and Peoples' Rights

It makes provisions on public participation in Article 13 (1), which provides that: *“Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.”*

³³ Section 8 (j) of the Commission on Administrative Justice Act.

³⁴ The Commission on Administrative Justice Annual Report: 2014

³⁵ Article 2 (1) Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

4) United Nations Economic Commission for Europe (UNECE)

The Aarhus Convention on Access to information, public participation in decision-making and access to justice in environmental matters in Articles 6, 7, 8 and 9 provides for public participation in different aspects. The Convention recognizes that procedural and participatory rights are an integral component of human rights. It imposes extensive duties on government to ensure openness, public engagement, accountability and responsiveness in the environmental spheres.

5) The Declaration of the International Conference on Public Participation

At a meeting held in Gauteng, South Africa (The Gauteng Declaration of March 2012), international actors stressed the importance of public participation as an essential ingredient to good governance and human development, whose ultimate objective is to improve the livelihood outcomes for the people.

CHAPTER 3

BEST PRACTICES: COUNTRY EXPERIENCES IN PUBLIC PARTICIPATION

Apart from Kenya that has entrenched the principle of public participation in its constitutional and statutory framework, many other countries have either entrenched the same in their Constitutions, statutes or both. Some of these countries are discussed below.

3.1 South Africa

A constitutional obligation is placed on Parliament and Provincial legislatures to ensure public participation. Legislation has been enacted to implement the constitutional requirements. Policies and strategies for public participation have also been developed.³⁶ Various methodologies have been adopted including:

- a) **Izimbizo:** The political leaders from the highest (President)–to the lowest (Councillors) hold public meetings accompanied by the relevant government officers to discuss with communities policies and service delivery issues. Cabinet Ministers also conduct sectoral or ministerial *izimbizo* with provincial Members of Executive Councils (MECs) to engage citizens on matters of their respective sectors.
- b) **Executive Committee (EXCO) Meets the People:** Premier of the **Province** and Members of his /her Executive Council in a province hold meetings to engage with communities on government policy and service delivery.
- c) **Public Hearings:** Public hearings of different types are organised by different organs of the state, including Parliament and National Council of Provinces (NCOP) to engage with the general public on policy and service delivery issues.
- d) **Ward Committees:** Ward committees which are established by law – the Municipal Structures Act (Act No. 117 of 1998) assist the democratically elected representative of a ward (the Councillor) to carry out his or her mandate. They are composed of members of the community representing the needs of the people in areas where they live. The law requires municipalities to establish ward committees to enhance participatory democracy in the local government.
- e) CDWs are community-based resource persons who collaborate with other community workers to help fellow community members to obtain information and resources from government departments. The aim of CDWs is to facilitate community participation in government initiatives.
- f) **Citizen Satisfaction Surveys:** Citizen Satisfaction Surveys are used to engage with citizens in order to obtain their views and expectations on service delivery. It is a feedback mechanism on the quality and adequacy of public services directly from the service users of government services. Citizen Satisfaction Surveys also provide a thorough basis and sets a proactive agenda for citizens and government to engage in dialogue to improve the delivery of services to the public.

- g) Citizens Forums:** The Citizens Forums model is a mechanism to facilitate public participation in the Public Service. The overall purpose of Citizens Forums is to evaluate the delivery of particular services throughout the country, and to enable active involvement of people affected by government programmes in service delivery improvement processes. The PSC was instrumental in piloting these forums and has since developed a toolkit containing an instrumental video and a step-by-step guide to the implementation of Citizens' Forums.
- h)** In addition, various structures such as the National Economic Development and Labour Council (NEDLAC) and the National Anti-Corruption Forum were established to create a platform for public participation.

With the legal framework in place as indicated above, cases have been brought before South African Courts to challenge lack of public participation. In *Matatiele Municipality & Others v President of the Republic of South Africa & Others [2006] ZACC 2*, the Matatiele Municipality and other organizations contested the validity of the Constitutional amendment in so far as their municipality was concerned. The Kwa Zulu Natal Legislature had not facilitated adequate public involvement in the legislative process in accordance with the Constitution of South Africa. The Constitutional court held that the Twelfth Amendment Bill was invalid.

3.2 Rwanda

Public participation in Rwanda is guided by the National Decentralization Policy (2000, Revised 2012). The policy was formulated after a series of dialogue sessions with citizens and consultations with experts on how Rwandans could embrace good governance and take charge of their destiny³⁷.

The Policy defines a community as a group of people with shared interests living in one village, cell, sector or district. The Policy seeks to deepen and sustain grassroots-based democratic governance and promote equitable local development by enhancing citizen participation. In order to enhance citizen participation, the Policy provides mechanisms for citizens to participate in initiating, making, implementing, monitoring and evaluating decisions and plans that affect them by transferring power, authority and resources from central to local government and lower levels, and ensuring that all levels have adequate capacities and motivation to engage in genuine participation.

Rwanda has over the last decade implemented the decentralization policy. This has had great impact in promoting government accountability to citizens. The Rwanda Governance Board (RGB) conducts Citizen Report Card (CRC) survey to provide public institutions and policy makers with feedback from citizens on services delivered at grassroots level. The 2010 Citizen Report Card conducted by the Board is summarized in Table 3 below:

Table 3: Level of Participation in different domains

No.	Area of Participation	Ranking
01.	Community work	93.2%
02.	Election of leaders	92.2%
03.	Financial contribution	84.8%
04.	Expression of views in different fora	82.2%
05.	Voluntary acceptance of responsibilities in leadership	66.4%
06.	Monitoring of services and holding leadership accountable	26.4%
07.	Formulation of performance contracts (<i>Imihigo</i>)	23.6%
08.	Formulation of District Development Plans	11.7%
09.	Participatory budgeting processes at District level	11.2%
10.	Formulating of District Council agenda	10.8%

³⁷ Rwanda, Ministry of Local Government, *National Decentralization Policy*, (June 2012). *Consolidating participatory governance and fast-tracking citizen-centered development*

3.3 Switzerland

Within the legal framework and the highly democratic nature of Switzerland, there is good co-operation among the stakeholders including the non-state actors. The right to take part in referenda and public initiatives is highly developed. For instance, a number of Cantons allow immigrants to participate in referenda and public initiatives. The Federal law on Spatial Planning provides for public participation at all levels: Federal, Cantonal and Communal. Two statutes have been enacted to ensure transparency and equality in the public participation process. The two statutes are the *Federal Act on Consultation* and the *Federal Act on Transparency*. Both Statutes are based on the mandate of Article 147 of the Federal Constitution of 1999.³⁸

3.4 European Union

The White Paper on European Governance of June 2001 articulated principles of good governance as transparency, openness, participation and accountability. The treaty on the European Union, The Treaty of Amsterdam and the Treaty of Nice anchor representative democracy through political parties and the rights of the European citizens to address petitions to the European Union. The many European treaties that govern the Union place great emphasis on the need for public participation. They range from participation in the legislative process, environmental matters, financial matters, participation in elections and referenda among others.

3.5 Italy

Under the Italian Constitution, regions have considerable autonomy. The Tuscany region has enacted legislation (Regional Law 69 of 27 December 2007) that makes public participation mandatory and provides for institutional mechanisms for public participation. These include the right to participate and creation of single person authority to promote public participation³⁹.

3.6 Canada

Although Canada does not have express provisions for mandatory public participation, its democratic practice has nurtured a culture of public practice that over the years has made it possible for most decision-making processes to involve public participation.

Public participation in South Africa, Rwanda, Switzerland, the European Union, Italy and Canada present a perfect study for the importance of public participation in governance matters and democracy. They indeed have a robust democracy that can be attributed to a culture of public participation.

The table below gives the legal framework of some of the Countries/Unions discussed above as far as public participation is concerned:

³⁸ The Cantons, the political parties and interested groups shall be invited to express their views when preparing important legislation or other projects of substantial impact as well as in relation to significant international treaties.

³⁹ See CRECO report and Prof Yash Ghai Article.

NO.	Country	Legal Framework	Provision
01.	South Africa	Constitution of the Republic of South Africa, 1996	<ul style="list-style-type: none"> ▪ Section (1) (a) - Public access to and involvement in National Assembly: the National Assembly must facilitate public involvement in the legislative and other processes of the Assembly and its committees. ▪ Section (1) (a) - public access to and involvement in National Council: the National Council of Provinces must facilitate public involvement in the legislative and other processes of the Council and its committees. ▪ Section 118 (1) (a) – Public access to and involvement in provincial legislatures: A provincial legislature must facilitate public involvement in the legislative and other processes of the legislature and its committees. ▪ Section 160 (4) (b) - no by-law may be passed by a Municipal Council unless the proposed by-law has been published for public comment.
		Local Government: Municipal Structures Act, 117 of 1998 Local Government: Municipal Systems Act, 32 of 2000 at Chapter 4: community participation	<ul style="list-style-type: none"> ▪ Sets out the requirement for public participation in a range of local government affairs, including the enactment of by-laws
02.	Switzerland- The Swiss Confederation is a Federal State comprising of three government levels: the Confederation, 26 Cantons and 2551 Communes.	Federal Constitution of the Swiss Confederation	<ul style="list-style-type: none"> ▪ Article 147: Consultation procedure: The Cantons, the political parties and interested groups shall be invited to express their views when preparing important legislation or other projects of substantial impact as well as in relation to significant international treaties.
		The Consultation Procedure Act: Federal Act	<ul style="list-style-type: none"> ▪ Article 3: sets out the requirements for public participation in the law-making process. This is to allow the Cantons, political parties and interested groups to participate in the shaping of opinions in the decision-making process.
03.	European Union	White Paper on European Governance, 2001	<ul style="list-style-type: none"> ▪ The paper aimed to reinforce the culture of consultation and dialogue at the European Union level thus increases the level of legitimacy of the decisions. ▪ It highlights 5 principles of good governance, namely: <ul style="list-style-type: none"> i. Openness; ii. Participation; iii. Accountability; iv. Effectiveness, and v. Coherence
		European Commission Principles and Minimum Standards for Consultation of interested parties, 2002	<ul style="list-style-type: none"> ▪ Emphasizes on the importance of providing clear consultation documents, consulting all relevant groups, leaving sufficient time for participation, publishing results and providing feedback.
		Lisbon Treaty	<ul style="list-style-type: none"> ▪ The participatory approach of making policies and laws on level of EU and its member states was enshrined in the Lisbon Treaty. ▪ Article 10 prescribes that: “Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.”

3.7 Best Country to Visit:

South Africa's public participation framework stands out as one of the best in Africa. Kenya can borrow much from her experience on public participation to improve on the framework of public participation in the National and County governments. The cases decided in South African Courts challenging lack of public participation form a good case study that can help in the formulation of policy that can enhance public participation. South Africa is therefore recommended as a good country to consider in the effort to build the capacity of key stakeholders responsible for public participation in Kenya.

CHAPTER 4

ASSESSMENT OF THE NATURE AND EXTENT OF PUBLIC PARTICIPATION IN KENYA

4.0 Establishment Mechanisms /Systems for Public Participation –Implementation Policies and Laws

Kenya has made considerable progress in public participation under the new Constitution. Many policies, legal and institutional measures have been taken to actualize the demands of the Constitution for participatory governance in both the National and County governments. The legal framework providing for public participation was discussed in Chapter 2 of this Report.

There is, however, general consensus that the nature and extent of participation contemplated by the Constitution and the laws have not been achieved in either level of government. While a lot public of participation efforts have been made in both levels of government, there is no clarity on what constitutes adequate participation, the nature of the participation that meets the constitutional threshold or the most effective mechanisms for public participation. Studies/surveys of public participation reveal that some form or other of public participation is taking place in most of the processes in the devolved system of governance at both levels of government. The form, nature and levels of Public participation are however unsatisfactory in both the county and national governments. Challenges to effective public participation include: lack of policies/laws on public participation, lack of public awareness due to failure to provide adequate civic education; lack of access to critical information, and; inadequate public participation infrastructure.

Among the notable surveys conducted by government and non-government agencies on the status of public participation in Kenya include the following.

4.1 Surveys

4.1.1 Transparency International-Kenya

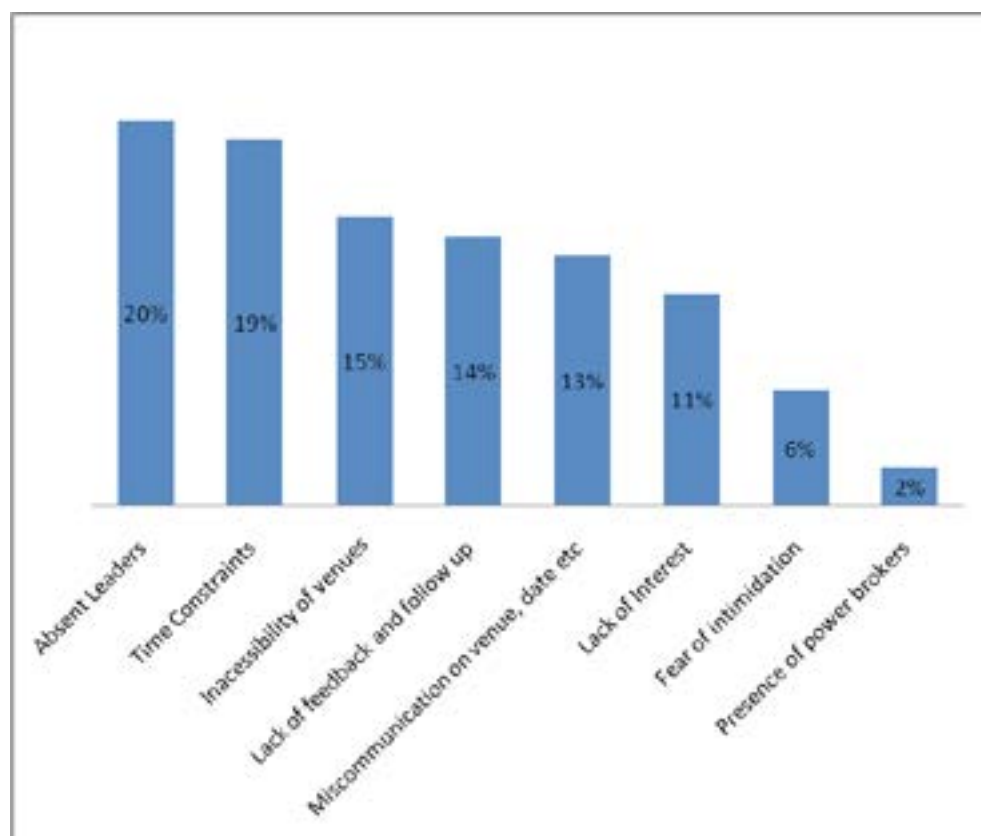
After a survey sampling 16 counties in June 2014⁴⁰, Transparency International –Kenya Chapter was of the view that:

‘In regard to awareness on county planning documents, only 7% of the respondents knew about the County Fiscal Strategy Paper, which provides an overview of how a county plans to raise and spend money in the next financial year. 16% were aware of the County Integrated Development Plan, a five-year plan that informs the county’s annual budget. The budget was the most widely known document as 41% of the respondents acknowledged awareness of it. Less than 10% of the respondents reported having a copy of these documents. These findings indicate that county governments are not doing enough to ensure access to information by the public and consequently very few Kenyans are aware or involved in crucial forums to discuss county plans and priorities during the 2014/2015 budget cycle’.

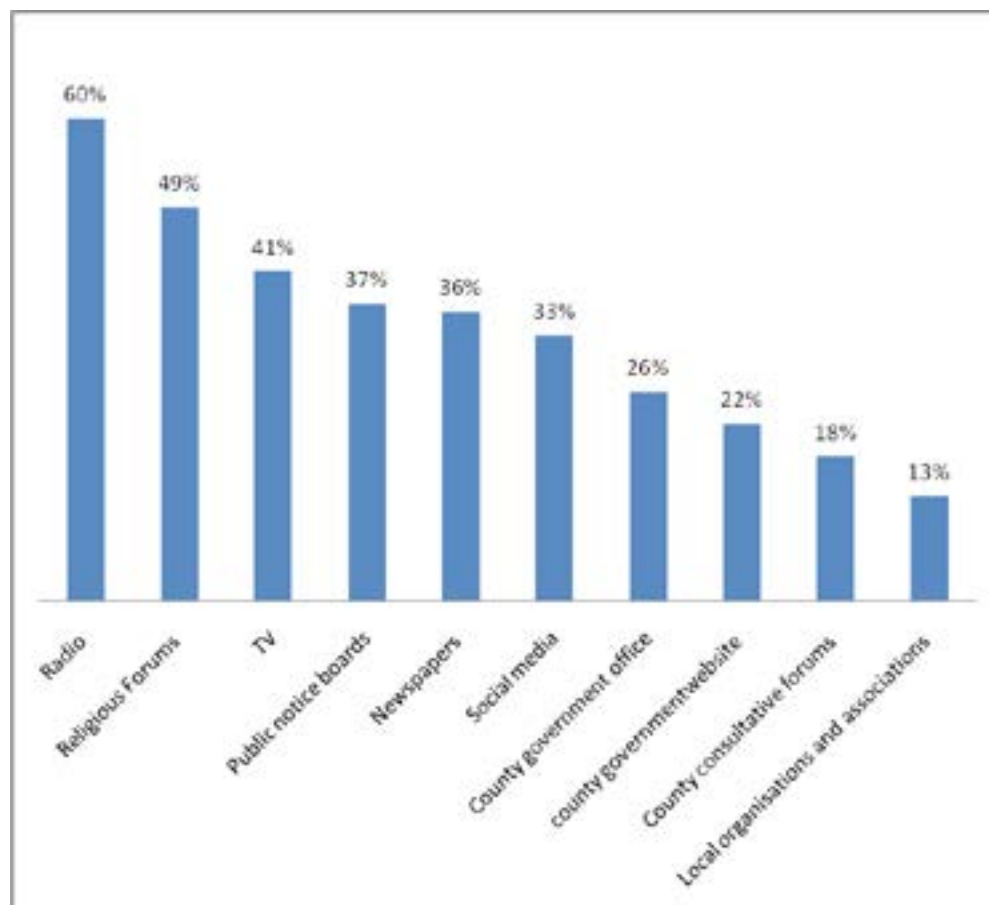
4.1.2 The Society for International Development (SID) study

The Society for International Development (SID) through a report on the *Citizens Report Card 2015* reviewed various aspects of the milestones achieved 5 years after the promulgation of the Constitution, in which public participation was one of the aspects assessed. From the report, the statistics below on the constraints to public participation and the most preferred channel of receiving communication were revealed.

40 Counties surveyed were: Bungoma, Embu, Garissa, Kakamega, Kilifi, Kisii, Kisumu, Machakos, Mombasa, Murangá, Nairobi, Nakuru, Narok, Nyeri, Turkana and Uasin Gishu.

Constraints to greater participation

Source: Adopted from the Lessons from 2015 Citizen Report Card, SID

Most preferred channel of receiving information

Source: Adopted from the Lessons from 2015 Citizen Report Card, SID

4.1.3 The Commission for the Implementation of the Constitution (CIC)

The CIC in its final report assessing the implementation of devolved government noted that public participation is inadequate due to limited awareness of the Constitution and devolution and the lack of a framework for public participation in terms of policies and laws.

4.1.4 Kenya School of Government and World Bank

The Kenya School of Government /World Bank working papers on public participation also note that the infrastructure for effective public participation is not yet in place but observes that the establishment of such infrastructure is a gradual process.

4.1.5 The Institute of Economic Affairs (IEA)

The Institute of Economic Affairs in partnership with URAIA has conducted a study on public participation and dissemination of information. The objectives of the study included:

1. Reviewing the constitutional provisions and existing laws on public participation both at the national and the county government;
2. Identification of the processes and platforms that have been created by the county governments to enhance public participation;
3. Assessing the level of involvement of the civil society and citizen engagement in governance process; and
4. Development of policy recommendations on public participation.

The IEA found that in the counties sampled—Isiolo, Kisumu, Makueni and Turkana—there was public participation especially in the budget-making and policy-formulation processes where the people were given an opportunity to give their suggestions on their preferred projects and on the allocation of funds to various projects⁴¹. Public participation took the form of public meetings at the ward level. The specific findings from the Counties are as summarized below:

Kisumu County

Kisumu County had created decentralization units at the sub-county and ward levels, and appointed Sub-County and Ward Administrators. This gives the people an opportunity to take part in development projects at the two levels. The system ensures quarterly meetings organized by the MCAs and the Governor to give citizens a platform to give views on various development projects and the county agenda. There was however, a concern about the involvement of political leaders who are not tolerant of opposing views. Participation for the 2014/2015 budget took place at the sub-county level, which allowed the public to give an assessment of the previous budget items as well as give an opinion on what their priority projects were. The meetings were advertised in the local radio stations.

In addition to the meetings that are convened by the county government, there are various CSOs based in Kisumu county that are involved in the implementation of public participation through enlightening the public on the importance of public participation and also through engagement with the county government to ensure that the proposals of the people are taken into consideration.

Turkana County

The County of Turkana has adopted various forms of public participation. These have included public meetings at the ward level, engagement of the people through an Information Communication Technology System and through two local magazines. The county uses the various platforms to reach the people and engage them at different levels on various development issues. In the 2014/2015 budget preparation process, the people

41 Review of the status of public participation and existing county public participation and existing county participation information dissemination framework. <http://dspace.africaportal.org/jspui/bitstream/123456789/35004/1/Review-of-status-of-Public-Participation.pdf?1>

were given an opportunity through public forums to give input on project priorities. However, there were concerns that since the opinions of people at the meetings were not binding on the Executive, more often than not their proposals were not taken into account. People were also given a chance to review implementation of the previous budget through distribution of copies of the status report. In addition to the initiatives by the county government, various CSOs in Turkana County are involved in public participation. The CSOs play a coordination and mobilization role, especially by mobilizing the locals and present opinions to the County Assembly and the County Executive on various matters that are of interest to the people.

Isiolo County

The decentralization structures in the county have been developed up to the ward level. However, Ward Administrators faces several challenges, especially inadequate facilities and inadequate transport to reach the residents in remote parts of the county. For the 2013/2014 budget, there were ward-based consultations on the budget to allow people to receive information on the proposed projects and give them an opportunity to propose their priority. Public participation has however been compromised in the county due to misunderstanding between the County Assembly and the County executive, a situation that has made it difficult for the citizens to be involved in development in the county. There are CSOs that are also involved in promoting civic education in the county, which includes holding of radio shows where trained community members educate the people on matters of governance, especially on the role of the various county structures and the role of the people. The CSOs through the shows interact with the people and educate them on the importance of involvement in governance.

Makueni County

Mechanisms for public participation in the county were created soon after the county government came into existence. The top leadership of the county at a very early stage recognized the importance and the need for civic education and public participation. The public participation and civic education framework of the county was developed through a consultative process of meetings with representatives of the community. Public participation and civic education were allocated as functions of the department of devolution and public service. An office of public participation was established in the said department. The office is headed by a public participation coordinator and has been decentralized to the sub-county and ward levels where there are the Sub County Civic Education Coordinators (SCEC) and the Ward Public Participation Facilitators (WPPF). The county government of Makueni formally employs the SCEC while the WPPF operate on a contract basis as need arises.

The public participation modalities in Makueni County was organized in a manner that allowed training of trainers - 3 ward representatives from the 30 wards were selected to be trained on public participation and civic education. The TOT graduates were responsible for training on civic education at the ward levels. Through this strategy, 900 community members were trained on civic education by the end of 2013/2014. This approach has had a multiplier effect over time.

Makueni County has adopted 3 mechanisms for public participation which are:

- giving opportunity to the general public and interested groups including professional associations to participate in decision-making in regard to identification and prioritization of projects;
- the establishment of Project Management Committees (PMCs), whereby each project has an oversight PMC where members are selected or elected at a public forum; and
- according the locals a first opportunity to whenever the county needs provision of goods and services.

Lesson Learnt from the IEA Report

- County governments should establish partnerships with CSOs. CSOs have already created links with the communities and are thus fundamental in creation of links and networks for public participation in the counties.

- Rural communities have a low understanding of their civic duties and rights and thus civic education is a prerequisite of effective public participation.
- It is necessary for the county governments to create key structures on public participation for proper and easier communication with the citizenry.
- Participation should be enhanced through awareness creation. The county governments should establish an open governance policy especially through proactive information disclosure.
- County governments should have a regular reporting structure and culture. Reporting creates a culture of accountability. There is need for periodic reports on public participation to the citizens and national government bodies.

4.1.6 The Institute of Social Accountability (TISA)

The Institute of Social Accountability (TISA) developed a program on social accountability aimed at promoting public participation. The project was implemented in 4 counties between 2014 and 2015 where TISA as a civil society organization wanted to take up the role of enhancing civic education which in turn would increase the demand from the public for participation. The aim of the project was to institutionalize public participation in the counties with the understanding that without proper frameworks public participation cannot be implemented. The main objective of the program was to support counties in implementation of public participation and social accountability through the establishment of operational public participation frameworks. The program was implemented in 4 counties and various aspects of public participation were observed from the counties as summarized below.

i. Baringo County

Effective public participation had not kicked off due to lack of established structures for citizen participation and lack of guidance on establishing the structures especially decentralization units. There was very low capacity of the citizens to engage the county government. This was evident during the 2015/2016 budget engagement, which had very low turnout at the public participation engagement forums.

ii. Kitui County

The public participation social accountability program was implemented through the Catholic Justice and Peace Commission (CJPC) Kitui and the Kitui Civil Society Forum. The program in Kitui was largely supported by the CSOs since the county government of Kitui lacked the appropriate structures to implement public participation. However, there was an observation that the county government was not very open to the CSOs in public engagement, which then pushed them to use unconventional methods such as petitions to engage the county government.

iii. Nairobi County

Since TISA is located in Nairobi, it was directly involved in the implementation of the program in Nairobi. TISA had an understanding with the County Assembly and the County Executive through the CEC in charge of Finance, which made it easier to implement the program. During the implementation of the program in Nairobi some of the emerging issues on public participation were:

1. There was need for the county to advertise public participation forums in time to give the residents time to prepare and participate adequately in the process.
2. The County should employ alternative means of publicizing the consultative meetings. Although the county already utilises notices in religious and popular venues, this was found not to be consistent across all the wards.
3. The County should strengthen its collaboration with civil society and local media outlets and adopt the use of ICT such as SMS and twitter. Community halls should be refurbished and be well maintained to provide a conducive meeting environment.

4. Public participation meetings should double up as opportunities for civic education.
5. The wards should convene regular meetings to review the status of the identified projects.
6. Government officers should be sensitized on principles and skills of public participation to make them more effective in dealing with the public.

The program by TISA generally made various observations that include⁴²:

1. Public participation has been compromised by lack of proper avenues for communication on the existence of public participation forums. The county governments have been using print media to advertise for public participation even when the target audience is not a consumer of the print media.
2. Communication gaps between the County Assembly, the County Executive and the Ward Representatives also proved to be a great challenge. There were gaps in the flow of information that resulted in miscommunication and delay in the delivery of information to the people on participation.
3. The people do not appreciate public participation as their responsibility. There is an expectation by the citizens that there will be monetary compensation for participation in public participation forums.
4. Lack of civic education is a major problem—communities do not appreciate their responsibility and their role in planning and development. The communities have not embraced the role of participating in planning as a responsibility.
5. Counties have not made use of the websites as tools of public participation. All counties have websites and this is a useful tool to reach the elite in the societies to contribute to public participation.

4.1.7 Constitution and Reform Education Consortium (CRE-CO)

CRE-CO has developed a model Policy Framework for Public Participation in County Governments. In the model, CRE-CO holds that public participation is about aligning the needs and the demands of the public more closely with the choices of government officials. Thus, public participation must occur at the formulation stage of policy and at the approval stages. Public participation becomes important as the needs and the priorities of the people are brought to the attention of the policy makers.

Some of the main issues that the report brings out are:

1. There is no structured effort in public participation though the law has provided for it. Thus county governments' efforts at public participation are piecemeal in nature, thus leaving the public participation process to comprise mainly of uncoordinated engagements with public and county structures.
2. There is no integrated and readily available information to the public for there to be meaningful engagement.
3. There is need for awareness creation for both the government officers and the public of the importance of public participation.
4. Building the capacity of the public officers on the appropriate methodologies for public participation will also be important⁴³.

4.2 Experiences in the Facilitation of Public Participation

To gauge the nature and level of public participation in both the national and county governments, key informant interviews were conducted with senior government officers in selected ministries/departments. At the national level, the Ministries of Finance (Treasury), Devolution and Planning, Interior and National Co-ordination, Agriculture, Livestock and Fisheries and Health were involved. The Counties sampled were: Tharaka Nithi, Bomet, Nyeri, Vihiga, Mombasa, Wajir, Nairobi, Samburu, and Kisumu. Key informant interviews were also conducted with both houses of Parliament—the National Assembly and the Senate.

⁴² Jihusishe: Lessons in participation in the county budget. http://www.tisa.or.ke/images/uploads/PP-SA_Report.pdf

⁴³ CRECO model framework for county public participation

The key informant interviews sought to establish:

- The understanding of public participation in respect to the national and the county governments;
- The structures and the existing frameworks for public participation;
- The forms and modes that have been adopted for public participation;
- The benefits of public participation;
- The challenges of public participation;
- The gaps and the suggestions on improvement of public participation in the country.

Two focus group discussions with experts were also held, bringing together experts from among others IGRTC, TISA, SID and Ministry of Devolution and Planning. A summary of the county experiences emerging from the key informant interviews and the focused group discussions is presented below.

4.2.1 National Government

The national government has embraced public participation as an imperative of the Constitution. In policy/ law making and planning and budgeting there are clear indications that the national government is making efforts to involve the public in decision making. In the development of legislation and policies to implement the Constitution, the government was greatly aided to comply with public participation requirements by the Commission for the Implementation of the Constitution (CIC), which made it a requirement that all policies and bills presented to it for concurrence were to be accompanied by clear evidence of public participation

Despite the desire to implement public participation requirements, the national government does not appear to have developed policies or laws to enhance public participation as expected upon promulgation of the Constitution of Kenya, 2010. The planning and budgeting processes remain largely the way they were before the Constitution. Public participation is mostly by way of sector hearings and written submissions. The composition of the budget sector working groups has not been opened up to include critical non-state actors, apart from the private sector and development partners. Government ministries do not have any have dedicated institutional arrangements for public participation and in many cases the impression given is that public participation is for county governments.

Public participation is largely viewed as restricted to planning, budgeting and the making of policies and laws. Consultations and engagements around decision making in day-to-day governance is not considered very critical. Public participation is still regarded as an expensive constitutional imposition with many complaints about its inconveniences and little utility. Public participation as a mechanism for good governance, democracy, transparency and accountability does not appear to have gained enough momentum. Critical laws such as the *Freedom of Information Act* and the *Public Benefit Organisations Act*, which are central to public participation, have not been enacted and/or operationalized⁴⁴. Below are selected ministerial experiences with public participation.

4.2.1.1 Ministry of Devolution and Planning

The Ministry of Devolution undertakes public participation through the Directorate of Capacity Building. The Ministry has in the 2015/2016 financial year set aside a budget of KES 300M for public participation as opposed to the previous years where public participation has not had any budget allocation. The Ministry facilitates public participation through the county coordinators. Being the planning ministry, it has planning offices in the counties which are used for public participation. Participation is through sector consultations/ hearings at both the national and county level. The Ministry also releases regular reports /surveys to inform the public on development matters. The Ministry recently released guidelines for public participation in the county governments.

⁴⁴ See SID's analysis of the environmental governance factors that are hindering public participation in SID's KDP Policy Brief No.1, May 2015, *Improving the quality of citizen engagement in Kenya*. In this brief, SID notes that the constraining of non-state actors' freedoms is undermining public participation. It cites the hostility against NGOs as evidenced by failure to operationalise the PBO Act two years after enactment and attempts to amend it to deny NGOs funding and the controversy on the Media Council Act as evidence of reduction of the space for public participation.

4.2.1.2 Treasury Public participation in the budget making process

MTEF budgeting is done through Sector Working Groups (SWGs). The public sector is currently divided into 10 budgeting sectors; Governance, Justice, Law and Order; Public Administration and International Relations; National Security; Social Protection, Culture and Recreation; Environment Protection, Water and Natural Resources; Agriculture, Rural Development and Urban Development; Energy, Infrastructure and ICT; General Economic and Commercial Affairs; Health and Education⁴⁵. These sectors are designed to facilitate a collaborative effort in the development of the budget through the incorporation of the Non-State Actors and the private sector together with various government departments depending on the sector that the respective departments would belong to.

The various Ministries, Departments and Agencies (MDAs) are all clustered under one or the other sector. The Sector Working Groups are responsible for formulating sector budget proposals and developing sector policies. Each sector working group is comprised of; the chairperson (an accounting officer chosen by his colleagues); a sector convenor appointed by the National Treasury; sector co-convenor appointed by the Ministry of Devolution and Planning; a technical committee appointed by the SWG; a SWG secretariat appointed by the individual accounting officers to assist the chairperson in coordinating the activities of the SWG; representatives of development partners; representatives of the public and representatives of the Kenya Private Sector Alliance (KEPSA)⁴⁶.

The terms of reference for SWGs are to: review sector objectives and strategies in line with the overall goals outlined in the Vision 2030; identify programmes and the necessary policy, legal and institutional reforms required; analyze cost implications of the proposed programmes, projects and policies for the MTEF period; prioritize Sector Programmes and allocate resources appropriately in accordance with an agreed criteria and justification for the prioritization; identify programmes and projects to be funded under Public Private Partnerships (PPPs), and; coordinate activities leading to the development of sector reports and indicative Sector Budget proposals.

In developing the proposals, the SWGs must involve their critical stakeholders and the public. They are expected to identify the stakeholders and develop a programme for engagement. They should also involve some representation from the counties invited through the Intergovernmental Budget and Economic Council.

Throughout the budget cycle there are various opportunities for public engagement from the beginning of the cycle to the end. The diagram below shows the budget cycle.

⁴⁵ H.K Rotich, Guidelines for the Preparation of the Medium Term Expenditure Framework (MTEF) Budget for the Period 2015/16- 2017/18, Treasury ,August, 2014.

⁴⁶ ibid

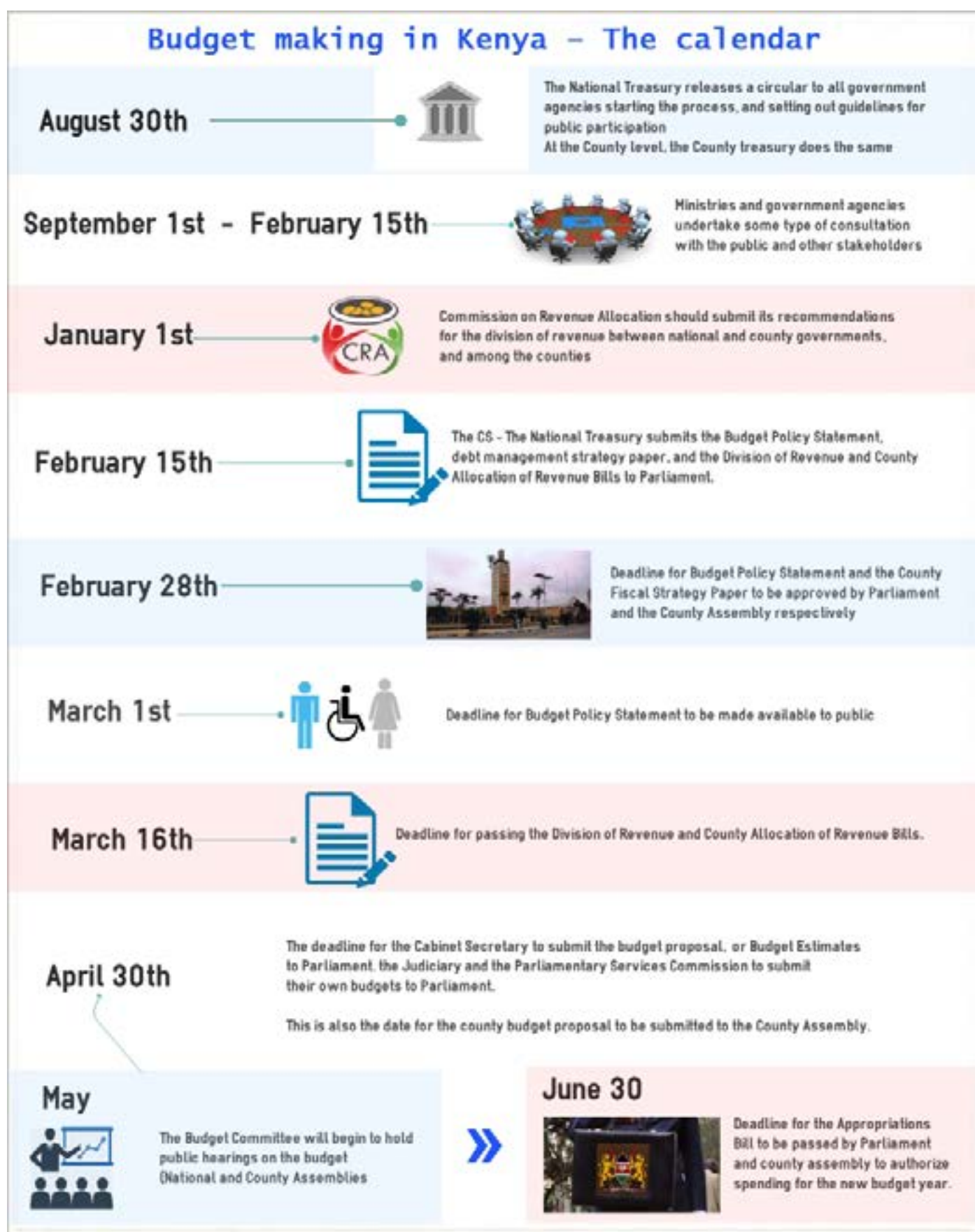


Figure 1: The Budget-making calendar in Kenya

Source: Adopted from the Transparency International website



The Budget-making cycle in Kenya

Source: *The PFM Act 2012 and www.internationalbudget.org*

Opportunities for Public Participation in the Budget Cycle

The guidelines for public participation are released each year in August by the National Treasury through a circular that commences the budget cycle. The first opportunity for public participation in the early stages of the budget is around September during the first engagement of stakeholders in the budget process. This may include county visits by Treasury and also sector hearings within the various MTEF sectors until the 15th of February when the public and other stakeholders have the opportunity to offer opinion on the priority areas for the coming financial year.

Sector hearings are conducted in December when the sectors are expected to prepare their various sector reports and publish the report for the implementation of the first quarter of the budget.

The Role of Public Participation in the Budgeting Process

Public participation plays an important role in various aspects including:

- The setting and realigning of government priorities
- Monitoring and evaluation of projects
- Implementation of projects
- Impact assessment of various projects

Challenges of public participation in the budgeting process include

- The budget timelines are too tight for effective public participation.
- Involvement of *Wanjiku* is a challenge due to the complexity of the budget and the budget process.
- Access to budget information materials during the budget cycle is major challenge to the public.

4.2.1.3 Ministry of Health

The Ministry has no dedicated framework for public participation. The Ministry of Health partners with development partners and implementing agencies on the creation of policy and legislation. The Ministry engages experts' opinion through the implementing agencies so as to involve them in the policy and legislation development process. There is a health sector coordination forum that is also an avenue for public participation. The Ministry also interacts with the public during National and International days such as World Health Day.

4.2.1.4 Ministry of Agriculture, Livestock and Fisheries

The Ministry has no dedicated framework for public participation. However, the ministry has an Intergovernmental Secretariat that works with the county governments in the implementation of policies and legislation. The Ministry engages with other stakeholders through workshops, meetings, and media in the formulation of budgets, legislation, and policies.

4.2.1.5 Ministry of Interior and Coordination of National Government

The Ministry has no dedicated office for public participation. Public participation is conducted through the departments/agencies of the Ministry. The Ministry has country-wide reach through the County Commissioners and other administrative officers such as sub-county administrators, Chiefs and Assistant Chiefs. These officers are used to interact with the public and support various government initiatives. Such initiatives would be like the recent initiative to deal with the illicit brews where the administrative officers together with the citizens were involved in efforts towards the eradication of illicit brew. The Ministry is also involved in public awareness campaigns through *Barazas* organised by the administrative officers at the lowest units of administration. However the Ministry lacks proper guidelines and a framework for engagement of the people.

4.2.1.5 National Assembly

The National Assembly's public participation is structured through the standing orders. It engages the public largely through committee hearings. The committee meetings are open to the public unless for good reason the Speaker authorises the exclusion of the public. There is also participation through petitions by members of the public. Though there have been challenges in the National Assembly due to Members of the National Assembly influencing the public to present petitions for their own political interests, petitions have been an effective way of involving the public and some have been adopted and even had legislation developed based on them. The National Assembly has not yet developed a system for tracking the petitions and analysing the root causes of the petitions. They were unable to provide data on the petitions received over the last three years. Awareness of the matters being handled by National assembly is a challenge to the public. Access to Parliament can also be difficult and the atmosphere there can be intimidating.

4.2.1.6 Senate

Just like in the National Assembly, public participation has been expressly provided for in the standing orders. Senate committee meetings are also open to the public and this provides the public an opportunity to engage on various issues. There are also efforts to go beyond advertising in daily newspapers for the committee hearings. The Senate sometimes directly invites the relevant stakeholders on various issues to the forums. The Senate also receives numerous petitions and the legal officers in the Senate ensure that the members of the public are facilitated to prepare the petitions in the required format before presentation to the relevant committees. The Senate however expressed fears that there were those members of the public who have would become "busy bodies", sending petitions to the Senate on all manner of issues and thus the question of the legitimacy of some petitions arises.

4.2.2 County Governments

County governments have made considerable efforts to facilitate public participation in many of their processes. Many counties have developed bills while others have already enacted public participation laws. Some have created dedicated departments or offices to facilitate public participation while others use the general county government laws and the Public Finance Management Act. However, few counties can claim to have reached the levels of public participation contemplated by the Constitution and the laws. Counties face many challenges to effective public participation including lack of infrastructure for effective communication, lack of adequate finances to facilitate adequate public participation, public expectations for allowances, public apathy, illiteracy and lack of awareness of the need to participate, political manipulation of public forums, lack of capacity to facilitate public participation and lack of norms and standards to determine effective or adequate public participation. Some experiences of county public participation are discussed below.

4.2.2.1 Vihiga County

Vihiga County has not yet developed a policy or legislation for public participation. It is in the process of developing the relevant legislation. However, the county conducts public participation through the administrators of the devolved units both for the County executive and the County Assembly. The county government has appointed Ward Administrators for the various wards in the county who are responsible for the conduct and coordination of public participation for the County Executive. The County Assembly also indicated that the administrators are also responsible for mobilisation of the people for its public participation forums.

The County Executive holds weekly meetings with people where they engage the citizens on various issues that concern the counties. It is during these forums when development projects are discussed, legislation and policies that are being developed are presented to the people and also the people get an opportunity to interact with their leaders to engage them on issues that affect them.

The structure of conducting public participation in Vihiga County has been harmonised for both the County Executive and the County Assembly. The two arms of government undertake public participation at the grassroots level and also at the county level through their administrators at the different levels of government.

4.2.2.2 Tharaka Nithi

Tharaka Nithi County has an existing Public Participation Act which has not been operationalized due to the absence of regulations that are necessary for the operationalization of the Act. The county government relies on the provisions of the Constitution, the County Governments Act and the Public Finance Management Act (PFMA) to conduct and coordinate public participation in the county. The County Assembly further relies on the standing orders to guide public participation.

Despite the absence of a framework, public participation is conducted through forums organised at the sub-county level and, when there are issues that need special attention, then there is a focus on targeted stakeholders who are directly affected by the issue at hand whether a legislation, policy or a development project.

4.2.2.3 Kisumu

Kisumu County has an existing Public Participation Act, but it has no policy on public participation. The county is in the process of developing a policy for public participation which they expect will offer clear guidelines on how to conduct public participation in the county.

The Kisumu County Public Participation Act of 2015 establishes a public participation unit. The chair of the unit is nominated by the people and then appointed by the Governor after the approval of the County Assembly. The Act also provides the guidelines for operationalizing public participation in the sub-counties and reaching all the citizens of the county.

The Act defines the relationship between public participation, civic education and civic engagement. Public participation is conducted through public meetings at the sub-county level and at the ward level. The county has structured public participation in a way that allows engagement of the rural and urban population through enhanced engagement of the rural population through local radio stations.

4.2.2.4 Mombasa

Mombasa County has no public participation law. The county government relies on the provisions of the County Governments Act as well as the PFMA.

However the county government of Mombasa has developed a framework for public participation that has helped to streamline public participation in the county. The framework has clearly brought out the role of the County Executive and the County Assembly in public participation which has been fundamental in dealing with the competing interests that have existed in the past.

The county government conducts public participation through the sub-county administrators. Monthly meetings are conducted at the sub-county level to engage the people on various issues on development projects, legislation, and policy.

4.2.2.5 Bomet

The County Government of Bomet has a pending public participation bill but currently relies on the County Governments Act and other national legislation that touch on public participation. The draft bill however aims at addressing various issues on public participation including creating structure for engagement of the public, defining the levels of public participation, defining what will be the threshold for proper public participation and also having an indication of the funding for public participation.

4.2.2.6 Nyeri

There is an existing Act on public participation. There is however agreement that the Act has loopholes that need to be addressed in order for it to fully support proper public participation in the county. Public participation has not been mainstreamed and the Act has not clearly defined the framework for public participation.

4.2.2.7 Nairobi

Nairobi County has no formal framework for public participation. There is however an Act on public participation that has not been operationalized due to some financial concerns. The Act is expected to give guidelines on the modalities of public participation including giving guidelines on the budgetary allocation for public participation. Currently, public participation in Nairobi County is undertaken through the various departments. Participation is tailored to the issue at hand. When there is a bill at the County Assembly, for example, the bill is published in the county government website and there is a notice in the newspapers for people to send in memoranda on the bill and also in some instances there are public hearings that are held in town halls. The county has had challenges in conducting the public participation due to the low interest among the residents of Nairobi. Most meetings are poorly attended.

Nairobi County has also developed a bill on Community and Neighbourhood Association Engagement, whose main objective is to recognise residents association for the purposes of partnership with the county government in the delivery of services.

4.2.2.8 Samburu

Samburu County has no formal public participation framework. Departments organise public participation using internal guidelines or on the basis of the relevant legislation such as PFMA. However, the county government has developed a public participation bill, but it has not yet been passed. Samburu County being a large county, the county government has been using sampling criteria to engage the people. They pick a sample of about 20 people from the wards that are taken to the headquarters to deliberate on issues affecting the county. The county has no special unit for public participation but the finance and planning department is responsible for public participation. A budget of only Ksh.5million has been allocated to public participation this year.

Samburu County has however stood out with an initiative by the Governor where he visited all the wards accompanied by MCAs, County Executive Members and some technical officers to listen to the people one on one. This approach should be replicated and institutionalised. Samburu County faces many challenges given that it has poor infrastructure and it is a huge county which is sparsely populated. The high levels of illiteracy have also been a great barrier to meaningful engagement of the people.

4.2.2.9 Wajir

The County of Wajir has a directorate of public participation that is responsible for the coordination of public participation in the county. The county makes use of a local radio stations to reach the people though this has not been very effective as the radio station only covers a radius of about 20km from the county headquarters. Public participation is conducted at the sub-county level and the local leaders are used to mobilise and coordinate the engagement of the people. Just like Samburu, the County of Wajir suffers the challenge of a vast county that is sparsely populated and thus engagement of the people is expensive and difficult. It is however one of the counties with a budget for public participation in this financial year. The budget however is meagre at Ksh.15million

4.2.2.10 Council of Governors

The Council of Governors (CoG) has no special mechanism for public participation. The CoG uses its website and conducts open committee meetings where the public is allowed to participate. The CoG is also invited by the various counties to their meetings where they get a chance to interact with the people. The annual devolution conferences provide an opportunity for public participation. The Governors also participate in TV and radio discussion to communicate the work of the CoG as it engages the people. The CoG also interacts through reports that the public make to it on various issues affecting devolution.

From the focused group discussions, important issues that require policy and legal interventions emerged

including:

- a) *Stakeholder mapping*: there is need for stakeholder mapping as a way of ensuring effective public participation. The youths, women and persons living with disabilities should be involved.
- b) *Threshold for public participation*: there should be guidelines to provide for the threshold for public participation. For instance, there should be a minimum percentage for people in a ward who should be consulted.
- c) *Review of the adequacy of inter-sectoral and sectoral forums* organized by the Ministry of Devolution and Planning as part of public participation should be conducted.
- d) *Profiling success stories*: the counties that have done well in terms of public participation should be identified and case studies shared with other counties so as to help them learn from the others.
- e) *Need to demystify certain myths on public participation*, i.e. the myth that the larger the number, the better or rather the effectiveness of the public participation.
- f) *Lack of diversity*: an effective public participation framework should ensure that the same people do not appear at every forum, every year, and pretend to represent the public. There is need for diversity and mapping of participants so as to get divergent ideas.
- g) *Public participation should be simplified*: the medium of communication should be simple and should reach many people. For instance, placing an advert on a newspaper may not constitute a good communication tool.
- h) *Short notice*: the government should give adequate notice to the members of the public for there to be effective public participation.
- i) *Contextualize public participation in the history of the country*: there is need to look at what has worked before that can be borrowed to ensure there is effective public participation.
- j) *How to address the question of mindset*: there is need for proper civic education to educate the members of the public on the importance of participating in the activities that affect them or rather in the governance of the County and the National government.
- k) *Public participation should be driven by those in leadership*. The leadership should appreciate the value of public participation. They should identify the barriers and address them. There is need for open governance and cordial inter-governmental relations as envisaged in the Constitution of Kenya, 2010.
- l) *Funding of public participation*: both the National and County governments should budget for public participation as resources are needed for effective public participation.
- m) *There is need for more civic education*.
- n) *How do we generate indicators?* There is need for a feedback platform where the members of the public can give feedback on public participation.
- o) *Analyze interest groups*: there is need to have champions of public participation, who are not necessarily politicians. There is also need for capacity building and equipping of officers with the skills, knowledge and the confidence in promoting and effecting public participation as opposed to letting the politicians conduct public participation initiatives. The politicians will at times further their interests and not those of the public.
- p) *Need to urgently address the problems / challenges facing public participation* such as time, required resources, lack of information, etc.
- q) *There is need for guidelines that define cooperation* between the National government and the County governments.

- r) *All Ministries/Departments/Agencies (MDAs) should have a framework for public participation.*
- s) *The budget cycle should be reviewed to ensure there is there adequate time for public participation in the county budget process.*

4.3 Emerging Good Practices in Public Participation

Public participation is not new in Kenya. Over the years the Government, Non-State Actors and development Partners have developed many strategies for public participation. Some good practices have emerged in effective citizen participation. Some of the strategies have emerged out of international and regional agreements that form part of the Laws of Kenya.

Notable experiences in effective public participation in the implementation of national public sector programmes include the family planning campaign in the 1970s and the anti HIV-AIDS campaign in the 1990s/2000s. The government with support from the United States Agency for International Development (USAID) implemented one of the most successful public engagements in family planning which greatly contributed to reducing the fertility rate in Kenya by engaging the community-based contributors⁴⁷. According to the 2014 Kenya Demographic and Health Survey,⁴⁸ this helped to reduce the fertility rate from about 8 children in 1960s to about 5 in 1990s. The success of this programme was primarily due to the involvement of the community members as health workers, which helped develop ownership of the initiative by the members of the society. The public were directly and indirectly involved in implementing this project.

4.3.1 Local Authority Service Delivery Action Plan (LASDAP)

The Local Authority Service Delivery Action Plan (LASDAP) was introduced through a ministerial circular in July 2001 with a view to empowering the local communities to develop capital investment plans to meet local needs and priorities through the adoption of bottom up approaches to planning. For the local authorities to receive funding (LATF), they were required to demonstrate effective public participation through the clearly stipulated guidelines of LASDAP.

LASDAP adopted clear strategies of public participation which involved a 3-stage process, involving consultation meetings, consensus-building and monitoring and evaluation of the implementation of the identified/selected projects as follows:

Stage 1: Consultative meeting- project identification

The LASDAP regulations required consultative meetings that would be held annually to identify the projects the community wanted the local authorities to take up.

Stage 2: Consensus meeting- project selection

At this stage, the projects that had been identified would be reviewed and the projects to be undertaken by the local authorities agreed on.

Stage 3: Monitoring and Implementation

Project committees were responsible for mobilization of resources for implementation of the projects.

Lessons Learnt

1. LASDAP had elaborate systems and structures for public participation that could be helpful in structuring the current systems of public participation. It had a three stage process that ensured that public participation took place and resources were tied to the process of public participation.

⁴⁷ Community Health Workers who distribute family planning commodities such as pills and condoms.

⁴⁸ Center for Strategic & International Studies, Family Planning and Women's Health in Kenya: The Impacts of US Investments, 2015.

2. Citizen participation had been given adequate time to ensure that there is time to identify and prioritize the projects that would be undertaken through the local authorities.
3. Consultation would start at the community level and then scale up. Public participation under LASDAP adopted the bottoms-up approach to planning⁴⁹.

4.3.3 Constituencies Development Fund (CDF)

Although CDF has had many bad experiences including misappropriation of funds by Members of Parliament (MPs), patronage practices and poor planning and accountability challenges, it has provided useful experiences in community involvement in the planning and budgeting processes. The CDF approach of allocating development funding on the basis of a poverty index is clearly a good practice that can be taken forward. The involvement of elected representatives in development decisions affecting their constituencies is also a good practice. It addresses the concern raised about LASDAP, which appeared to marginalise elected representatives in favour of central government administrators in the District Development Committee (DDC). There is no doubt that CDF has had considerable impact in addressing local infrastructure demands in a more equitable manner in all parts of the country. However, CDF has faced criticism that it distorts the separation of powers by conferring executive powers to the legislature.

The Constituencies Development Fund (CDF) Act (now repealed) was first passed into law in 2003 by National Assembly. The Act has since gone through a revolution in 2007 and a new Act was enacted in 2013 to accommodate the changes brought in by the Constitution of Kenya, 2010.

The Constituencies Development Fund Act, Act No. 30 of 2013 was successfully challenged in Court in 2013: *The Institute of Social Accountability & Another v National Assembly & 4 others [2015] eKLR petition number 71 of 2013*. The petitioners challenged the constitutionality of the CDF Act on two fronts:

- i. The process leading to its enactment, and;
- ii. The substance of the legislation including the nature, administration and management of the CDF.

The petitioners contended that the CDF Act contravened the constitutional principles of the rule of law, good governance, transparency, accountability, separation of powers and the division of powers between the national and county government and the Public Finance Management Act.

The Court declared that the Act was unconstitutional and invalid. However, the Court gave a reprieve to the Fund by directing that it be repealed in 12 months. The National Assembly enacted the *National Government Constituencies Fund Act, 2015* to cure the unconstitutionality.

This new Act has however, being challenged in court by Wanjiru Gikonyo of the Institute of Social Accountability (TISA) and Cornelius Oduor Opuot of the Centre for Enhancing Democracy and Good Governance. The Petitioners have sued the National Assembly, the Senate, the Attorney-General, and the National Government Constituencies Development Fund Board as respondents and The Cabinet Secretary for Finance and the Council of Governors as interested parties. They argue that the Act is unconstitutional as that role has been given to the Counties and thus the Act constitutes a duplication of roles. They also argue that the members of the National Assembly did not involve the Senate in the passage of the Act. The determination of the case is pending.

4.3.4 Makueni Public Participation Framework

There is general consensus that Makueni County provides a good example of what can be achieved in the promotion of public participation in the governance of counties. The political leadership in Makueni County has wholly embraced participatory governance and set up the mechanism for public participation from the county to the community level. The participation forums are empowered to have real influence in the decision making process and they are elected by the public not imposed by the county government. The County also has a dedicated office for public participation thus mainstreaming it as an essential governance institution.

⁴⁹ Lakin, J (2013) "Toward Public Participation in the County Budget Process in Kenya: Principles and Lessons from the Former Local Action Service Delivery Action Program (LASDAP)" IBP: Washington DC <http://internationalbudget.org/wp-content/uploads/brief20.pdf>; and Muriu, A (2013), "A study on the nature and influence of citizen participation of decentralized local service delivery," International Journal of Social Sciences Management and Entrepreneurship 1(2):85-105.

CHAPTER 5

THE ROLE OF STAKEHOLDERS IN PUBLIC PARTICIPATION

A review of the nature and extent of public participation in Kenya indicates there is need for various stakeholders to effectively play their roles in order to enhance public participation to the level contemplated by the Constitution. Below we discuss the various roles of stakeholders and how they can be enhanced.

5.1 National Government

As discussed earlier, public participation under the Constitution of Kenya, 2010 is essentially about empowering people to effectively participate in governance and the decision making process. Empowerment includes access to accurate, timely information; adequate understanding of governance issues, processes and procedures; and opportunities to participate and power to hold public officers accountable. To facilitate public participation, the national government should therefore develop and adopt policy and legislation that make this empowerment possible. Policies and legislation should provide for easy, timely access to information held by public officers; establish clear mechanisms for public participation that are neither expensive nor difficult to access; provide an enabling national framework for civic education and support provision of civic education through adequate budgetary provisions; ensure public officers facilitate genuine public participation; provide effective mechanisms for public accountability by its officers, and; decentralise its services to the lowest level.

5.2 County Governments

Like the national government, county governments are required by both the Constitution and the various devolution laws to provide easy and timely access to information held by public officers, provide mechanisms for public participation including establishing dedicated offices for public participation and provide budgetary provisions for public participation. Counties are also required by the County Governments Act, the Urban Areas and Cities Act and Public Finance Management Act to provide for citizen participation in: planning and budgeting process; the management of cities and urban areas; the evaluation of their performance as well as share their performance progress reports with the public.

5.3 Council of Governors

The Council of Governors brings together all Governors and is one of the key organs of the Summit. The functions of the CoG include: sharing of information on the performance of counties for the purposes of learning; promotion of best practices and initiating preventive or corrective action; dispute resolution between counties; consideration of matters referred to it by any member of the public, and. consideration of reports from other intergovernmental forums on matters relating to both levels of government or performance of counties. All these functions require clear mechanisms for public participation. The CoG should therefore develop policies, guidelines and mechanisms for public consultation, public awareness/outreach and complaints-handling.

5.4 The Intergovernmental Relations Technical Committee

Under Section 11 of the Intergovernmental Relations Act, the IGRTC is responsible for the day-to-day administration of the Summit and the Council of Governors and in particular for facilitating the activities of the Summit and the CoG and implementing the decisions of both organs of intergovernmental relations. The principles of intergovernmental relations (Section 4) include ‘recognition of the sovereignty of the people...’ and ‘inclusive and participatory governance’, hence requiring the IGRTC to facilitate the development of the policy, legal and institutional frameworks for public participation in the implementation of devolved governance. The IGRTC has also inherited the residual functions of the Transition Authority (TA), which include ‘co-ordinating and facilitating the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively’. It is against this background that the IGRTC seeks to facilitate development of a national framework for public participation.

5.5 Ministries, Departments and Agencies (MDAs)

MDAs are responsible for the development and implementation of public policies, laws and programmes. They also provide services to citizens and they are therefore the contact points for state interaction with citizens. It is therefore critical that they proactively promote public participation in the development and implementation of policies, laws and programmes. To facilitate effective participation there is need to review their systems, processes and procedure to enhance public participation. This would include reviewing the governing laws to ensure easier access of their documents to the public, establishing effective public consultation frameworks and creating responsive public complaints mechanisms. MDAs should also undertake regular public awareness campaigns to explain the services they provide as well as the mechanisms for public engagement with their work. Clear mechanisms for public accountability of all MDAs should be established to encourage civic engagement.

5.6 County Assemblies Forum (CAF)

The County Assemblies Forum (CAF) is a voluntary association of all the 47 County Assemblies. It brings together the Speakers and the MCAs of all counties. The primary role of CAF is to support the County Assemblies perform their three core functions of law making, oversight and representation, by providing an avenue for consultation, coordination, capacity development and networking amongst the 47 Assemblies with the executive arm, as well as with national government. Public Participation is legal requirement for all the activities of the County Assembly. CAF has a responsibility of ensuring that all the 47 County Assemblies adhere to the constitutional requirement for public participation in performing their duties. This can be achieved through the development of common norms and standards for public participation, overseeing their implementation in the counties, and facilitating peer learning. CAF, in carrying out its duties should also ensure that public participation is promoted.

5.7 Non-State Actors (NSAs)

NSAs which comprise of the Religious Organisations, Private Sector Organizations, NGOs/PBOs, and Community Based Organisations (CBOs) and other voluntary sector organisations are vital to effective public participation. Over the years, they have created civic awareness, advocated for human rights and liberties and created capacity among the people in various areas to access their rights. Unfortunately their efforts are not sufficient in most cases due to financial constraints, institutional capacity and policy/legal weaknesses in various sectors. For effective public participation to be achieved, it will be necessary to enhance NSAs activities in civic education, rights advocacy, monitoring and evaluation of public projects, social audits and capacity building to ensure public participation reaches the levels envisaged by the Constitution of Kenya, 2010.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

There is general consensus that the nature and extent of public participation contemplated by the Constitution and the laws of Kenya have not been achieved in either level of government. While a lot public of participation efforts have been made in both levels of government, there is no clarity on what constitutes adequate participation, the nature of the participation that meets the constitutional threshold or the most effective mechanisms for public participation. Studies/surveys of public participation reveal that some form or other of public participation is taking place in most of the processes in the devolved system of governance at both levels of government. The form, nature and levels of public participation are however unsatisfactory in both the county and national government. Both the national and county governments have not yet developed effective frameworks to facilitate public participation. Although most of the counties have developed and enacted legislation on public participation, very little has been done to operationalize the legislation by developing regulations, setting up relevant institutions/offices, systems, guidelines and procedures or providing adequate budgetary provisions for public participation. The national government is operating largely the way it operated before the constitutional requirements for public participation were adopted, thus public participation remains peripheral and perfunctory. Civic education has not been carried out by either level of government in any significant manner. Access to public information in a timely, inexpensive manner has not been achieved in either level of government.

There are however emerging good practices in some of the county governments such as Makueni County, which has wholeheartedly embraced public participation and established a citizen-led participation framework going all the way to the village level. Key challenges to effective public participation therefore include: lack of a national policy setting out the norms and standards for effective public participation; lack of public awareness due to failure to provide adequate civic education; lack of access to critical information; inadequate public participation infrastructure; and lack of funding for public participation.

From an examination of the literature, key informant interviews and expert discussions, it is clear that the following interventions are necessary to enhance public participation:

1. There is general consensus that there are no clear norms or standards for effective public participation. Both levels of government are constantly wondering whether they have met the threshold for public participation. A national overarching policy providing for the norms and standards for effective public participation should be developed through a process that involves all key stakeholders, including the national and county governments. The policy should among other provisions provide for a holistic definition of public participation, the values and principles of public participation, key elements of effective public participation, infrastructure for public participation and the resourcing of public participation.
2. Effective public participation requires enforceable norms and standards. There is therefore need for legislation to define and enforce standards across the public sector. A national public legislation should be enacted to implement the national policy on public participation, setting the parameters for public participation. This legislation should be binding on both national and county governments. It should set clear minimum standards for effective public participation to be observed by all state institutions, state officers and public officers with consequences for non-compliance.
3. Public participation guidelines for the national government similar to those recently launched by the Ministry of Devolution for county governments should be developed urgently. Although the guidelines for public participation as released by the Ministry of Devolution are relevant to the national government, there is need for guidelines that specifically address the context, scope and issues of service delivery at the national level.

4. Public participation requires adequate citizen awareness. A comprehensive and adequately funded civic education based on a national curriculum should be launched and sustained over a period of at least five years. The civic education programme should be provided for in both the national and county budgets as a governance and development initiative and not as an incidental expense.
5. Enabling legislation to facilitate access to information for effective public participation should be enacted. This includes the Freedom of Information Act and legislation to empower non-state actors and the media to access planning and budget information in a timely and easy-to-understand form.
6. For effective public participation to be mainstreamed, institutionalised, developed and sustained, there is need to invest both time and resources to this important facet of governance and development. Dedicated offices/officers to facilitate public participation should therefore be established or designated at the national and county level. The offices should develop the infrastructure for public participation, including information centres, public communication frameworks, modalities and platforms for participation, petition procedures, referenda guidelines and public complaints systems.
7. A key consideration in public participation is the value added by the participation to the decision making process. Public participation must therefore be able to reach the affected persons as well as those who can provide critical information for the decision making. A comprehensive stakeholder mapping for the purposes of public participation should therefore be developed by all state institutions and agencies, including identifying categories of stakeholders, stakeholders' capacity, interest and influence and the means of engaging them.
8. The adequacy of planning and budget sectors as public participation mechanisms should be reviewed to ensure adequate public participation as opposed to elite sector participation (and possible capture). Inclusion of more non-state actors in the budget Sector Working Groups should be considered.
9. A major challenge to effective public participation is the tight budget deadlines. Due to this, both levels of government often engage in tokenistic, perfunctory participation process geared to satisfy statutory demands will little or no impact. The budget timelines should be reviewed to increase the time for public participation.
10. A major challenge to public participation is the ability of the public to access documents relating to the budget easily and in a form that they can understand. Measures should be taken to enhance budget transparency to improve public participation.
11. Public participation is not new in Kenya but the approach to public participation under the Constitution of Kenya 2010 is different. It provides for participation founded on citizen empowerment rather than patronage. There are however good practices emerging from past public participation processes, which should be distilled and institutionalised to enhance public participation. The LASDAP elaborate public participation guidelines, and the HIV/AIDS and family planning campaigns provide useful lessons and good practices that can benefit public participation in the current initiatives.
12. A major challenge to public participation is the capacity or lack thereof in both the national and county governments to facilitate effective participation. The capacity to facilitate public participation should be enhanced in both levels of government through a partnership between the governments, non-state actors and development partners.
13. Low levels of public participation and the expectation of payment by members of the public to be paid for attending public forums is a prevalent cause of ineffective public participation. A culture of civic engagement should be encouraged by both levels of government through civic education. Citizen apathy and expectation of financial reward for participation in public forums should be discouraged through creation of civic duty awareness.

ANNEXES

ANNEX 1:

KENYA LAW REFORM PUBLIC PARTICIPATION MODEL

(NAME OF COUNTY) COUNTY PUBLIC PARTICIPATION BILL, 2014

ARRANGEMENT OF CLAUSES

Clauses

PART I— PRELIMINARY

- 1—Citation
- 2—Interpretation
- 3—Objects and purposes of the Act
- 4—Guiding principles

PART II— ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE OFFICE OF PUBLIC PARTICIPATION

- 5—Establishment of Office of Public Participation
- 6—Composition of Office
- 7—Appointment and qualifications of chairperson and members
- 8—Functions of the Office
- 9—Powers of the Office
- 10—Committees of Office
- 11—Terms of Office
- 13—Remuneration
- 13—Removal from Office
- 14—Vacation of Office
- 15—Filling of vacancy
- 16—Secretary
- 17—Removal of Secretary
- 18—Meetings
- 19—Employees of Office
- 20—Protection from personal liability

PART III— CITIZENS' PARTICIPATION FORUMS

- 21— Culture of democratic governance
- 22—Participation by local community
- 23—Communication by Office
- 24—Notification by Office
- 25— County Citizens' Participation Forum
- 26— Sub-county, City and Urban Area citizen participation forum
- 27— Ward or village citizen participation forum
- 28—Citizen initiative forum

PART IV— PETITIONS

- 29—Form of Petition
- 30—Procedure for presenting petition
- 31—Consideration of petition
- 32—Procedure in the investigation
- 33—Publication of decision on petition
- 34—Register of petitions
- 35—Appeal against decision on a petition
- 36—Petitions to Assembly

PART V— FINANCIAL PROVISIONS

- 37—Funds of Office
- 38—Financial year
- 39—Annual estimates
- 40—Accounts and audit
- 41—Bank accounts

PART VI—MISCELLANEOUS PROVISIONS

- 42—Performance agreement
- 43—County Executive power
- 44—Annual report
- 45—Management of information
- 46—Publicity
- 47—Offences and general penalty
- 48—Review
- 49—Regulations

SCHEDULES

FIRST SCHEDULE— PUBLIC PARTICIPATION GUIDELINES

SECOND SCHEDULE—MEETINGS AND PROCEDURE FOR THE OFFICE

THIRD SCHEDULE—FORM OF A PUBLIC PETITION

A Bill for

AN ACT of the (Name of County) County Assembly to give effect to paragraph 14 of part 2 of the Fourth Schedule of the Constitution; to establish modalities and platform for public participation in the governance of the county and for connected purposes

ENACTED by the County Assembly of (Name of County) of as follows—

PART I – PRELIMINARY

- Citation.** 1. This Act may be cited as the (Name of County) County Public Participation Act, 2014.
- Interpretation.** 2. In this Act, unless the context otherwise requires—
- “**Constitution**” means the Constitution of Kenya, 2010;
- “**executive committee**” means (Name of County) county executive committee established in accordance with Article 176 of the Constitution;
- “**county secretary**” means a county secretary appointed under section 44 of the County Government Act, 2012;
- “**county Gazette**” means a *gazette* published by the authority of the county government or a supplement of such *gazette*;
- “**government**” means (Name of County) county government;
- “**county public officer**” means any person appointed by the county government and holding or acting in any county public office whether paid or unpaid or on contractual or permanent terms but does not include a person engaged on a part time basis in a county public body paid at an hourly or daily rate;
- “**output indicator**” means an indicator that measures the results of activities, processes and strategies of programmes or projects of the Office;
- “**Office**” means the Office of Public Participation established under section 5;
- “**public participation**” means any process that directly engages the public in decision making and gives full consideration to public input in making that decision;
- “**the public**”, when used in relation to public participation in this Act, means—
- (a) the residents of the county;
 - (b) the rate payers of a particular city or municipality;
any resident civic organization or non-governmental, private sector or labour organization with an interest in the governance of the county, city or municipality;
 - (c) Non-resident persons who because of their temporary presence in the county, city or municipality make use of services or facilities provided by the county, city or municipality.
- Objects and purposes of the Act.** 3. The objects and purposes of this Act are, subject to Articles 1(4), 10, 201 and 232 (1) (e) of the Constitution, to establish a legislative framework to give effect to —
- (a) paragraph 14 of part 2 of the Fourth Schedule of the Constitution;
 - (b) the objects and principles of devolution set out under Article 174 (c) and (d) of the Constitution; and
 - (c) Part VIII of the County Governments Act, 2012.

Guiding principles.

4. Subject to section 87 of the County Governments Act, public participation in the county government activities will be guided by the following principles—
 - (a) the communities, organizations and citizens to be affected by a decision shall have a right to be consulted and involved in the decision making process;
 - (b) public contributions shall be taken into consideration when making the decisions;
 - (c) promotion of sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers;
 - (d) facilitation of the involvement of communities, organizations and citizens potentially affected by or interested in a decision;
 - (e) mandatory participants consultation and input in designing how they participate;
 - (f) participants equitable access to the information they need to participate in a meaningful manner;
 - (g) communication to participants on how their input affected the decision;
 - (h) adherence to the national values and principles of governance set out under Article 10 of the Constitution;
 - (i) adherence to the values and principles of public service set out by Article 232 of the Constitution;
 - (j) adherence to the principles of leadership and integrity set out in Chapter Six of the Constitution; and
 - (k) adherence to the principles of citizen participation set out in Section 87 of the County Governments Act, 2012.

PART II — ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE OFFICE OF PUBLIC PARTICIPATION

Establishment of Office.

5. There is established an office to be known as the Office of Public Participation which shall be a public office in the county government and whose remuneration, administration costs and other expenses shall be provided by the County Assembly and payable from the county Revenue Fund.

Composition of Office.

6. (1) The Office shall comprise—
 - (a) a chairperson who shall be appointed by the Governor with approval of the County Assembly;
 - (b) three members nominated by the bodies and organizations specified under subsection (2), who shall be appointed by the Governor with approval of the County Assembly;
 - (c) ex-officio members representing the county departments specified under subsection (3); and
 - (d) the secretary who shall be an ex-officio member.
- (2) The members referred to under subsection (1) (b), shall be nominated by—
 - (a) an association representing the private sector in the county;
 - (b) a cluster representing the registered associations of the informal sector in the county; and
 - (c) a cluster representing the civil society and nongovernmental organizations.
- (3) The members referred to under subsection (1) (c) shall be senior public officers representing the departments responsible for—
 - (a) Finance;
 - (b) Public Works;
 - (c) Agriculture;
 - (d) Environment
 - (e) Education; and
 - (f) Planning.

Appointment
and
qualifications of
chairperson and
members.

7. (1) The appointment and nomination of the chairperson and members of the Office shall be—

- (a) carried out in a competitive and transparent manner;
- (b) based on merit; and
- (c) in line with the constitutional requirements for public service.

(2) A person is qualified for appointment as chairperson or member of the Office if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a recognized university;
- (c) has knowledge and relevant experience in community service or social work; and
- (d) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(3) A person shall not be qualified for appointment as the Chairperson or as a member under section (1) if such person—

- (a) is declared to be of unsound mind;
- (b) is an un-discharged bankrupt; or
- (c) has been removed from office for contravening the provisions of the Constitution or any other written law.

Functions of the Office.

8. (1) The Office of Public Participation shall facilitate and co-ordinate public participation in the governance of the county as provided under paragraph 14 of part 2 of the Fourth Schedule to the Constitution, including the participation of communities, organizations and citizens forming the public in the decentralized units within the county.
- (2) In the performance of its functions and obligations under subsection (1), the Office will facilitate and oversee the effective coordination of the operations of the Office and shall —
- (a) establish structures for public participation as is required under section 91 of the County Governments Act;
 - (b) ensure that public participation activities are inclusive of the broad spectrum of the public and not limited to the traditional sector stakeholders;
 - (c) formulate policy relating to public participation;
 - (d) advise county government on the operations of the Office;
 - (e) formulate training, development and capacity building for its employees;
 - (f) collaborate with relevant institutions in the county to promote access to information and civic education programmes;
 - (g) provide the public with a clear context for which public participation is to be undertaken and how decisions will be made;
 - (h) inform the public of existing or potential linkages with other policy initiatives, issues or public participation activities;
 - (i) inform the public on whether financial resources correspond to the nature and scope of the public participation planned;
 - (j) provide information on whether there is sufficient and adequately trained staff to carry out the planned public participation;
 - (k) ensure that clear and reasonable timelines are established for public input and comment and that these timelines are communicated to the participants;
 - (l) ensure that the public participation device used is appropriate to the nature of the policy initiatives, issues involved, the target groups affected and the staff and resources available;
 - (m) establish a feedback process to the public including opportunities for the public to forward additional comments or input to the decision taken;
 - (n) develop an evaluation framework to the public participation plan;
 - (o) ensure that the public, affected groups, and stakeholders are informed of the results of the public participation process and how their input was used in the decision taken;
 - (p) ensure that public participation processes adhere to the relevant legislation, regulations, policies or guidelines affecting the rights and responsibilities of the public, officers and the different participants involved;
 - (q) establish whether there is support for the development of new public participation techniques and technologies;

- (r) provide logistical support and strategies to the County Assembly, including the development of consultation plans and information facilitating public participation in any matter before the Assembly;
- (s) maintain an up to date database or inventory of all its activities;
- (t) for the purpose of creating the culture of, and respect for the principles of public participation, facilitate public education and training programmes in relating to public participation;
- (u) carry on research on matters relating to public participation generally;
- (v) prepare and submit reports to the County Assembly on the status of the implementation of its functions and obligations under this Act;
- (w) prepare and submit an annual report to the Governor for submission to the county assembly on the status of public participation in the affairs of county governance;
- (x) monitor and evaluate the performance of the Office mandate; and
- (y) perform any other function as may be assigned by legislation.

(3) In the performance of its functions and obligations under this section and Part III, the Office shall be guided by the guidelines provided in the First Schedule.

(4) Despite subsection (1), the County government organ or entity desiring to be facilitated to convene a public participation activity as required by any relevant law, to show to the Office that it can mobilize the relevant public for that public participation activity.

(5) It shall be the responsibility of every County government organ or entity to relevant public for any public participation activity.

(6) Two months before the end of the financial year, every County government organ or entity required to undertake public participation must submit a timetable of public participation activities envisioned for the next financial year to the Office.

Powers of the Office.

9. (1) The Office may do or perform all such other things or acts as may be necessary for the proper discharge of its functions under this Act or as may lawfully be done by a public office.
- (2) Without prejudice to the generality of subsection (1) the Office shall have power to—
- (a) advise the county executive committee on matters of policy relating to public participation;
 - (b) enter into agreements or arrangements with any institution, association or professional organizations as the Office may consider appropriate in furtherance of the purpose for which the Office is established;
 - (c) enforce set standards regarding public participation;
 - (d) manage, supervise, secure and administer the assets of the Office in such manner as best promotes the purpose for which the Office is established;
 - (e) delegate any of its powers to any officer, employee, agent, section or committee of the Office; and
 - (f) undertake any activity necessary for the fulfillment of any of its functions under this Act.

Committees of Office.

- 10.** (1) The Office may establish functional based committees for the better carrying out of its functions.
 (2) A committee established under subsection (1) may comprise members of the Office and such other co-opted persons who may not be more than two as the Office may determine.
 (3) No decision of any committee shall be effective unless it has been confirmed by the Office.

Term of Office.

- 11.** The chairperson shall be appointed for a term of three years and is eligible for re-appointment upon exemplary performance.
 (2) The chairperson and members of the Office shall serve on a part time basis.

Remuneration.

- 12.** (1) The chairperson and members of the Office, other than the ex-officio members, may be paid such salary, allowances and benefits as the County Public Service Board shall, on the advice of the Salaries and Remuneration Commission, determine.
 (2) The ex-officio members of the Office shall be paid such allowances and benefits as the County Executive Committee shall, with the approval of the County Assembly and on the advice of the Salaries and Remuneration Commission determine.

Removal from Office.

- 13.** The chairperson or a member may be removed from office for—
 (a) inability to perform the functions of the office arising out of physical or mental incapacity;
 (b) gross misconduct;
 (c) incompetence or negligence of duty;
 (d) bankruptcy;
 (e) is found guilty of professional misconduct by the relevant professional body;
 (f) in any particular case, failure to declare his or her interest in any matter being considered or to be considered by the board or committee; or
 (g) absence from three consecutive meetings of the Office without a reasonable explanation.
 (2) A member may be removed from office of chairperson or member of the Office on any of the grounds in subsection (1) by—
 (a) the Governor;
 (b) the Office, supported by the vote of at least two-thirds of the members of Office; or
 (c) upon petition by the residents of a county.
 (3) Before a member is removed from office under subsection (2), the member shall be given an opportunity to provide a defence against any of the allegations against such member.

Vacation of office.

- 14.** A person shall cease to be a member of the Office if that person—
 (a) resigns in writing, to the Governor;
 (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
 (c) is declared bankrupt;
 (d) is unable to perform the functions of his or her office by reason of mental or physical infirmity;
 (e) ceases to be a member of the nominating body section 6 (2); or
 (f) dies.

**Filling of
Vacancy.**

15. Where a vacancy occurs in the membership of the Office under section 13 or 14, the Governor shall, appoint a new member in accordance with the provisions of this Act.

Secretary.

16. (1) There shall be a secretary to the Office who shall be competitively recruited by the County Public Service Board and appointed by the Governor.

(2) A person shall be qualified for appointment as a secretary to the Office if the person –

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years proven experience at management level;
- (d) has extensive experience in public administration; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The secretary shall be the chief executive officer of the Office and head of the secretariat and shall be responsible to the Office.

(4) The secretary shall hold office for a term of five years and shall be eligible for re-appointment for a further term of five years.

**Removal of
Secretary.**

17. (1) The secretary may be removed from office by the Governor in accordance with the terms and conditions of service if—

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared or becomes bankrupt or insolvent;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) resigns in writing to the County Governor;
- (e) without reasonable cause, is absent from three consecutive meetings of the board or committee within one financial year;
- (f) found guilty of professional misconduct by the relevant professional body;
- (g) disqualified from holding a public office under the Constitution;
- (h) convicted of an offence and is sentenced to imprisonment for a term of six months or more;
- (i) where required, fails to declare his or her interest in any matter being considered or to be considered by the Office;
- (j) engages in any gross misbehavior or gross misconduct.

(2) Before the Secretary is removed from office under subsection (1), the Secretary shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his or her defence against the allegations.

Meetings.

18. (1) The business and affairs of the Office shall be conducted in accordance with the Second Schedule.

(2) Except as provided in the third Schedule, the Office may regulate its own procedure subject to the law governing meetings and proceedings of Boards of State Corporations.

(3) The Office may invite any person to attend any of its meetings and to participate in its deliberations, but that person shall not vote on any matter requiring decision of the Office.

Employees of
the Office.

19. The Chief Officer shall make available to the Office on full time basis, the services of adequate county public officers as are necessary for the proper and efficient exercise of the functions of this Act.

Protection
from personal
liability.

20. No matter or thing done by a member of the Office or any officer, employee or agent of the Office shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the Office, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever.

PART III— COMMUNITY PARTICIPATION AND INVOLVEMENT

Culture of
democratic
governance.

21. (1) A county must develop a culture of democratic governance that complements a system of participatory governance, and the Office must for this purpose-

(a) encourage, and create conditions for the local community to participate in the affairs of the county, including in—

(i) the preparation, implementation and review of its integrated development plan;

(i) the establishment, implementation and review of its performance management system in the County;

(ii) the monitoring and review of its performance, including the outcomes and impact of such performance;

(iii) the preparation of its budget; and

(iv) strategic decisions relating to the provision of county services and functions.

(b) contribute to building the capacity of—

(i) the local community to enable it to participate in the affairs of the county; and

(ii) ward representatives and staff to foster community participation; appropriate for the purpose

(2) Despite subsection (1) must not be interpreted as permitting interference with a county government right to govern and to exercise the executive and legislative authority of the County.

Participation
by local
community.

22. (1) Participation by the local community in the affairs of the county must take place through—
- (a) political structures for participation in terms of the County Government Act, Urban Areas and Cities Act, Public Finance Management Act and other relevant Act;
 - (b) the mechanisms, processes and procedures for participation in participatory governance established in terms of this Act and any other relevant Act;
 - (c) other appropriate mechanisms, processes and procedures established by the office or county assembly; and
 - (e) generally applying the provisions for participation as provided for in this Act.
- (2) The Office must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the county, and must for this purpose provide for—
- (a) the receipt, processing and consideration of petitions and complaints lodged by members of the local community;
 - (b) notification and public comment procedures, when appropriate;
 - (c) public meetings and hearings by the county government organs and other political structures and political office bearers of the county when appropriate;
 - (d) consultative sessions with locally recognized community organizations and, where appropriate, minorities; and
 - (e) report-back to the local community.
- (3) When establishing mechanisms, processes and procedures in terms of subsection (2) the Office must take into account the special needs of—
- (a) people who cannot read or write;
 - (b) people with disabilities;
 - (c) women; and
 - (d) other disadvantaged groups.
- (4) The County Executive Committee Member may establish one or more advisory committees consisting of persons who are not ward representatives to advise the county executive committee member and the Office on any matter within the County Government competence. When appointing the members of such a committee, gender representation must be taken into account.

Communication
by Office.

23. (1) The Office must communicate to its community information concerning—
- (a) the available mechanisms, processes and procedures to encourage and facilitate community participation;
 - (b) the matters with regard to which community participation is encouraged;
 - (c) the rights and duties of members of the local community; and
 - (d) county governance, management and development.
- (2) When communicating the information mentioned in subsection (1), a county government must take into account—
- (a) language preferences and usage in the county; and
 - (b) the special needs of people who cannot read or write.

**Notification by
Office.**

- 24.** (1) When anything must be notified by the Office through the media to the local community in terms of this Act or any other applicable legislation, it must be done—
- (a) in the local newspaper or newspapers of its area;
 - (b) the Office website; or
 - (c) by means of radio broadcasts covering the area of the county.
- (2) Any such notification must be in the official languages, having regard to language preferences and usage within its area.
- (3) A copy of every notice that must be published in the *county Gazette* or the media in terms of this Act or any other applicable legislation must be displayed at the Office and County Government main offices.
- (4) When the Office invites the local community to submit written comments or representations on any matter before the County Government, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the Office named in the invitation will assist that person to transcribe that person's comments or representations.
- (5) When the Office requires a form to be completed by a member of the local community, a staff member of the Office must give reasonable assistance to persons who cannot read or write, to enable such persons to understand and complete the form.
- (6) If the form referred to in subsection (5) relates to the payment of money to the County Government or to the provision of any service, the assistance must include an explanation of its terms and conditions.

County
Citizens'
Participation
Forum.

25. (1) On the request of the county executive committee, a county government organ, member of the Senate concerning a county citizen participation forum, the Office shall facilitate resource the convening of a citizens' participation forum and shall convene a citizens' participation forum once in three months to discuss any matter of public importance affecting the public or any community in the county or the delivery of services by the County Government.
- (2) The Office shall, when a forum is convened, ensure that the forum is fully publicized to enable the attendance and participation of a wide section of the population, including gender and marginalized groups and communities.
- (3) The Office shall appoint a secretary for every forum to take the minutes of the proceedings of the forum and shall publicize the minutes throughout the county-
- (a) taking note of the issues arising from the forum for action or response by the relevant organ or organs of the county government or other entity; and
 - (b) giving feedback on the action taken on the issues raised.
- (4) The Office shall facilitate meaningful participation of the citizens in the forum including—
- (a) ensuring accessibility to the forums; and
 - (b) the use of language that is understandable by the citizens including person with disabilities.
- (5) No meeting shall be convened for the purpose of promoting, opposing or discussing the election of any person as a member of that County Assembly or as a Member of Parliament.
- (6) Nothing in this section shall be construed as derogating from the provisions of any other written law relating to the holding of public meetings.

Sub-county,
City and Urban
area citizen
participation
forum.

26. (1) On the request of a sub-county or town administrator, city or municipal manager or member of the county assembly in the areas for a sub-county, city or urban area citizen participation forum, the Office shall facilitate the convening of a citizens' participation forum to discuss and give views on -
- (a) issues of interests in the sub-county, city or urban area;
 - (b) the implementation of county policies and plans in the sub-county, city or urban area; or
 - (c) the administration and functioning of the sub-county, city or urban area; or
 - (d) the delivery of services by the county public service in the sub-county, city or urban area.
- (2) The provisions of subsections (2) to (6) of section 25 shall apply to a forum convened under this section.

**Ward or
village citizen
participation
forum.**

- 27.** (1) A ward or village administrator or a member of the county assembly may convene a ward or village citizen participation forum and the Office shall facilitate the organization of the forum to discuss and give views on – with respect to the following—
- (a) issues of interests in the ward or village, as the case may be;
 - (b) implementation of county or sub county policies and plans in the ward or village;
 - (c) the administration and functioning of the ward or village; or
 - (d) the delivery of services by the county public service in the ward or village.
- (2) The forum shall be open to all citizens of the ward or village who desire to attend and citizens shall be allowed to speak through representatives or directly.
- (3) The convener of the forum shall appoint a secretary to take the minutes of the proceedings of the forum and shall, with the assistance of the Office publicize the minutes throughout the ward or village and shall—
- (a) taking note of the issues arising from the forum for action or response by the relevant organs of the county government; and
 - (b) giving a feedback on the action taken on the issues raised.
- (4) The convener of the forum must ensure that the forum is fully publicized to enable attendance and participation of a wide cross-section of the population, including marginalized groups and communities.

**Citizen
initiative forum.**

- 28.** A person from this county may request facilitation for purposes of convening a citizen initiative forum from the Office.
- (2) Where the Office declines to issue a request under subsection (1), the Office shall issue written reasons for such decline.
- (3) A person dissatisfied with the decision of the Office under subsection (2) may appeal to the county executive committee member for review of that decision.

PART IV— PETITIONS**Form of
Petition.**

- 29.** A petition to County Executive Committee shall be in the form set out in the Third Schedule and shall—
- (a) be handwritten, printed or typed;
 - (b) be in English or Kiswahili and be written in temperate language;
 - (c) be free of alterations and interlineations in its text;
 - (d) be addressed to the county secretary;
 - (e) have its subject-matter indicated on every sheet if it consists of more than one sheet;
 - (f) confirm that efforts have been made to have the matter addressed by the relevant body and that there has been no response on the matter from the relevant body or that the response has not been satisfactory;
 - (g) confirm that the issues in respect of which the petition is made are not pending before any court or other constitutional or legal body;
 - (h) conclude with a clear, proper and respectful prayer, reciting the definite object of the petitioner or petitioners in regard to the matter to which it relates;
 - (i) subject to paragraph (m), contain the names, addresses, identification numbers, signature or a thumb impression of the petitioner or of every petitioner, where there is more than one petitioner;
 - (j) contain only signatures or thumb impressions, as the case may be, and addresses and identification numbers written directly onto the petition and not pasted thereon or otherwise transferred to it;
 - (k) not have any letters, affidavits or other documents annexed to it;
 - (l) in the case of a petition presented by a Member of County Assembly on behalf of a petitioner, be countersigned by the Member presenting it; and
 - (m) if the petitioner is unable to sign, be signed by a witness in whose presence the petitioner shall make his or her mark or thumb impression on the petition.

**Procedure for
presenting
petition.**

- 30.** (1) A petition to the County Executive Committee shall be submitted to the Secretary by the petitioner.
- (2) The Secretary shall, within seven days of the date of receipt of the petition, review the petition to ascertain whether the petition meets the requirements of this Act.
- (3) Where the county secretary considers that a petition does not comply with section 26, the secretary may give such directions as are necessary to ensure that the petition is amended to comply with that section.

**Consideration
of petition.**

- 31.** (1) The Secretary shall, if satisfied that the petition meets the requirements of this Act, forward the petition to the county executive committee or the relevant body for consideration.
- (2) The county executive committee or the relevant body relating to the petition may appoint a committee to investigate the subject matter of the petition.

Procedure in the investigation.

- 32.** (1) The county executive committee, the relevant body or a committee appointed in relation to a petition may hold public hearing and may –
- (a) invite individuals to submit memoranda or appear before the committee to give evidence on a petition;
 - (b) invite any Executive Secretary or any person holding public office to appear before them to give evidence relating a petition;
 - (c) employ qualified persons to assist it in the discharge of their functions; or
 - (d) with the support from the Office, hold public hearing in relation to the petition.
- (2) The Office shall be involved in any public hearing referred to in subsection (1).
- (3) The evidence given by a person invited under sub section (1) shall be taken down in writing and a copy of it sent to the person who gave the evidence.
- (4) The presentations and comments given during a public hearing shall be recorded and a copy of it shall be publicized by posting the copy in a conspicuous place at the offices of the county government and on the website as the case may be.
- (5) A person giving evidence may, within seven days from the date of receipt of the copy under sub section (2), suggest corrections to his or her evidence due to inaccurate reporting and the evidence shall be printed with such corrections as may be appropriate.
- (6) The county executive committee, the relevant body or the committee may at its discretion refuse to hear any irrelevant evidence or to listen to any unruly or unmanageable person giving evidence.
- (7) Any document received at the investigation of a petition shall not be withdrawn or altered without the knowledge and approval of the executive committee.
- (8) A document submitted to the investigation of a petition may be released to the person who submitted it at the conclusion of the deliberations.
- (9) The committee appointed under section 28 shall, as soon as practicable after the conclusion of the investigation, submit its findings and recommendation to the county executive committee or the relevant body for a final decision to be made on the petition.
- (10) The county secretary shall, within fifteen days of the decision of the County executive or the relevant body, in writing, notify the petitioner of the decision.

Publication of decision on petition.

- 33.** The County Secretary shall, within fourteen days after the decision is communicated to the petitioner or petitioners, with support from the Office —
- (a) give notice of the decision to the public by posting a copy in a conspicuous place at the offices of the county government;
 - (b) inform the public that a copy or extract of the decision is available on its website;
 - (c) publish the decision in the county Gazette, print or electronic media; or
 - (d) publish the decision in such other manner as may be appropriate for the dissemination of information.

Register of petitions.

- 34.** (1) The county secretary shall keep and maintain a register in which shall be recorded all petitions and supporting documents, and the decisions of the county executive committee or the relevant body.
- (2) The register of petitions under subsection (1) shall be accessible to the public during working hours.

Appeal against decision on a petition.

- 35.** Any petitioner who is dissatisfied by the decision of the county government or the relevant body may appeal to the Commission on Administrative Justice pursuant to the Commission on Administrative Act, 2011.

Petitions to Assembly.

- 36.** A petition may be presented or submitted to the Assembly by the petitioner or a Member of the Assembly on behalf of the petitioner in accordance with the Standing Orders of the Assembly.

PART V – FINANCIAL PROVISIONS**Funds of the Office.**

- 37.** The funds of the Office shall consist of—
- (a) monies allocated by the County Assembly for the purposes of the Office;
 - (b) such monies or assets as may accrue to the Office in the course of the exercise of its powers or in the performance of its functions under this Act; and
 - (c) all monies from any other source provided, donated or advanced to the Office.

Financial year.

- 38.** The financial year of the Office shall be the period of twelve months ending on the thirtieth day of June in each year.

Annual estimates.

- 39.** (1) Before the commencement of each financial year, the Office shall cause to be prepared estimates of the revenue and expenditure of the Office for that year.
- (2) The annual estimates shall make provision for all the estimated expenditure of the Office for the financial year concerned and, in particular, shall provide for —
- (a) maintenance of buildings and grounds of the Office;
 - (b) funding of training, research and development of activities of the Office; and
 - (c) the funding of the schedules and organization of public participation meetings.
- (3) The annual estimates shall be approved by the Office before the commencement of the financial year to which they relate and shall be submitted to the county secretary for tabling in County Assembly.
- (4) No expenditure shall be incurred for the purposes of the Office except in accordance with the annual estimates approved under subsection (3).

Accounts and audit.

- 40.** (1) The Office shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Office.
- (2) Within a period of three months after the end of each financial year, the Office shall submit to the county Auditor-General the accounts of the Office in respect of that year together with a —
- (a) statement of the income and expenditure of the Office during that year; and
 - (b) statement of the assets and liabilities of the Office on the last day of that financial year.
- (3) The annual accounts of the Office shall be prepared, audited and reported upon in accordance with the provisions relating to public audit.

Bank accounts.

- 41.** The Office shall open and maintain such bank accounts as shall be necessary for the performance of its functions.

PART VI— MISCELLANEOUS PROVISIONS

Performance agreement.

- 42.** (1) A performance agreement shall be made between the executive committee and the Office in relation to the mandate of the Office.
- (2) The performance agreement shall describe the key outputs that the Office shall achieve in any financial year and such output shall be defined in terms of performance indicators and targets.
- (3) The executive committee may request for an independent report on the implementation of the performance agreement.
- (4) The County Executive Committee Member must establish mechanisms to monitor and review the Office performance management system.

Executive Committee's power of direction.

- 43.** The County Executive Committee shall oversee the performance of the activities of the Office under this Act and may, in writing, give the Office directions on matters of policy not inconsistent with the provisions of this Act.

Annual report.

- 44.** (1) The Office shall, at the end of each financial year cause an annual report to be prepared.
- (2) The Office shall submit the annual report to the Governor and the County Assembly not later than three months after the end of the year to which it relates.
- (3) The annual report shall contain, in respect of the year to which it relates—
- (a) the financial statements of the Office;
 - (b) a description of the activities and outcomes of public participation; and
 - (c) any other information, that the Office may consider relevant.
- (4) The Office shall cause the annual report to be published and publicized in the *County Gazette* and in at least one newspaper with national circulation and such other manner as the Office may determine.

Management of information.

45. (1) The Office shall publish and publicize all important information affecting the county within its mandate.

(2) A person may request for information within the mandate of the Office in public interest.

(3) A request for information under subsection (2)—

- (a) shall be addressed to the Secretary or such other person as the Office may designate for that purpose;
- (b) may, where the Office incurs expense in providing the information, be subject to payment of a reasonable fee; and
- (c) may be subject to confidentiality requirements of the Office.

(4) Subject to the provisions of Article 35 of the Constitution and the law relating to freedom of information and data protection, the Office may decline to give information to an applicant where—

- (a) the request is unreasonable in the circumstances; or
- (b) the applicant fails to satisfy any confidentiality requirements imposed by the Office.

(5) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.

(6) Every member and staff of the Office shall sign a confidentiality agreement.

Publicity.

46. Subject to section 91 of the County Governments Act, the Office shall, in such manner as it considers appropriate, publish a notice for public information specifying—

- (a) the location of all its offices; and
- (b) its address or addresses, telephone numbers and other means of communication or contact with the Office.

Offences and penalty.

47. A person or petitioner who—

- (a) without justification or lawful excuse, obstructs hinders, threatens a member of the Office or a member of staff acting under this Act;
- (b) submits false or misleading information;
- (c) without reasonable excuse, fails to appear before a meeting of the Office when required to do so; or
- (d) misrepresents to or knowingly misleads a member of the Office or a member of staff of the Office acting under this Act,

commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

Review.

48. A person who is aggrieved by a decision of the Office under this Act may apply to the Office for review of that decision.

Regulations.

49. (1) The executive committee member responsible for matters relating to information may, in consultation with the Office, make regulations for the better carrying into effect of the provisions of this Act.

(2) The executive committee member referred to in subsection (1) shall make regulations in the conduct and modalities of meetings in various fora.

FIRST SCHEDULE

(s.8)

PUBLIC PARTICIPATION GUIDELINES

The following guidelines shall guide the county government and the Office when conducting public participation activities:

1. Build a realistic timeframe for the consultation, allowing reasonable period for each stage of the process.
2. Be clear as to the type of the public, community or profession to be consulted, the issues or matter for consultation and for what specific purpose.
3. Ensure that the consultation document is as simple and concise as possible, providing the summary of the issues or matter for consultation and clearly setting out the questions to be address.
4. Publish and distribute the documents as widely as possible, including but not limited to providing hard copies, television advertisements, websites, community radio announcements and traditional media.
5. Ensure that all responses are carefully and open-mindedly analysed and the results made widely available to the public, including an account of the views expressed and the reasons for the decisions taken.
6. Disclose all information relevant for the public to understand and evaluate the decision.
7. Ensure that stakeholders have fair and equal access to the public participation process and their opportunity to influence decisions.
8. Ensure that all commitments made to the public, including those by the decision-maker, are made in good faith.
9. Undertake and encourage actions that build trust and credibility for the process among all the participants.
10. Be personally responsible for the validity of all data collected, analyses performed, or plans developed by it or under its direction.
11. Ensure that there is no misrepresentation of work performed or that was performed under the relevant body's direction.
12. Examine all of its relationships or actions, which could be legitimately interpreted as a conflict of interest by clients, officials, the public or peers.
13. Should not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination.
14. Should not accept fees wholly or partially contingent on the client's desired result where that desired result conflicts with its professional judgment.

SECOND SCHEDULE

(s.18)

MEETINGS AND PROCEDURE FOR THE OFFICE

1. The county secretary shall convene the first meeting of the Office.
2. The Office shall decide when and where it meets and the meetings shall be convened by the chairperson.
3. The Office shall have at least six meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.
4. Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member.
5. A meeting shall be presided over by the chairperson or in his or her absence, by the vice-chairperson.
6. The members of the Office shall elect a vice-chairperson from among themselves-
 - (a) at the first sitting of the Office; and
 - (b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.
7. The chairperson and vice-chairperson shall not be of the same gender.
8. If any person has a personal or fiduciary interest in any matter before the Office, and is present at a meeting of the Office or any committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.
9. A disclosure of interest made under paragraph 8 shall be recorded in the minutes of the meeting at which it is made.
10. A person who contravenes paragraph 8 commits an offence and is liable, upon conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding seven years, or to both.
11. No member or staff of the Office shall transact any business or trade with the Office.
12. (1) Subject to paragraph 13, the quorum of the meeting shall not be less than half of the appointed members.
13. Where there is a vacancy in the Office, the quorum of the meeting shall not be less than three appointed members.
14. A question before the meeting shall be decided with a supporting vote of at least two thirds of the members present.
15. The Office shall keep minutes of proceedings of its meetings and decisions taken.

THIRD SCHEDULE

(s. 29)

FORM OF A PUBLIC PETITION

TO: The (Name of county) County Government/Assembly/Office

WE/I, the undersigned and humble Petitioner(s) of..... (Here insert the names or description of the petitioner or petitioners and address including their status: residents of a particular area, workers, particular part of the community, minority or marginalised group etc.)

DRAW the attention of the County Government/Assembly to the following:

(Here, briefly state the reasons underlying the petition and request for the intervention of the Government/Assembly by outlining the grievances or problems and summarizing the facts which the petitioners wish the Government/Assembly/Office to consider)

THAT:

(Here confirm that efforts have been made to have the matter addressed by the relevant body, and it failed to give satisfactory response.)

THAT:

(Here confirm that the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body.)

THEREFORE your humble petitioners PRAY that the Government / Assembly/ Office:-

(Here, set out the prayer; by stating in summary what action the petitioners wish the Government/Assembly to take or refrain from)

and your PETITIONERS will ever Pray.

Name of petitioner	Full Address	National ID Passport No.	or Signature/Thumb print
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-----	-----	-----	-----
-----	-----	-----	-----
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Subsequent Pages

PETITION concerning.....
(Here, repeat the summary in first page)

***This form may contain such variations as the circumstances of each case may require.**

MEMORANDUM OF OBJECTS AND REASONS

The purpose of the Bill is to establish modalities and platform for public participation in the governance of the county as envisaged in the Constitution and County Governments Act, 2012. The structure of the Bill is as follows—

PART I (Clauses 1-4) on preliminary matters provides for short title, interpretation, objects and purposes of the Act and guiding principles.

PART II (Clauses 5-20) is on establishment, composition and functions of the directorate of public participation. It provides for the following: establishment of Directorate of Public Participation, composition of Directorate, appointment and qualifications of Director and members, functions of the Directorate, powers of the Directorate, oath or affirmation of Directorate, committees of Directorate, terms of office, remuneration, removal from office, vacation of office, filling of vacancy, secretary, removal of secretary, meetings, employees of Directorate and protection from personal liability.

PART III (Clauses 21-28) provides for citizens' participation forums. It contains the following provisions, culture of democratic governance, participation by local community, communication by Office, notification by Office, county Citizens' Participation Forum, sub-county, City and Urban area citizen participation forum, ward or village citizen participation forum and affirmative action programmes.

PART IV (Clauses 29-36) is on petitions. This part includes form of Petition, procedure for presenting petition, consideration of petition, procedure in the investigations, publication of decision on petition, register of petitions, appeal against decision on a petition and petitions to Assembly.

PART V (Clauses 37- 41) is on financial provisions. This part contains the following: funds of Directorate, borrowing powers, financial year, annual estimates, accounts and audit and bank accounts.

PART VI (Clauses 42-49) provides for miscellaneous provisions. It more specifically provides for: performance agreement, county Executive Committee's power, annual report, management of information, publicity, offences and general penalty and regulations.

Dated the2016

.....

County Executive Member responsible for matters relating to Information

ANNEX 2

TISA PUBLIC PARTICIPATION MODEL

COUNTY PUBLIC PARTICIPATION BILL, 2014

ARRANGEMENT OF SECTIONS

PART 1 – PRELIMINARY

- 1- Short title and Commencement
- 2- Interpretation
- 3- Objectives and Purpose of the Act
- 4- Principles of the Act

PART II – ROLES AND RESPONSIBILITIES OF COUNTY GOVERNMENT OFFICERS

- 5- The Governor and County Executive Committees
- 6- The Speaker
- 7- Clerk of the County Assembly
- 8- Chief Officer
- 9- Sub-county administrators, Ward administrators and Village administrators

PART III – PUBLIC PARTICIPATION FORUMS

- 10- Citizens forums
- 11- Notices
- 12- Provision of information
- 13- Venues
- 14- Management of proceedings
- 15- Input by facilitators, public and state officers
- 16- Citizens right to attend and contribute
- 17- Immunity
- 18- Presentation of information against individuals
- 19- Recording of proceedings
- 20- Registration of submissions
- 21- Reporting
- 22- County Leaders Forum
- 23- Meeting schedule of County Leaders Forum
- 24- Governor support to the Council
- 25- Decisions of the Council

PART IV – PETITIONS AND COMPLAINTS

- 26- Petitions to County Executive
- 27- Petition to County Assembly

PART V- GENERAL PROVISIONS

- 28- Budget
- 29- Independently organized initiatives
- 30- Review Forums
- 31- Civic Education Forums
- 32- Operationalisation of the Act

Long Title A bill for an Act of the County Assembly of XXXXX to provide a framework for the exercise of citizens' right to public participation, and for connected purposes.

ENACTED by the County Assembly as follows-

PART I - PRELIMINARY**Short Title and Commencement**

1. This Act may be cited as the County Public Participation Act, 2014 and shall come into operation upon expiry of fourteen days from the date of publication.

Interpretation

2. In this Act, unless the context otherwise requires
 - “Civic education” means the provision of information and learning experiences to equip and empower citizens to participate in democratic and governance processes;
 - “Constitution” means the Constitution of Kenya, 2010;
 - ‘Council’ means the Legislative-Executive Council established under Section 18 of the County Public Participation Act, 2014;
 - “County Assembly” means a county assembly established under Article 176 of the Constitution;
 - “County executive committee” means a county executive committee established in accordance with Article 176 of the Constitution;
 - “County government” means the county government provided for under Article 176 of the Constitution;
 - “Deputy Governor” means a person nominated by the governor in accordance with Article 180 of the Constitution;
 - “Governor” means a county governor elected in accordance with Article 180 of the Constitution;

Interpretation

Long Title

Short Title and Commencement

“Marginalised group” has the meaning assigned to it by Article 260 of the Constitution;

“The public”, when used in relation to public participation in this Act, means—

- (a) the residents of a particular county;
- (b) the rate payers of a particular city or municipality;
- (c) any resident civic organisation with an interest in the governance of a particular county, city or municipality
- (d) non-resident persons who because of their temporary presence in a particular county, city or municipality make use of services or facilities provided by the county, city or municipality;

“Participation” means the involvement of individuals and groups that are positively or negatively affected by, or that are interested in, a proposed project, program, plan, legislation or policy that is subject to a decision-making process.

Objects and Purpose

Objectives

3. The object and purpose of this Act is to—

- (a) provide for matters necessary or convenient to give effect to Chapter Eleven of the Constitution;
- (b) provide a framework for the direct exercise of sovereignty by the people through actively informing the form and content of legislation, policy and development plans;
- (c) provide for a framework for informed, effective, efficient and sustainable engagement of persons in policy, legislation and development plans and programmes;
- (d) provide for a framework for public participation in service delivery by the County government;

- (e) give effect to the principles of public participation as set out in Articles 1(2), 10, Chapter 4, Article 35, 61, 69, 118, 119, 196, 174, 184, 201, 232, Fourth Schedule of the Constitution; and
- (f) provide for written and oral submissions on draft county policies, legislation and development plans.

Principles of the Act

Principles of the Act

- 4. (1) The Principles of Public Participation under Section 87 of the County Governments Act shall apply to this Act.
- (2) The County Government, its organs and departments shall promote the principle in sub-section (1).

PART II – ROLES AND RESPONSIBILITIES

Roles and Responsibilities

- 5. (1) The Governor shall promote and facilitate public participation in the county
- (2) The Governor shall designate a Member of the County Executive Committee to be in charge of Public Participation
- (3) The Member of the County Executive Committee in charge of Public Participation, in consultation with the County Public Service Board shall establish such offices and structures that may be necessary for the proper execution of Public Participation under this act.
- (4) Without prejudice to any structures that may be created under sub-section (3), the office or officer responsible for Public Participation shall
 - (a) coordinate public participation by all County departments or agencies;
 - (b) facilitate capacity building and provide support to other county government departments on public participation processes;
 - (c) monitor and evaluate public participation processes undertaken by each department or agency;
 - (d) develop and execute an appropriate civic education program;
 - (e) ensure coordination with Non State Actors in public participation processes and civic education;
 - (f) prepare an annual report on public participation in accordance with the County Governments Act;
 - (g) manage the day to day running of civic education in the county;
- (5) Notwithstanding sub-section (2), each member of the County Executive Committee shall promote, facilitate and coordinate public participation on matters under the department of that member.

6. The Speaker of the County Assembly shall promote and facilitate public participation in the proceedings and other activities of the county assembly
7. The Clerk of the County Assembly shall provide administrative support for all public participation activities carried out by the county assembly.
8. Each Chief Officer shall provide administrative support for all public participation activities carried out by the respective department for which the chief officer is responsible
9. Sub-County Administrators, Ward Administrators and Village Administrators shall promote, facilitate, and coordinate public participation activities in their respective administrative units

PART III - PUBLIC PARTICIPATION FORUMS

Citizen Forums

10. (1) Public participation meetings shall be known as citizen forums, and shall be conducted to—
 - (a) provide opportunity for consultation with the widest possible cross- section of the society
 - (b) build a climate of trust, collaboration and mutual respect in public participation processes;
 - (c) ensure that public participation process is carried within reasonable time
- (2) Unless otherwise provided in any written law, Citizen Forum held to discuss and receive input on the Budget, The Finance Bill, and County Development Plans shall be held at the Ward level.
- (3) Citizen Forums held to discuss and receive input on other matters shall be held at the sub-county level
- (4) Notwithstanding subsection (3), Citizen Forums held to discuss any matter may be held at the ward and village level.
- (5) Where a policy, regulation, legislation or development plan is deemed to have a significant impact on a section of the society, the County Government shall take steps to ensure that the views of that section of the society are received.
- (6) The county government shall ensure citizen participation by its decentralized units through the provision of guidelines and allocation of adequate resources to the decentralized units

Notices

11. (1) A notice for a Citizen Forum shall be issued at least fourteen (14) days prior to the citizen forum.
- (2) Notwithstanding the provision of sub-section (1), the County Executive Member responsible for the matter under consideration may, in writing, reduce the notice period to seven (7) days
- (3) A notice for a Citizen Forum shall-
 - (a) be published in a newspaper with national circulation
 - (b) be carried in an announcement by a radio that has county wide audience, and broadcasts in Kiswahili
 - (c) be placed in notice boards in the offices of the Ward Administrator.
- (4) The county may use any other appropriate method to publicize the Citizen Forum
- (5) A notice of a Citizen Forum shall be written in English or Kiswahili and shall provide
 - (a) Information on the instrument under consideration
 - (b) A short rationale of the instrument and its importance to the county
 - (c) The date and the venue(s) of the Citizen Forum
 - (d) Information on how citizens may give their input on the matter under consideration
 - (e) Information on how copies of the instrument under consideration may be obtained.

12. (1) Unless otherwise provided by any written law, copies of the instrument under consideration shall be made available at the office of each Sub-County Administrator.
- (2) In addition to providing a copy of the instrument under consideration the County may provide further information through
 - (a) Publishing popular version of the instrument
 - (b) Publishing and distributing information packages
 - (c) Conduct roads shows, workshops and radio shows
 - (d) Any other activity aimed at informing and educating the public on the matter under consideration
- (3) Communication on Public Participation shall be tailored to meet the needs of persons with disabilities, older members of the society and the less educated residents of the County, and may include the following forms
 - (a) Publications for persons with hearing impairments;
 - (b) Braille;
 - (c) Local language publications;
 - (d) Popular versions; and
 - (e) Large print publications.
- (4) The County Government shall establish county resource centers at the offices of sub-county, ward and village administrators that shall at all times make available to county residents all county documents, records and reports.
- (5) Access to County Executive and County Assembly information, documents and records required for public participation shall be made to county residents at no cost.
- (6) The county government may use information technology platforms as additional channels to provide public information.
13. Citizen Forums shall be held in venues that are easily accessible to citizens, including people living with disabilities.
14. Proceedings of Citizens Forums shall be managed in such a manner as to allow time for citizens to present their views
15. Input by facilitators, public and state officers during Citizen Forums shall be limited to giving instructions and making clarification on issues raised in the instrument under consideration

Input by Facilitators,
Public and State
Officers

16. Every Citizen has a right to attend and make contributions during Citizen Forums
17. No person shall face any sanctions for attending and making submissions during a Citizen Forum
18. (1) Information that contains allegations of wrong-doing against another person shall not be received in a Citizen Forum, unless accompanied by a sworn statement by the person making the allegation
 - (2) The sworn statement must be made available to the public officers in charge of a Citizen Forum at least thirty minutes before the submission containing such allegations is made.
 - (3) Public order shall be observed at all times during the proceeding of a Citizen Forum
19. The proceedings of a Citizen Forum shall be recorded in written or electronic form.
20. All written submissions received during the Citizen Forum shall be registered.
- 21 (1) Within thirty (30) days after the conclusion of public participation activities on an instrument, the public officer responsible shall publicize a report with information on
 - (a) Number of Citizen Forums held
 - (b) Number of people reached
 - (c) Summary of submissions given by citizens
 - (d) Consideration and use of the public input received
- (2) Every year, the Governor shall submit a report to the County Assembly pursuant to Section 92(2) of the County Governments Act, with information on
 - (a) Methods of public participation used;
 - (b) Budget spent;
 - (c) Platforms for public participation availed;
 - (d) Content generated from public participation; and
 - (e) Final use of input from the people by the County Executive and County Assembly.

Input by Facilitators,
Public and State
Officers

Governors Report

County Leaders Forum

- 22 (1) There is established the XXXXX County Leaders Forum pursuant to Section 91(f) of the County Governments Act
- (2) The County Leaders Forum shall be composed of:
 - (a) The Governor who shall be Convenor of the Forum;
 - (b) The Deputy Governor;
 - (c) The County Secretary who shall be the secretary to the forum;
 - (d) The Senator (or Senators where applicable);
 - (e) The Members of Parliament from the County;
 - (f) The Speaker of the County Assembly. (Deputy Speaker can appear as an Alternate Member);
 - (g) A minimum of four and a maximum 10 Members of the County Assembly nominated by Parties in Assembly.
- (3) The County Leaders Forum shall:
 - (a) Ensure the integration of national and constituency development plans in the county development plan and assess effectiveness of the implementation of the county development plan;
 - (b) Integrate the national legislative agenda with the county development plan and propose a common legislative agenda;
 - (c) Determine issues and strategies for engagement with the national government, independent commissions and offices, on matters that affect the county development;
 - (d) Recommend socioeconomic development goals and provide policy advice to the County Government;
 - (e) Study measures to improve the implementation of official development assistance to the county;
 - (f) Assess effectiveness of the implementation of the national development plan in the county;
 - (g) Integrate environmental principles and practices into the county development plan; and
 - (h) Recommend to the Governor and Senate sources of revenue and measures to reduce unnecessary expenditures in county government;
23. The County Leaders Forum shall meet at least twice every year
24. The Office of the Governor shall provide administrative support to the Forum
25. Decisions of the forum shall be publicized in a media communiqué and made available to the public

PART IV – PETITIONS AND COMPLAINTS**Petition to County
Executive**

26. (1) A citizen may present a petition or a complaint to the County Government or any of its organs, departments, agencies or officers.
- (2) The petition or complaint may be presented in a general letter, or may be put in a specific format that may be prescribed by any written law
- (3) A petition or complain shall be received, acknowledged and recorded in a register of petitions and complaints for the respective organ, department or agency, and a copy sent to the County Secretary.
- (4) A petition or complaint shall be acted upon promptly by
- (a) resolving the issue raised in the petition or complaint
 - (b) referring the matter to the relevant organ of state for action
 - (c) taking any other step that may be necessary for effective and prompt resolution of the issue raised,
- (5) Within thirty (30) days of receipt of a petition or complaint, a designated officer in the department or agency shall formally write to the petitioner or complainant to provide information on the action taken.
- (6) A petition or complaint shall be resolved and the matter closed within ninety (90) days from the date of submission within prejudice to the right of the petitioner or complainant seeking further action.
- (7) An officer of the county government who fails to act or respond to a petition or complaint shall be liable to disciplinary action in accordance to laid down procedures
27. Petition to the County Assembly shall be processed in accordance with the Standing Orders of the Assembly, or any other written law.

PART V – GENERAL PROVISIONS

- Budget**
28. The County Government, through its organs and departments shall set aside at least two percent of the annual budget for Public Participation
- Independently Organized Initiatives**
29. (1) No provision in the Act precludes the private mobilisation for citizens for purposes of public participation.
- (2) County Government shall work in cooperation with Independent citizen forums.
- Review Forums**
30. (1) The county government through its organs, departments, and agencies shall organize annual forums at the ward level to receive feedback from the citizens.
- (2) The forums referred to in sub-section (1) shall be held accordance with the provisions of part 1(iii) of this act.
- Civic Education**
31. (1) Every financial year, the Sub-County Administrators, Ward Administrators and Village Administrators in consultation with the County Executive Committee and County Assembly shall conduct at least two civic education sessions to inform county residents on issues including but not limited to:
- (a) County policy making;
 - (b) Law making processes;
 - (c) Public finance management processes;
 - (d) Development planning processes;
 - (e) Monitoring and evaluating county budget implementation;
 - (f) Evaluating periodic county reports; and
- (2) Certified civic education providers who are non-state actors may conduct civic education in the county as per county civic education guidelines.
- (3) Non-state actors shall coordinate with the Department in charge of Public Participation at all times as they carry out civic education.
- (4) The Member of the County Executive Committee responsible for Public Participation shall publish a quarterly report on
- (a) number of certified non-state actor civic education providers;
 - (b) number of civic education session conducted by non-state actors;and
 - (c) assessment of the impact of civic education conducted by non-state actors.
32. The County Executive in charge of Public Participation may make regulation to operationalize this Act. 13

ANNEX 3

PUBLIC PARTICIPATION BILLS AND ACTS

No	Counties with Public Participation Bills	No	Counties with Public Participation Acts	Counties without Public Participation Bills/ Acts
1	Kirinyaga	1	Machakos	1. Garissa
2	Bomet	2	Baringo	2. Migori
3	Bungoma	3	Busia	3. TaitaTaveta
4	Kiambu	4	ElgeyoMarakwet	4. Vihiga
5	Marsabit	5	Kericho	
6	Nairobi	6	Laikipia	
7	Embu	7	Meru	
8	Kitui	8	Kajiado	
9	Tranzoia	10	Siaya	
10	Lamu	11	Isiolo	
11	Tana River	12	Uasin Gishu	
12	Mombasa	13	Nyeri	
13	Nakuru	14	Kisii	
14	Turkana	15	Homa Bay	
15	West Pokot	16	Makueni	
16	TharakaNithi	17	Kwale	
17	Samburu	18	Kisumu	
18	Narok			
19	Nyandarua			
20	Nandi			
21	Muranga			
22	Kilifi			
23	Kakamega			
24	Mandera			
25	Nyamira			
26	Wajir			

ANNEX 4

LIST OF INTERVIEWEES

- | | |
|-----------------------|---|
| 1. Jane Wandia | Mombasa County |
| 2. Jeremiah Ndombi | Director Legal Affairs Senate |
| 3. Salim Juma | Mombasa County |
| 4. Martin Kariuki | Tharaka Nithi County |
| 5. Lawrence Micheni | Tharaka Nithi County |
| 6. Isaac Kitur | Bomet County |
| 7. Josephat Musambayi | Vihiga County |
| 8. Halima | Vihiga County |
| 9. Jenard Mwiggeh | Nyeri County |
| 10. Dr. David Kiima | Ministry of Health |
| 11. Mwenda Njoka | Ministry of Interior and Co-ordination of National Government |
| 12. Eunice Gichangi | Principal Legal Counsel National assembly |
| 13. George Ananga | Kisumu County |
| 14. Phylis Jane | Ministry of Agriculture |
| 15. Gad Awuonda | Nairobi County |
| 16. David Njenga | Samburu County |
| 17. Jacqueline Mogeni | Council of Governors |
| 18. Sarah | Wajir County |

ANNEX 5

FOCUS GROUP DISCUSSION PARTICIPANTS

Focus Group Discussion with the Members of the IGRTC

1. Prof. Karega Mutahi
2. Dr. Francis Kalama Fondo
3. Dr. Billow Khalid
4. Prof. Shanyisa Khasiani
5. Ms. Allyce Kureiya
6. Dr. Raymond Nyeris
7. Prof. Judith Migunda- Attyang
8. Mrs. Elizabeth Njambi Muchane

ANNEX 6

FOCUS GROUP DISCUSSION PARTICIPANTS

Participants in the Focus Group Discussions with the key stakeholders on public participation were:

1. Prof. Karega Mutahi, CBS
2. Dr. Nyeris Raymond
3. Prof. Judith Miguda
4. Prof. Shanyisa Khasiani
5. Dr. Francis Fondo
6. George Collins Owuor
7. Irungu Houghton
8. Joy Bigambo
9. Austin Nyaoke
10. Lucy Githaiga
11. Dr. Billow Khalid
12. Peter Ochieng
13. Beatrice Waithera
14. Margaret Kanyara
15. David S. Otigo
16. Wanjiru Gikonyo
17. Benard Ndungu
18. Samson Mogire
19. Daniel Misia
20. Martin Omwange
21. Grace Maingi
22. Christine Ochieng
23. Gloria Wesonga
24. Amos Katana
25. Martin Anyango
26. George Kimani
27. Michael Mwangi
28. Joseph Kimani
29. Joel Arika
30. Gichira Kibara
31. Margaret C. Korir

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