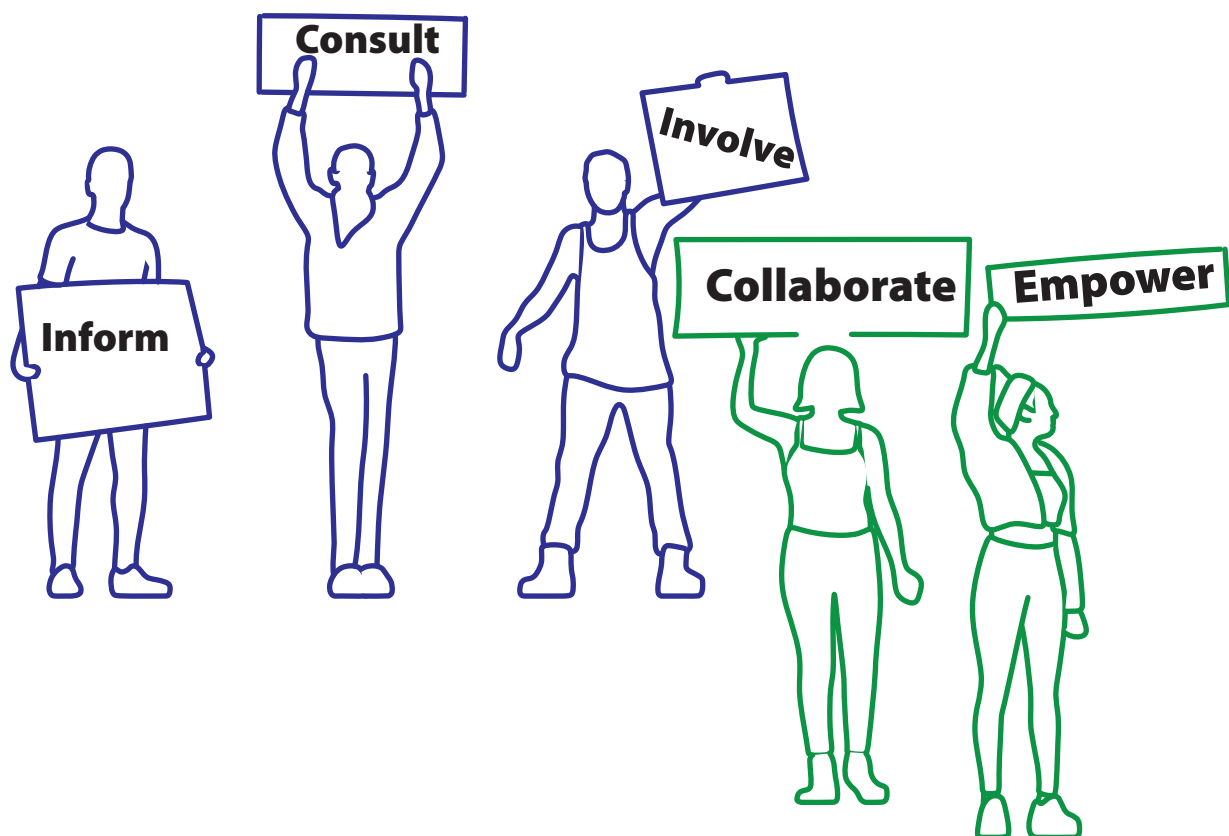


EFFECTIVE PUBLIC PARTICIPATION: THE BIG QUESTION FOR LEGISLATURES

Papers presented during the 3rd Annual National Parliamentary Symposium held from 26th to 27th May 2023



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CONTENTS

FOREWORD VI

ACKNOWLEDGEMENTS VIII

Thematic Area One: Actualization of The Constitutional Principle of Public Participation Through Law Making 1

Actualization of the Constitutional Principle of Public Participation through Law Making; Public Participation in the Pandemic Era

By Christine Aqua Mududa

Actualization of the Constitutional Principles of Public Participation Through Law Making 15

By Beverly Muthoki Musili & Peter Muchira Mureithi

Public Participation in The Law-Making Process, A Case Study of The County Assembly of Kiambu, Kenya 32

By Angela Wanjiru Kagunyi (CS)

Thematic Area 2: Tools for promoting Public Participation in legislative oversight 51

Tools for promoting Public Participation in legislative oversight The Nexus Between Public Petitioning and Effective Public Participation In Legislative Oversight: The Case of Kenya’s National Assembly

By Dennis Mogare Ogechi

Public Participation in Legislative oversight and representation in Kenya: Lessons from South Africa and Brazil..... 70

By Dr. Ruth Aura

Thematic Area 3: Public Participation in Enhancing the Representation Role of a Legislature 96

Public participation in enhancing the representation role of a legislature Participatory Budget Reform Process, the Case of Kenyan Parliament

By FA. Dr. George Wakah & Dr. Martin Masinde, Ringine Mutwiri

The Mirage of Public Participation: A Critical Analysis of the Modalities for Promoting Public Participation in the Legislative Process in Kenya 112

By Daniel Ominde, Donald KeyaManyala, and Pricillah Saidi

Thematic Area 4: The role of research in propagating effective public

The role of research in propagating effective public Participationrole of Capacity Building of Legislators In Fostering Best Practices In Public Participation In Kenya

By Fera Wema Muthanje Mugai Senior Clerk Assistant

The Role of Research In Promoting Effective Public Participation146

By Mr. Misheck Njihia Waweru,

Promoting Youth Engagement in Development Interventions Through Research and Innovative Involvement Strategies. The Case of Homa Bay County, Kenya159

By Samuel Omondi Osike¹, Robert Kabumbuli², and Achilles Ssewaya³

Thematic Area 5: Capacity Building and Curriculum Development in fostering best practices in Public Participation_____180

Capacity Building and Curriculum Development for Public Participation Empowering Youth Participation in Delivering a Peaceful 2022 General Election in Kenya - a Case of Kisumu County

By Jescah A. Otieno & Regina Mutiru Mwendwa

Bottom-Up Economics Political Rhetorics In Kenya: A Public Participation Analysis197

By TerryRuth Wanjiku Muriithi

Capacity Building: A Critical Pillar for an Effective Public Participation Exercise216

By Mohamud Mohamed Abdi, and Vincent Okongo, MBS, 'ndc' (K)

ANNEX 1234

ANNEX 2235

LIST OF TABLES

Tables 1: Response Rates.....137

Tables 2: Influence of Capacity Building of Legislators on Public Participation138

Tables 3: Capacity Building of Legislators and Levels of Satisfaction with Public Participation.....140

Tables 4: Pearson’s Product Moment Correlation Analysis of the Relationship between Capacity Building of Legislators and Public Participation141

Tables 5: Correlation analysis between Research and Public participation152

Tables 6: Analysis of Education Level and Public participation.....152

Tables 7: Analysis of Public Participation and Training.....153

Tables 8: Public Participation and Incentives155

Tables 9: Videos from three mainstream media in Kenya208

Tables 10: Table showing the whether selected Counties have frameworks for capacity building to foster effective public participation exercise228

LIST OF FIGURES

Figure 1: Figure one: IAP2 Spectrum of Public Participation103

Figure 2: Conceptual Framework for the Study 116

Figure 3: Analysis of Public Contribution in Final Approved Decision.....154

Figure 4: Principles of Public Participation translated from an illustration by International Center for Not-for-Profit Law LLC.219

Figure 5: The role of empowerment in determining the levels of effectiveness and stakeholder influence of the in Public Participation.....220

Figure 6: The role of capacity building in the public participation process.....224

FOREWORD



It is with great pride and pleasure that I present to you this latest publication by the Centre for Parliamentary Studies and Training (CPST) containing papers on the theme, “*Effective Public Participation: The Big Question for Legislatures.*” The analyses, conclusions and recommendations contained herein have brought out new knowledge in the area of public participation in the legislative process.

This publication represents a significant milestone in our journey of knowledge management and our ongoing mission of strengthening research, publication and disseminative activities. Significant questions on what constitutes an effective participatory public participation exercise as envisaged in the Constitution of Kenya were raised. The call by Article 118 (1) (b) of the Constitution of Kenya, 2010 that requires *Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its committees was put to focus*

In view of the big question, the sub-themes of the symposium were: actualization of the constitutional principle of public participation through law making; tools for promoting public participation in legislative oversight; public participation in enhancing the representation role of a legislature; the role of research in propagating effective public participation; and capacity building and curriculum development in fostering best practices in public participation.

The papers published in this edition are a testament of intellectual vitality and dynamism. The nexus between public petitioning vis-à-vis effective public participation in legislative oversight and the role of research in promoting effective public participation were analyzed. Modalities of public participation, participatory budget reform process, lessons learnt and best practices from various jurisdictions were also discussed in depth.

This publication therefore acts as a platform for sharing research outcomes with the global legislative community. The publication encourages researchers to build on existing work and keep abreast with the latest advancements in the field of effective public participation.

The Parliament of Kenya gratefully acknowledges the contributions made by all the participants from diverse sectors who made the Symposium a success. The high caliber of research papers and speeches shared by vibrant community of scholars, policy makers and practitioners have truly made this publication special. I wish to express my sincere gratitude to all those whom in one way or the other made this publication possible.

As we look forward into the future, I am confident that this publication will continue to play a fundamental role in enhancing and building the capacity of staff and Members of legislatures to effectively discharge their constitutional mandate of legislation, oversight and representation. With the unwavering support of our editorial team, dedication of our peer reviewers and generosity of our contributors, we are poised to tackle the challenges of our times through research, symposia and publications.

Finally, I want to confirm that this publication is exciting, inspirational and motivating. May the ideas herein spark new ideas for conducting effective public participation in ways that positively impact our respective communities.

Rt. Hon. Dr. Moses Wetangula, EGH, MP
Speaker of the National Assembly and
Chair of The Parliamentary Service Commission

ACKNOWLEDGEMENTS



The Constitution of Kenya 2010 under Article 10 lists participation of the people as one of Kenya's national values. Article 10 of the Constitution of Kenya compels all public entities to involve and consider the public's views on issues affecting them.

This publication represents the compilation of insightful presentations and discussions that were presented during our bi-annual national symposium held in June 2023.

The symposium served as a platform for participants to delve deep into Parliament's constitutional mandate of public participation in the legislative process. It also highlights the opportunities and challenges that require continuous innovation and improvement.

As we present this publication, we wish to pass our sincere gratitude to the following: The Hon. Speaker of the Kenya's National Assembly and the Chairperson of the Parliamentary Service Commission, Hon. Dr. Moses Wetangula EGH; the Leader of the Majority Party in the National Assembly Hon. Kimani Ichungwa EGH who represented the Speaker of the National Assembly; our very able key note speaker, Hon. Kivutha Kibwana EGH, the Chairperson of the CPST Board, Hon. Rachel Ameso and all CPST Board members.

We extend our heartfelt gratitude to the Symposium Organizing Committee, the Hans Seidel Foundation for their partnership, the CPST Webinar Planning Committee (see annex 1) for their meticulous collation and review of the papers presented during the symposium, the CPST peer reviewers from various Universities (see annex 2) who offered technical review and rating of the papers to advise on which ones merited publication, and last but not least, the Kenya Literature Bureau for the meticulous final edits of the manuscript.

Prof. Nyokabi Kamau, EBS
Executive Director, CPST.

Thematic Area One: Actualization of The Constitutional Principle of Public Participation Through Law Making

Actualization of the Constitutional Principle of Public Participation through Law Making; Public Participation in the Pandemic Era

By Christine Aqua Mududa

Abstract

Public participation is entrenched in the Constitution of Kenya, 2010, and various Statutes. It offers the people a voice and encourages meaningful input into the decision-making process.

The Constitution of Kenya, 2010, provides the legal basis for public participation. Indeed, Article 10 provides for national values and principles of governance, which include democracy and people's participation. Article 27 provides for equality and freedom from discrimination, and the public participation process should, therefore, ensure equality and non-discrimination.

The approaches of conducting public participation in Kenya are mainly through public meetings and memoranda. The public is informed through newspaper advertisements, websites, social media, radio advertisements, text messages, posters and bulletin boards and roadshows.

Legislatures and government agencies in Kenya majorly use public meetings as an approach to conducting public participation, given the demand by the residents in their areas of jurisdiction. However, with the guidelines on the management of COVID-19 in Kenya that were put in place, there was an element of social distancing which posed restrictions on public meetings. This COVID-19, therefore, forced the legislatures and government agencies to adopt the submission of memoranda as the major and safe mode of public participation during the COVID-19 period and setting a precedent for any other pandemic that may occur. The mandated agencies must adopt modalities that will ensure that the people's participation is transparent. Availing information is key to public participation, therefore, legislatures and government agencies should ensure that websites are not only working but are fast as well for efficient functionality.

It is time to strategize on public participation partnerships between the government and non-government agencies so that participation of the people is not curtailed

by the pandemic and the legislatures should also amend laws and standing orders to accommodate virtual meetings and other needed adjustments.

Key Words: Public participation, COVID-19 era, legislatures, modalities.

1. Introduction

1.1 Background of the Study

Public participation is a core principle in the running of democratic nations. The essence of public participation is to allow citizens to take part in decision-making and to hold institutions and leadership structures to account for powers donated to such leaders and institutions through democratic processes (Toth, 2010). In most democracies, public participation is considered a key principle of good governance; all policies, regulations, and statutes must be subjected to a rigorous public participation process before they become effective. The Kenyan constitutional dispensation engrains public participation in legislation and public policy-making processes to strengthen the country's democratic space, and to ensure that policies, regulations, and laws passed in Kenya take into consideration the realities and circumstances of the Kenyan people.

The Kenyan democratic space has matured over time, from the precolonial era to the introduction of a centralized system of government in post-independent Kenya to the push for multiparty democracy in the 1990s up to the promulgation of the Constitution of Kenya, 2010. In the pre-colonial era, public participation was not envisaged in the form and system of government for the native Kenyans. After independence, Kenyan citizens were given little voice to play a role in policy and regulation-making processes with increased agitation over time, the role of public participation gained prominence and conversations were heard between the public and the political class on issues including governance and policies; leading to changes such as the reintroduction of multiparty democracy in the 1990s.

Public participation has since gained prominence in Kenya and the same has been witnessed through the 2010 constitution-making processes, the provision of the Kenyan Constitution, 2010, Statutes, and Regulations at the national and county government levels, progressive case laws on public participation developed over time, and policies on public participation (Mbithi et al., 2019).

Article 10 of the Constitution, 2010 lists the national values and principles of governance where under Article 10(2)(a), democracy and participation of the people

are listed as national values and principles of governance that bind all state organs, state officers, public officers, and all persons whenever they make or implement public policy decisions (Hao et al., 2022).

The COVID-19 pandemic changed the way public participation is done. Public interactions were significantly reduced to control the spread of the pandemic and it was near impossible to conduct public participation the traditional way. Nonetheless, the obligation of governments and public institutions to conduct public participation in the law-making process, public policy formulation and implementation has not changed. However, public participation in Kenya and around the world faces challenges due to the constraints imposed by the COVID-19 pandemic and how the world has adapted to the reality of the pandemic. Challenges relating to the capacity for public participation, public awareness, resources to conduct public participation, and the right to public participation became significant concerns.

This paper looks at developments in public participation in the post-COVID-19 pandemic era, and how governments and public institutions can preserve the right to public participation in the law-making process, public policy formulation and implementation, alive to the realities of information and public interactions imposed by COVID-19. To achieve this, the paper will look into the current legal framework of public participation in Kenya, analyse changes in public participation laws around the world, and propose new adaptations to the law and processes of public participation in Kenya based on international best practices and the need to protect the right to public participation.

1.2 Statement of the Problem

COVID-19 hit the globe in 2020, and it led to certain specific health guidelines being issued, including social distancing, amongst others. Social distancing affected public participation. This paper examines public participation during the pandemic and the intrigues brought about by the pandemic.

1.3 Research Questions

The following research questions guided the paper:

- (i). Which laws and regulations should be amended to recognize virtual public participation?
- (ii). What are the gaps in equal access to digital tools?

- (iii). Are there policies on transparency and accountability of online public participation?

2. Literature Review

2.1 The Legal Framework on Public Participation in Kenya

At the apex of the laws on public participation in Kenya is the Constitution of Kenya, 2010. The Constitution outlines the essence and the basis of public participation at all levels of government and in all aspects of the law-making process and public policy formulation. There are several other statutes on public participation. Case law on public participation in Kenya is well-developed and provides critical guidance at all levels of public policy-making and the law-making process.

2.2 Constitution of Kenya, 2010

The constitutional-making process leading up to the Constitution of Kenya, 2010 was a robust process that included public participation across the country before having a final draft, which was subsequently subjected to a referendum. The constitution outlines national values under Article 10, and among these values is public participation. All public entities and public bodies are compelled by Article 10 of the Constitution of Kenya, 2010 to involve the public in exercising their powers and managing their affairs, especially on issues concerning or affecting the citizens of the Republic of Kenya. All entities at national and county levels of government and across all the arms of government must abide by the provisions of Article 10.

Article 33 of the Constitution of Kenya, 2010 outlines the right of citizens to participate in public participation initiatives. The right to freedom of expression is guaranteed therein, which entails seeking, receiving, and imparting information. With the right to freedom of expression, every Kenyan citizen has the right to participate fully in public decision-making. Every Kenyan has a right to participate in initiatives that seek the opinions and input of the public in policy formulation processes across all levels of government.

Kenya embraced a devolved system of government with the Constitution of Kenya, 2010, and devolution is set as a critical aspect of governance per Article 174 of the Constitution. In the spirit of devolution, Kenyan citizens are encouraged to participate in the decision-making process at the local level.

Policies on sharing of power and resources between the local and national levels of government under Article 174 of the Constitution require robust public participation.

The budgeting process is critical to the smooth running of both county and national governments. Citizens' input in the budget-making process is required through public participation, as per the provisions of Article 196 of the Constitution of Kenya and Article 201(a), which provides openness and accountability, including public participation as a principle of public finance. Kenyans' input is required when it comes to the allocation and use of public funds at both county and national levels of government.

2.2.1 Key Statutes on Public Participation

Several statutes highlight the critical role of public participation in the public sector in Kenya. This segment of the paper highlights the core statutes that define the scope of public participation and their impact on guaranteeing it.

2.2.2 The Public Finance Management Act, 2012

The Public Finance Management (PFM) Act, 2012 provides for the budget-making process. Several obligations are imposed on public bodies that are involved in the budget-making process. Section 10(2) of the Act obligates the parliamentary budget office to observe the principle of public participation in the budget-making process, the same as Section 125(2) which places the responsibility on the county executive committee member for finance. Section 35(2) of the Act places a further obligation on the Cabinet Secretary to conduct public participation when it comes to the national budget-making process. Budget and budget-making processes for cities and urban areas also must be subjected to public participation according to Section 175(9)(b) of the Act. Section 207 of the Act provides for making regulations on public participation according to the Act. The regulations can be made at national and county levels of government to help with public finance management under the Act.

2.2.3 County Governments Act, 2012

Among the primary objects of the County Governments Act, 2012 is to provide the framework for public participation in the conduct of the activities of the county government and county assembly as required under Article 196 of the Constitution; this is captured under Section 3(f) of the Act. Public participation, by law, plays an

an integral part in all the activities of county governments and county assemblies in Kenya. The Act further imposes an obligation on all authorities within the 47 county governments in the Republic of Kenya to incorporate non-state actors in all their activities to promote public participation.

Section 115 of the Act provides a detailed guideline on how public participation should be undertaken when it comes to county planning. The county governments are burdened with the obligation of providing the public with clear and unambiguous information on county planning processes. Also, county governments are required to make laws and regulations that promote public participation in county planning.

2.2.4 The Environmental Management and Coordination Act, 1999

The Environmental Management and Coordination Act of 1999 is geared towards promoting the sustainable use of natural resources and the environment in a sustainable manner. The Act is one of the key statutes highlighting the critical role that public participation plays in Kenya's governance and policy implementation process. Section 3(5)(a) of the Act imposes an obligation on the High Court to consider the principle of public participation when it comes to policies, plans, and processes for the management of the environment.

The Environmental Management and Co-ordination Act, 1999 is lauded for introducing Environmental Impact Assessment (EIA) on projects that affect the environment. In conducting an E al impact assessment undertaking to be valid.

At any level of government and in all actions on the environment whether by the government or by private actors as supervised by public regulatory bodies, the Act applies and public participation has to be conducted in accordance with Act. Where public participation is not conducted, the Environment and Lands Court, which is obligated to take into account the principle of public action, will most certainly sanction such action.

2.2.5 The Urban Areas and Cities Act, 2011

This is the last statute covered in this section. The Act adds to other highlighted statutes by stressing the need for public participation in urban areas and cities planning. The management of urban areas and cities has to take into consideration

the principle of public participation. This includes holding public sessions with citizens to collect views on proposed policies and projects for urban areas and cities.

The highlighted statutes illustrate the significance of public participation in governance and planning in the Republic of Kenya, both at the national and county levels of government. Citizens need to be involved as prescribed by law. Therefore, any event or circumstance that limits the ability of members of the public to take part in public participation initiatives as required by statute limits their rights and poses tough questions concerning compliance with laws on public participation.

2.3 Case Law on Public Participation

This section of the paper highlights case law that touches on the nature of public participation and the place of public participation in governance. These are key decisions that can help chart a way forward for public participation in the post-COVID-19 era.

2.3.1 Supreme Court Advisory Opinion Reference No. 2 of 2014

The Supreme Court of Kenya, in the Matter of the National Land Commission [2015] eKLR, had to determine the place of public participation in land acquisition processes by the government, as well as the nature of public participation. In the matter, the Supreme Court indicated that public participation was a constitutional requirement and key to the functioning of the Kenyan democracy. It proceeded to quote with approval the decision of the Constitutional Court of South Africa in **Doctors for Life International v. Speaker of the National Assembly and Others [2006]** thus:

Therefore, our democracy includes as one of its basic and fundamental principles, the principle of participatory democracy. The democratic government that is contemplated is partly representative and partly participatory, is accountable, responsive and transparent and makes provision for public participation in the law-making processes. Parliament must, therefore, function in accordance with the principles of our participatory democracy.”

The Supreme Court went further to assert that public participation involved providing adequate information to COVID-19 citizens and conducting public hearings, aspects of public participation adversely affected by COVID-19 and which need to be reviewed to provide better mechanisms for people to take part in public participation initiatives even in the face of pandemics like COVID-19.

2.3.2 Robert N. Gakuru & Others v Governor Kiambu County & 3 others

In **Robert N. Gakuru & Others v Governor Kiambu County & 3 Others [2014] eKLR**, Odunga J. outlined what constituted an actual public participation process, and quoting:

In my view public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behooves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively.

The good judge stresses that both the quantitative and qualitative aspects of public participation ought for the exercise to be considered to be meeting the constitutional threshold. Considering the COVID-19 pandemic and its implications on traditional human interactions, the quantitative and qualitative aspects of public participation must be defined in view of our current realities.

2.3.3 Minister of Health v New Clicks South Africa (PTY) Ltd [2005]

In the South African case of **Minister of Health v New Clicks South Africa (PTY) Ltd [2005]**, the court had to decide on the forms and degree of public participation. It was stated that:

The forms of facilitating an appropriate degree of participation in the law-making process are indeed capable of infinite variation. What matters is that at the end of the day a reasonable opportunity is offered to members of the public and all interested parties to know about the issue and to have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case.

This touches on critical aspects of public participation in relation to the COVID-19 era since the pandemic set in, traditional forms of human interaction have been greatly affected. Physical meetings, which used to be the primary forms of meetings have been reduced. The case moves the focus of public participation from the form to the objective. It points to the possibility of adaptations based on circumstances.

What is the way forward then? Various jurisdictions are making changes to ensure that the objectives of public participation in governance are met despite the changes in traditional forms of human interactions and meetings occasioned by the COVID-19 pandemic.

2.4 Public Participation in Other Jurisdictions in the COVID-19 Era

Nations worldwide have made adaptations to ensure that public participation, which forms a critical part of governance in these jurisdictions, is conducted in a manner leading to the attainment of the goals of the laws on public participation. This section of the paper looks at some of the jurisdictions and the tweaks in their rules and policies that allow for effective public participation in the COVID-19 era.

2.4.1 The United States of America

The United States is a country that supports participatory democracy and has laws that advocate for public participation in governance. The US was also among the worst-hit countries by COVID-19, implementing a number of lockdowns and movement restrictions before things eased up with COVID-19 vaccination.

The Federal Advisory Committee Act, 1972, is a US statute that requires public participation in its implementation. It is meant to guide the operations of federal advisory committees. In 2022, regulations and notices were passed as per Section 10 of the Act, allowing for virtual meetings to enhance public participation in the activities of various federal advisory committees.

Also, the Government in the Sunshine Act, 1976, which requires open meetings of bodies that head federal agencies allowed for virtual meetings of bodies that head federal agencies in the US, with the virtual sessions available to members of the public.

In the US, the law has given room to adaptations that allow for public participation despite the realities of the COVID-19 pandemic. Having virtual sessions which are open and accessible to the public is one sure way of ensuring public participation where physical human interaction is limited.

2.4.2 The United Kingdom

The UK became very open to passing regulations that allowed for public participation through virtual sessions or video conferencing following the COVID-19 limiting movement of people and public gatherings, across all levels of government.

One such regulation is The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations, 2020. The regulation allowed for remote meetings

and virtual public participation during the COVID-19 pandemic. “To enhance public participation in Planning During the COVID-19 period, The Town.”

2.4.3 Canada

Canada, just like its neighbour down South, passed several regulations under its existing laws to allow for virtual and remote public participation in the most critical sectors of democracy and in the exercise of the IR citizens’ most critical democratic rights. For example, Canadians were allowed to participate virtually in the most critical democratic process of public participation, voting virtually, as per regulation passed in accordance with the Canada Elections Act, 2000.

Public participation is key to the legislative process in Canada. To allow for public participation during the COVID-19 era, the Canadian government was open to accepting online submissions and comments on proposed legislation. The citizens’ online input is considered part of public participation, and citizens are encouraged to present their submissions, views, and comments online.

2.4.4 Australia

Australia amended some of its key statutes to incorporate new aspects of public participation in light of COVID-19. Australia had some of the roughest policies on COVID-19, with lockdowns and closed borders being a way of life at the height of the pandemic. To ensure that public participation was still carried out where the law required, amendments were made to some of the nation’s statutes to guarantee that the people’s rights to public participation were not limited by the COVID-19 pandemic.

The Australian Capital Territory’s Human Rights Act, 2004, was amended to allow virtual public human consultations as part of public participation in the Australian democratic space. The New South Wales Environmental Planning and Assessment Act, 1979 was also amended to allow for virtual public hearings as part of public participation dictated by the Act. The adaptations allowed for public participation to continue in Australia when the country was in lockdown, with borders closed and internal movement and public gatherings restricted.

3. Research Methodology

3.1 Secondary Data

The study involved a desk literature review that analysed different sources to find information. Secondary data sources included books, articles, journals, reports, magazines, and online portals.

3.2 Data Analysis

Descriptive statistics were used to analyse the data, which was done through content analysis and, thereafter, classification into similar themes and topics.

4. Conclusions and Recommendations

4.1 Conclusion

As Odunga J. points out in *Robert N. Gakuru & Others v Governor Kiambu County & 3 others*, there is a need to enact legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively in light of the changes imposed on the Kenyan society by the COVID-19 pandemic. The fundamental guideline to any changes towards traditional forms of public participation should be, “is the process quantitative as well as qualitative?” A quantitative process ensures that as many people as reasonably possible take part in the public participation process. A qualitative process guarantees that the views, desires, and actual input of the participants in relation to the actual subject are captured as expressed. Most jurisdictions worldwide have embraced virtual public participation in light of the COVID-19 pandemic and its impact on traditional forms of public participation. This is a direction that Kenya should consider in terms of laws, regulations, and policies. Laws passed to help with the transition should take care of the quantitative and qualitative aspects of a public participation process. The fundamental objectives of the public participation process should be achieved at the end.

4.2 Recommendations

4.2.1 Adapting the Law on Public Participation to the Reality of a Pandemic

The adverse phases of COVID-19 may be gone. Still, the pandemic has taught us to prepare and adapt to changes in our ways of life, just as we witnessed and probably will continue to witness pandemics in the future. A review of case law on public participation has demonstrated that public participation is a right that should not be limited, especially by the processes of conducting public

participation. The Kenyan public is more conversant with the traditional forms of public participation. However, there is a need to envisage the times of a pandemic, how public participation is affected, and the adaptations that can be made to ensure public participation processes are carried out successfully. This section of the paper outlines some of the changes that can be made in the laws and regulations on public participation to ensure that every Kenyan is not left behind when it comes to public participation.

4.2.2 Amend Laws and Regulations to Allow Virtual Public Participation

The COVID-19 pandemic saw technology that allows for virtual meetings and engagement over the internet increase. It is time to amend key legislation in Kenya to allow for virtual public participation. Virtual consultations and meetings are already becoming a key part of public functions and government engagement, such as court proceedings, so why not amend the law to allow for virtual public participation?

Like in Australia, Canada, and the United States, key statutes have been amended to allow for virtual meetings, consultations, and hearings as part of the public participation process. The same should be encouraged in Kenya, with key statutes on public participation amended to encourage this practice.

Public bodies should be encouraged to develop guidelines on virtual public participation where the law permits. The goal is to ensure that public participation is actually conducted, whether virtually or physically. Virtual public participation gives everyone enough room to have a say where the laws allow them to give their views.

4.2.3 Pass Regulations on Equal Access to Digital Tools

Even though the law might be amended to allow for virtual and online public participation, not everyone has access to the digital tools that allow for virtual and online public participation. Many Kenyans do not have access to digital tools like Zoom, Microsoft Teams, Microsoft Forms, and Google Meet; especially people in remote parts of Kenya.

Regulations should be passed to ensure equal access to these tools. According to Nyakwaka (2022) the government should provide these tools through its administrative structure across the republic. The citizens should be sensitised and made aware of the availability of these tools, how they can access them, and how

they can be used to take part in public discourse that pertains to their governments and the use of their natural resources.

4.2.4 Pass Policies on the Transparency and Accountability of Online Public Participation Processes

Online public participation through digital tools and channels is desirable considering the impact COVID-19 has had on public participation. However, the susceptible nature of these processes and the tools used in public participation should be acknowledged.

There is a need to formulate policies on the transparent use of these tools in the public participation process and for accountability of the tools and everyone involved in the processes. Public participation should reflect the exact opinions of the citizens involved in the public participation process and nothing else. It is important to establish the transparency and accuracy threshold and pass policies on the best ways to attain the same.

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Actualization of the Constitutional Principles of Public Participation Through Law Making

By Beverly Muthoki Musili & Peter Muchira Mureithi

Abstract

Public participation is a process and principle that has been given prominence in the Constitution of Kenya, 2010. Article 10 (2) of the Constitution provides that public participation is a national value and principle of governance. All citizens are entitled as of right to participate in all governance processes. Public Participation is recognized as one of the key objectives of devolution under Article 174 (c) of the Constitution of Kenya.

Recent studies and surveys have shown that public participation has become common practice in Kenya, albeit with shortfalls. Organization, coordination and implementation of public participation in Kenya's devolved system of government has encountered several challenges over the years, preventing the two levels of government from achieving the nature and extent contemplated by the Constitution and devolution laws. A few of the major challenges facing public participation include the slow pace in operationalising participation laws to actualize the Constitution, and inconsistent interpretation of public participation processes including the extent, mechanisms for public participation. Public participation is a prerequisite in development of policy and legislation. Failure to conduct public participation prior to publication of a policy or law exposes the legislative instrument or policy decision to dispute, hence making them at risk for declaration for unconstitutionality in a court of law.

The objectives of the paper will be to review policy, regulatory and legal frameworks and the structures supporting public participation at national and county level, highlight gaps and proffer recommendations to enhance actualization of the Constitutional principles and guarantees on public participation. The paper will also provide comparative analysis of select jurisdictions to enhance analysis. This paper will adopt a qualitative approach and data collection majorly relied on analysis of the Kenyan Constitution, policy papers, academic papers, organizational journals, and government statutes relating to devolution.

Key Words: Constitution, Public Participation, devolution, law making, public policy.

1. Introduction

Public participation is described and defined in a variety of ways and its threshold has evolved since the promulgation of the Constitution in 2010. The County Government Guidelines on public participation define public participation as *“the process where individuals, governmental and non-governmental groups influence decision making in policy, legislation, service delivery, oversight and development matters. It is a two-way interactive process where the duty bearer communicates information in a transparent and timely manner, engages the public in decision making and is responsive and accountable to their needs. The public gets actively involved in the process when the issue at stake relates directly to them”*(COG, 2015). Further, public participation is defined by the International Association for Public Participation as the involvement of those affected by a decision in the decision-making process. Public participation encompasses a range of public involvement, from simply informing people about what Parliament is doing to delegating decisions to the public¹.

The right to public participation is one of the cornerstones of public policy and legislative processes in Kenya. The right is enshrined and protected as a Constitutional right in Kenya, a right that the Judiciary of Kenya has affirmed in several instances. The Constitution assigns the right to public participation to Kenyan citizens and equally places a duty upon public policy and law making agencies to ensure and facilitate public participation. Though considered indispensable, the right to exercise public participation and the duty to facilitate public participation has been met with hurdles. In its legacy report, the National Assembly Committee on Delegated legislation reported that during the term 2017 – 2022 a total of 25 pieces of subsidiary legislations were annulled primarily on the basis that they lacked reasonable public participation as envisaged in the Constitution.²

The Constitution of Kenya, 2010 provides for the legal basis for public participation. Article 10 provides for national value and principles of governance, which include democracy and participation of the people. Article 27 provides for equality and freedom from discrimination, therefore, public participation processes should ensure equality and non-discrimination. Article 33 provides for freedom of expression of all people thus public participation should respect the freedom of expression of

¹ Victorian Auditor-General's Office, Public Participation in Government Decision-making: Better practice guide, 2015..

² National Assembly, Delegated Legislation Committee legacy report 2017 - 2022.

all participants. Article 35 provides for the right to access information, which is imperative for people to participate. Article 118 (1) (b) provides that parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees. Article 174 provides for objects of devolution which include to give powers of self-governance to the people and enhance the people's participation in the exercise of the powers of the State. It also empowers the people to make decisions on matters affecting them and gives communities the right to manage their own affairs and to further their development. Article 184 (1) (c) provides that 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 (1) (b) provides that a county assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees. Article 232 provides for the values and principles of public service which includes the involvement of the people in the process of policy making. In spite of the elaborate constitutional framework that enshrines the right to public participation, the implementation of public participation by duty bearers does not meet the required standards anticipated by the Constitution.

The Constitution of Kenya is therefore very intricate on the participation of the people on issues affecting them which should not be ignored by the national and county governments as it may lead to legal dispute of policies and laws thereby delaying service provision. The Constitution assigns county governments the responsibility to ensure, facilitate and build capacity of the public to participate in the governance of county affairs through function 14 (Schedule 4 Part 2). As such, county governments are required to:

- (1). Create mechanisms of engagement by ensuring and coordinating the participation of communities and locations in governance; and
- (2). Build capacity by assisting communities and locations to develop the administrative capacity for the effective exercise of the devolved functions and powers and participation in governance at the local level.

The entrenchment and the rise to prominence of the need for public participation as a principle arose during the process of enacting the constitution itself. As reported in the report of the Committee of Experts on Constitutional Review who were the custodian of the process, the Reverend Timothy Njoya commenced judicial proceedings to review the constitutionality of the constitutional review procedure

as set out in the amended 1997 Review Act and the existing Constitution, 1963. Among other things, they argued that the Constitution permitted its amendment by Parliament but not its replacement and that the process denied the people of Kenya their sovereign right to approve a new constitution. In *Timothy Njoya and others –vs- the Hon. Attorney-General & 3 others*, the High Court declared that for replacement of the Constitution, full participation of the people was required apparently through both a constituent assembly and a referendum³. This set the stage for the full participation of the people having to vote on the enacted of the supreme law. Consequently, the governance mechanism and structure shifted to a participatory one which still stands to date (Committee of experts on Constitutional Review, 2010).

Through this constitutional review process, public participation has been recognized as one of the key objectives of devolution under Article 174 (c) of the Constitution of Kenya, 2010. Public participation therefore is a process and principle that has been given prominence in the Constitution of Kenya 2010. Article 10 (2) of the Constitution provides that public participation is a national value and principle of governance. All citizens are entitled as of right to participate in all governance processes.

The Statement of the Problem: Public participation in governance and lawmaking was mandated under the Constitution of Kenya 2010. It was a significant shift from the past as it required that the participation of the people be sought by the law-making entity, primarily the legislature for any law to be deemed legitimate. However, the Constitution gave a broad statement and mandate but left the operationalization to subsequent statute. Whereas various county assemblies have enacted laws on public participation, there lacks a national legislative framework on the matter leading to numerous challenges of laws in the courts and in some cases quashing of entire laws. This paper will seek to answer the question as to how law making on the subject area can close this gap and provide the much-needed legislative framework to ensure the actualization of public participation in the country.

The paper is organized in five parts including the Introduction, the Current legal setup on the matter of public participation in Kenya, an analysis of the legal framework, interpretation and conclusions and recommendations.

³ Miscellaneous Civil Application No 82 of 2004.

2. Legal and Policy Framework on Public Participation in Kenya

Until the promulgation of the Constitution in 2010, delivery of public services was often perceived as unilateral, autonomous, non-inclusive and non-responsive to citizens' needs. The Constitution attaches special importance to social accountability to ensure citizens are effectively engaged in all matters of their governance. Currently, public participation is considered an indispensable element of people centered development encapsulated in the Constitution. It is also entrenched in the Vision 2030, the County Governments Act, 2012, the Public Finance Management Act, 2012 and in several international and regional human rights conventions that the country has ratified that guarantees citizens a say in the governance of the country. The right to public participation often interrelates with other human rights, such as the right to freedom of expression. The right to freedom of expression is recognized as a fundamental human right under Article 19 of the United Nations Declaration of Human Rights which provides that everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers. Citizens across the world have been demanding opportunities to exercise their democratic rights to participate in the governance decisions that affect them, beyond the election of parliamentary representatives. Public participation is at the core of the openness agenda; it does not aim to reduce or replace the functions of parliamentarians, but to enhance them.

Article 1 of the Constitution of Kenya states that sovereign power belongs to the people and that this power may be exercised directly or indirectly through their democratically elected representatives. The Constitution gives powers of self-governance to the people as well as enhances the participation of the people in the exercise of the powers of the state and in the decisions affecting them. Similarly, the national values and principles of governance have the element of participation. The Constitution of Kenya 2010 states that every person has a right to information held by the state⁴, as well as information held by another person and required for the exercise or protection of any right or fundamental freedom⁵. And that the state shall publish and publicise any important information affecting the nation⁶. The Constitution also calls for openness and accountability including

⁴ Constitution of Kenya 2010 Article 35 (a).

⁵ Constitution of Kenya 2010 Article 35 (b).

⁶ Constitution of Kenya 2010 Article 35 (3).

public participation in financial matters⁷. Transparency and provision to the public timely accurate information is also a prerequisite to public participation⁸.

Besides the Constitution, other laws in Kenya codify provisions on public participation. For instance, the County Government Acts, 2012 supports freedom of the media⁹, establishes mechanisms of communicating and access of information to the in the form of media that have wide public access¹⁰, as well as provide access to information to the public on request¹¹ and establishment of structures for public participation¹² in the development of policies, plans and service delivery at the county level. Section 46(2) (g) of the County Government Act compels the County Executive committee to bear in mind the need for an all-participatory decision making.

Under Section 50(3) (g) of the County Government Act, the sub-county administrator is responsible for the coordination, management and supervision of the general administrative functions in the Sub-county including the facilitation and coordination of citizen participation in the development of policies, plans and service delivery. Also, under Section 51(3) (g) of the County Government Act, the ward administrator is responsible for the coordination, management and supervision of the general functions in the ward including the facilitation and coordination of citizen participation in the development of policies, plans and service delivery. Section 52(3)(a)(i) of the County Government Act, tasks the village administrator with the coordination, management and supervision of the general administrative functions in the sub-county including ensuring and coordinating the participation of the village unit in governance.

The Public Finance Management Act 2012 provides for participation in the cycle of budget planning, formulation and implementation and cites several requisites that should be provided to the citizenry which include County Fiscal Strategy Paper and the Budget Review and Outlook Paper. The Act also provides for a County Budget and Economic Forum as a means where the public and county government

⁷ Constitution of Kenya 2010 Article 201

⁸ Constitution of Kenya 2010 article 232

⁹ County Government Act 2012 article 94

¹⁰ County Government Act 2012 article 95

¹¹ County Government Act 2012 article 96

¹² County Government Act 2012 article 91

can converge and have consultation on areas such as preparation of county plans, county fiscal strategy paper, the budget review and outlook paper.

The Constitution is also clear on accountability, it provides for democratic and accountable exercise of power¹³. Sharing of performance progress report. Sustained civic engagement in the implementation of the Constitution. Kenya is also a signatory to the United Nations Universal Declaration of Human Rights that guarantees rights and responsibility to all individuals to demand accountability from their governments by holding public actors to obey the law and not abuse their powers, and to serve the public interest in an efficient, effective, and fair manner¹⁴. Article 196 of the Constitution compels the County Assembly to facilitate participation of the public in its committees, the legislative and other business of the assembly. Section 21(1) (g) of the Urban Areas and Cities Act requires boards of cities and municipalities to ensure that residents participate in decision making, its activities and programmes. Section 22 establishes that residents of a city, municipality or town may actively be involved in policy and law making plus service deliveries in their respective areas. Section 125 of the Public Finance Management Act provides the involvement of the public in the budget making process.

3. Analysis of the Legal and Policy Frameworks Governing Public Participation in Kenya

While there are a number of legal provisions regulating public participation, there is lack of clear and consistent guidelines and steps to be applied and followed by national and county governments and governmental ministries, departments and agencies on the process of conducting public participation including the activities that require public participation, the minimum number of people who should be consulted, the composition of stakeholders, the number of people who should be consulted, the form of consultation, and mechanisms for feedback. A key gap in the law is what amounts to sufficient or adequate participation. There is also confusion over the concepts of public participation and stakeholder engagement. This section will consider relevant case law and comparative jurisprudence to outline the practical elements or principles which public agencies can utilize to gauge whether the obligation to facilitate public participation has been reached in a given case. A cursory review of some select case law indicates that the courts

¹³ Constitution of Kenya 2010 Article 174

¹⁴ The Universal Declaration of Human Rights is accessible at <http://www.un.org/en/documents/udhr>.

have attempted to outline the basic principles to be guide in conducting public participation.

As highlighted earlier, at the sub national level of governance, the Constitution under its 4th Schedule bestows on the county governments the function to “*ensure and coordinate 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 levels*” This places a constitutional mandate on that level of government to enhance the capabilities of the citizenry in the matters of public participation.

This has led to various County Governments developing guidelines to ensure the actualization of these principles. For instance, the County Government of Makueni adopted its public participation framework which gives clear process and levels under which these principles will be exercised. This is in addition to the guidelines that were published in 2015 through an intergovernmental approach specifically for the implementation of Public Participation in the County Governments. Other counties that have enacted legislation around this are the Nairobi City County (Nairobi City County Public Participation Act, 2015) and the Mombasa County (Mombasa County public Participation Act among others.

Public participation recognizes and communicates the needs and interests of the people which lead to sustainable decisions. In interpreting the importance of public participation, the High Court (Petition 532 of 2013 & 12, 35, 36, 42, & 72 of 2014 & Judicial Review Miscellaneous Application 61 of 2014 [consolidated]) stated:

‘Public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behooves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not just enough in my view to simply “tweet” messages as it were and leave it to those who care to scavenge for it. The County Assemblies ought to do whatever is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of the intention to pass legislation and where the legislation in question involves such important aspects as payment of taxes and levies, the duty is even more onerous. I hold that it is the duty of the County Assembly in such circumstances to exhort its constituents to participate in the process of the enactment of such legislation by making use of as many fora

as possible such as churches, mosques, temples, public barazas, national and vernacular radio broadcasting stations and other avenues where the public are known to converge to disseminate information with respect to the intended action.’

The importance of engaging the public was further stated in Nairobi Judicial Review Case No.434 of 2015. The Court held that *“it must be appreciated that the yardstick for public participation is that a reasonable opportunity has been given to the members of the public and all interested parties to know about the issue and to have an adequate say.”*

The legislative arm of Government has also established various legal instruments in furtherance and for the realization of public participation in its activities. This primarily emanates from the constitutional dictate of Article 118 which mandates parliament to ensure and facilitate public participation in its legislative process. Consequently, the legislatures both at the National and County levels have enacted Standing Orders to provide for procedures in the conduct of their business. These procedures clearly indicate the place for the participation of the people in the legislative process and the avenues available for that. The standing orders provide for public participation in legislative processes, budget making, oversight, approval and appointments of state officers among other functions of Parliament. The legislatures have progressively amended their orders to ensure meaningful implementation of public participation.

Further, various pieces of legislation and regulations have provided for avenues that the public can participate in legislative business. These Acts include the Petitions to Parliament (Procedure) Act, No. 22 of 2012 which provides a pathway for ordinary citizens to petition Parliament on any matter under their mandate and further provides for the timelines to deal with such petitions (The National Assembly, 2022). The Public Finance Management Act, 2012 and the Statutory Instruments Act, 2013 also contain provisions on public participation. The legal regime governing public participation is fragmented across various pieces of legislation.

Due to the centrality of this principle, the Judiciary and even Parliament have struck down pieces of legislation and subsidiary legislation due to a lack of public participation. Some notable instances where the courts have declared legislation and government actions as unconstitutional on account of a lack of public participation include: The Kiambu County Finance Act, 2013 was declared unconstitutional for not meeting the threshold of public participation. In declaring the Act unconstitutional, the Court relied primarily on South Africa’s *Doctors for*

Life case where Justice Yacoob ruled that citizens require *effective* opportunity to participate. The Court considered “reasonable” possibilities of participation, and “What amounts to a reasonable opportunity will depend on the circumstances of each case”—to quote the South African Judge Albie Sachs, as many Kenyan judges have done. Public authorities have a good deal of discretion on how to organize public participation, though little about whether to do so¹⁵. The Coffee General Regulations, 2021 are another example that were declared unconstitutional by Justice Odunga in 2016 for lacking public participation. This is in addition to various sections of the law being found to be unconstitutional due to lack of what the Courts define as adequate, sufficient and effective public participation.

To cure some of its own deficiencies, Parliament, through its standing order, has recognized the place of public participation in its procedure. This includes the actual involvement of the people in enacting the standing orders. The Legislature on its part has declined to approve subsidiary legislation on the basis that the drafting authorities did not perform adequate public participation. Further, the procedure for law making in Parliament has provided specific period of time of which a proposed legislation must be subjected to public participation especially by the relevant Committee of which a report must be tabled in the house to inform debate in the house on a proposal. This applies to the budget proposal whereby the Budget Committee not only receives submissions from the public but also visits sampled constituencies to further entrench the principle of public participation.

This notwithstanding, the country is still unpacking effective ways to ensure public participation is actualized in the governance system.

4. The Judicial Interpretation and Procedures Governing Public Participation

In seeking to understand public participation as enunciated under the law, it is important to realise that there are two facets to public participation which anticipate representation through elected political representatives and also through direct participation of the public. This denotes that there exists a symbiotic relationship between the concepts of political representation and public participation. In the case of **Matatiele Municipality and Others vs. President of the Republic of South Africa and Others (2) (CCT73/05A) [2006] ZACC 12; 2007 (1) BCLR 47 (CC)**, where **Ngcobo, J** clarified as follows: “Our constitutional democracy has essential elements which constitute its foundation; it is partly representative

¹⁵ Katiba Institute

and partly participative. Our system of government requires that the people elect representatives who make laws on their behalf and contemplates that people will be given the opportunity to participate in the law-making process in certain circumstances. The law-making process will then produce a dialogue between the elected representatives of the people and the people themselves. The representative and participative elements of our democracy should not be seen as being in tension with each other... What our constitutional scheme requires is “the achievement of a balanced relationship between representative and participatory elements in our democracy.” The public involvement provisions of the Constitution address this symbolic relationship, and they lie at the heart of the legislative function.

The Constitution contemplates that the people will have a voice in the legislative organs of the State not only through elected representatives but also through direct participation in the law and policy making process which enables the public and citizenry to contribute to governance processes. It is apparent from the provisions of the Constitution that the democratic government that is contemplated is partly representative and partly participatory, accountable, transparent and makes provision for public participation in the making of laws by legislative bodies. Consistent with our constitutional commitment to human dignity and self-respect, section 118(1) (a) contemplates that members of the public will often be given an opportunity to participate in the making of laws that affect them. As has been observed, a “commitment to a right to public participation in governmental decision-making is derived not only from the belief that we improve the accuracy of decisions when we allow people to present their side of the story, but also from our sense that participation is necessary to preserve human dignity and self-respect .”

Public participation envisions various levels including indirect participation through elected representatives but also direct participation. In the South African case of *international v. Speaker of the National Assembly & Others* (CCT 12/05) [2006] ZACC 11, 2006(12) BCLR 1399(CC), 2006 (6) SA 416 (CC) the following principles may be discerned from the quotations reproduced from that case, in summary: “It is generally accepted that modes of public participation may include not only indirect participation through elected representatives but also forms of direct participation. The general right to participate in the conduct of public affairs includes engaging in public debate and dialogue with elected representatives at public hearings. There is a duty to facilitate public participation by ensuring citizens have the necessary information and effective opportunity to exercise the right to political participation. The democratic government is partly representative

and partly participatory, is accountable, responsive and transparent and makes provision for public participation in the law-making processes. Facilitation of public involvement relates to making it easy or easier, promoting or helping the public to take part with others in the legislative process. Parliament and the provincial legislatures have the discretion to determine how best to facilitate public involvement, but the courts have the power to determine the reasonableness of that discretion against the degree of involvement envisaged in the Constitution. The nature and importance of the legislation and the intensity of its impact are especially relevant. Participation must be facilitated where it is most meaningful, and the persons concerned must be manifestly shown the respect due to them as concerned citizens. There may be circumstances of emergency that require urgent legislative responses and short timetables but there must be a demonstration of such cases, since the timetable is subordinate to the rights guaranteed in the Constitution and not the rights to the timetable. Not everyone should be heard orally. The basic elements of public participation include the dissemination of information, invitation to participate in the process and consultation.”

The right to public participation involves both the right to participate but also the duty of public institution to give the public an opportunity to participate. Further, it includes the duty of the public institution to facilitate the public participation. In *Doctors for Life International vs. Speaker of the National Assembly and Others* (CCT12/05)[2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC), where the court held as follows: “The right to political participation is a fundamental human right, which is set out in a number of international and regional human rights instruments. In most of these instruments, the right consists of at least two elements: a general right to take part in the conduct of public affairs; and a more specific right to vote and/or to be elected... Significantly, the ICCPR guarantees not only the “right” but also the “opportunity” to take part in the conduct of public affairs. This imposes an obligation on states to take positive steps to ensure that their citizens have an opportunity to exercise their right to political participation.”

Access to information is a critical prerequisite to realization of the duty to facilitate public participation. This position reflects the view held in **Doctors for Life International vs The Speaker of the National Assembly & Others CCT 12 of 2005 [2006] ZACC 11** to the effect that “where the public has been given the opportunity to lodge written submissions, the public institution will have acted reasonably in respect of its duty to facilitate public involvement. However, for

citizens to carry out their responsibilities, it is necessary that the legislative organs of state perform their constitutional obligations to facilitate public involvement. The basic elements of public involvement include the dissemination of information concerning legislation under consideration, invitation to participate in the process and consultation on the legislation. These three elements are crucial to the exercise of the right to participate in the law-making process. Without the knowledge of the fact that there is a bill under consideration, what its objective is and when submissions may be made, interested persons who wish to contribute to the law-making process may not be able to participate and make such contributions.”

In the case of Doctors for Life International vs The Speaker of the National Assembly & Others CCT 12 of 2005 [2006] ZACC 11, it was held that “what is intimately important is that the public institution has taken steps to afford the public a reasonable opportunity to participate effectively in the public policy and decision-making process. Thus, there are at least two aspects of the duty to facilitate public involvement. The first is the duty to provide meaningful opportunities for public participation in the law-making process. The second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided. In this sense, public involvement may be seen as a continuum that ranges from providing information and building awareness to partnering in decision making. This construction of the duty is consistent with the right to political participation. This right not only guarantees the positive right to participate in the public affairs, but it simultaneously imposes a duty on the state to facilitate public participation in the conduct of public affairs by ensuring that this right can be realized. It will be convenient here to consider each of these aspects beginning with the broader duty to take steps to ensure that people have the capacity to participate.”

In facilitating the public, the implementing agency is required to entreat the public to participate, by undertaking all measures possible to ensure the public participates.

In Robert N. Gakuru & Another vs Governor Kiambu County & 3 others [2013] eKLR; the court stated “In my view public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behooves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not just enough in my view to simply “tweet” messages as it were and leave it to those who care to scavenge for it. The County Assemblies ought to do whatever is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of

the intention to pass legislation and where the legislation in question involves such important aspect as payment of taxes and levies, the duty is even more onerous. I hold that it is the duty of the County Assembly in such circumstances to exhort its constituents to participate in the process of the enactment of such legislation by making use of as many forums as possible such as churches, mosques, temples, public barazas national and vernacular radio broadcasting stations and other avenues where the public are known to converge to disseminate information with respect to the intended action.”

There are limits to the extent of public participation, and incorporation of public views. However, the courts have held that the mere fact that particular views have not been incorporated in the enactment does not justify the court in invalidating the enactment in question (*Samuel Thinguri Waruathie & 2 others v Kiambu County Government & 2 others* [2015] eKLR). As was appreciated by **Lenaola, J** in **Nairobi Metropolitan PSV Saccos Union Ltd & 25 Others v County of Nairobi Government & 3 Others Petition No. 486 of 2013**, public participation is not the same as saying that public views must prevail.

It should be noted that it is critical to document the process. Courts have held that the burden of proof in matters concerning public participation is on the decision-making institution to demonstrate that they conducted adequate, sufficient and effective public participation both quantitatively and qualitatively. The burden of proof is not on the petitioner to demonstrate that sufficient public participation did not take place (see: *Law Society of Kenya v Attorney General & 2 others* [2019] eKLR). It is therefore critical for public institutions to document the process and maintain evidence on how they conducted the public participation, how they consulted the public, how the public views were documented and how they were considered. It is therefore critical for institutions carrying out public participation to carefully collect and collate the public input in a systematic and retrievable manner.

5. Conclusion and Recommendations

A review of the Kenyan laws demonstrates a pronounced lack of clarity on the modalities of public participation. While law makers may have attempted to allow more flexibility, leeway and discretion for public institutions to adopt in the process of public participation, this may have led to effects of confusion, misunderstanding and uncertainty in the sector, particularly for policy and regulation making institutions. In light of this gap, it is admitted that Kenya can benefit from a

cross-jurisdictional comparative analysis in attempting to chart specific guidelines and provide more clarity on the understanding of public participation.

Nonetheless, while the law does not provide much clarity, the judiciary through case law and judicial interpretation have attempted to fill in the gaps. From a review of the case law and literature, it appears that key considerations and factors to ensure successful public participation include: the duty of a public institution to provide an opportunity for the public to participate and secondly, the duty of a public institution conducting public participation to facilitate the public participation exercises. The duty to facilitate includes the duty to disseminate information to the public in a timely manner before they are required to give input. There is also need to ease access to the information, data, documents, and other information relevant or related to policy formulation and implementation in a timely manner. Effective public participation depends on the public having access to accurate and comprehensive information. Further, such information should be in a form and language that can be understood by all which may be communicated in the national languages (which include English and Swahili) and local dialects. Various media and forms of communication can be utilized including newspapers, barazas, social media, radio, television, national and vernacular radio broadcasting stations and websites. As a prelude to this, it is also critical to build capacity of the public through civic education and citizen awareness to participate in decision making and appreciate why their input is important.

Further, the process for public participation should be all-inclusive, however the mechanisms for engaging various categories of the public or stakeholders may vary and an institution should assess/determine the most appropriate and accessible medium of communication. An institution may determine the most appropriate mechanisms of engaging PWDs, minorities and marginalized, bureaucrats, technocrats, or children.

Once consultations have taken place, there is need for the institution to provide feedback on how the public input has been used, what has been incorporated, what has been left out and the reasons why. The channels for feedback and reporting can be communicated through use of various media such as through use of websites or explanatory memorandum. Feedback template should highlight how consultations were undertaken, who was consulted, an outline of the results of the consultation; and dissemination of status reports via various media forms. This envisions a cyclic process as opposed to a linear process whereby consultations are undertaken and

views, comments, needs and concerns from the public collected and collated. Thereafter, the institution is required to analyse the views and provide feedback on what actions have been taken since the initial consultation.

Moreover, while the right to public participation is codified in law, its modalities including specific timelines and minimum number of meetings and dissemination/ media communication modes have conspicuously not been specifically provided for. This is in contrast to other jurisdictions and may be an opportunity for the Kenyan legal framework to enhance its clarity on public participation guidelines.

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Public Participation in The Law-Making Process, A Case Study of The County Assembly of Kiambu, Kenya

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Abstract

The Constitution guarantees the people's sovereignty and requires legislatures to facilitate public participation in all their legislative processes. This paper examined the constitutional requirement for public participation in the law-making process and examined ways in which legislatures can fully operationalize this requirement. Legislatures seem to have abandoned their role to facilitate public participation and instead handed over the fate of their laws to the courts. This is due to the absence of a national legal and policy framework for public participation in Kenya, which establishes a legal threshold for public participation in the legislative process. As a result, the courts have intervened but not fully addressed the problem of effective public engagement in the legislative process. Several counties have attempted to legislate on public participation, but a closer examination of these laws reveal gaps.

This research study utilized a qualitative and case study methodology of the Kiambu County Assembly. Despite the enactment of the Kiambu County Citizen Petition and Participation Act, 2016, the Act does not address how the County Assembly is expected to 'facilitate' public participation in its legislative processes.

Legislatures have only applied the recommendations of the courts out of necessity without making any intentional steps in entrenching public participation in the law-making process. This study recommends the enactment of a national legal framework on public participation that defines the parameters of effective public participation. It further recommends that all county assembly legislatures in Kenya amend their Standing Orders to include public participation as a stage on its own within the Bill process and in doing so, they should consider using online platforms to enhance public participation. The study further recommends that legislatures should appropriate adequate funds and provide a specific budget line for the voting of public participation activities.

Key Words: Public participation, law-making, legislatures, standing orders.

1. Introduction

When legislatures begin to exercise their role as law-makers, they serve as representative institutions providing a link between citizens and their legislatures (Kutz, 2021). In some parts of the world, under highly centralized governments, the only role legislatures could play was to express the views of their constituents and serve as a link between the government and citizens (Kutz, 2021). In Kenya, before the promulgation of the Constitution of Kenya, 2010, this linkage between the citizens and the legislatures facilitated the legitimization of government actions, more so because the system of government was one of a parliamentary nature and therefore the role of parliament had been reduced to that of ‘rubber-stamping’ executive decisions.

The Constitution of Kenya, 2010 was birthed during a time when Kenyans sought to emerge from the strongholds of centralization and reclaim that which belonged to them, sovereign power. The sovereignty of the people has been clearly provided for and is guaranteed under Article 1 of the Constitution. The Constitution provides that sovereign power is delegated to State organs including Parliament and the county assemblies in the County Governments.

The 2010 Constitution provides a strong legal foundation for the enhancement of participatory governance through the devolved structures of Government. Unlike the 1963 Constitution, Articles 118(1) and 196(1) of the 2010 Constitution require Parliament and County Assemblies to ‘facilitate public participation in all legislative processes’. An examination of these articles of the Constitution demonstrates that the requirement for public participation is not a rhetorical device or only relevant to representation, but it serves as a tool for substantively influencing policy to give it life and legitimacy in the eyes of the people it serves (Monica de Souza, 2014).

Public participation, as envisioned by the Constitution of Kenya 2010, is the process by which public concerns, needs, and values are incorporated into governmental decision-making (Scott, 2009). It has been defined in various ways and by various actors, but the underlying feature of the definition of public participation encompasses the involvement of the public directly in government-related processes which may influence decision-making. Public participation, aims at bridging the gap between the government, civil society, private sector and the general public, and seeks to build a common understanding of the local situation, priorities and programs (CIC, 2012).

Apart from the provisions in the Constitution of Kenya, 2010 that require public participation (Sihanya, 2013), Kenya lacks a comprehensive and functional framework for the implementation of the constitutional requirement of public participation, specifically in the legislative arm of Government at both levels. It remains peripheral, perfunctory and government focused. This has led to situations where the definition of public participation and the extent to which public participation is implemented in the law-making process in Kenya has been opened up to numerous interpretations by various actors, that is, the general public, legislators, Constitutional Commissions and the Courts (Kihonge, 2016). As a result of this, laws enacted by Parliament and County Assemblies have been challenged in Court on the grounds of lack of public participation or lack of sufficient public participation, thereby causing a significant effect on the role of legislatures in making laws.

Due to these varying interpretations, legislation passed by both Parliament and County Assemblies has often been challenged on the grounds of inadequate public participation. For instance, in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* (2013), the Supreme Court emphasized the constitutional necessity of public involvement in legislative and governmental appointments. Furthermore, the High Court nullified the Kiambu County Finance Act in *Robert N. Gakuru & Others v Governor Kiambu County & 30 others* (2014) due to a lack of meaningful public engagement. Additionally, the case of *Okiya Omtatah Okoiti v Attorney General & 3 others* (2017) challenged the Election Laws (Amendment) Act 2017 for similar reasons. These cases illustrate the profound impact of public participation on the legislative function, highlighting the need for clear, effective, and meaningful engagement with the public to ensure the legitimacy and acceptance of laws.

The challenges brought forth in these judicial decisions have led to the creation of a body of jurisprudence, which, while substantial, has not fully resolved the complexities of ensuring effective public participation in the law-making process. This paper therefore seeks to explore the constitutional requirement for public participation in the law-making process and examine ways in which legislatures across Kenya can fully operationalize this requirement in their law-making processes. The term ‘creation of jurisprudence’ in this context refers to the evolving legal principles and precedents established by courts as they interpret the existing laws and provisions of the Constitution regarding public participation. By exploring

these judicial interpretations, this study aims to provide a clearer path forward for enhancing legislative practices to meet constitutional mandates effectively.

Further, the paper seeks to ascertain the proper scope of public participation and what amounts to sufficient or proper public participation in the eyes of the law and the 2010 Constitution of Kenya. It also aims to determine to what degree it can sufficiently be deemed that there has been public participation in the law-making process in the County Assembly of Kiambu.

Beyond this landmark ruling, in 2016, the County Assembly of Kiambu, in 2016 passed the Kiambu County Citizen Petition and Participation Act in a bid to provide for public participation in the legislative process. However, even after the enactment of this law, as will be illustrated in this paper, the Courts have still gone ahead to nullify various laws enacted by the County Assembly of Kiambu on the basis of inadequate public participation.

The inadequacies of public participation in the law-making process essentially threaten the law-making authority of not only the County Assembly of Kiambu but all legislatures across the country and has a negative impact on the relationship between the representatives and the people that they represent. This paper is therefore justified because it analyzes existing gaps and recommends methods for legislatures to incorporate public participation into their law-making processes. This incorporation leads to the legitimization of laws and general public acceptance of these laws.

The paper commences with a review of existing literature on public participation in Section 2: Literature Review. It then proceeds in Section 3: Methodology with an analysis of the existing legal framework on public participation in the law-making process, examining both the national level and the county level with a specific focus on Kiambu County. This is followed by Section 4: Results and Discussion, where findings are presented and discussed. The paper concludes in Section 5: Conclusion and Recommendations, where final thoughts and suggestions for future improvements are provided.

2. Literature Review

This literature review explores the constitutional basis and implementation of public participation in Kenya's legislative processes. It assesses the adequacy of existing frameworks and highlights gaps in facilitating effective public engagement at national and county levels. A lot has been written about public participation in

Kenya and Africa but not much has been written on how Parliament and County Assemblies should facilitate, enhance and implement public participation.

2.1 The Importance of Public Participation

Sihanya, 2013 argues that the Constitution of Kenya 2010 has opened up space for the exercise of popular sovereignty in governance through legislative activity. Specifically, Article 118 of the Constitution requires Parliament to facilitate public participation and involvement in its legislative and other business, and it stipulates that:

“(1) Parliament shall— (a)conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and (b) facilitate public participation and involvement in the legislative and other business of Parliament and its committees.

(2) Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.”

Article 119 of the Constitution also provides that one of the mechanisms of citizen participation in Parliamentary processes includes petitions to Parliament. It states:

“(1) Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.

(2) Parliament shall make provision for the procedure for the exercise of this right.”

Sihanya, 2013 indicates that the above provisions can be contrasted to the nature and level of participation of the people and or their representatives under the Independence Constitution. Though his work underlies and emphasizes the importance of public participation as a constitutional principle, it does not address the issues under investigation in this paper as they relate to public participation in the law-making process.

2.2 The legal framework on public participation in Kenya.

Kanyinga, 2014 states that the Constitution of Kenya 2010 identifies democracy and public participation as some of the values and principles of good governance and that public involvement is a theme that is recurrent in the Constitution’s chapters and articles. He avers that Parliament and county assemblies are required to involve the public in their proceedings with state agencies and public officials

are also required to involve the public in making key decisions including having a say in financial management.

Kanyinga, 2014 argues that while the provision for public participation in the 2010 Constitution is an important achievement, Kenya has yet to develop a framework on how citizens can engage meaningfully in the policy making process. He recommends that a policy framework be developed to guide how the public and the civil society organizations (CSOs) engage in the policy making process.

Though Kanyinga correctly recognizes the need for a policy framework on how citizens can engage in meaningful public participation, his research is mainly focused on the policy-making process rather than the law-making process which are two related but distinct processes. He reiterates the constitutional requirement for Parliament and County Assemblies to conduct their business in an open manner as a form of public participation, and associates ineffective public participation to lack of capacity on the part of the Members of Parliament and the Members of the County Assemblies. Kanyinga's study however, places more focus on the need for a legal framework at the legislature level that would guide the Members of Parliament and County Assemblies on how to carry out effective public participation while carrying out the law-making process.

John Owegi, 2012 examines the manner in which the concept of public participation is realized in the implementation of the Constitution. He does not confine himself to application of the concept in the foregoing discussion to law making, he moves ahead to look at application of the concept of public participation in budgeting, judges and magistrates vetting and the operations of the devolved government. Owegi appreciates the legal framework of the concept of public participation, both in the constitutional context and the statutory framework.

2.3 Public participation in the law-making process in Kenya.

Prof Migai Akech, 2015 while acknowledging the importance of public participation as provided by the Constitution of Kenya 2010 states that it is difficult to ensure direct participation of citizens in governance on the scale of a nation state. He states that Parliament has made an effort to implement these provisions of the Constitution through legislation and the standing orders. On the question of public participation, he postulates that the standing orders of both Houses of Parliament now give the public a unique and timely opportunity to participate in law-making by requiring committees which Bills have been committed to facilitate public

participation and take into account the views and recommendations of the public when they make their reports on the Bills to the house.

He goes further to state that the standing orders do not contain a procedure for accounting to the public, so that it can be known whether or not, and how, its views and recommendations on a bill have been considered (Akech, 2015). Prof. Akech notes that there is a need to establish procedures for ensuring public participation, such as “notice and comment” and public hearings.

In addition Prof. Kithure Kindiki, 2007 touches on public participation in law making but confines his analysis to the aspect of Constitution making. Despite the fact that his work is majorly concerned with constitutional review leading to the paradigm shift in 2010, when the 2010 Constitution was put in place, he appreciates the role of public participation in the process of discussions and consensus on the provisions of the Constitution.

In as much as the literature reviewed contributes to this study on public participation, it does not provide a clear legal clarification as to how legislatures can effectively implement public participation in their law-making processes in Kenya.

3. Methodology

This research paper undertook a qualitative analysis approach done by way of desk review of scholarly materials, academic texts and materials. The research paper focused on both primary and secondary sources of information in the law-making process in Kenya.

The primary sources of information included available legislation and case law on public participation in the law-making process such as the Constitution of Kenya 2010, the County Governments, 2012, the Public Finance Management Act, 2012 and the Urban Areas and Cities Act, 2011.

Secondary sources inclusive of scholarly works in journal articles and textbooks, reports from non-governmental organizations, institutions, and task forces have come in handy in the research paper. Some of the above materials have been accessed via internet and electronic sources.

This paper has chosen to focus on public participation in the law-making process in the County Government of Kiambu among other legislatures across the Country, as it is among the County Governments with the highest number of laws that have

nullified by the courts on account of lack of or inadequate public participation. The inadequacies of public participation in the law-making process in Kiambu County led to the landmark ruling of Judge Odunga in the case of *Robert N. Gakuru & Others v. Governor Kiambu County and 3 others* where the parameters of public participation in the law-making process were set out.

Beyond this landmark ruling, in 2016, the County Government of Kiambu, in 2016 passed the Kiambu County Citizen Petition and Participation Act in a bid to provide for public participation in the legislative process. However, even after the enactment of this law, as will be illustrated in this paper, the Courts have still gone ahead to nullify actions of the County Assembly of Kiambu on the basis of inadequate public participation.

4. Results And Discussion

4.1 Public participation in the law-making process under the Constitution of Kenya.

The Constitution of Kenya, 2010 lays the foundation for the need for public participation in governance in at least ten (10) articles. It promotes participatory legislative processes with regards to all the Acts of Parliament, regulations and policies.

The Constitution aims at giving powers of self-governance to the people of Kenya, enhancing their participation in the exercise of the powers of the State and in making decisions affecting them in addition to recognizing the rights of communities to manage their own affairs and to further their development (Kanyinga, 2014).

Article 1(1) of the Constitution of Kenya, 2010 vests all sovereign power in the Kenyan people. This power is to be exercised either directly by the people through public participation or indirectly through their democratically elected representatives. In addition, the Constitution creates a decentralized system of government with the primary goal of devolving resources, power and representation to the local level. The rationale of public participation is therefore based on the foundation that the people of Kenya have sovereign power which they have delegated to state actors at the national and county levels.

Article 118(1) (a) and (b) of the Constitution, requires Parliament to conduct its business in an open manner, and its sittings and those of its committees are expected to be open to the public. Parliament is also expected to facilitate public

participation and involvement in the legislative process and other business of Parliament and its committees. Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending, or repealing any legislation. Parliament may not exclude the public, or any media, from any sitting, unless in exceptional circumstances the speaker has determined that there are justifiable reasons for the exclusion.

In the same breadth, Article 196(1) of the 2010 Constitution replicates the above provisions in the case of county assemblies.

Article 33(a) of the Constitution also provides that every person has the right to freedom of expression, which includes freedom to seek, receive or impart information or ideas, emphasizing the fact that citizens deserve information on critical government decisions such as those relating to the law-making process and the budget making process.

Article 184(1) (c) of the Constitution further directs that 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. Consequently, Parliament enacted the Urban Areas and Cities Act whose relevant provisions are discussed below.

Article 201(a) of the Constitution provides for openness and accountability, including public participation in financial matters. This applies to financial matters at both national government and county government levels. Among the values and principles of public service, provided for under Article 232(1) (d), is public participation in policymaking. Furthermore, according to part 2(14) of the Fourth Schedule to the Constitution, the counties functions and powers include the coordination of community involvement in governance. Counties are tasked to assist communities to develop the administrative capacity to enhance their exercise of power and participation in governance at local levels.

From the foregoing, it is clear that public involvement and participation is a theme that runs through all the chapters of the Constitution. Parliament and County Assemblies are required to open their proceedings to the public (Kanyinga, 2014). State agencies and public officials also have an obligation to involve the public in making key decisions including having a say in financial management.

Although this is an important achievement, Kenya has not developed a framework on how citizens can engage meaningfully in the law-making

processes. In many instances, public participation has been carried out through elected leaders and appointed officials.

4.2 Public Participation under the County Governments Act, 2012

The County Governments Act, 2012 is an Act of Parliament meant to give effect to chapter eleven of the Constitution which deals with devolution. It provides for county governments' powers, functions and responsibilities to deliver services. Under the Act, county governments are expected to facilitate the establishment of structures for citizen participation including the following: information communication technology-based platforms, town hall meetings, budget preparation and validation fora among others.

Part IX of the County Governments Act requires County governments to facilitate public communication and access to information by the citizens. Section 94 of the same Act stipulates that County governments are to use media to, inter alia, create awareness on devolution and governance and promote citizens understanding for purposes of peace and national cohesion.

County Governments are required to establish mechanisms to facilitate public communication and access to information in the form of media with the widest public outreach in the county. These may include television stations, information communication technology platforms, websites, community radio stations, public meetings, and traditional media. Every county is to designate an office for ensuring access to information.

Section 89 of the County Government Act, 2012 underscores the importance of public participation. It mandates the County Governments to respond to any petition received from the members of the public. As a result, when a person petitions a county legislature to amend, repeal, or enact a county law, the County Assembly is required to consider the petition and act on it in accordance with Section 89 of the Act.

In the case of *Robert N. Gakuru & Others v. Kiambu County Government & 3 Others* [2014] eKLR, the court observed that public participation ought not to be illusory but must be real. Furthermore, public participation should be adhered to not as a formality but in fulfillment of the constitutional dictates. Justice Odunga observed in the case that:

“It is not just enough, in my view, to simply “tweet” messages as it were and leave it to those who care to scavenge for it. The County Assemblies ought to do whatever

is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of the intention to pass legislation and where the legislation in question involves such important aspect as payment of taxes and levies, the duty is even more onerous.”

The court recommended that public participation in the counties should be conducted in as many places as possible. Such places include barazas, temples, churches, mosques, national and vernacular radio stations amongst other public venues. In other words, the places must be where people converge and disseminate information with respect to the intended legislation.

The Court of Appeal upheld the decision of the High Court in *Kiambu County Government & 3 Others v. Robert N. Gakuru & Others* [2017] eKLR stating that:

“...The issue of public participation is of immense significance considering the primacy it has been given in the supreme law of this country and in relevant statutes relating to institutions that touch on the lives of the people. The Constitution in Article 10 which binds all state organs, state officers, public officers and all persons in the discharge of public functions, highlights public participation as one of the ideals and aspirations of our democratic nation...”

The court expressed the view that public participation must include and be seen to include the dissemination of information, invitation to participate in the process and consultation on the legislation.

Under section 115 of the County Governments Act, each county assembly is required to develop laws and regulations that should give effect to effective public participation. Section 30(3) of the same Act specifically mandates the Governor to facilitate public participation in the development of policies, plans and service delivery in the county. At the County Assembly levels, the speaker and chairpersons of the various committees of the house are responsible for the conduct of public participation.

4.3 Public Participation in the law-making process in Kiambu County

The landmark ruling by Judge Odunga in the case of *Robert N. Gakuru & Others v. Governor Kiambu County and 3 others* (2014) eKLR stemmed from the County Assembly’s failure to adequately conduct public participation during its consideration of the Finance Bill, 2014.

In this case, the County Assembly enacted the Kiambu County Finance Act, 2014, which was subsequently challenged in court due to the lack of public participation. The County Assembly argued that it had previously rejected the Kiambu County Finance Bill, 2013, which had undergone public participation. Consequently, they claimed it was unnecessary to conduct public participation for the Kiambu County Finance Bill, 2014, as it was essentially a replica of the previously rejected 2013 Finance Bill.

However, the court rejected this argument, asserting that the two pieces of legislation were distinct and each required to undergo all stages of the legislative process, including public participation.

Following the nullification of the Kiambu County Finance Act, 2014 by the court in 2015, the County Assembly was compelled to reevaluate its approach to public participation in law-making processes to prevent further nullification of other laws and policies (Rose Wanjiru, 2019). This review included several measures such as: introducing public hearings at the Sub-County level for Budget and Finance Bills. Holding public hearings at the County Assembly headquarters for other proposed legislation, policies, and bills (Rose Wanjiru, 2019). Publishing advertisements inviting written memoranda in at least two newspapers with national circulation, as well as airing the same advertisements on at least two vernacular radio stations popular in Kiambu County (Adede, 2017). Finally, making public announcements using a public address vehicle (primarily used as a reminder one day before public hearings, especially for Budget and Finance Bill considerations) (Adede, 2017).

These steps aimed to enhance public participation and ensure the validity of laws enacted by the County Assembly.

In 2016, the County Assembly went a step further and enacted the Kiambu County Citizen Petition and Participation Act, 2016. The main objective of the Act was to facilitate the implementation of the constitutional provisions set out under Article 1 on Sovereignty of the people, Article 10 on national values and principles of governance, Article 35 on access to information, Article 37 on assembly, demonstration, picketing and petition, Article 48 on access to justice, Article 174 on objects of devolution, Article 196 on public participation and county assembly powers, privileges and immunities, Article 201 on principles of public finance, and Article 232 on values and principles of public service of the Constitution as well as to give effect to public participation framework stipulated under the County

Governments Act, 2012, the Public Finance Management Act, 2012, and the Urban Areas and Cities Act, 2011.

The Kiambu County citizen petition and participation Act, 2016, which is divided into five (5) parts and three (3) schedules provides for among others, the rights and responsibilities of the people of Kiambu in regards to public participation. Section 11 specifically provides that residents of Kenya's Kiambu County have the right to constructively participate in the forums and platforms created by the County Government for public participation and determine the manner in which they shall participate.

While the enactment of the Kiambu County Citizen Petition and Participation Act, 2016 is definitely a step in the right direction, there are still major challenges when it comes to the implementation of the Act by the County Assembly of Kiambu. This was highlighted in the case of *George Ngotho & 26 others v. Governor of Kiambu County & 6 others (2019) eKLR* where the court declared the entire Kiambu County Water and Sanitation Services (Amendment) Act, 2019 as unconstitutional and invalid for lack of adequate public participation.

Judge Meoli in his ruling stated:

“The duty of the County Government to notify the public of the intended legislation was onerous. The corresponding and equally important duty flowing from the duty to give notice is the obligation on the part of the county government to provide appropriately adequate opportunities for the public to give their views on the legislation. This is what is envisaged by Articles 174 and 175 of the Constitution.”

He further stated:

“The County Assembly has its role but its representation of the people is no substitute for the direct participation by the electorate. Water is indeed an important and critical resource for every household and it was incumbent on the county government to create opportunity to as many people as possible to give their views on the impugned legislation, for instance, by holding concurrent public hearings in several strategic venues in the county.”

He concluded by stating that;

“Therefore, given the nature of the subject matter and implications of the Amendment Act, it is my view that in this instance, the efforts made by the county

government were not reasonable and that the resultant public participation fell below the standard required in such a weighty question. I find therefore that the Amendment Act was unconstitutional and therefore invalid as the enactment process does not pass muster the prescribed constitutional standard found in Articles 10, 174 and 196 of the Constitution as read with Section 87 and 91 of the County Governments Act.”

The court required the County Assembly of Kiambu to implement the following measures to ensure adequate public participation: First, extend the notice period, particularly when an intervening weekend is involved. As a result, section 15 of the Kiambu County Citizen Petition and Public Participation Act, 2016—which states that a “notice shall not be less than seven days”—should exclude weekends from the seven-day count for the notice to be considered sufficient. Second, the County Assembly must make deliberate efforts to identify relevant stakeholders, disseminate information to them, and solicit their views. Third, the Assembly needs to ensure the broadest dissemination of the notice regarding the legislation within the county. Fourth, the Assembly should hold simultaneous public hearings at various strategic locations in Kiambu County.

Further to this, the County Assembly Standing Orders, make very little mention of the procedure for public participation in the law-making process. Public participation is only mentioned once in the entire standing orders i.e., Standing Order 152(3) which states:

“The Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the Assembly.”

Accordingly, the same standing order requires the call for public participation on a bill only after a bill is committed to the relevant Committee after the First reading. As such, the public participation process has been integrated into a committee’s consideration of the Bill and is considered as being part of the second stage of a Bill which is the Committee consideration stage.

The standing orders mentioned above place an obligation on legislatures to facilitate public participation. Additionally, they require that the Committee to which a Bill is assigned take public input into account when submitting its report to the House. However, according to standing order 152(6), if a committee fails to present its report on the consideration of the Bill within the specified period, the same standing orders allow the legislature to not only proceed with debating the Bill during the

Second Reading, but also to schedule the Bill for consideration in the committee of the whole assembly.

If the County Assembly proceeds to debate the Bill during the second reading and the committee of the whole assembly without taking into account the Committee's report, the public's views and recommendations contained in the report will be disregarded by the legislature. Consequently, the call for public participation would be rendered meaningless and perceived as a mere academic exercise. When the public participation process is closely tied to the Committee's consideration of the Bill, it undermines the objectives of effective public participation in the lawmaking process. Therefore, there is a need to separate and codify the public participation process as a distinct stage within the Bill/legislative process to ensure its effectiveness.

Standing Order 152(5) mandates that a committee must consider a bill and conduct public participation within a maximum of twenty (20) calendar days, after which they must submit a report on their findings. During this period, committee members are required to familiarize themselves with the Bill, facilitate public participation, consider the views and recommendations of the public and other stakeholders, and then draft and present their report on the Bill to the Assembly. Not to mention that the twenty (20) calendar days include weekends, during which, in most cases, the committee or the County Assembly does not sit. In practical terms, these processes highlight that the time limit of twenty (20) calendar days, inclusive of weekends, is restrictive, inhibitory, and insufficient, ultimately hindering the effective facilitation of public participation.

The gaps in the Standing Orders, as discussed above, may be contributing factors to the annulment of various pieces of legislation by the County Assembly of Kiambu due to inadequate public participation. Consequently, it is essential to address these gaps by amending the Standing Orders to promote effective public participation in the law-making process in Kiambu County. Such improvements would not only benefit Kenya's Kiambu County Assembly but also legislatures across the country, ensuring a more robust and inclusive legislative process.

5. Conclusion and Recommendations

Although the Constitution of Kenya includes provisions for public participation at both the national and county levels, its full implementation has not been achieved. The primary challenge stems from the absence of comprehensive policies and laws

that put into practice the Constitution's provisions regarding public participation in the law-making process. As a result, various legislatures at the national and county levels have resorted to different approaches to facilitate public participation in an attempt to meet the Constitutional requirement.

This paper focused on the lack of a proper comprehensive and functional legal framework as the main challenge against the full realization of the right to public participation in the law-making processes in Kenya's Kiambu County and Kenya as a whole. However, there is still need for more research on other alternatives on how to effectively implement public participation in the law-making process not only in Kiambu County but Kenya as a whole.

Following the discussions from the study, the researcher made some recommendations aimed at enhancing public participation in the law-making process.

To enhance public participation in the legislative process, the County Assembly of Kiambu and other legislatures across the country may consider amending their standing orders. One approach is to incorporate public participation as a distinct stage within the Bill process, commencing immediately after the First Reading of a Bill. During this phase, the county legislature, through the relevant Committees, should be required to publish the Bill in the Gazette and publicize it using the structures outlined in section 91 of the County Governments Act. The Committee should be granted a sufficient period of no less than twenty-one (21) days to effectively conduct the public participation process. Following the public participation stage, it is recommended that the standing orders introduce a separate committee stage within the Bill process. In this phase, the Committee should have the opportunity to consider the public participation report, the views of relevant state departments, the views of the sponsor of the Bill, and any other pertinent information before making recommendations and reporting back to the Assembly.

Secondly, it is necessary to amend the Kiambu County Citizen Petition and Public Participation Act, 2016 to incorporate the establishment of an Office of Public Participation and Citizen Petitions within the County Assembly, similar to the one in the County Executive. Among the roles of the Director of Public Participation should be documenting evidence of public participation, coordinating public participation activities in the County Assembly, mapping out relevant stakeholders in the various sectors within the County, and submitting annual reports to the

County Assembly evaluating the extent to which the legislature has facilitated public participation in compliance with Article 196 of the Constitution.

Third, it is essential to allocate specific budgets for facilitating public participation, not only in Kiambu County but across all 47 counties in Kenya and in Parliament. To make public participation a reality, legislatures throughout the country, including the County Assembly of Kiambu, must be intentional in allocating resources specifically aimed at promoting public involvement in the decision-making process.

Lastly, it may be necessary for Parliament to enact national legislation that establishes a comprehensive framework and principles for public participation, encompassing not only the law-making process but all aspects of governance. This proposed Act of Parliament should be guided by several key constitutional provisions:

- a. Sovereignty of the people of Kenya, as stipulated in Article 1 of the Constitution of Kenya, 2010.
- b. The national values and principles of governance outlined in Articles 10(1) and 10(2).
- c. Enabling citizen access to information under Article 35 and the Access to Information Act, 2016.
- d. Promoting public participation as a core principle of public finance management under Article 201(a) and a core value of public service under Article 232(1)(d) of the Constitution of Kenya, 2010.
- e. Encouraging citizen participation in land and environmental governance under Article 69(1)(d).
- f. Enhancing public participation as a core constitutional mandate of Parliament and County Assemblies under Articles 118 and 196, as well as a key principle of devolution under Articles 174(c) and (d).
- g. By establishing a consistent national framework for public participation, the various levels of governance can work together more effectively to involve citizens in decision-making processes.

The proposed Act of Parliament on public participation should guide the authorities in considering factors such as the purpose of the law. This means that legislation should be evaluated based on its likely impact on the people (Marwa, 2021), which

will determine the level of public participation needed and the urgency of the legislation. The Act should also take into account the number of interested parties for different legislation and their capacity to access the necessary information regarding the legislation. This approach will promote the legitimacy of laws enacted by Parliament and foster a culture of implementation.

In today's interconnected world, technological advancements have made information sharing easier through online platforms like websites and social media. As a result, Parliament and County Assemblies should leverage these platforms to enhance public participation in the law-making process. Modern technology can play a crucial role in ensuring the right to public participation is effectively implemented, as it allows for broader reach and collection of views on proposed legislation.

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Thematic Area 2: Tools for promoting Public Participation in legislative oversight

Tools for promoting Public Participation in legislative oversight The Nexus Between Public Petitioning and Effective Public Participation In Legislative Oversight: The Case of Kenya's National Assembly

By Dennis Mogare Ogechi

Abstract

There is no consensus on the origin of the right to petition but it is ancient. Generally, the right emanated from the need to retain a connection between the public and the political power wielders long before the era of universal suffrage (Smith, 1985). Article 118 of the Constitution of Kenya provides that Parliament shall facilitate public participation and involvement in the legislative business and other business of Parliament and its Committees. Further, Article 119 of the Constitution provides for the right to petition Parliament. Parliament, therefore, ought to ensure meaningful participation of the public in the decisions that affect them. Although ordinary people have been empowered with constitutional rights, socio-economic inequalities abound. Consequently, organized civil society gets heard at the expense of ordinary citizens whose voices are muzzled due to difficulties in accessing information to effectively participate in parliamentary processes. The objectives of this study were to: examine the legal framework of public petitions in Kenya, evaluate the procedures of petitioning the National Assembly of Kenya, and explore the limits and prospects of the contribution of petitions to public participation in legislative oversight. The study utilized secondary data gathered through an analysis of existing documentary sources (scholarly articles, journals, academic books, reports, policies, the Constitution of Kenya, and other official parliamentary documents). The petitioning mechanism serves to diversify the engagement of citizens in decision-making processes and to consolidate democracy. Although there is a robust legal regime guiding public petitions in Kenya, the procedures for petitioning Kenya's National Assembly are detailed and may not be friendly to all those who have the intention to petition the House. There is a need for the House to embrace innovation and establish a robust online petitions platform in order to reach the wider public. The Public Petitions Committee may not have the capacity to satisfactorily process all petitions filed in the House. There may be a need to share the work with the relevant departmental Committees in order to ensure expeditious consideration. Generally, petitions can be a powerful tool in

enhancing public participation. However, they have limitations too including the fact that they must be in a written form yet the country has high illiteracy levels.

Key Words: Public Petition, Public Participation, Legislative Oversight, Right to Petition, Constitution of Kenya, Parliament, Parliamentary Processes, National Assembly of Kenya, Citizen Engagement, Democracy.

1. Introduction

The Kenyan Constitution has robust provisions on both the public's participation in parliamentary business and the right to petition parliament. Article 118 of the Kenyan Constitution of Kenya states that "Parliament shall facilitate public participation and involvement in the legislative business and other business of Parliament and its Committees." Petitions are one way through which Parliaments ensure public participation in their business. Indeed, Article 119 of the Constitution provides for the right to petition Parliament (Constitution of Kenya, 2010). The foregoing implies that Parliament ought to ensure meaningful participation of the public in the decisions that affect them. Although ordinary people have been empowered with constitutional rights, socio-economic inequalities abound. Consequently, organized civil society largely gets heard at the expense of ordinary citizens whose voices are muzzled due to difficulties in accessing information to effectively participate in parliamentary processes. It's in this context that this study seeks to examine the nexus between public petitioning and the effectiveness of public participation in legislative oversight with a focus on Kenya's National Assembly. This article explores the historical evolution of the right to petition, the legal framework for public petitioning in Kenya, the procedures of petitioning the National Assembly of Kenya, and finally, assesses the limits and prospects of the contribution of public petitions to public participation in legislative oversight.

2. Conceptual Underpinning of Public Participation

The International Association for Public Participation defines public participation "as the involvement of those affected by a decision in the decision-making process. It encompasses a range of public involvement, from simply informing people about what government is doing to delegating decisions to the public" (The Victorian Auditor-General's Office, 2015). Creighton (2005:7) on the other hand avers that public participation is "the process by which public concerns, needs and values are incorporated into governmental decision making, a two-way communication and interaction process with the overall goal of better decision making supported

by the public”. The two definitions emphasize the aspect of ensuring the public’s voice is not only heard but meaningfully considered in decisions being made by those in government. Two categories of public participation exist-direct citizen participation and participation through associations.

Although public participation is largely styled as desirable, some scholars question its utility. Heywood (2007:74) avers that there is a tendency for public participation to be both tedious and conflictual leading to public discontent. Further, Tshoose (2015:17) concurs and asserts that the engagement between the government and citizens is not always meaningful, implying that some participatory processes are pursued merely for compliance purposes.

3. Conceptual Underpinning of the Right to Petition

‘Petition’ etymologically means to request. Its Latin root ‘petere’ means to ask. In modern usage, a petition means a written request that is addressed to a public authority from which one hopes to obtain redress (Alberto, 2021).

The origin of the right to petition is not consensual but it is ancient. It’s among the first political rights granted to citizens in history (Higginson, 1986). While some scholars assert that it should be attributed to the Magna Carta of 1215 (Richard, 1932, Stancati, 1983), others differ and aver that it originated in earlier times since the right has existed as long as there was political power (Hauriou, 1929). Indeed, the concept goes back into human history with records of ancient Egyptian workers petitioning for better working conditions (Tiburcio, 2015:8). The right to petition originated from the desire to maintain a relationship between those wielding political power and the community. Indeed, the right finds its origin in the ancient right to appeal to the sovereign to urge action in cases of abuse or to obtain support in cases of adversity. With the English Petition of Rights (1628) and the Bill of Rights (1689) the right to petition was expressly provided for in law (McKinley, 2018) as a means through which citizens address requests to the sovereign without fearing reprisals. Taking advantage of the constitutionalism movement from the late 18th century, the right re-emerged with the creation of modern representative structures (Tiburcio, 2015). Therefore, as sovereignty moved to citizens, petitions found a home in parliament where the new holders of sovereignty sit.

In many Parliaments, the right to petition is a conventional form of participation that is regulated by frameworks –constitutions and/or by law and has few formal constraints. Normally, petitions are presented in writing by citizens directly to

Parliament. As Verba (1987) demonstrated, the efforts required from citizens are relatively minimal and the timing and subject matter are wholly dependent on the petitioner. The final decisions on petitions presented to parliaments always lie wholly in the hands of elected representatives.

There have been attempts to reinvigorate, over time, the right to petition, especially by putting in place procedures for handling petitions. Some Parliaments modernized in a bid to ensure the realization of this right by taking advantage of new technologies (Dalton, Scarrow & Cain, 2004) to counter the dissatisfaction of citizens towards the performance of parliaments (Putnam, Pharr, and Dalton, 2000).

The main trajectory of the modernization efforts has been the utilization of Information and Communication Technology, which has increasingly become indispensable in both communication and public opinion formation (Leston-Bandeira, 2009). The aim of Parliaments when venturing online is to espouse transparency, openness, and accessibility in their operations thereby fostering vibrant participation by citizens in parliamentary processes. The modernization efforts have reinvigorated this participatory tool. This has in turn seen the growth in the number of submissions (for instance in the European Parliament), which exerts pressure on Parliaments to treat petitions diligently and expeditiously (Tiburcio, 2015:9).

In a nutshell, the intention of the right to petition is to empower citizens to deliver their concerns directly to Parliament and thereby influence the parliamentary agenda. However, there is no corresponding right to a favourable decision, so the outcome of the process can't be indicative of the effectiveness of a petition system. As Hough quips, in assessing the effectiveness of petition systems in legislatures, it is vital to underscore that "it is not the role of Parliament to deliver policy, but instead to allow a policy to be debated and scrutinized" (2012:487).

4. Legal Context of Public Petitioning in Kenya

The latitude for citizens to effectively utilize democratic institutions and rights differs significantly between societies. The African experience of watered-down constitutionalism was premised on statism, an ideology that originated from misguided notions of colonial developmentalism and was embraced by postcolonial African leadership as a trade-off between democracy and development (Murunga, Okello, & Sjogren, 2014). However, in Africa, such notions saw the flourishing of authoritarianism at the expense of development. As authoritarianism got entrenched,

citizen rights suffered and decisions affecting their lives made without their participation. It's in this context that the Constitution of Kenya, 2010 was enacted. The legal context of public petitioning in Kenya is grounded in the Constitution of Kenya, 2010 which then led to the enactment of the Petitions to Parliament (Procedure) Act (No. 12 of 2012). Ultimately both fed into the National Assembly Standing Orders.

(a) *The Constitution of Kenya, 2010*

The Constitution of Kenya, 2010 sought to deal with many of the challenges that had bedeviled Kenya since its independence in 1963. As Murunga and others (2014:35) observe, one outstanding feature is its Bill of Rights. The right to petition Parliament in a democracy is of immense importance for safeguarding the rights of the citizens. The Constitution of Kenya in Articles 37 and 119 gives a broader framework to any citizen to exercise the right to petition public authorities and in particular Parliament to consider any matter within its authority.

(b) *Petitions to Parliament (Procedure) Act (No. 12 of 2012)*

The Petitions to Parliament (Procedure) Act (No. 12 of 2012) gives effect to Article 37 and Article 119 of the Constitution on the right to petition Parliament. It sets out an elaborate procedure for the exercise of the right with the aim of enhancing public participation in parliament's legislative and other businesses.

Specifically, the Act provides for the form in which a petition is to be prepared, the procedure for presenting a petition to Parliament, the manner in which a petition is to be considered by Parliament and finally, it makes provisions on a Register of petitions to be maintained by each House of Parliament. The effectiveness of these provisions in light of the objective of fostering public participation of citizens in the work of the National Assembly shall be evaluated in the final section of this study.

(c) *National Assembly Standing Orders*

Article 124 (1) of the Constitution of Kenya provides for the making of Parliamentary Standing Orders. Further, Section 5 (2) of the Petitions to Parliament (Procedure) Act, 2012 provides that a petition that is tabled in Parliament under the Act is to be considered in accordance with the Standing Orders of the relevant House. The foregoing anchors the National Assembly Standing Orders firmly in the Constitution and the Petitions to Parliament (Procedure) Act, 2012.

5. Petitioning the National Assembly of Kenya

Chapter Eight of the Constitution of Kenya establishes a bicameral legislature comprising the National Assembly and the Senate (Article 93). For the purposes of this study, the focus shall be given to the role of the National Assembly which is explicated in Article 95 of the Constitution. Petitions are one of the avenues for public participation in the legislative business of the National Assembly. Part XXIII of the National Assembly Standing Orders, makes provisions on how the right can be exercised. We now move on to examine each aspect of the provisions.

5.1 Categories of Petitions¹⁶

The National Assembly can entertain two categories of public petitions. The first one is a petition under Article 37 or Article 119 of the Constitution. Standing Order 219 defines it as a “*written prayer to the House under Article 37 or 119 of the Constitution by a member of the public requesting the House to consider any matter within its authority, as contemplated in Articles 94 and 95 of the Constitution, including enacting, amending or repealing any legislation.*” The second category is a petition that specifically seeks the removal of a member of a Constitutional Commission or holder of an Independent Office.¹⁷ This category of a petition is premised on Article 251 of the Constitution.

5.2 Petitioners

In terms of who can petition the National Assembly, Article 37 of the Constitution provides that “*every person* has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities”. This implies that whether one is a citizen or a non-citizen, whether it’s an individual or a corporate entity, they have the liberty to present a petition to public authorities, including the National Assembly. Equally, Article 119 (1) reiterates the same and gives *every person* a “right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation”.

¹⁶ National Assembly Standing Orders, 6th edition, Standing Orders 219 and 230.

¹⁷ The Constitution (Chapter 15 and Article 79) provides for eleven commissions and two independent offices. They address issues ranging from human rights; land; ethics; budgetary control and audit; elections; salaries in the public sphere; appointments and disciplinary action for the police, public service, judiciary, parliament, and teachers; and allocation of revenue (for counties).

5.3 Procedure for Petitioning the National Assembly¹⁸

A petition to the National Assembly is ordinarily submitted to the Clerk by the petitioner. It is consequently reported to the House by the Speaker. A petition can also be presented by a Member of the National Assembly on behalf of a petitioner, only with the consent of the Speaker. To ensure thorough scrutiny of a petition by the Clerk, a Member of the National Assembly intending to present a Petition on behalf of a Petitioner is obligated to give a two sitting days' notice to the Clerk. The Clerk's role upon receipt of a petition is to ascertain if it complies with the dictates of the Standing Orders and the applicable law. This is to be done within seven days of receiving the petition. In cases where, in the Clerk's view, a petition doesn't conform with the provisions of the Standing Orders or the law, he/she is obligated to give directions on amendments to be made to ensure it complies. Upon ensuring a petition is compliant, the Clerk then forwards it to the Speaker who then authorizes its tabling in the House. Upon review, if the Clerks deems that the matter in question lies within the Senate's mandate, he/she refers such a petition to the Senate.

In petitioning the National Assembly, a specific format is provided by the Petitions to Parliament (Procedure) Act (No. 12 of 2012) and reiterated in the National Assembly Standing Orders (Third Schedule). Among others, the format requires that a petition should be in written form using either English or Kiswahili (national languages), be free of alterations, have its subject matter indicated on every sheet, indicate whether any efforts have been made to have the matter addressed by a relevant body, whether there has been any response from that body, whether the response has been unsatisfactory, whether the issues in the petition are pending before any court of law or other constitutional body, have a clear prayer, contain the names, addresses, identification numbers, signature or a thumb impression of the petitioner(s).

Once presented to the House, the Speaker refers a petition to the Public Petitions Committee¹⁹ for consideration. The Committee has up to ninety days to respond to the Petitioner through a report that is first tabled in the House and then forwarded to the Petitioner. However, for petitions on the removal of a member of a constitutional commission or holder of an independent office, they are referred to the relevant departmental committee²⁰ which will have fourteen days to report to the House. At

¹⁸ National Assembly Standing Orders, 6th edition, Standing Order 220

¹⁹ National Assembly Standing Orders, 6th edition, Standing Order 208A

²⁰ National Assembly Standing Orders, 6th edition, Standing Order 216 and the Second Schedule

the end of a term of Parliament, public petitions (except petitions for removal of a member of a constitutional commission or holder of an independent office) to the National Assembly lapse if not concluded by the relevant committee of the House. However, a Petition that has lapsed can be re-introduced in a new Parliament.

6. Limits and Prospects of the Contribution of Public Petitions to Effective Public Participation in Legislative Oversight

Generally, the objectives pursued by petition systems are the ability to foster democratic ideals through ensuring the participation of citizens in political processes, to bridge the gap between elected representatives and those represented, to foster transparency, and ensure information flows (Tiburcio, 2015:16). It is against this backdrop that this paper will analyze the effectiveness of public petitions in engendering public participation in legislative oversight in the context of Kenya's National Assembly. The effectiveness will be assessed along the following parameters of a petition system: The type of petitioners that a petition system can entertain, the form in which petitions can be presented, the nature of interests pursued by petitioners, the level of information publicized by a parliament during the processing of a petition, the innovations associated with petition systems (e-petitions), the response from the executive, and finally the response from parliament.

6.1 Type of Petitioners

The first determinant of the effectiveness of public petitions in engendering public participation is the type of petitioners that can be entertained by a petition system. The scope of the right to petition, with regard to who can exercise it differs remarkably across countries. While some grant the right to any individual, be it a citizen or just a resident, others reserve the right to citizens only. Some countries set a minimum age requirement; some make it a preserve of those with a right to vote; some grant it to corporate bodies (Tiburcio, 2015:22). Bearing in mind the goals of petitioning, the wider this group is, the more effective the exercise of this right can be. Open systems in relation to the type of petitioners contribute to greater inclusion of the system. This is one of the strengths of the petition system in the National Assembly of Kenya. It has no requirements concerning petitioners. Instead, Article 119 (1) of the Constitution which provides expressly for the right to petition Parliament states that: *“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal*

any legislation.” The only criteria seem to be that the subject of a petition should be within the purview of the National Assembly.

6.2 Direct access by the public to the right to petition

The second determinant of the effectiveness of public petitions in engendering public participation is whether there is direct access by the public to the right to petition. Many petition systems ensure that citizens can petition without any mediation. However, there are rare cases – like the United Kingdom, Greece, Austria,²¹ or Malta - where a sponsor (a Member of Parliament) is required. Indeed, systems that require that the petition is sponsored by an MP introduce a discretionary element that limits its effectiveness. The National Assembly of Kenya scores highly on this by having provisions for both direct access and access through a Member of the House.²² Sponsored access can help in cases where petitioners would be either illiterate or unable to utilize the petitioning system of the House for whatever reasons. This hybridity fosters public participation either directly or through mediated access.

6.3 Response from Petitioners

The third determinant of the effectiveness of public petitions in engendering public participation is the response from petitioners. The number of petitions submitted to a Parliament is the first measure of whether and how petitioners engage with the tool. A higher number of petitions is indicative of stronger public participation. In Kenya, there is scant knowledge among citizens on the utilization of petitions to influence the workings of Parliament. Further, the petitioning process in the National Assembly is arduous, given that petitions must be submitted to the Clerk of the House who reviews them for correctness of form and content, and then decides whether they should be sent to the Speaker. Consequently, some petitions may never see the light of day.

However, practice has demonstrated that the number of petitions alone is not a good measure of effectiveness in a petition system. Other aspects of petitioners’ behaviour should be considered: the nature of interests pursued by the majority of petitioners (general or private interest); the proportion of individual versus corporate

²¹ In Austria, petitions (a "citizens' initiative", as called by the law) must be submitted via members of Parliament, unless the petition is supported by at least 500 Austrian citizens (§ 100) of the Federal law on the Rules of Procedure of the National Council.

²² National Assembly Standing Orders, 6th edition, Standing Order 220 (1) and (2).

petitioners; unions, associations, businesses, lobbies, public entities; and the socio-economic profile of the petitioners – particularly their age, education, and sex.

The nature of the interests pursued by petitions also has implications on the effectiveness of a petitions system. Most Parliamentary petition systems admit petitions raising both private and general interests. However, there are systems that accept only petitions related to typical parliamentary competencies - general interest petitions (Tiburcio, 2015:23). Petitions pursuing general interests enable a more effective response by Parliaments since they allow them to exercise their main functions legislation, and control. General interest petitions also engage citizens and increase their influence on issues of interest to the community. Petitions pursuing private matters can be seen as a historical remnant of the original right of petition, which called for the grace of the sovereign on a private case. This is clearly no longer the mainstay of petition systems, as individual grievances are normally dealt with by ombudsmen or the judicial system. Therefore, systems that admit only general interest petitions, like in Scotland, the Czech Republic, Germany, Luxemburg, and the Irish system ensure greater effectiveness.

In systems where both kinds of petitions are admitted, the way petitioners choose to use this right (favouring the petitions of general or private nature) will determine the effectiveness of the petition system (Tiburcio, 2015:23). The petition system in the National Assembly of Kenya has no provisions restricting the nature of the interests that can be pursued by petitioners, implying both general and private interest petitions are entertained. In a bid to enhance the effectiveness of public participation in the Assembly business, restricting the nature of the interests pursued by petitioners to issues of general interest will be commendable. Private matters can then be pursued through other avenues like the Commission on Administrative Justice (Ombudsman) and the judicial system. Further, in Kenya and globally, the participation of corporate bodies is widely accepted. However, citizen participation shouldn't be negligible since this will indicate the hijack of the tool by corporates that may have the wherewithal and knowledge of participation mechanisms. Such a scenario happened in Portugal in the 1980s when trade unions overrun citizens in using the tool during the nascent years of Portuguese democracy (Tiburcio, 2015:35).

6.4 Acceptable petition form

The fourth determinant of the effectiveness of public petitions in fostering public participation is the requirements in terms of the form of a petition. The stringent form requirements for petitions which entail that they must be written, signed, and identity details of the petitioner(s) included are way too formal and require citizens with both literacy and resources. In a country like Kenya with significant illiteracy and poverty levels, this is rather restrictive thus curtailing wider public participation.

6.5 Level of information provided to Petitioners by Parliament

The fifth determinant of the effectiveness of public petitions in fostering public participation is the level of information provided by Parliament when a petition is under consideration. Petition systems vary with regard to the information provided to petitioners relating to decisions on admissibility, questions to the executive and their answers, or final decision. However, most petition systems guarantee a minimum level of information to petitioners (Riehm, Böhle, & Lindner, 2014). Information provided to petitioners (within a reasonable time) during the petition process guarantees greater participation. In Kenya's National Assembly, decisions on admissibility are promptly given to petitioners by the clerk's office, and even suggestions are made on amendments to be made to ensure compliance with the prescribed form of presentation. Equally, when the Public Petitions Committee invites the relevant agency in the executive to provide answers to matters canvassed in a petition, the petitioners are invited to such meetings. This gives such petitioners an opportunity to pose supplementary questions and seek clarity from the executive in the course of consideration of a petition.

6.6 Response from the Executive

The sixth determinant of the effectiveness of public petitions in fostering public participation is the response from the executive. It's imperative for parliament and the executive to coordinate in order to address the concerns canvassed in petitions. The effectiveness of this coordination can be assessed on three fronts: if petitions pose questions to the executive through parliament regularly; if the questions raised receive responses from the executive; and if the executive responds within a reasonable time. Questions to the executive are a common feature in Kenya's National Assembly where the executive is asked to state its position on petitions. Equally Members of the National Assembly and petitioners often have the opportunity to directly question, during committee meetings, members of the

executive on the petitions. Ordinarily, the executive is given timelines within which to respond since there is a ninety-day deadline (fourteen days for petitions for removal of a member of a constitutional commission or an independent office) within which petitions have to be dispensed with by a House Committee. Regular questions to the executive, prompt responses, and involvement of petitioners when members of the executive appear before committees greatly foster the effectiveness of petitions in the enhancement of public participation. Public participation peaks if such meetings are aired or streamed live on social media platforms. However, replies from the executive often come late which hinders the provision of information to the petitioners by the National Assembly and prevents the examination of petitions within a reasonable time. This has negative consequences on the system's effectiveness.

6.7 Response from Parliament

The seventh determinant of the effectiveness of public petitions in fostering public participation is the right to a response. This means the right of every petitioner to get a formal response once his/her petition has been considered by parliament. This is an achievement of modern petition systems, including the petition system in Kenya's National Assembly. Section 5 (3) of the Petitions to Parliament (Procedure) Act (No. 12 of 2012) provides that, "The Clerk of the relevant House of Parliament shall, within fifteen days of the decision of the relevant House, in writing, notify the petitioner of the decision of the House." The same is reiterated in National Assembly Standing Order 228. Whether a petitioner's prayers are granted or not, a formal response builds trust and encourages future use of the petitioning system by the petitioner(s). Further, a response fosters feedback, information sharing, and accountability aspects of petitioning thus nurturing public participation.

One of the indicators of effectiveness is a response within a reasonable time. Some petition systems provide binding deadlines for Parliaments to deliver a final response to a petition. Indeed, this is the case in Kenya's National Assembly as Standing Order 227 (2)²³ provides that "whenever a petition is committed to the Public Petitions Committee, the Committee shall, within ninety calendar days of committal, respond to the petitioner by way of a report addressed to the petitioner(s) and laid on the Table of the House." Deadlines for the conclusion of petitions are also present for example in Lithuania (90 days), Portugal (60 days), or the Czech Republic (30 days). However, some systems, like the Scottish one, do not provide

²³ The National Assembly Standing Orders (6th Edition).

any specific deadline for the consideration of petitions (Tiburcio, 2015:37). It's undeniable that the speed within which a parliament processes petitions has a bearing on the effectiveness of the system and public participation.

The substantial volume of petitions received by Kenya's National Assembly and the fact that all petitions are handled by one Committee – the Public Petitions Committee - has the potential to lead to delays in the processing of petitions. Consequently, the backlog in the processing of petitions has major implications for the manner in which the National Assembly encourages the use of petitions as a means to promote public involvement in its work. Further, it is noteworthy that hitherto, petitions were considered by relevant departmental committees. Such Committees tend to attract members who have a passion for the subject area and therefore consideration of petitions through such Committees had an edge as the process benefitted from insights and experience of some Members who are experts in the particular field.

Generally, regarding the behavior of Parliament, the most critical aspect is how it treats petitioners and their petitions. Petitioners' perceptions seem critical in their assessment of parliaments. Carman (2006), who studied the Scottish petition system asserts that petitioners who perceived the process as fair and transparent seemed more satisfied with the outcome of their petitioning. The response from parliament and perceptions of petitioners seems at the core of the right to petition goal - narrowing the gap between citizens and their representatives.

Acceptability of electronic petitions (e-petitions)

The eighth determinant of the effectiveness of public petitions in fostering public participation is the acceptability of electronic petitions (e-petitions). Some Parliaments have adopted limited e-petition functionalities. However, there are petitions systems that still do not accept petitions submitted electronically, such as in France, Malta, Greece, or Austria (Riehm, Böhle, and Lindner, 2014). The ability to submit petitions by electronic means expands the possibilities of use of the right to petition by potentially reaching out to citizens who may otherwise be less inclined to political participation, like youth, thus spurring greater public participation. Submission by electronic means can be done either through an e-form, which usually requires registration and access to a Parliamentary or institutional website, and submission by e-mail (Tiburcio, 2015:26). Kenya's National Assembly accepts petitions submitted through an e-form that is available also on its web portal.²⁴

²⁴ The e-form is available at: http://www.parliament.go.ke/contact/national_assembly_petition

This feature has its own downside, especially the “digital divide” risk (Norris, 2003). In countries like Kenya where there is unequal access to new technologies, participation can lead to an overrepresentation of some segments of the population. It is therefore important to be aware of this and ensure that traditional paper petitions are maintained. Indeed, in the National Assembly of Kenya, paper petitions are still the mainstay thereby assuring that the digital divide challenge is addressed.

Another dimension of e-petition systems is the publication of petitions on the Internet, whether submitted conventionally or electronically. Most Parliaments still do not provide the text of petitions on the Internet. Some Parliaments - for example, Ireland and the European Parliament- provide only a brief summary on the Internet (Tiburcio, 2015:26). However, some like Kenya’s National Assembly publish the full text of petitions on the Internet.

In addition to the publication of the petition text, some petition systems provide for the publication on the Internet of information on the whole petition process allowing citizens to monitor the decision-making process. This is the case for example in Scotland, Portugal, Ireland, or Luxembourg (Tiburcio, 2015:26). In Kenya, such is yet to be operationalized but the final report²⁵/decision is published on the institution’s website.

In a nutshell, with regard to e-petitions, their major contribution towards fostering public participation comes from two aspects: the publication of petitions and the publication of the main elements of the petitions process. The provision of information to the petitioner and to the general public through the Internet allows the petition process to open up, allowing citizens to follow any petition they want, permitting petitioners to exchange views, enabling them to gather support and draw public attention, including of the media, to the issues raised, thereby allowing public scrutiny. Further, many e-petitions features benefit all petitions regardless of the way they were submitted (paper or electronically) which promotes inclusion.

7. Conclusion and Recommendations

The right to petition is intended to give a voice to citizens but that does not give the right to the outcome that the petitioner hoped for. Modern petition

²⁵ Kenya’s National Assembly petitions system publishes the report of the Public Petitions Committee which has the details including the text of the petition, presentations by petitioners and other stakeholders, the responses of the executive, the minutes of the Public Petitions Committee, the Committee decision and the members who adopted the Committee decision.

systems seem to focus more on the process (which is within the purview of parliaments) than on the final outcome (over which Parliaments have no control). The effectiveness of the system should not be based on whether it guarantees a favourable decision but on the effective achievement of the goals of the petition system. It should be acknowledged that Kenya's National Assembly and indeed Parliaments in democracies across the world have made progress in developing various mechanisms to promote public involvement in their processes. In Kenya, the judiciary has played a significant role in propelling parliament to commit to promoting public participation in its law-making and similar activities. The Constitution provides the basis for public participation and public petitioning and it is vital for the 13th Parliament to lead by example in promoting meaningful public participation in its activities so that the 47 County Assemblies (regional legislatures) and similar organs of state may follow suit.

Recommendations

1. The National Assembly needs to review some requirements for the submission of petitions. This is especially with regard to petitions on private matters. This would encourage the use of this tool hence fostering public participation in parliamentary affairs. Equally, the requirements for the submission and processing of petitions ought to be advertised prominently on the Parliamentary website and other appropriate channels for wider publicity.
2. The National Assembly's e-petition system is limited. The following features would strongly improve the e-petition platform:
 - (a) There should be publicized clearer information on the legal limits of the right and what the system can offer. This would avoid dysfunctional expectations. As discussed, petitions pursuing general interest enable a more effective response and are in line with the parliamentary mandate. Therefore, the information provided to the public should emphasize the submission of general interest petitions.
 - (b) There should be detailed information online on the processing of petitions. This includes procedural information on the handling of petitions, the stage at which each petition is, relevant dates (i.e. of submission, when admissibility was decided on, when the hearing took place, when questions were sent to the executive, when the executive responded, when a fact-finding visit was done (if any), and when a report was tabled in the House).

3. There should be a mechanism to profile all petitioners (in terms of age, sex, education, occupation, etc.) in order to address potential inequalities in the use of the right to petition.
4. The education system should be used to facilitate the dissemination of information on public petitioning through civic education courses. This is particularly significant since public petitioning is one of the rare channels that allow minors to participate in political processes.
5. The Public Petitions Committee should consider possible synergies with academia to benefit from expert insights on the matters under consideration. It's noteworthy that some petitions raise specialized matters that require subject experts for in-depth consideration.
6. The Public Petition Committee may not have the capacity to process all the petitions submitted. In this regard, a shared system of petitions would enable the involvement of other parliamentary committees in the petition process, thereby assisting to provide much-needed feedback to petitioners within a short span of time and also to benefit from MPs who are subject experts and are likely to be in departmental committees.
7. The National Assembly of Kenya ought to consider prioritizing public interest petitions as opposed to petitions pursuing private interests. Such a move would enhance the effectiveness of the petition system as it won't be clogged with the pursuit of private interest. This would in turn enhance public participation in parliamentary business. Private matters can then be pursued through other avenues like the Commission on Administrative Justice (Ombudsman) and the judicial system.

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Public Participation in Legislative oversight and representation in Kenya: Lessons from South Africa and Brazil

By Dr. Ruth Aura

Abstract

This study examines the role of public participation in legislative oversight and representation in Kenya, with a focus on the mechanisms used to promote public participation and the challenges faced. The study uses participatory democracy and social capital theories as theoretical frameworks that combine the principles of deliberative democracy and participatory governance. Through a comparative analysis with South Africa and Brazil, the study identifies best practices that Kenya can adopt to improve public participation. Using a desktop review of laws, policies and programmes, the findings reveal that although Kenya has made progress in promoting public participation, there are still significant challenges that need to be addressed, such as limited awareness, resource constraints, political interference, limited access to information, and tokenistic participation. The study recommends that Kenya should strengthen the legal framework for public participation, increase public awareness, enhance capacity building, ensure transparency, and develop mechanisms to ensure effective implementation of public participation. Overall, this study contributes to the understanding of public participation in legislative oversight and representation in Kenya and offers insights into how the system can be improved to enhance democratic governance.

Key Words: public participation, legislative oversight, representation, governance, capacity building, civic education

Public participation in legislative oversight and representation refers to the involvement of citizens in the decision-making process of the legislative branch of government (Oyugi, 2019). It is a process that enables citizens to contribute to the development and implementation of laws, policies, and programs that affect their lives. Public participation in legislative oversight and representation involves providing citizens with opportunities to voice their concerns, opinions, and feedback on government policies and activities. It is aimed at ensuring that the government is accountable to the people and that citizens have a say in the laws and policies that affect them. Public participation in legislative oversight and representation is a key element of democracy and good governance (Oyugi, 2019). In Kenya, the Constitution of 2010 guarantees the right of citizens to participate in the legislative

process through public consultation and engagement (Article 10, Constitution of Kenya (COK) 2010). Public participation in legislative oversight and representation is crucial to ensure that government policies and activities align with the needs and interests of the people (Mutua, 2016).

Legislative oversight involves the monitoring and evaluation of government policies, programs, and activities to ensure that they are in line with the Constitution and serve the best interests of citizens (Mutua, 2016).

Public participation in legislative oversight and representation in Kenya takes different forms, including public hearings, public forums, and public consultations (Kimani and Gathii 2017). These forums provide citizens with the opportunity to engage with their elected representatives and voice their concerns on issues affecting them (Kimani and Gathii 2017). The National Assembly and the Senate have put in place mechanisms to facilitate public participation in the legislative process. These mechanisms include the establishment of public committees and the use of electronic media platforms to enable citizens to participate in the legislative process remotely (Kimani and Gathii 2017). In addition, the Constitution of Kenya 2010 requires the national and county governments to promote public participation in their decision-making processes. This requirement is aimed at ensuring that citizens are involved in the formulation and implementation of policies and programs that affect them (Articles 118, 196 and 201 of the CoK 2010).

However, despite the constitutional provisions on public participation, there have been concerns about the quality and effectiveness of public participation in Kenya (Ndegwa and Levy 2019). Some citizens have complained that public participation is often tokenistic and that their views are not taken into account in decision-making (Ndegwa and Levy 2019). In some cases, there have been allegations of corruption and lack of transparency in the public participation process. To address these concerns, there is a need for continuous engagement between citizens and their elected representatives to build trust and ensure that public participation is meaningful and effective. There is also a need for capacity building for citizens and elected representatives to enhance their understanding of the legislative process and the importance of public participation (Ndegwa and Levy 2019).

This paper provides an overview of public participation in legislative oversight and representation in Kenya, including the constitutional provisions on public participation, the mechanisms for public participation, the challenges facing public participation, and the strategies for addressing these challenges. It makes

reference to South Africa and Brazil, two countries with evolved public participation mechanisms, with a view to identify best practices that Kenya can replicate in its processes. The paper concludes with a call to action for continued efforts to promote meaningful and effective public participation in Kenya.

1. Theoretical Framework

The theoretical framework for this study is grounded on the concept of **participatory democracy**, which is a democratic form of governance that emphasizes the importance of active citizen participation in decision-making processes (Fishkin, 2018). This framework draws on the works of scholars such as Carole Pateman, Jürgen Habermas, and Sherry Arnstein, who have explored the role of public participation in promoting democratic legitimacy and accountability (Fishkin, 2018). The framework recognizes that public participation in legislative oversight and representation is essential to promoting transparency, accountability, and responsiveness in the legislative process (Elstub, 2013). It also acknowledges that effective public participation requires the creation of an enabling environment that facilitates citizen engagement and ensures that diverse perspectives are represented in decision-making processes (Elstub, 2013).

To assess the effectiveness of public participation in legislative oversight and representation in Kenya, this framework proposes several key dimensions of analysis. One is access and inclusivity: This dimension focuses on the extent to which the legislative process provides meaningful opportunities for citizens to participate and ensures that diverse perspectives are represented (Elstub, 2013). Another dimension is Transparency and information dissemination: This dimension examines the extent to which legislative information is made accessible and understandable to the public, and the degree to which the legislative process is transparent. There is also Responsiveness and accountability which assesses the extent to which the legislative process is responsive to citizen input and feedback, and the degree to which legislators are accountable to the public. (Warren, 2008). Finally is sustainability and impact: This dimension examines the long-term sustainability and impact of public participation initiatives, including the extent to which they result in tangible improvements in legislative outcomes and policy implementation (Warren, 2008).

By analyzing these dimensions, this theoretical framework aims to provide a comprehensive assessment of the effectiveness of public participation in legislative oversight and representation in Kenya, and to identify areas for improvement in

order to promote more robust and effective citizen engagement in the legislative process.

The Social Capital Framework, developed by Robert Putnam and others, also provides a useful lens for understanding the role of public participation in legislative oversight and representation (Putnam 1993). According to this framework, social capital refers to the networks, norms, and trust that facilitate cooperation and coordination among individuals and groups. In the context of public participation, social capital can be seen as the resources that citizens and other stakeholders can draw upon to participate effectively in the legislative process (Putnam 1993).

This framework proposes several key dimensions for analyzing the role of social capital in public participation. One is Networks. This dimension focuses on the extent and quality of social networks among citizens and other stakeholders, including civil society organizations, community groups, and other forms of collective action (Woolcock, 2000). Another dimension is Norms. This dimension examines the shared values and norms that guide behavior within these networks, including expectations of trust, reciprocity, and mutual obligation. Another dimension is Trust. This dimension refers to the level of trust and confidence that citizens and other stakeholders have in each other and in the institutions of governance, including the legislature. (Grootaert, 2001). Finally, is Civic engagement. This dimension examines the degree to which citizens are actively engaged in civic life, including participation in political processes and community activities (Grootaert, 2001).

By analyzing these dimensions, this theoretical framework aims to provide a deeper understanding of the role of social capital in promoting effective public participation in legislative oversight and representation. This framework also recognizes that social capital is influenced by broader social, economic, and political factors, and that efforts to promote public participation must address these underlying structural issues in order to be effective. It is on these grounds that the study centers its arguments in analyzing public participation legislative oversight and representation.

2. Legislative Framework: Constitutional Provisions on Public Participation in Kenya

The Constitution of Kenya, 2010 is a reflection of an elaborate framework on public participation. The framework facilitates citizen participation in legislative processes through its provisions. Article 1 of the Constitution proclaims the sovereignty of

the people and that they can exercise their power directly or through their elected representatives. Article 10 sets out the national values and principles of governance, which include public participation, accountability and transparency. Furthermore, Article 118 provides for public access and participation, and in particular that Parliament shall conduct its business in an open manner, and its sittings and those of its committees shall be open to the public. Parliament is also obligated to facilitate public participation and involvement in the legislative and other business of parliament and its committees. Parliament is not expected to exclude the public from any sittings unless in exceptional circumstances.

Article 196 touches on Public participation and county assembly. A county assembly is expected to conduct its business in an open manner, and hold its sittings and those of its committees, in public; and facilitate public participation and involvement in the legislative and other business of the assembly and its committees. A county assembly may not exclude the public, or any media, from any sitting unless in exceptional circumstances the speaker has determined that there are justifiable reasons for doing so. In addition, Article 201 requires the government to promote transparency and accountability in the management of public finances and requires public participation in financial matters. Article 232 requires public officers to be responsive to the people they serve and requires involvement of the people in the process of policy making. Finally, Article 259 requires the courts and other tribunals to interpret the Constitution in a manner that promotes its purposes, values, and principles, including public participation.

These constitutional provisions therefore affirm the importance of public participation in legislative oversight and representation through its provisions to ensure citizens' participation in the decision-making process.

2.1 Mechanisms/Tools for public participation in legislative oversight and representation in Kenya

Kenya uses various mechanisms and tools to ensure public participation in legislative oversight and representation. These tools ensure entrenchment of the people's views and interests in the legislative processes, thereby enabling a system of efficient participatory democracy.

2.2 Public hearings

Public hearings are meetings where members of the public are invited to give feedback and opinions on a particular legislative issue (Gitau, & Githinji, 2016).

The Kenyan Parliament regularly holds public hearings on bills and other matters of public interest to gather public input. These hearings are an important mechanism for ensuring public participation in the legislative process. During a public hearing, members of the public are invited to present their views, concerns, and suggestions on a specific bill or issue under consideration. The hearing may take place in Parliament, in a public venue, or virtually through video conferencing or other digital platforms. The public hearing process typically involves a notice being issued by the Parliament or the relevant committee inviting the public to submit written submissions or appear in person to present their views. The notice will specify the date, time, and location of the hearing, as well as the specific issues under consideration (Gitau, & Githinji, 2016).

At the hearing, members of the public are given an opportunity to make oral submissions to the committee or Parliament, and to respond to questions from committee members or MPs (Wakhungu, 2017). The proceedings are usually recorded and transcribed, and the input received is taken into consideration when the committee or Parliament makes its decision on the matter. Public hearings provide an important avenue for members of the public to make their voices heard on issues that affect them. They enable individuals and groups to provide direct input into the legislative process and to engage in dialogue with their elected representatives. Public hearings also provide a platform for transparency and accountability in the legislative process, as they allow the public to see how their representatives are making decisions that affect them (Wakhungu, 2017).

A recent example of Parliament conducting public hearings is when The Justice and Legal Affairs Committee (JLAC) held public hearings with different stakeholders to consider the Statute Law (Miscellaneous) (Amendment) Bill, 2022 (Parliament, 2023). The Bill seeks to amend various provisions of the Statute Law including those in 18 Statutes under the purview of the Committee (Parliament, 2023). The Bill seeks to among others; amend the Judicature Act (Cap 8) by increasing the maximum number of Judges that may be appointed to the Court of Appeal from the current 30 judges to 70 Judges. It also seeks to amend section 40 of the Sexual Offences Act (2006) to align the provisions with Article 157 of the Constitution which grants powers of criminal prosecutions to the Director of Public Prosecutions (DPP). Further, it proposes that Section 38 of the Judicial Service Commission Act (2011) be amended to provide that the JSC submits its Annual Reports to the National Assembly within six months after the end of the year to which the Report

relate. The committee will consider these submissions and prepare a Report which will be tabled in the House for debate (Parliament, 2023).

In addition, in March 2023, The Select Committee on Election-Related Laws concluded its public hearing sessions after receiving submissions from the Independent Electoral and Boundaries Commission (IEBC) on the proposed amendments. Other institutions that made submissions included the Kenya National Commission on Human Rights (KNCHR), Ethics and Anti-Corruption Commission (EACC) among others. The committee is expected to submit its report to the respective Houses (Parliament, 2023).

The effectiveness of public hearings in Kenya can vary depending on several factors, such as the level of participation, the quality of the submissions made, and the responsiveness of the legislative body to the input received (Kinyanjui, 2019). In some cases, public hearings have been successful in ensuring that the public's views and concerns are taken into account in the legislative process. For example, in 2016, public hearings were held on the Public Benefits Organizations (PBO) Act, which regulates the operations of non-profit organizations in Kenya. The input received during the hearings led to amendments to the bill, including the removal of provisions that had been criticized by civil society groups (Kinyanjui, 2019).

However, in other cases, public hearings have been criticized for being ineffective or for not adequately reflecting the views of the public. For example, some have argued that the public hearings held on the controversial Security Laws (Amendment) Bill in 2014 were rushed and did not provide adequate time for public participation. Indeed, the courts had to intervene to declare some of its provisions unconstitutional (*Coalition for Reform and Democracy (CORD) & another v Republic of Kenya & Others*, 2015).

Despite these criticisms, public hearings remain an important tool for ensuring public participation in the legislative process. They provide an opportunity for the public to engage directly with their elected representatives and to have a say in decisions that affect them. However, for public hearings to be effective, they must be well-publicized, transparent, and conducted in a manner that ensures that all voices are heard and that the input received is taken into account.

2.3 Public petitions

Public petitions are formal requests made by citizens to the government to address a particular issue (Kareithi, 2018). Under Article 37 of the Constitution, every person has the right to petition Parliament to consider any matter within its authority, including enacting, amending, or repealing any legislation. Petitions can be submitted by individuals, groups, or organizations, and must be addressed to either the National Assembly or the Senate. Once a petition is received, the Clerk of the relevant House will circulate it to all members and refer it to the relevant committee for consideration. The committee will then investigate the matter and make recommendations to the House on any action to be taken (Kareithi, 2018). Petitions can be uploaded easily at the Parliament's official website (Parliament, 2023).

Public petitions have been used in Kenya to raise a variety of issues, including concerns over government policies, environmental degradation, and human rights abuses (Kilonzo, 2018). In some cases, petitions have been successful in bringing attention to important issues and in facilitating action by the legislative bodies. One example of a successful public petition in Kenya is the case of the Murang'a County Residents Association, which submitted a petition to the National Assembly in 2019 calling for the withdrawal of the Murang'a County Water and Sanitation Bill. The bill, which was aimed at privatizing water services in the county, had been widely criticized by residents and civil society groups. Following the submission of the petition, the National Assembly's Committee on Environment and Natural Resources recommended that the bill be withdrawn and that a new bill be developed through a more consultative process with the public (Kilonzo, 2018).

Other petitions to the 13th Parliament include Petition By The Residents of Buxton Estate on The Eviction and Demolition of The Buxton Estate to Roads, Transportation and Housing Committee on 1 March 2023, Petition To The Senate Concerning The British Colonial Historical Land Injustices Against The Kipsigis People to JLAC on 9 March 2023; Petition To The Senate Concerning Titles For Properties Bought In Jamii Bora Estate, Kisaju, Kajiado County to The Roads, Transportation and Housing Committee on 14 March 2023; The plight of the landless in Muthanthara, Embu County on 15 February 2024 to the Land, Environment and Natural Resources Committee; Implementation of a court order by the Environment and Land Court for compensation and land resettlement to the owners of Ramisi Phase 1 Block 5056 in Kwale County to JLAC on 27 March

2024; The State of insecurity in Turkana County to National Security, Defence and Foreign Relation on 17 October 2023 (Parliament, 2023).

While public petitions can be an effective tool for promoting public participation in the legislative process, their effectiveness can depend on factors such as the level of participation, the quality of the submissions made, and the responsiveness of the legislative body to the input received.

2.4 Online platforms

The Kenyan government has developed several online platforms that enable citizens to participate in the legislative process remotely. Online platforms are increasingly being used as a mechanism to promote public participation in the legislative process in Kenya (Kivuva & Musyoka, 2015). The use of online platforms allows for greater accessibility, especially for individuals who may not be able to attend in-person meetings due to various reasons such as distance, work commitments, or disability (Kivuva & Musyoka, 2015).

One example of the use of online platforms for public participation in Kenya is the e-Citizen portal, which is an online platform that allows citizens to access government services and information, including submitting petitions to the National Assembly and the Senate. This platform has made it easier for individuals to participate in the legislative process, as they can submit their petitions online and track the progress of their submissions (Kivuva & Musyoka, 2015). Another example is the use of social media platforms such as Twitter, YouTube, Facebook, and WhatsApp to promote public participation (Musyoki, 2018). These platforms are often used by members of the public to engage with their elected representatives and to provide feedback on proposed legislation. For example, during the public participation process for the Data Protection Bill, members of the public used social media platforms to provide feedback on the proposed legislation, which was then considered by the relevant committee (Musyoki, 2018). Additionally, in March 2024, The National Assembly through its X (twitter) account published a call for public participation by citizens on a number of bills such as IEBC (Amendment) Bill, No. 10 of 2024 and Public Audit Bill No. 4 of 2024 (National Assembly X account, 2024).

Additionally, you can follow live National Assembly/senate proceedings online through Parliament's YouTube channel and get informed about what the deliberations are. You also have the opportunity to post online comments about

the deliberations (Parliament You tube channel, 2023). This gives the general public the opportunity to participate in the legislative process. By taking part and viewing the deliberations, citizens get informed and can make better choices about their leaders.

While online platforms have the potential to increase public participation in the legislative process, their effectiveness can be limited by factors such as the digital divide, where some individuals may not have access to the internet or may not be familiar with online platforms, and the need for adequate resources to ensure that the platforms are properly maintained and monitored. Cyber security issues such as spreading of misinformation are concerns too (Musyoki, 2018).

Consequently, the use of online platforms has the potential to increase public participation in the legislative process in Kenya, but their effectiveness will depend on ensuring that they are accessible, user-friendly, and well-promoted to the public.

2.5 Media

The media, including television, radio, and newspapers, play a critical role in informing the public about legislative issues and facilitating public participation (Osano & Kariuki, 2016). The media provides a platform for citizens to express their views and for elected officials to communicate with their constituents. People can also give their views to editors of newspapers through letters which are published in the newspapers. The media, both traditional and new media, have played a critical role in promoting public participation in the legislative process in Kenya (Osano & Kariuki, 2016). It serves as a platform to inform the public about proposed legislation and the legislative process, and to provide a space for public debate and dialogue (Kimani & Munyao, 2017). Traditional media such as newspapers, television, and radio have been effective in promoting public participation. For example, newspapers have published articles and opinion pieces about proposed legislation, providing analysis and commentary on the potential impact of the legislation on the public. Radio and television programs have also provided a platform for members of the public to express their opinions and provide feedback on proposed legislation (Kimani & Munyao, 2017). For instance, Kenya Broadcasting Corporation (KBC) a government-owned media house, transmits legislative proceedings and discusses the work of Parliament and Senate through livestream sessions on TV and radio.

New media platforms such as blogs and social media have also been used effectively to promote public participation. For example, bloggers and social media influencers have used their platforms to raise awareness about proposed legislation and to mobilize public opinion on certain issues (Kimani & Munyao, 2017). One example of the media's effectiveness in promoting public participation is the debate on the Finance Bill, 2019 which proposed an increase in taxes on fuel products. The media provided extensive coverage on the proposed legislation, highlighting the potential impact on the public and encouraging public debate and engagement. The increased public scrutiny and debate ultimately led to a revision of the proposed legislation (Mutinda, Masai, and Wanjohi 2019). Similarly in 2023, the media played a pivotal role in promoting debate on The Finance Bill 2023 (Nation Newspaper, 28 May 2023,) which led to submission of 970 memorandums to Parliament opposing the bill. However, the media's effectiveness can also be limited by factors such as political interference, media censorship, and the need for accurate and balanced reporting (Mutinda, Masai, and Wanjohi 2019). This is affirmed by (Corduneanu-Huci and Hamilton 2022), citing increased censorship and coercive actions against the media around the world affecting both democracies and autocracies.

Public participation in Kenya: challenges and ways of addressing them

This section addresses challenges to public participation in legislative oversight and representation in Kenya and proffers ways of addressing the challenges.

3. Resource Constraints

Limited resources may prevent members of the public from participating in legislative processes (Moraa & Korir, 2019). For example, the cost of attending public hearings or town hall meetings may be prohibitive for some people. Limited financial resources or lack of access to transport or communication tools may prevent members of the public from participating in legislative processes. For example, attending public hearings or town hall meetings may be too expensive for some people, particularly those who live in rural areas or who are marginalized. Resource constraints can also limit the ability of members of the public to access information about the legislative process or proposed legislation. Lack of access to information can limit the effectiveness of public participation, as members of the public may not be able to make informed contributions to the legislative process (Moraa & Korir, 2019).

To address this challenge, efforts can be made to increase access to resources and information. For example, providing transportation or accommodations for members of the public who wish to attend public hearings or town hall meetings, or using online platforms to allow for virtual participation, can help to overcome barriers related to resource constraints. It is also paramount to ensure that information about the legislative process and proposed legislation is widely available and accessible, including through the use of plain language and community-based outreach (Moraa & Korir, 2019).

4. Limited Access to Information

Members of the public may not have access to the necessary information to enable them to make informed contributions to the legislative process. This can limit the effectiveness of public participation (Mutuku, 2019). This can include a lack of access to information about the legislative process or proposed legislation, as well as limited access to information about the rights and responsibilities of citizens in the legislative process. Limited access to information can limit the ability of members of the public to make informed contributions to the legislative process, as they may not have the necessary information to understand the potential impacts of proposed legislation or to identify areas where improvements could be made (Mutuku, 2019). For instance, there were 22.71 million internet users in Kenya at the start of 2024, when internet penetration stood at 40.8 percent. Kenya was home to 13.05 million social media users in January 2024, equating to just 23.5 percent of the total population. (DataReportal, 2024). Given that a lot of information is found through social media, access to such information is then difficult for a majority of the population due to the digital divide.

To address this challenge, efforts can be made to increase access to information about the legislative process and proposed legislation. This can include making information available through affordable online platforms such as ensuring access to affordable phones, public information campaigns, and community-based outreach efforts. It is also important to ensure that information is presented in a clear and accessible manner, using plain language and avoiding technical jargon that may be difficult for members of the public to understand (Mutuku, 2019).

The study posits that addressing the challenge of limited access to information is critical to ensuring that public participation in legislative oversight and representation is inclusive and representative of the diverse perspectives and experiences of the Kenyan public. By providing access to information, members

of the public can make informed contributions to the legislative process, leading to more effective and representative legislative outcomes.

5. Cultural Barriers

These refer to the cultural norms, values, and practices that may limit the ability of certain groups to participate in the legislative process (Maina & Ondimu, 2019). This can include factors such as gender roles, ethnic divisions, and socio-economic status. Some cultural practices and beliefs may discourage or limit public participation, especially among marginalized communities. Cultural barriers can limit the ability of members of the public to engage in the legislative process, particularly for marginalized groups who may face additional barriers to participation. For example, in some communities, women may be discouraged from participating in public meetings or engaging with government officials, limiting their ability to provide feedback on proposed legislation (Maina & Ondimu, 2019). For instance, indigenous women such as pastoral communities from arid and semi-arid areas are usually sidelined when key decisions affecting them are made by county governments. They are never allowed to speak in the presence of men hence are left out during mobilization (Nation, 2022).

To address this challenge, efforts can be made to address cultural barriers to public participation by promoting greater awareness and understanding of the importance of public participation across diverse communities (Ondimu & Kobia 2019). This can include targeted outreach efforts such as village caucuses to engage with marginalized groups and to provide support and resources to help overcome cultural barriers to participation. The study avers that addressing the challenge of cultural barriers is critical to ensuring that public participation in legislative oversight and representation is inclusive and representative of the diverse perspectives and experiences of the Kenyan public. By working to overcome cultural barriers to participation, lawmakers can better represent the needs and concerns of all members of society, leading to more effective and responsive legislative outcomes.

6. Tokenistic Public Participation

Tokenistic public participation is another challenge to public participation in legislative oversight and representation in Kenya. It occurs when public participation is implemented in a superficial or perfunctory manner, without any real intention of incorporating public feedback into legislative decision-making (Ogembo & Wambua 2020). Tokenistic public participation can take many forms,

such as public hearings that are held purely for show, without any real intention of incorporating public feedback into legislative decision-making, or consultations that are held at times and locations that are inconvenient for the public. Tokenistic public participation undermines the legitimacy of the legislative process, and can lead to public disillusionment and mistrust. It can also result in poor legislative outcomes, as important perspectives and feedback from the public are not taken into account in decision-making processes (Ogembo & Wambua 2020).

A good example is the housing levy where the public considered public participation as a cosmetic exercise. Views and suggestions given by the public were never considered by Parliament and consequently the Affordable Housing Act was passed (Nation, 2024).

To address this challenge, it is important to ensure that public participation processes are designed with the intention of genuinely incorporating public feedback into legislative decision-making (Njiru & Ombati, 2019). This can include setting clear objectives for public participation, ensuring that feedback is actively sought and considered in decision-making processes, and providing opportunities for ongoing engagement with the public throughout the legislative process. Addressing the challenge of tokenistic public participation is critical to ensuring that public participation in legislative oversight and representation in Kenya is meaningful and effective. By working to ensure that public participation processes are designed to genuinely incorporate public feedback, lawmakers can build trust and legitimacy in the legislative process, and create more effective and responsive legislative outcomes.

7. Corruption and Lack of Transparency

Corruption and lack of transparency are significant challenges to public participation in legislative oversight and representation in Kenya. Corruption can undermine public trust in government institutions and processes, and can create significant barriers to effective public participation (John Githongo, 2015). One of the key ways in which corruption and lack of transparency can impact public participation is by limiting access to information. When information about legislative processes, decision-making, and outcomes is not readily available or is distorted, it can be difficult for the public to understand and engage with the issues at hand. This can make it more challenging for the public to provide meaningful feedback and input into legislative decision-making processes (John Githongo, 2015).

Corruption can also create a perception among the public that their input and feedback is not valued, and that the legislative process is driven by special interests rather than the needs and perspectives of ordinary citizens. This can lead to a sense of disempowerment and disengagement among the public, making it more difficult to promote meaningful public participation (John Githongo, 2015). For instance, The Indigenous Women Council leaders from 14 counties noted that public participation had become a manipulative process where few people are invited and paid allowances to rubber-stamp what Executive had already decided (Nation, 2022).

To address these challenges, it is critical to promote greater transparency and accountability in the legislative process (Ochieng, 2019). This can include measures such as making legislative information more accessible to the public, increasing public education and awareness about the legislative process, and implementing measures to prevent and address corruption and conflicts of interest among lawmakers. Ultimately, addressing the challenges of corruption and lack of transparency is essential to building a more responsive and accountable legislative system that is better able to engage with and represent the needs and perspectives of the public. (Ochieng, 2019).

8. Comparative Analysis

This section addresses a comparative analysis from South Africa and Brazil and draws lessons Kenya can learn from these two jurisdictions in its efforts to promote an efficacious system of public participation in legislative oversight and representation.

One of these countries is South Africa. In South Africa, The National Assembly and the National Council of Provinces are mandated to receive petitions, representations or submissions from any interested persons or institutions. (Constitution of South Africa, section 56 (d) and 69 (d); Rules of the National Council of Provinces 9th edition 2008, sections 229-236 and Rules of The National Assembly 9th edition 2016, sections 344-350). South Africa's Constitution explicitly guarantees the right of citizens to participate in legislative processes and the government has established various mechanisms to facilitate public participation in decision-making (Koma, 2015).

The South African Parliament has a well-established system of public hearings, which are held to gather input from citizens and stakeholders on proposed

legislation. These hearings are typically held in public and broadcast on television and radio to ensure that as many people as possible can participate. Members of the public are invited to attend the hearings and are given the opportunity to make submissions and ask questions (Koma, 2015). South Africa also has a system of public petitions, which allows citizens to submit formal requests for action or redress to Parliament. (Skinner & Swilling, 2017). If a petition meets certain criteria, it may be referred to a relevant committee for consideration and a response.

South Africa's Parliament also has a system of portfolio committees, which are responsible for overseeing specific government departments and agencies. These committees are made up of members of Parliament and often hold public hearings and consultations as part of their oversight work. Members of the public can also make submissions to portfolio committees on issues within their purview. Furthermore, South Africa's upper house of Parliament, the National Council of Provinces (NCOP), is mandated to facilitate public participation in legislative processes. The NCOP is required to conduct public hearings on all bills that affect the provinces and is also responsible for promoting public participation in the legislative process at the provincial level (Skinner & Swilling, 2017).

For example, the select committee on Petitions and Executive Undertakings received and determined a petition on gender-based violence and femicide in South Africa which was submitted on 22 November 2021 and heard on 2nd December 2021 (Parliamentary Monitoring Group (pmg.org.)). Some of its recommendations required the President to review and evaluate effectiveness of existing legislation and look into the possibility of extending the application of the relevant legislation. Consequently, in 2022, various legislation were amended for example Criminal Law (Amendment Act, 2022), Criminal and Related Matters Amendment Act of 2012 and Domestic Violence Amendment Act of 2022 which are aimed at stepping up the national fight against GBVF in South Africa (South African Government, gov.za/information and services).

Another example is the Boshielo petition that sought dissolution of the municipal council of Sekhukhune District Municipality under section 139 of the Constitution of South Africa and also to provide clean running water to the surrounding communities. Among the recommendations by the Committee to the municipality were to improve its relationship and communication with the communities and hosting regular *imbizos* and public hearings and further to ensure steps were taken to supply water to the villages. (Parliamentary Monitoring Group Report, 2023).

The report reveals that 43 petitions have been submitted to Parliament since 2019. Out of these, 23 (52%) were considered and finalized by August 2023. Notable is the challenges in implementing outcomes or results/decisions from the committees.

On April 12, 2024, the South African National Assembly made a significant stride towards enhancing public participation by adopting transformative amendments to its House Rules and Guidelines concerning petitions. This pivotal reform enables members of the public to directly petition the National Assembly, an initiative aimed at fostering a more open, transparent, and responsive legislative environment (Parliament of South Africa. 2024). This is a progressive example for legislative bodies in Kenya.

Moreover, Brazil has implemented a number of innovative strategies for promoting public participation in legislative oversight and representation. For example, the country has a system of participatory budgeting, in which citizens have direct input into the allocation of public funds, and has also established a national system of participatory planning, in which citizens are involved in the design and implementation of government policies and programs (Santos, 2014). Brazil's system of public participation in legislative oversight and representation has been praised as one of the most comprehensive in the world in comparison to other countries (IPU and UNDP Report, 2022) and has been credited with improving transparency and accountability in local government. The Brazilian Constitution guarantees the right to participation in the political process, and this is reflected in the country's legislative framework (Santos, 2014).

One notable aspect of Brazil's system is the use of public hearings, which are held at all levels of government, from the federal level down to the local level (Avritzer, 2009). These hearings are mandatory for any legislative proposal that would have a significant impact on society. They are advertised well in advance and are open to the public, allowing citizens to provide input and ask questions of government officials. Another important feature of Brazil's system is the use of online platforms for public participation.

The country's e-Democracy platform, for example, allows citizens to participate in online discussions and debates on legislative proposals and public policies. This platform has been used by millions of Brazilians and has been praised for its user-friendly interface and ability to promote meaningful dialogue between citizens and government officials (Avritzer, 2009; IPU and UNDP Report, 2022). The Parliament provides incentives to citizens to encourage their participation for

instance through awards, prizes or special benefits depending on the frequency they use a particular mechanism. The e-democracy portal, known as the ‘e-Democracia Portal’ allows users to access benefits and prizes depending on how frequently the public makes contributions (ParlAmericas.org).

Furthermore, through mini-publics to address a range of policy issues across Brazil, *Delibera Brasil* is a civil society organization committed to advancing civic lottery and public deliberation in Brazilian public decision-making (OECDilibrary, 2024). The OECD recognizes mini-publics as one of the models of representative deliberative processes. Crowdsourcing, hackathons, and public challenges are some other instances of best practices from Brazil. These initiatives allow public authorities to pool their collective knowledge to jointly develop solutions to particular public problems. In order to generate concepts or ideas, prototypes and test solutions to particular public problems. These practices are typically used to bring together experts from stakeholders and citizens to generate concepts or ideas, prototype and test solutions or enhance services or procedures (OECDilibrary, 2024). These enable effective citizen participation in decision-making.

This discussion therefore begs the question as to what lessons Kenyans can learn. From South Africa, Kenya can learn the importance of institutionalizing public participation in the legislative process, as well as the need to provide adequate resources to facilitate effective public engagement. Kenya can also adopt the use of technology to increase public participation, as well as the establishment of an independent oversight body to monitor public participation processes.

From Brazil, Kenya can learn the importance of developing a culture of public participation, as well as the need for clear guidelines and regulations to guide the process. Kenya can also adopt the use of participatory budgeting, where citizens directly participate in the allocation of resources, as well as the establishment of participatory councils and forums to facilitate effective public engagement. Kenya can also provide incentives to citizens in the form of awards, prizes depending on the frequency of participation mechanism. This can encourage their participation.

9. Recommendations

Based on Kenya’s challenges and lessons learned from South Africa and Brazil, the study proffers the following recommendations for Kenya to improve its public participation in legislative oversight and representation. One is strengthening the legal and policy framework to institutionalize public participation in the legislative

process. This can include clear guidelines on how the public can engage in the process. Kenya can also develop a culture of public participation through civic education and awareness campaigns.

Providing adequate resources is also vital to facilitate effective public engagement. This may include funding for public hearings and town hall meetings, and providing translation services for non-English speaking citizens. Utilizing technology to increase public participation, such as online platforms for public consultations and feedback mechanisms is also a step in the right direction.

Kenya can also establish an independent oversight body to monitor public participation processes and ensure they are effective and transparent. Providing adequate time for public consultation, including allowing sufficient time for feedback and revisions, is also important.

Kenya can provide incentives for participation, depending on frequency of citizen participation, through awards, prizes or special benefits as done in Brazil. This can encourage public participation.

Kenya can enhance transparency and accountability in the legislative process by addressing corruption and ensuring all information is publicly available. This entails adopting best practices from other jurisdictions, such as participatory budgeting and the establishment of participatory councils and forums, to facilitate effective public engagement. Finally, Kenya should also encourage greater collaboration and dialogue between the national and county governments to ensure effective public participation at all levels of government.

10. Conclusion

Public participation is an essential component of legislative oversight and representation in Kenya. The constitution of Kenya guarantees the right to public participation in the legislative process. Adopting the theory of participatory democracy and social capital, the study has addressed several mechanisms that have been put in place to ensure participation, including public hearings, town hall meetings, public petitions, public participation committees, online platforms, and the media. However, several challenges, such as limited awareness and understanding, resource constraints, political interference, limited access to information, limited time for public consultation, cultural barriers, tokenistic public participation, and corruption, hinder effective public participation in Kenya's legislative process.

These have been identified using a desktop review of Kenya's laws, policies and programmes.

A comparative analysis with South Africa and Brazil shows that these countries have adopted best practices that Kenya can learn from, such as the creation of an enabling legal framework, effective use of technology, establishment of independent public participation committees, and capacity building for stakeholders.

In light of the above, it is recommended that Kenya improves its legal framework for public participation, enhances the use of technology, promotes capacity building for stakeholders, and increases public awareness and education on the importance of public participation in the legislative process. It is only by addressing these challenges and adopting best practices that Kenya can achieve effective public participation in legislative oversight and representation, ultimately contributing to a more democratic and inclusive society.

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Thematic Area 3: Public Participation in Enhancing the Representation Role of a Legislature

Public participation in enhancing the representation role of a legislature Participatory Budget Reform Process, the Case of Kenyan Parliament

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Abstract

Article 118 (1) (b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. The same is required for legislative business of the County Assemblies pursuant to Article 196 (1) (b) of the Constitution of Kenya.

Article 119 (1) of the Constitution of Kenya gives the right to petition Parliament to consider any matter within its authority. This includes enactment, amendment or repeal of legislation. This provision further gives a lot of power for public involvement in legislative business. Article 119 (2) demands of Parliament to put in place provisions and procedures to enable the public exercise this right to petition Parliament.

Importantly, from a public finance management perspective, Article 201(a) of the Constitution requires that there shall be openness and accountability, including public participation in financial matters. Since promulgation of the Constitution, public participation in the budget process has been limited to planning and approval steps in the budget making process (ex-ante). The Parliament of Kenya uses a number of methods to enable the public to participate in its legislative business. Among the notable methods of public involvement include submission of written memoranda; public petitions; public hearings; public and seeking views on key institutions involved in a matter of interest.

This paper takes the position that there is limited public involvement in the whole process of budget implementation, reporting and evaluation. The paper will therefore scrutinise the whole issue of participatory budget reform process as an important ingredient in the realm of modern public finance management. The paper proposes key reforms to ensure that Kenya achieves the ultimate goal of a participatory budget process.

Key Words

- (1). Participatory Budgeting refers to the process where citizen input in the budget process is formal and intentional.
- (2). Budget Process takes the meaning as provided for by Kenyan Public Finance Act.
- (3). Public Finance Management, Legislative Oversight.
- (4). Public participation assumes the meaning contemplated in Article 118 of the Constitution of Kenya.
- (5). Ex-ante has the meaning of before the fact.
- (6). Ex-post has the meaning of after the fact.

1. Introduction

1.1 Background

Kenya promulgated a new constitution on 27th August 2010. This constitution brought about major changes in governance and public finance management. The first major change was a move from a parliamentary to a purely presidential system of governance. This implied a greater role in the work of Parliament as espoused in Articles 94, 95 and 96 of the current Constitution of Kenya. The role of Parliament of Kenya expanded from just covering *legislation, representation and oversight* but to also assume a new and critical role of *budget making* (Constitution of Kenya, 2010).

This new role of Parliament in the *budget making process* comes with greater responsibility and accountability in financial governance of public resources for the Parliament of Kenya. This greater responsibility also came at a time when the Parliament of Kenya moved from the Westminster system where Cabinet Ministers were also Members of Parliament to a system where members of the *Executive Arm* of government of Kenya is not represented in any of the Houses of the Parliament of Kenya in line with provisions of the Constitution of Kenya (2010). This move gave more autonomy to the Parliament of Kenya to effectively play their constitutional role but also bestows greater accountability to the same Parliament in the manner in which public financial resources are appropriated and managed and in the entire public finance management framework.

1.2 Public participation

Article 118 (1) (b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. The same is required for legislative business of the County Assemblies pursuant to Article 196 (1) (b) of the Constitution of Kenya.

Chapter twelve of the Constitution of Kenya, 2010 provides a detailed framework for management of public resources. The Constitution of Kenya further clearly stipulates principles of public finance. Article 201 (a) states one of the key principles of management of public finance as follows:

“There shall be openness and accountability, including public participation in financial matters.”

Article 201 (a) of Constitution of Kenya, 2010.

This constitutional provision re-emphasises the importance of public participation in the management of public finance in Kenya. The Parliament of Kenya uses a number of methods to enable members of the public to participate in its legislative business. Among the notable methods the two Houses of Parliament have used to ensure public involvement in their legislative business include submission of *written memoranda; public petitions; public hearings; and seeking views on key institutions* involved in a matter of interest.

This paper notes that dimensions of public engagement in the entire budget process in Kenya have been well stated as follows in the Public Audit Act 2015:

“... The Auditor-General shall conduct performance audit to examine the economy, efficiency and effectiveness with which public money has been expended pursuant to Article 229 of the Constitution.”

Section 36 (1) of the Public Audit Act, 2015.

The paper therefore hypothesises that these dimensions require effective public participation in the entire budget process from planning to reporting and evaluation of performance of utilisation of public funds by Ministries, Departments and Agencies (MDAs).

Article 119 (1) of the Constitution of Kenya, 2010 gives the right to petition Parliament to consider any matter within its authority. This includes enactment, amendment or repeal of legislation. This provision further gives a lot of power for public involvement in legislative business. Article 119 (2) demands of Parliament

to put in place provisions and procedures to enable the public exercise this right to petition Parliament.

This implies that, in case Parliament does not provide for adequate avenue for public participation in order to exercise their sovereign power in its entire budgeting process in line with Article 1 and 2 of the Constitution of Kenya 2010, any Kenyan has a right to petition Parliament to declare that legislation or resolution of the House unconstitutional. In case the petitioner is still aggrieved, by a resolution of any House of Parliament, he/she may seek settlement of the matter in a court of competent jurisdiction. This choice is open to the petitioner even on matters relating to public participation in all legislative business pursuant to Articles 118 and particularly Article 201 on public participation in all financial matters handled by the legislature.

1.3 Public Participation in the Budget Making Process in Kenya

The budget making process in the Kenyan context is anchored on the Constitution of Kenya (2010) and well defined in the Public Finance Management Act 2012 and attendant regulations. This budget process has five stages namely planning, approval, execution (implementation), reporting and evaluation. There are legal and regulatory provisions that govern execution of each of these stages in line with provisions of Articles 201 and 229 of the Constitution of Kenya.

At the centre of each of the five stages in the budget process mentioned above, there is need to ensure *efficiency, effectiveness and economy* in the management of public finances. These three should be at the centre on the work of Parliament in areas of legislation, representation and oversight of the use of public resources. An effective public finance management framework must therefore ensure that the public are involved at each of these five stages in the budget process. The public can be involved directly in line with provisions of Articles 1 and 2 of the Constitution of Kenya, 2010.

This paper takes the position that an effective public participation in the budget process must cover all the five areas in the budget process. The paper further contends that public participation has been mainly concentrated at the planning and approval stages in the budget process. At the planning stage, public participation is undertaken during the processing of the Budget Policy Statement (BPS). Parliament calls for submission of Memoranda from the general public on key policy pronouncements outlined in the BPS. There are however concerns on the

extent to which these submissions are put into consideration and to what level they inform policy direction.

At the approval stage, Parliament requests for submissions from the public on the submitted Annual Estimates of Revenue and Expenditure. The Budget and Appropriations Committee of the National Assembly further undertakes public hearing exercise in twelve counties each financial year. Key priority areas identified during the public hearings are allocated resources to a tune of KES. 1.2 billion. However, there is no clear linkage of public participation proposals arising at the planning stage and what eventually gets funded at the approval stage.

There is however limited involvement of the public at the other three subsequent stages in the budget process. This involvement is largely undertaken by elected representatives via Parliamentary processes. The paper therefore makes a case that in order to ensure *efficiency, effectiveness and economy* in the management of public finances, there should be greater involvement of the public in the entire budget process. This can be achieved in Kenya through participatory budget reforms that cover all the five stages in the budget process.

1.4 Statement of the Problem

Kenya was ranked among the top 10 out of 120 countries surveyed on compliance to the principles of public participation with a score of 31 points against the global average of 14 out of 100 points. (IBP²⁶, 2021). This is however below the 61-point threshold that is considered satisfactory for transparency to support informed public engagement on the budget. This implies lack of adequate opportunities for the public to be engaged in the entire budget process.

This paper hypothesises that since the promulgation of the Constitution of Kenya in the year 2010, there has been limited public participation in the entire budget process. Public participation in the budget process has been predominantly ex-ante. This implies that public participation in the budget process by the two Houses of Parliament has mainly been carried out at the planning and approval stages of the budget process.

Consequently, there is limited involvement of the public in implementation, reporting and evaluation stages of the budget process. The statement of the problem of this paper is therefore as follows:

²⁶ IBP means International Budget Partnership.

What participatory budget reform will Kenya need to implement in order to ensure better involvement of the public in the whole budget process?

The paper therefore proposes participatory budget reforms that will ensure effectiveness in the whole budget process right from planning, implementation, reporting and evaluation by the Auditor General.

2. Literature Review

According to Sintomer et al. (2012), participatory budgeting emerged in 1989 in Brazil as the country transitioned from autocratic to democratic governance. The aim was to promote the role of the citizens in allocation of public resources and enhance legitimacy of the government and government programmes. The study evaluates the evolution and spread of participatory budgeting using six models of citizen participation that include: *participatory democracy, proximity democracy, participative modernization, multistakeholder participation, neo-corporatism, and community development models*. The study concludes that participatory budgeting constitutes a unique innovation in the public finance institutional framework that provides the public with tangible power, and has a strong dimension of redistributive justice.

The evolution of participatory budgeting has been driven by two sets of institutional logic. Initially, the drive was politically motivated to enhance relevance and buy-in of government programs by the citizenry (source?). However, this has evolved to a hybrid of managerial and community-building logics. The managerial logic dictates that participatory budgeting is a useful tool for policy makers to drive change and innovation in order to improve public sector performance while the community building logic emphasises the need to establish, restore and increase citizen participation as a form of community empowerment (Bartocci, Grossi and Mauro, 2019),

Soojin and Schachter (2013) contend that participatory approaches in the budgeting process play a critical role in responsive service delivery through organizational learning. This conclusion was arrived at in a comparative analysis of Citizen Participation in the Budget Process and Local Government Accountability between South Korea and the United States. The study notes that the two nations have moved beyond traditional public hearings to two-way engagement between the government and the public that covers the entire budget cycle. This move has

awakened citizens' interest in the budget process while providing valuable feedback to the government.

Fung, (2015), in an attempt to decode the potential of public participation to advance values of democratic governance such as effectiveness, legitimacy, and social justice contends that the emerging constraints on the public sector, coupled with increasing desire for individual engagement and the dominance of digital technology, have created an environment for participatory innovations aimed at effective public sector governance. Further, lack of coordination and leadership among the public, lack of consensus on the role of direct citizen participation among the technocrats, and the limited nature and scope of participatory innovations and tools are noted as the key challenges to seamless public engagement in governance.

Emeka and Nwokedi (2016), while drawing lessons from Latin America, evaluated participatory budgeting in Nigeria and conclude that participatory budgeting enhances development outcomes because when citizens are appropriately engaged in the planning, approval, implementation, and evaluation of the national budget. The government tends to be more accountable and transparent on the policies and programmes that they undertake. This leads to effective and efficient utilisation of public resources. They further note that scarce public resources are applied to the most pressing needs of the citizenry given that the people have the best knowledge of their needs, preferences, and local conditions.

Nemec and Špaček (2022), in their study in Central and Eastern Europe, noted that participatory budgeting attempts to change the allocation of public resources to address the needs of local communities and improve decision-making. In order to establish the importance of participatory budgeting in addressing the real needs of the people, the findings indicated that there were little efforts in implementation of the public participation programmes. This was attributed to reluctance of both the executive and the legislature to share part power, yet budget making power is actually delegated to them by their citizen. Similar sentiments are shared by Baogang (2011) in their similar study in China.

Falanga and Lüchmann (2020) underscored the importance of strong institutional framework in their comparative analysis of the patterns of dissemination of participatory budgeting between Brazil and Portugal. The study contends that in order to translate participatory engagements into tangible benefits for the people, there is need for an elaborate institutional design ranging from legal underpinning

and coordinated feedback mechanisms for continuous engagement. This implies that participatory budgeting is not an event but a continuous process.

Schneider and Busse (2019) reports that although there is general satisfaction among the population on the participatory budgeting practice because it has enhanced transparency, accountability and enlightenment on public finances, the impact of submitted proposals is generally diffused or non-existent. This is as result of the limited role of the public in resource allocation and monitoring implementation of budget. This conclusion was based on review of empirical findings on participatory budgeting in Germany. The study notes that this has undermined the potential of participatory budgeting in promoting social equality and responsiveness of the budgeting process to the needs of the people.

Williams, Denny & Bristow (2019) concludes that an effective participatory budgeting process must have the following attributes. It must be structured, its objectives clearly outlined, have high commitment to the degree of deliberations and broader scale of geographical coverage.

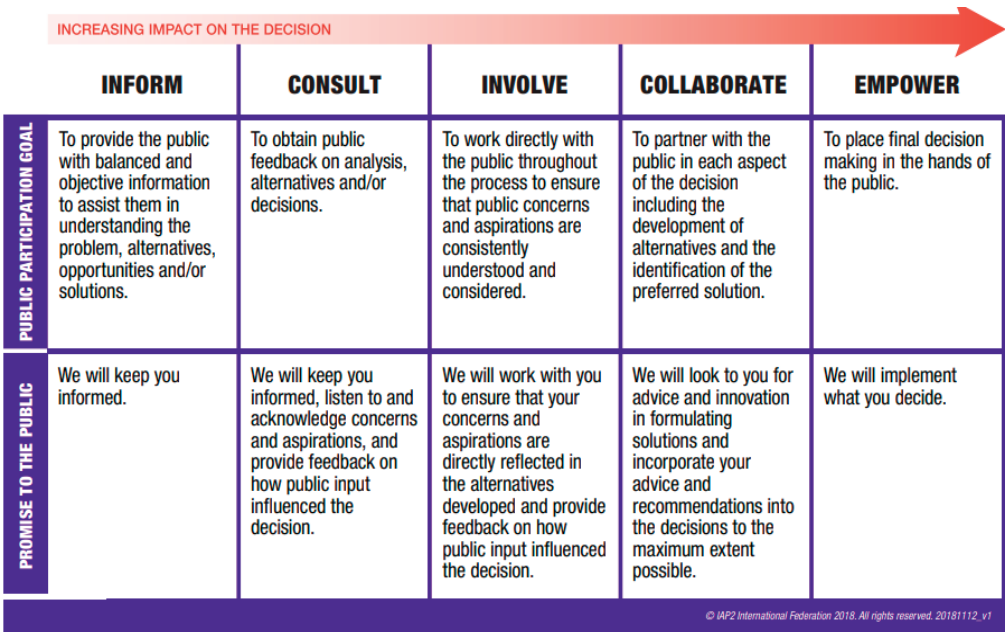


Figure 1: Figure one: IAP2 Spectrum of Public Participation

Source: International Association of Public Participation²⁷

The International Association for Public Participation has further developed a spectrum for public participation based on the role of the public in any participatory

²⁷ Public Participation Spectrum Retrieved from - [Spectrum_8.5x11_Print\(ymaws.com\)](#)

process as shown in *figure one*. On one end of the spectrum, public participation has a passive role where the engagements only seek to inform the public. On the other end of the spectrum, the engagement is community led where the public play a leading role in making binding decisions.

3. Methodology

This paper is based on desktop research of constitutional and other legal provisions on management of public resources in Kenya. The paper compares involvement of the public in the management of public finance by the government as required by law versus what actually happens in practice in Kenya. The paper then uses the gaps in this comparison to propose participatory budget reforms in the entire budget process in Kenya.

4. Participatory Budget Reforms In Kenya

4.1 Objectives of Participatory Budget Reforms in Kenya

Information from literature review above has provided the justification for participatory budget. The participatory budget reform in Kenya should cover all the five stages in the budget process right from planning to reporting on budget performance.

The reforms must, therefore, have *ex-ante* and *ex-post* participatory budget reform. Ex-ante reforms are *in-built passive management strategies* incorporated in processes at the planning stage geared towards ensuring better resource allocation (source of this information??). Ex-post participatory budget reforms are accountability frameworks in management of public resources in the entire budgeting process. In order for Kenya to achieve desired outcomes of participatory budget reforms, her agenda should focus on the following four key objectives:

(a). Promoting transparency and accountability in the budget process:

Through continuous engagement of the public at all stages of the budget cycle, the process will ensure openness in the entire budget process. This will create a framework in which citizens are aware of their budget together with all the successes and the challenges involved in its management from preparation through implementation: This will enable the general public to know how their budget is being managed and also monitor the same to avoid wastage of public resources.

- (b). **Efficient resource allocation and value for money:** Depending on the extent to which participatory budgeting allows the public to influence resource allocation, it is possible to promote more efficient resource allocation given the possibility that priority will be given to the most pressing needs as identified by the public. Further, as a result of the interface between the policy implementers and policy consumers, it is possible to build coherence and consistency in priority interventions thereby enhancing the value for money from public programmes.
- (c). **Promote credibility of the budget:** Through participatory budgeting the public gathers critical information on key priorities and programmes that the government is planning to implement and therefore are able to ensure that the promises made are being upheld or raise concerns if they are not being adhered to. This has a two-fold benefit, first, it enhances the commitment of the government to the policy pronouncements and secondly, provides the basis for the public to hold the government to account.
- (d). **Enhanced Development Outcomes:** Participatory budgeting process endeavours to approach development from a collaboration point of view. As such, the needs of the public are well articulated, properly targeted and befitting interventions designed. Given that the public has to be involved through the implementation process, there is better ownership of these interventions by the beneficiaries enhancing their sustainability and enhanced development outcomes.

4.2 Proposed participatory budget reforms in Kenya

This paper observes that Parliament is central to this participatory budget reform in Kenya since the Constitution of Kenya (2010) bestows budget making responsibility to the Parliament of Kenya. The paper notes that in order for participatory budget reforms to succeed in Kenya, Parliament must ensure that *ex-ante* and *ex-post* participatory budget reforms instituted in Kenya should cover each of the following areas:

- (a). **Legal empowerment:** Participatory budget reforms that are put in place must have a legal backing in order to have a force of law. The weak link is usually the issue of enforcement. There must be equally a strong framework for compliance framework right from budget approval to the reporting and oversight process. The most critical issue is to ensure that Parliament either enacts a specific law that will cover deeper involvement of the public in

budget approval, but implementation and most effectively, public involvement in the public audit process. A new facility of public audit with a clear framework for reporting to the National Assembly must be given legal basis to complement audit reports of the Auditor General. Both reports must be used by Public Accounts and Public Investment Committees of the National Assembly and the Senate.

- (b). Technical capacity:** The question of literacy levels of most Kenyans, and especially in the discipline of finance and accounting requires a lot of support to understand technical jargon that goes on with public finance management. A Participatory Budget Reforms will only be effective if there is a critical investment in technical capacity. This technical capacity must be on two fronts.

The first set of Participatory Budget Reforms should be a comprehensive investment in building technical capacity of Members of Parliament on not only budget matters but the whole framework of policy and its relationship to budgeting and economic growth and development. Technical capacity of Members of Parliament should be such that they can understand and comprehensively interrogate any budget and budget policy proposals tabled by the Executive Arm of government for their approval. Their input must also be the one that has harnessed the input of members of the public through and structured and comprehensive public participation process.

The second set of should focus on Participatory Budget Reforms should be technical capacity of staff who support members of Parliament in their budget scrutiny. There should also be a strong focus on institutions memory among these technical staff as a critical component of these reforms.

The third phase of this Participatory Budget Reforms should involve strengthening of institutions of Parliament. This includes building technical capacity of officers of Parliament such as the Auditor General and the Controller of Budget. This will allow for better reports and data driven reports that are evidence based in order to ensure better scrutiny of the budget approval, implementation and reporting processes.

The fourth and last front of this Participatory Budget Reforms should be one that ensure checks and balances in the whole budget oversight process. This paper proposes that an effective check and balance must build the capacity

of non-state actors to allow Parliament to have an alternative source of evidence that can collaborate the ones given by state agencies in order to avoid collusion among players in government to circumvent the whole budget oversight by Parliament. Political will: The leadership in the county must agree that the current practice of management of public resources require a comprehensive reform with greater involvement of the public directly and through the Legislative Arms of Government. The political leadership must then agree and provide financial and technical resources and the political good will to push for Participatory Budget Reforms in Kenya.

- (c). **Conducive governance framework:** The Executive Arm of government tend to bully and manipulate the whole budget process from planning to reporting. The Executive Arm of government tend to intimidate other Arms of government to become only approving agencies and opposed to budget making agencies as proposed by the Constitution of Kenya. This state of affairs arises out of a number of factors including lack of independence in selection of leadership of legislative institutions. The leadership of the legislative institutions end up operating as appendages of the Executive Arm of government.

In fact, the current situations where the party forming government also greatly influences election of leaders in Parliament due to its majoritarian nature and further influences the legislator who becomes the Chairman of the Budget and Appropriations Committee creates and incestual relationship in the management and oversight of public finance management matters in the legislature. This whole process ends up killing the independence of legislature in the budget process.

A good Participatory Budget Reform should be one that gives independence to the process of recruitment of leadership critical to the budget process in the legislature. A good point to start will be for the Chairman of the Budget and Appropriation Committee to come from minority as opposed to majority side of government in Parliament. The second step in the reforms should be to ensure that the Chairman of the Budget and Appropriations Committee is elected by winning a two thirds majority in Parliament. The office must also be equated to the Leaders of Majority and Minority of Parliament so that they can have the necessary political and financial clout to effectively enhance management of public resources with greater oversights of the

Legislative Arms of Government. Such reforms will ensure that Budget and Appropriation Committee has the political and economic muscles to entrench public participation and ensure that budget process is both professional and authentic.

5. Conclusion

From the foregoing discussion, it is evident that Participatory budget reform in Kenya should lead to successful national growth and development through effective budgeting framework and effective service delivery. In order for Kenya to successfully realise the four objectives of participatory budget reforms outlined in section 4.1 above, then Kenya ought to implement both *ex-ante* and *ex-post* participatory budget reforms. These reforms should however adhere to the following critical success factors:

- (a) *Reforming the budget format.* The current format for presentation in the National Assembly is actually very technical. Staffs from either the Parliament Budget Office (PBO) and the National Treasury and Chief Finance Officers in the Ministries Department and Agencies are better placed to interpret the technical nature of the information contained in the annual budget. This highly technical presentation of the national budget makes it hard for any one with basic education to give meaningful input in the budget process during the public participation process. This calls for need to have a review of the budget format to make it citizen friendly.
- (b) *Alignment of the budget to priority policy pronouncements:* A review of reports of the National Assembly Budget and Appropriation Committee from year 2016 has constantly raised the issue of lack of adherence to Budget Policy Statement (BPS) when MDAs present their itemised budgets in the National Assembly. This indicates lack of coherence between approved BPS and the annual budget that are finally approved. This is a serious issue that affects effectiveness of the approved budget to address policy priorities. It should not be lost to all that in most cases, the approved BPS usually has had a good input of the citizens from the sector working groups and the public participation processes undertaken by Parliament with technical support from PBO. Failure to relate approved annual itemised budgets to the approved BPS implies that there is a possibility that the input of citizens on national policy priorities could be ignored. Effective

participatory budget reforms must ensure that measures are put in place to invalidate any budget that does not adhere to national priorities as approved in the BPS each year.

- (c) *National Stability*. Participatory budget reforms must lead to stability of the economy and enhance economic productivity. This will be achieved through improved allocation of public resource during the annual budgeting process. National Budget must ensure that resources are allocated not only areas where Kenya's policy in priorities are but also ensure that there is redistribution of national resources areas.
- (d) *The Redistribution of resources*. Allocation of public resources to the poor as part of affirmative action must come as a more comfortable process that is well infused in the annual budget process.
- (e) *Promotion of inclusivity*: A well-executed participatory budgeting exercise brings on board the general public in the sharing of the national cake and defining priorities that way enhancing the spirit of inclusiveness.
- (f) *Upscaling Monitoring and Evaluation*. An effective monitoring and evaluation system needs to be put in place to ensure that implementation of the approved national budget by MDAs complies with national priorities as approved in the BPS. A similar monitoring system should be put in place by the Senate. This will ensure that implementation of the approved budget and programmes at County Government level comply with the Fiscal Strategy Paper (FSP) approved by the respective County Assembly. This reform is intended to ensure that Kenya achieves national growth and development targets set in policy documents such as Vision 2030 at national level and County Integrated Development Plans approved by individual County Assemblies.

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The Mirage of Public Participation: A Critical Analysis of the Modalities for Promoting Public Participation in the Legislative Process in Kenya

By Daniel Ominde, Donald KeyaManyala, and Pricillah Saidi

Abstract

Public participation is the involvement of members of the society in public decision-making processes. Similar to other public institutions, legislative institutions are enjoined to engage the public or a representative sector in legislative processes. Public participation in the legislative process accords members of the public an opportunity to influence the decision of law-makers. The need for public involvement in legislative processes is now universally accepted in constitutional democracies. However, concerns persist regarding the effectiveness of mechanisms employed to foster public participation. This study critically analyses the modalities for promoting public participation in Kenya's legislative process, assessing their implementation and effectiveness, identifying barriers hindering effective citizen engagement, and proposing evidence-based recommendations for enhancement. Drawing from comparative analysis with best practices in South Africa, this study aims to provide insights into strengthening democratic governance in Kenya. Through empirical research, it seeks to address gaps in understanding and improve the efficacy of public participation mechanisms, ultimately enhancing democratic processes and accountability.

Key Words: Legislative Process, Legislature, Public Participation, Public Participation Modalities, Public Participation Tools.

1. Introduction

1.1 Background

Kenya is a constitutional democracy built upon the sovereignty of its people, who may exercise their democratic rights either directly or indirectly through their democratically elected representatives (Government of Kenya, 2010). The governance system in Kenya is predominantly representative, with legislative authority vested in the Parliament and county assemblies (Government of Kenya, 2010). However, representative democracy often offers limited opportunities for public to exercise their citizenship rights (Waterhouse, 2015). This system is frequently plagued by unresponsive and unaccountable state institutions, along with a weak connection between the state and its citizens. Consequently, the concept of participatory democracy emerged to strengthen the ties between the state and its citizens within the framework of representative democracy (Murphy, 2020).

Participatory democracy is grounded in fostering empowered public discourse, which recognises the people's disadvantage as stemming from unequal power relations between the State and its citizens, leading to institutionalised neglect (Kamau, 2017). It aims to tackle this challenge by empowering individuals to take action to compel the state to operate in alignment with their shared values and aspirations (Waterhouse, 2015). Many countries have embraced participatory democracy through state-sponsored initiatives aimed at empowering the public and holding the state accountable. Participatory democracy also promotes active citizenship, strengthens communities, improves public sector performance, and fosters public familiarity with legislative activities (Jegade & Tendani, 2020; 2012; Constitutional Court, 2006).

Participatory democracy offers avenues for improving democracy and critiquing institutions that fail to meet normative standards (Kawadza, 2018). It involves engaging the public in debates and discussions with the aim of generating informed and reasonable opinions, where participants are willing to reassess their preferences based on discussion, new information, and arguments presented during deliberations (Kamau, 2017). However, achieving consensus is not the primary objective of participatory democracy; participants are expected to advocate for their interests, moderate self-interest (Liebenberg, 2018), empower marginalized groups, mediate differences, promote recognition, and develop rational opinions and policies (della Porta, 2019).

Public participation, defined as the involvement of members of society in public decision-making processes (Mbithi, Ndambuki, & Juma, 2019), is integral to legislative institutions, akin to other public bodies (Jegede & Tendani, 2020). It offers the public a platform to influence lawmakers' decisions (Kariuki, Iravo, & Yusuf, 2022), a practice widely embraced in constitutional democracies (Phooko, 2017). In Kenya, public participation in legislative processes is enshrined the Constitution (Government of Kenya, 2010) and various legislative frameworks. Despite this, concerns persist regarding the efficacy of mechanisms employed to foster public engagement in Kenya's legislative process, with suggestions that citizens are not adequately involved (Kaseya & Kihonge, 2016).

Despite constitutional and legislative mandates requiring public participation in Kenya's legislative process (Kariuki, Iravo, & Yusuf, 2022), there is growing concern that citizens are not effectively engaged. Claims suggest that the modalities employed to promote public participation are ineffective (Buele, Tobar, & Gallegos, 2021), and citizens are inadequately informed about the process (Thungo & Mavee, 2021). Compounding the issue is the absence of empirical evidence on the effectiveness of existing modalities for fostering public participation in the legislative process.

1.2 Statement of the Problem

Despite Kenya's constitutional and legislative provisions mandating public participation in the legislative process, there is growing concern that citizens are not effectively engaged. Claims suggest that the modalities employed to promote public participation are ineffective, and citizens are inadequately informed about the process. Compounding the issue is the absence of empirical evidence on the effectiveness of existing modalities for fostering public participation in the legislative process.

1.3 Justification for the Study

This study is rooted in the challenges facing Kenya's democratic system, particularly regarding public participation in the legislative process. Kenya, as a constitutional democracy, upholds the sovereignty of its people and grants them the right to exercise their democratic rights through elected representatives. However, the predominantly representative governance system in Kenya often limits the opportunities for citizens to actively participate in decision-making processes,

leading to unresponsive and unaccountable state institutions and a weak connection between the state and its citizens.

To address these challenges, the concept of participatory democracy has emerged, aiming to empower individuals to compel the state to operate in alignment with shared values and aspirations. Many countries have embraced participatory democracy through state-sponsored initiatives, which not only promote active citizenship but also strengthen communities, improve public sector performance, and foster public familiarity with legislative activities. However, despite the constitutional and legislative mandates requiring public participation in Kenya's legislative process, concerns persist regarding the efficacy of mechanisms employed to foster public engagement.

Claims suggest that the modalities used to promote public participation are ineffective, and citizens are inadequately informed about the process. Moreover, the absence of empirical evidence on the effectiveness of existing modalities further compounds the issue. Therefore, this study seeks to address these concerns by examining the current state of public participation in Kenya's legislative process, identifying challenges, and proposing recommendations for improvement. Through empirical research, this study aims to provide valuable insights into enhancing public engagement and strengthening democratic governance in Kenya.

1.4 Research Objectives

The main objective of this study was to critically analyse the modalities for promoting public participation in the legislative process in Kenya. Specifically, the study aimed to:

- (1). To evaluate the implementation and effectiveness of public participation mechanisms in Kenya's legislative process, considering both legal frameworks and practical challenges.
- (2). To identify barriers hindering effective citizen engagement in Kenya's legislative process, including institutional responsiveness and citizen awareness issues.
- (3). To propose evidence-based recommendations for enhancing public participation in Kenya's legislative process, drawing from comparative analysis with other jurisdictions and best practices.

1.5 Research Questions

The study hypothesised that legislative bodies have, in many occasions, abused the discretion by opting for ineffective modalities to conduct public participation as a formality and not as a constitutional obligation. The study was guided by the following research questions:

- (1). How effective are the current mechanisms for public participation in Kenya’s legislative process, and to what extent do they align with legal frameworks?
- (2). What are the main barriers preventing citizens from effectively engaging in Kenya’s legislative process, including issues related to institutional responsiveness and citizen awareness?
- (3). What evidence-based strategies and practices can be recommended to enhance public participation in Kenya’s legislative process, drawing from comparative analysis with other jurisdictions and best practices?

1.6 Literature Review

The research has independent variables including the existing modalities of public participation in Kenya and the legal and policy framework of public participation in Kenya, and the dependent variable, being public participation. The research also did a comparison analysis with South Africa best practices on public participation in the legislative process. This section reviews the existing literature on: legal and policy framework, the existing modalities for conducting public participation, the challenges facing public participation in Kenya, and the legal and policy framework governing public participation in South Africa. This section also outlines the conceptual framework of the research.

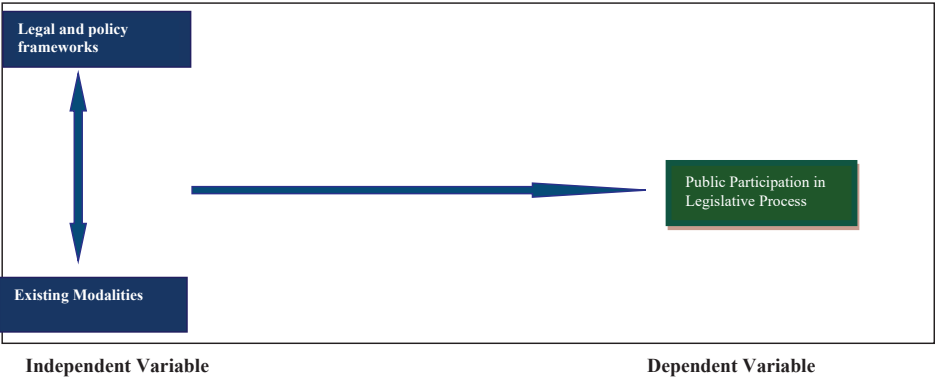


Figure 2: Conceptual Framework for the Study

1.6.1 Legal and Policy Framework of Public Participation in Kenya

Public participation plays a crucial role in providing the public with the opportunity to influence the decisions made by legislative bodies (Imbo & Kiruthu, 2019). It enhances decision accuracy and upholds the dignity and self-respect of society members. Consequently, legislative bodies must provide the public with a meaningful opportunity to make representations and take their views and preferences into account when shaping decisions (Court of Appeal, 2018). This section analyses the legal and policy framework governing public participation in Kenya.

1.6.1.1 The Constitution of Kenya, 2010

The Constitution of Kenya, 2010 establishes immediate, enforceable, and justiciable national values and principles of governance (Court of Appeal, 2017). These values and principles bind all state organs and individuals when enacting, applying, or implementing any law Constitution of Kenya, 2010. Among the national values and principles of governance outlined in Article 10(2)(a) of the Constitution of Kenya, 2010 is the participation of the people.

Additionally, Article 174(c) of the Constitution of Kenya, 2010 emphasizes the significance of self-governance and public participation in the exercise of state power and decision-making processes affecting the people. Consequently, county assemblies, akin to national legislative bodies, are mandated to facilitate public participation and involvement in their legislative and other proceedings Constitution of Kenya, 2010. Public participation plays a pivotal role in both the legislative and policy functions of both national and county governments (High Court of Kenya, 2014).

Furthermore, the Constitution of Kenya, 2010 guarantees other fundamental civil and political rights, including freedom of expression, assembly, and association (Waterhouse, 2015). For example, Article 33(1)(a) entitles every person to freedom of expression, encompassing the freedom to seek, receive, or impart information or ideas Constitution of Kenya, 2010. Moreover, Article 35(1) of the Constitution of Kenya, 2010 ensures the right to access information held by the state.

1.6.1.2 County Governments Act, 2012

In addition to the Constitution, the County Governments Act provides for public participation in the conduct of county assembly activities. Regarding public participation, the Act requires county assembly members to maintain close contact

with the electorate, consult them on matters under consideration in the county assembly, present the views, opinions, and proposals of the electorate to the county assembly, and establish a linkage between the county assembly and the electorate on public service delivery County Governments Act 2012.

Furthermore, the Act County Governments Act 2012 delineates the principles of citizen participation in county governments, which include: timely access to relevant information for policy formulation; reasonable access to the process of formulating policies, laws, and regulations; balancing roles and obligations between county assemblies and non-state actors in decision-making processes to provide complementary authority and oversight; fostering direct dialogue and concerted action on sustainable development; and recognizing and promoting the reciprocal roles of non-state actors' participation and governmental facilitation and oversight County Governments Act 2012.

The Act County Governments Act 2012 establishes modalities and platforms for public participation, including information communication technology-based platforms, town hall meetings, budget preparation and validation fora, notice boards, and the establishment of citizen fora at county and decentralized units. Moreover, the County Governments Act 2012 empowers citizens to petition the county assembly to consider any matter within its authority, including enacting, amending, or repealing any of its legislation. County assemblies are therefore required to respond expeditiously to petitions and challenges from citizens. Additionally, they are mandated to conduct local referenda on local issues, including county laws and petitions County Governments Act 2012.

1.6.1.3 International Instruments

The Constitution of Kenya, 2010 recognises the general rules of international law, as well as the treaties and conventions ratified by Kenya, as integral parts of Kenya's laws. Consequently, Kenya has ratified various treaties and conventions concerning public participation. For example, Article 25(c) of the ICCPR (UN, 1966) guarantees every citizen the right and opportunity to participate in public affairs, either directly or through freely chosen representatives (AU, 1981). The ICCPR (UN, 1966) requires states to take affirmative measures to provide citizens with adequate opportunities to participate in legislative activities without discrimination or undue restrictions.

According to OHCHR, Article 25(a) of the ICCPR pertains to the management of public affairs, encompassing the exercise of political power, including legislative authority. The provision mandates that the distribution of powers and the mechanisms for individual citizens to engage in public affairs be defined by the constitution and laws (UNHRC, 1966). OHCHR observes that participatory democracy can be practised through involvement in popular assemblies with authority over local matters or community affairs, as well as in representative bodies established in collaboration with the government. Individual states retain discretion in determining the extent and nature of public participation in the legislative process (SA Constitutional Court, 2006).

Furthermore, the African Charter on Democracy, Elections and Governance (AU, 2007) asserts the commitment of Member States to enhance good governance by institutionalizing transparency, accountability, and participatory democracy. The Charter (AU, 2007) aims to promote, among other things, the creation of conducive conditions for citizen participation, access to information, freedom of the press, and accountability in public affairs management. To enhance political, economic, and social governance, the Charter (AU, 2007) emphasises principles such as citizen involvement in public affairs governance, as well as transparency and equity in public affairs management. Consequently, the Charter (AU, 2007) mandates State Parties to reinforce parliamentary capacity and foster public participation and collaboration with civil society organisations.

Furthermore, Kenya is obligated by the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance (AU, 2002). This Declaration is founded on the principles of just, honest, transparent, accountable, and participatory governance, as well as integrity in public service. It aims to foster political representation and augment citizen participation in the legislative process within a context of freedom and fairness. Additionally, Kenya is mandated by the Constitutive Act of the African Union (AU, 2000) to uphold democratic principles and institutions, encourage popular participation, and promote good governance.

1.6.2 Challenges to Effective Public Participation in Legislative Process

Ensuring public participation of citizens in the legislative process presents a challenge to Kenyan legislative organs. Public participation is a complex and perplexing concept (High Court of Kenya, 2014). There are concerns regarding institutional corruption and a disconnect between legislative organs and the lives of citizens (Chamhuri, 2015). Moreover, it is argued that the modalities for conducting

an appropriate degree of public participation in the legislative process can vary infinitely (High Court of Kenya, 2015).

On many occasions, public participation has been conflated with activities such as information sharing, consultation, involvement, and engagement, as well as other rubber-stamping exercises aimed at legitimising pre-defined agendas (Waterhouse, 2015). Consequently, numerous efforts made by legislative organs to facilitate public participation often amount to little more than information sharing, rather than genuine public engagement. The current legal framework, including the jurisprudence derived from Kenyan courts on public participation, has not adequately addressed the shortcomings of public participation instruments.

Moreover, the spaces and modalities for public participation exhibit bias and are only accessible to specific stakeholders. Waterhouse (2015) notes that those responsible for creating these spaces and modalities often define the rules and processes of public participation, thereby exerting influence on its ultimate outcome. Consequently, the public does not control these processes but is rather perceived as mere beneficiaries of the ‘privilege’ to participate in the legislative process.

Furthermore, public participation in legislative processes is structured as invited spaces, where issues, timing, format, venue, agenda, and process are defined by the legislature rather than the people. The legislative organs have shown centralizing tendencies, relegating citizens to passive observers and marginalizing them from participation in the legislative process (Chamhuri, 2015). Some argue that consulting every possible person in the legislative process is impractical, hence it is prudent to engage a representative proportion of the population (High Court of Kenya, 2014).

1.6.3 Existing Modalities for Promoting Public Participation in Legislative Process in Kenya

It is crucial to note from the outset that there are three broad categories of modalities for public participation. Firstly, there are the closed space modalities, primarily accessible to organized groups (Waterhouse, 2015). Secondly, there are the invited space modalities, which are government-led participation processes involving the engagement of invited citizens in public participation. Lastly, there are the invented space modalities, created by citizens for engagement with the State, including public meetings (barazas), public protests, and building social consciousness on issues (Kamau, 2017).

It has been argued that there is no one-size-fits-all approach to public participation, and that the choice of modalities depends on the specific matter being addressed (Kawadza, 2018). Primarily, the selection of modalities for public participation must adhere to certain criteria: ensuring reasonable access to information for the public to provide their views, ensuring that the public understands the subject matter, providing the public with adequate opportunity to discuss the information and formulate opinions, establishing mechanisms for receiving responses (Kariuki, Iravo, & Yusuf, 2022), incorporating feedback processes to demonstrate how public responses have influenced the final decisions made, and including complaint mechanisms to promote accountability for poorly executed processes (Waterhouse, 2015).

The Kenyan legislative organs have largely relied on closed and invited space modalities, which are primarily determined by the legislature rather than the citizens themselves (Kaseya & Kihonge, 2016). Additionally, it is noteworthy that citizens and opposition political parties have informally utilised invented space modalities as a response to the limitations of closed and invited space modalities. Given the pivotal role of public participation in the legislative process, this section scrutinises the current modalities for public participation in Kenya (Kawadza, 2018).

1.6.3.1 Stakeholder Engagement

Stakeholder engagement involves consulting a specific segment of the population likely to be impacted by a legislative body's actions (Matatiele, 2006). It is guided by the subsidiary principle, which mandates active involvement of the most affected population segment in policy, legislation, or legislative actions (High Court of Kenya, 2015; Waterhouse, 2015). This approach facilitates the participation of significant sector stakeholders who are greatly influenced by legislative processes (Hutahaeen, 2016).

Stakeholder engagement manifests in various forms, including involving service users or key industry players, particularly in complex and diverse societies aiming to acknowledge diverse legitimate interests in both public and private spheres (Chamhuri, 2015). While stakeholder engagement streamlines resource use and saves time in public participation, it leans more towards representative democracy than direct democracy. It upholds stakeholders' interests through discussion and consensus-based decision-making processes (Chamhuri, 2015).

1.6.3.2 Inviting Submission of Memoranda

It has been established that the submission of memoranda is the traditional method of public participation in the legislative process (SA Constitutional Court, 2006). Parliament engages the public in this process by inviting submissions or memoranda, typically when considering bills, statutory instruments, budget estimates, or conducting inquiries. During approval hearings or the removal of a state officer from office, Parliament invites the public to submit memoranda regarding the suitability or unsuitability of the state officer.

1.6.3.3 Holding Public Hearings

Members of the public also participate in legislative processes by exerting influence through public debate. Members of Parliament can engage the public through face-to-face meetings or by visiting various project sites. This method offers immediate feedback to Members of Parliament regarding public sentiment on the issues under discussion.

1.6.3.4 Petitions to Parliament

Petitions grant citizens the right to participate in public affairs by petitioning Parliament on any matter within its authority, including the removal of a public officer from office or the amendment or repeal of legislation (Government of Kenya, 2010; National Assembly, 2022). Petitions submitted to Parliament can be handwritten, printed, or typed, and must be in English or Kiswahili. They should also indicate whether any prior efforts have been made to address the subject matter by the relevant body County Governments Act 2012.

1.6.4 Comparative Analysis of Existing Modalities in Kenya with Best Practices in South Africa

Public participation is a flexible and dynamic right that undergoes experimental reformulation, adapting to various cultural and political contexts (Umoh, 2022). Nonetheless, the fundamental criterion for public participation is to provide citizens with a meaningful opportunity to contribute to public debates on significant issues (Phooko, 2020). In South Africa, public participation involves consultations by Parliament and provincial legislatures with the people, interested or affected individuals, organizations, and government entities before enacting legislation (Legislative Sector SA, 2013). Section 1(d) of the Constitution of the Republic of South Africa (Government of RSA, 1996) establishes the republic as a sovereign, democratic state, founded on principles such as democracy, accountability,

responsiveness, and open government. The approach to public participation varies depending on factors such as the specific process, content, importance, urgency, and the public's response.

The legislative organs are mandated to facilitate public participation and uphold fundamental democratic rights and social justice. For example, according to section 56(d) of the SA Constitution (Government of RSA, 1996), the National Assembly or any of its committees must accept petitions, representations, or submissions from interested individuals or institutions. Additionally, section 59(1) (Government of RSA, 1996) mandates the National Assembly to facilitate public involvement in the legislative and other processes of the National Assembly and its committees.

The National Council of Provinces is mandated to accept petitions, representations, or submissions from any interested individuals or institutions (Legislative Sector SA, 2013). It is also required to establish rules and orders regarding its operations, with consideration for representative and participatory democracy, accountability, transparency, and public involvement (Government of RSA, 1996). Furthermore, section 72(1) of the SA Constitution (Government of RSA, 1996) mandates the National Council of Provinces to facilitate public involvement in the legislative and other processes of the Council and its committees. Unlike the Constitution of Kenya 2010, which merely mentions public participation without detailing its normative contents, the SA Constitution (Government of RSA, 1996) specifies the modalities for public participation.

It is therefore evident that public involvement is a multifaceted concept with various potential dimensions. In South Africa, public participation can manifest in diverse forms, including the submission of comments and representations (Majuta, Maria, & Mathome, 2015). The Supreme Court of Appeal (2005) has ruled that while the Constitution sets the benchmark for public participation, it allows Parliament significant flexibility in meeting this obligation. This differs from the Kenyan context, where the Constitution of Kenya ,2010 mentions public participation without specifying the standards for its implementation. It grants Parliament unchecked discretion to determine the modalities and procedures for public participation (Gardbaum, 2019).

To bolster participatory democracy, the South African Parliament, in collaboration with provincial legislatures, has developed the People's Assembly to empower the public to influence legislative actions (Girma, 2014). This initiative provides a platform for citizens to engage with Parliament and provincial legislatures, allowing

them to voice concerns on issues affecting them and build on the legacy of active participation (SA Constitutional Court, 2006). Furthermore, the Parliament of the Republic of South Africa has implemented measures to provide information, education, and opportunities necessary to enhance public participation (Serra-Silva, 2022). This includes establishing education offices to inform people about ways to influence and participate in legislative activities, utilizing the South African Broadcasting Corporation to educate the public on Parliament's activities, organizing workshops and conferences in rural areas to enhance public participation, and permitting electronic submissions to leverage technology (Walkland, 2021).

2. Methods

2.1 Eligibility criteria

The scope of the study was limited to desk/secondary research that utilizes academic literature, Government reports, and policy documents to analyse the modalities for promoting public participation in the legislative process in Kenya. The study focused on the legislative process in Kenya and did not cover public participation in other Government processes. The study also focused on comparative legislative processes in South Africa.

2.2 Information sources

The research utilized a systematic review of secondary data research design to gather information about public participation in the legislative process in Kenya. This research relied primarily on desk research technique that involves, gathering and analysing existing data from different sources, including academic journals, Government reports, policy documents, and other relevant publications

2.3 Data collection process

Data from the study was mainly collected from secondary sources including academic journals, Government reports, policy documents, and other relevant publications. The research later utilized doctrinal, comparative and descriptive data analysis techniques. The doctrinal research involved studying the legal position and analysing the legal provisions using legal reasoning and critical analysis. The research critically analysed the legal and policy frameworks governing public participation in Kenya. Comparative analysis on the other hand, was used to make a comparison of public participation in Kenya and South Africa, and to draw lessons for the improvement of the Kenyan system. Descriptive analysis was also used

to analyse the existing modalities and the legal framework of public participation in Kenya.

3. Results

The right to public participation, as enshrined in the Constitution, is broad and open-textured. The legal and policy framework in Kenya is crafted to grant Parliament the discretion to establish the methods and procedures for public involvement in the legislative process. However, the Parliament of Kenya has misused this discretion by formulating its Standing Orders in such a way that restricts public engagement in legislative activities solely at the discretion of Parliament.

Although there are several methods available for public participation in the legislative process in Kenya, Parliament has consistently favoured stakeholder engagement and the solicitation of memoranda. By issuing calls for memoranda in national newspapers and occasionally holding meetings for oral submissions near Parliament, it has been deemed by Parliament that they have fulfilled the requirements, despite the lack of significant responses. However, this approach has hindered effective public participation.

The jurisprudence developed by the Kenyan courts has established criteria for ensuring meaningful public participation, which include providing reasonable access to information regarding the legislative process in question, as well as offering adequate opportunities and mechanisms to scrutinise this information and submit responses. However, the courts have not clarified standards for public participation in terms of both quantitative and qualitative aspects. As a result, it is challenging to assess the effectiveness of the various methods of public participation in Kenya.

Therefore, the state must develop modalities to ensure meaningful public participation by the citizenry in the legislative process. South Africa has a robust legislative framework that clearly delineates duties and rights among various stakeholders. This framework is underpinned by an extensive policy framework that encompasses normative elements for public participation in the legislative process. South Africa's legislative framework establishes institutions and structures tasked with facilitating public participation, ensuring that the public can utilise available opportunities and benefit from timely dissemination of information. To enhance participatory democracy, the South African Parliament, in collaboration with provincial legislatures, has established the People's Assembly. This platform enables members of the public to influence legislative actions, engage with Parliament and

provincial legislatures, and voice their concerns on issues affecting them, thereby building on a legacy of active public participation.

The Parliament of the Republic of South Africa has implemented measures to facilitate public participation by providing information, education, and opportunities. It has established an education office aimed at informing the public about methods and mechanisms for influencing and participating in legislative activities. Additionally, it utilises the South African Broadcasting Corporation to educate and inform the public about parliamentary activities. Moreover, the South African Parliament organises workshops and conferences in rural areas to enhance public participation. Furthermore, it embraces technology by allowing electronic submissions.

4. Conclusion

The study concludes that the Constitution of Kenya merely outlines the principle of public participation without providing a clear framework for its implementation. It neither specifies the methods nor delineates the procedure for public involvement in the legislative process, thereby allowing the legislature considerable discretion in determining the normative aspects. This discretion has been exploited, resulting in systematic exclusion of the public from meaningful participation. In contrast, the legal and policy framework in South Africa adheres to the principles of an ideal regime for public participation. The South African Constitution outlines both the methods and procedures for conducting public involvement.

The study recommends that there is need to formulate an extensive and robust policy framework.

Kenya lacks a clear policy framework on public participation, unlike South Africa, which boasts a very robust framework for public involvement. Therefore, the study recommends that the relevant State Department should develop a comprehensive policy framework, which Parliament can utilise in shaping legislative procedures. Additionally, there is a need to enact a Parliamentary Act to establish the methods and procedures for public participation. The study identified the absence of a legislative framework on public involvement in Kenya, contrasting with South Africa's enactment of several statutes that enhance public participation.

The study thus recommends that Parliament should pass legislation to clearly establish the procedure and methods for conducting public participation. Furthermore, the study suggests the necessity for additional research to elucidate

the standards of public involvement in both quantitative and qualitative terms. This would enable an assessment of the effectiveness and sustainability of different methods of public participation as a governance principle in Kenya.

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Thematic Area 4: The role of research in propagating effective public Participation

The role of research in propagating effective public Participationrole of Capacity Building of Legislators In Fostering Best Practices In Public Participation In Kenya

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Abstract

Capacity building of legislators plays an important role in sharpening their skills to undertake effective public participation activities. However, in Kenya, effective public participation programmes have not been fostered with 64.3% of the members of the public being rarely involved during the legislation of important motions affecting them. This is despite the existence of laws governing public participation. Thus, the study sought to assess the role of capacity building in fostering best practices in public participation in Kenya. The study was guided by the capacity-building theory of change. The study adopted a mixed methodology and thus, applied a concurrent triangulation research design. The research targeted 442 respondents comprising 349 legislators and 93 Parliamentary Service Commission (PSC) staff from which 210 respondents (135 legislators and 75 PSC staff) were determined using Yamane's Formula. Qualitative data were analysed thematically along the objectives and presented in narrative forms. Quantitative data were analysed descriptively using frequencies and percentages and inferentially using Pearson's Product Moment Correlation Analysis in Statistical Packages for Social Science (SPSS 23) and presented using tables. The study established that even though infrequently, legislators' attendance of capacity-building programmes organised by PSC largely reflected in their ability to adopt and promote best practices in public participation. Thus, the study recommends that legislators should fully embrace capacity-building programmes as a tool for equipping them with requisite skills to adopt best practices while undertaking and promoting public participation in their constituencies. PSC should allocate enough time for capacity-building activities with appropriate content touching on best public participation practices.

Key Words: Capacity building, public participation, legislators' information literacy

1. Introduction

Success of any government depends on prudent use of the available financial resources. To achieve these objectives, the government and members of the public should be concerned about how such resources are planned, controlled, and applied for specific assignments (Allan, 2015). Thus, the views and opinions of the members of the public as key decision makers cannot be wished away as they ought to be engaged in public participation programmes. Public participation entails taking part in decision-making with regard to operations that take place within government circles from policy formulation to service delivery (Aulich, 2018).

Public participation has also been described as any process that directly engages the public in decision-making and gives full consideration to public input in making that decision (Cattino & Reckien, 2021). It is further termed as a process, as opposed to being a single event that consists of a series of activities and actions by a sponsor agency over full lifespan of a project to both inform the public and obtain input from them (MelekEker, 2017). In other words, public participation presents stakeholders (those that have interest or stake in an issue, such as individuals, interest groups, communities) with the opportunity to influence decisions that affect their lives.

The practice of public participation has been on the rise due to the shift by most governments from centralized governance to decentralized governance, where services are brought closer to the people (Swapan, 2014). Such devolved governance goes a long way in establishing mechanisms and opportunities for communities to directly participate in policy formulation, law-making, and governance towards improved service delivery. Nonetheless, with the advent of devolution, governance has shifted from just service delivery or transfer of resources and functions to lower tiers of government, to improved relations with the locals (Dasgupta, Kugananthan, Rao, Somanathan, & Tewari, 2020). Enhanced relationship between legislators and the communities they represent can have significant gains in fostering best practices towards meaningful public participation.

When done well, public participation is essential for promoting meaningful decision making processes, as stakeholders have collaborative ways to approach each other, manage difficult decisions, and resolve disputes (Abas, Arifin, Ali, & Khairi, 2023). Stakeholders learn to appreciate each other's positions by first learning about each other's values and interests. As participants in good decision-making processes, all stakeholders must understand all sides of an issue, weigh the pros and cons, and make more thoughtful decisions (Kandil, 2024). This implies that those planning

public participation must recognize their responsibility to help communities build their capacity for collaborative problem-solving. However, the involvement of people in governance is still not fully embraced and sometimes their views are ignored. To mitigate these challenges, workshops and seminars have been organised for different policy-makers and policy implementers to undertake capacity-building programmes on the essence of fostering best public participation practices.

Capacity building or development entails equipping legislators with skills and abilities on how to undertake effective public participation programmes. The term first appeared in the 1970s in the United States, in reference to the need to improve the capacity of state and local governments to implement fiscal decentralization policies (Cherney & Head, 2011). Capacity-building has widely been used in different organisations and contexts. A general definition has however gained consensus as planned development of (or increase in) knowledge, output rate, management, skills, and other capabilities of an organisation through acquisition, incentives, technology, and/or training (European Union, 2017). The term has most often been used in relation to public institutions and has been widely debated and analysed from a conceptual point of view in development policy, which aims to improve the capacity of developing countries' institutions to deliver on their functions.

United Nations Development Programme (2010) asserts that capacity building has become an indispensable part of the activity of all development organisations today, even if in practice the results of efforts to develop capacity have not always been satisfactory. As part of its support for democracy and elections, the European Parliament (EP) provides assistance to parliaments in third-world countries in order to strengthen their institutional capacity. More specifically, EP programmes focus on strengthening the parliamentary functions; setting up parliamentary organisations; implementing administrative and institutional reform and sharing of best public participation practices (Greijn, Hauck, Land & Ubels, 2015).

While previously capacity-building was implemented in a rather ad-hoc manner, it has since 2014 been pursued in a systematic way, addressing the whole electoral cycle via a so-called Comprehensive Democracy Support approach (CDSA) through effective participation (European Union, 2017). These assertions point to the fact that capacity building includes building of frameworks, work cultures, policies, processes and systems within an organisation to improve performance to achieve successful outcomes. Training, or building capacity in individuals, is an integral

part of this process insofar as it supports the attainment of organisational goals. This is attributed to the fact that, given that parliamentarians perform their work on behalf of the electorate, they also are required to consult the same people when making important decisions that affect their lives, hence the key role of public participation in parliamentary work.

Promoting the training of legislators in the Czech Republic is seen as promoting the best practices in public participation and its significance cannot be overemphasised. However, many young legislators are not sufficiently equipped with life skills to help them deal with the increased demands and stresses they experience concerning addressing challenges that bedevil their constituents (Ales, 2016). Given the wide-ranging relevance in effective public participation, there is need for integration of effective strategies aimed at equipping Kenyan legislators at the national level in order to foster best practices in public participation.

Capacity development has become a major means of increasing parliamentary effectiveness. Most strengthening activities of parliament have focused on this technical area. Capacity development has included the establishment of Parliamentary Training Institutes (PTI's) that train legislators and staff of parliaments, making management and infrastructure improvements and better equipping members and staff (AFIDEP, 2017). Research offices have been set up in many parliaments where research is carried out for members and their committees (Cassandry & Simpson, 2015). Other parliaments have also put in place budget or fiscal offices that are charged with the responsibility of interpreting unique executive budgets for legislators while at the same time assisting them in accomplishing their oversight roles and responsibilities (Cassandry & Simpson, 2015). This has increased effectiveness in their oversight roles and responsibilities as elected leaders.

In Sub-Saharan Africa region, Broadbent (2012) asserts that, in capacity building, legislators need to be actively involved in a dynamic training and learning process. The methods used to facilitate this active involvement include working in small groups and pairs, brainstorming, role play, games and debates. Capacity building and development for legislators is a fairly new phenomenon, and the few training providers that are undertaking it have had to learn along the way given the scarce documented best practices on requisite approaches for assisting these institutions perform optimally (Mkandawire, 2014).

Research from Nigeria revealed that capacity-building sessions may start with a trainer exploring with the legislators what their ideas or knowledge are about a particular situation in which such skills can be used. The trainees may be asked to discuss the issues raised in more detail in small groups or with a partner. They may then engage in short role-play scenarios or take part in activities that allow them to practice the skills in different situations - the actual practice of skills is a vital component of capacity building. It was further noted that the trainer will assign tasks to encourage the trainees to further discuss and practice the skills with their contemporaries (Oluwasola, 2017). Tanzania, Uganda and Kenya are no exceptions and capacity building of staff including legislators has been recognized as a key strategy that can foster best practices in public participation.

In Kenya, Odhiambo, (2013) established that, irrespective of their occupation or professional background prior to election, few new parliamentarians arrive fully equipped for their parliamentary roles and legislative functions. It was noted that the legislators are faced with a myriad of complex issues in a context where there are many competing priorities for their attention. Thus, the primary objective of capacity building is to assist members to become effective parliamentarians. Yet, the barriers of effective capacity building for parliamentarians can be high and may often seem insurmountable. In the same token, a study carried out in Imenti North District, Meru Kenya by Mbogo (2012) found that capacity building influences employee performance and hence effectiveness in service delivery. It was found that training enhances possession of appropriate skill and knowledge.

Akala (2019) based on a study involving members of County Assembly of Nairobi, revealed that investment in capacity-building programmes is worthwhile considering that the potential gains of capacity-building are so far-reaching. The study further noted that the methods used can help to improve legislators' relationships with the electorates. The study further found that building the capacity of the organisation also depends on the capacities of individual legislators within the organisation to develop new skills, acquire knowledge and implement and sustain change. This has been done based different approaches or modules such as on-the-job training, which has been the most effective and well regarded by senior managers and project teams for the results that it achieved.

However, much still needs to be done as the reported empirical works, have not interrogated how different concepts learnt during capacity-building sessions specifically foster best practices in public participation, hence the study.

2. Statement of the Problem

Capacity building of legislators plays an important role in sharpening their skills to undertake effective public participation activities. However, in Kenya, effective public participation programmes have not been fostered with 64.3% of the members of the public being rarely involved during the legislation of important motions affecting them. This is despite the existence of laws governing public participation. Thus, this study sought to examine the role of capacity building of legislators in fostering best practices in public participation in Kenya.

3. Theoretical Framework

The study was guided by the capacity-building theory of change, postulated by Stein and Valters (2012) which emanated from a Theory of Change that describes how inputs and activities result in short-term outcomes and can lead to long-term outcomes and ultimate impact. This theory was premised on the commitment to develop and ensure access to high-quality materials and content, allowing organisations, their members and their partners to conduct a range of activities that will result in demonstrable outcomes within the community of practice. Organisations hold the belief that the short-term outcomes of their activities will promote long-term positive improvements in capacity and skills with the community, ultimately leading to an overall outcome of improved cash transfer programming. In the context of this study, this theory is relevant in that it underscores the significance of capacity-building programmes of trainees, in this case legislators toward fostering best practices in the objects of governance such as public participation.

4. Objective of The Study

The study sought to assess the role of capacity building of legislators in fostering best practices in public participation in Kenya.

5. Research Methodology

The study adopted a mixed methodology and thus, applied a concurrent triangulation research design to enable the researcher to implement both quantitative and qualitative methods at the same time and with equal weight. The research targeted 442 respondents comprising 349 legislators and 93 Parliamentary Service Commission (PSC) staff from which 210 respondents (135 legislators and 75 PSC staff) were determined using Yamane's Formula. Questionnaires were used to

collect quantitative data from legislators whereas interviews were used to gather qualitative data from Parliamentary Service Commission (PSC) Staff.

Quantitative data were analysed using descriptive statistics such as frequencies and percentages. Inferential analysis was also undertaken using Pearson’s Product Moment Correlation Analysis with the help of Statistical Packages for Social Science (SPSS 23). The quantitative study findings were presented using tables.

5.1 Results and Discussions

This section presents the findings of the study based on the objective. It also outlines the methods of presentation of the study findings and discussions.

5.2 Response Rate

In this study, 135 questionnaires were administered to legislators and, in return, 131 questionnaires were filled and returned. The researcher also interviewed 70 Parliamentary Service Commission (PSC) Staff. This yielded response rates shown in Table 1.

Tables 1: Response Rates

Respondents	Sampled Respondents	Those Who Participated	Achieved Return Rate (%)
Legislators	135	131	97.0
PSC Staff	75	70	93.3
Total	210	201	95.7

Source: Field Data (2023)

Table 1 shows that legislators registered a response rate of 97.0% whereas Parliamentary Service Commission Staff registered a response rate of 93.3%. This yielded an average response rate of 95.7% which is consistent with the assertions of Creswell (2014) that a response rate above 75.0% is adequate and of suitable levels to allow for the generalization of the outcomes to the target population.

5.3 Capacity Building of Legislators and Public Participation

The study sought to examine how the capacity building of legislators influences public participation. Descriptive data were collected from legislators. Results are shown in Table 2;

Tables 2: Influence of Capacity Building of Legislators on Public Participation

Test Items	Ratings in %				
	SA	A	U	D	SD
Legislators have undertaken sufficient capacity-building activities on public participation	51.9	11.1	5.6	5.6	25.8
Legislators from time to time undergo capacity building as a way of fostering best practices in public participation	53.7	14.8	5.6	11.1	14.8
Capacity-building strategies for public participation have been effective in fostering best practices in public participation	57.4	9.3	7.4	9.3	16.7
Capacity building of legislators is considered as a strategy for fostering best practices in public participation	48.1	18.5	5.6	9.3	18.5
Success of public participation programmes has depended on the capacity-building of legislators	66.7	11.1	3.7	5.6	13.0

Table 2 shows that 68(51.9%) of legislators strongly agreed that they have undertaken sufficient capacity-building activities on public participation as did 15(11.1%) who agreed. However, 7(5.6%) were undecided, 7(5.6%) disagreed, whereas 34(25.8%) strongly disagreed. Despite consensus among the majority of the participants, a significant number of those dissenting was reported, implying that there was room for improvement. A fair majority, 70(53.7%) of the participants strongly agreed with the view that legislators from time to time undergo capacity building as a way of fostering best practices in public participation while 19(14.8%) agreed. However, 7(5.6%) were undecided, 15(11.1%) disagreed whereas 19(14.8%) strongly disagreed. The findings suggest that legislators were from time to time exposed to processes of knowledge and skill development aimed at improving their skills towards improved standards and outcomes of public participation. These findings largely support the assertions of Ales (2016) that, given the wide-ranging relevance of capacity building and training of legislators on public participation

strategies, an optimal strategy for the introduction of training would be to make it available to all legislators. This indicates that, although it is occasionally practiced, capacity building of legislators promotes best public participation practices and enhances positive interpersonal relationships between them and their constituents.

Most, 75(57.4%), of the legislators strongly agreed with the view that capacity-building strategies on public participation have been effective in fostering best practices in public participation, while 12(9.3%) agreed. However, 10(7.4%) were undecided, 12(9.3%) disagreed whereas 22(16.7%) strongly disagreed. The results by and large indicate that most of those sampled concurred on effectiveness of strategies of in promoting best practices in public participation. The results reveal that 63(48.1%) of the legislators strongly agreed with the view that, capacity building of legislators is considered as a strategy for fostering best practices in public participation whereas 24(18.5%) agreed. At the same time, 7(5.6%) were undecided, 12(9.3%) disagreed whereas 24(18.5%) strongly disagreed. From the reported findings, majority, 87(66.7%), of the legislators strongly agreed with the view that the success of public participation programmes has depended on the capacity building of legislators, while 15(11.1%) agreed, 5(3.7%) undecided, 7(5.6%) disagreed, whereas 17(13.0%) strongly disagreed. The results imply that efforts and commitment made in building human capital and relevant skills among the legislators have produced positive results in public participation programmes. These findings are consistent with those of a study conducted in Nairobi County by Akala (2019), which revealed that investment in capacity-building programmes is worthwhile because its potential gains are so far-reaching. Akala (2019) further noted that the methods used can help to improve legislators' relationships with the electorates through effective engagement in public participation programmes. The results demonstrate that continuous training of legislators on governance skills is an effective approach for fostering best practices in public participation. This further indicates that there is a need to equip legislators with skills to undertake effective public participation activities.

6. Inferential Analysis of the Influence of Capacity Building of Legislators on Public Participation

To verify the influence of the capacity building of legislators on public participation, data were collected on how often the capacity building of legislators is undertaken among a sample of eight (8) legislators (Very Often = 5, Often = 4, Sometimes = 3,

Rarely = 2 and Never = 1) and the levels of satisfaction (Satisfied = 3, Not Satisfied = 3 and Not Sure 1) with public participation. The results are shown in Table 3.

Tables 3: Capacity Building of Legislators and Levels of Satisfaction with Public Participation

Frequency of Capacity Building of Legislators	Levels of Satisfaction with Public Participation
2	2
1	1
2	3
1	1
3	3
1	2
1	2
5	3

Table 3 shows that the capacity building of legislators is an activity that is rarely undertaken. However, when the capacity building of legislators is frequently undertaken, the levels of satisfaction with public participation activities improve.

The results were subjected to Pearson’s’ Product Moment Correlation Analysis and the results are shown in Table 4, in order to test the hypothesis advanced as follows:

H01: There is no statistically significant relationship between capacity building of legislators and fostering best practices in public participation in Kenya

Tables 4: Pearson’s Product Moment Correlation Analysis of the Relationship between Capacity Building of Legislators and Public Participation

Frequency of Capacity Building of Legislators			Levels of Satisfaction with Public Participation
Frequency of Capacity Building of Legislators	Pearson Correlation	1	.726*
	Sig. (2-tailed)		.041
	N	8	8
Levels of Satisfaction with Public Participation	Pearson Correlation	.726*	1
	Sig. (2-tailed)	.041	
	N	8	8

*. Correlation is significant at the 0.05 level (2-tailed).

Table 4 shows a Pearson Product-Moment Correlation Test Analysis which generated correlation coefficients of $r = 0.726$ with a corresponding significant level (p-value) of 0.041 which was less than the predetermined level of significance, 0.05, that is, $p\text{-value} = 0.041 < 0.05$. The results therefore provide adequate evidence of existence of relationship between the two variables. Thus, the advanced hypothesis that there was no statistically significant relationship between capacity building of legislators and fostering best practices in public participation in Kenya was rejected. This implies that the capacity building of national level legislators contributes to fostering best practices in public participation. That is, the higher the frequency of capacity building of legislators, the higher the levels of satisfaction with public participation.

7. **Thematic Analysis of the Influence of Capacity Building of Legislators on Public Participation**

During the interviews with Parliamentary Service Commission (PSC) staff, it was noted that legislators have undertaken capacity building on public participation. On further probing, Parliamentary Service Commission (PSC) staff, PSCS1, noted;

We have ensured that both legislators and peer legislators undertake training programmes to equip them with basic public participation skills, though there have been numerous challenges due to lack of resources.

The findings are testament to the fact that the role of capacity building in equipping legislators with skills is crucial as a strategy for fostering best practices in public participation. This implies that equipping national-level legislators with requisite skills on participatory law-making process creates better interaction with members of the public, thus affording them more opportunities to take part in decision making. Such interrelations promote citizen consultations, and electorate knowledge on processes of participation, including petitioning the national assembly through the laid down mechanisms, taking part in public forums and following the parliamentary debates. The interviewees and discussants concurred with the legislators that capacity-building strategies have been somewhat effective even though more needed to be done for such approaches to fully promote best practices in public participation. Parliamentary Service Commission (PSC) staff, PSCS2, admitted;

There have been challenges in organising effective capacity building for legislators to equip them with skills to handle and foster best practices in public participation.

This indicates that there is recognition that the place of capacity building of legislators as a model for improving levels of satisfaction with public participation cannot be overemphasised. In summary, these findings indicate that despite challenges and intermittent practice, capacity building of legislators promotes skill acquisition and information literacy that enable legislators to plan and ensure that the right stakeholders are involved in public participation forums.

8. Summary of Findings And Conclusions

From the study findings, it is evident that legislators' attendance of capacity-building programmes organised by PSC has promoted their skill development, information literacy and positive interactions with the electorate, resulting in adoption and application of best practices in public participation. This indicates that, though only occasionally practised, capacity building of legislators equips legislators with skills to embrace a collegial form of leadership by tapping into the abilities of the people through effective public participation forums.

9. Recommendations

The study recommends that Parliamentary Service Commission should continue organising seminars and workshops to train legislators on how to undertake public participation activities in a manner that benefits the potential stakeholders, especially the people. The government should utilise capacity-building mechanisms

as a means of building management systems and programs, hold seminars and workshops, and broaden public participation, which in turn can allow for the progress of implemented programs and increase competence and effectiveness in participatory governance. In terms of promoting sustainability and increasing the impact of capacity building activities, these programmes need to move beyond technical issues and focus on organisational issues and national human resource frameworks.

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The Role of Research In Promoting Effective Public Participation

By Mr. Misheck Njihia Waweru,

Abstract

The Constitution of Kenya mentions Public Participation 15 times under Articles 10, 69, 118, 174, 184, 196 and 201. The spirit of this articles is to achieve information access and inclusivity under Articles 33 and 35 of the Constitution of Kenya. Since independence, the public has been invited to participate in government programmes through Chiefs Barazas, village development Committees and Church announcements. However, this methods of engagement were not effective as the Public were not reliably informed on the impacts of their contribution or that their previous contributions were not captured in the resolution made by the government. This is because, there has not been a comprehensive study showing the nature and needs of the public, level of information required, the format and dissemination mediums that are most appropriate to reach out to the citizenry or the good will to do so. This informational gap hampers success and effectiveness of public engagements in governance. This study sought to investigate the role of research in promoting the effectiveness of Public participation. The study objectives were to establish the correlation between research and public participation and to identify the challenges hampering effective public participation. Correlation analysis was used to achieve the first objective, the finding from the analysis shows that there is no positive correlation between research and effective public participation with a Pearsons correlation coefficient of -0.333 (-33.3%) which is significant at a p-value of 0.005. Further, the study found out that effective public participation is faced by a myriad of challenges that include; tight bureaucracy in accessing public information, ineffective public communication between government and the people, demotivation and failure to incentivise the public to participate – 83% of respondents said that they would participate effectively if they were given incentives. Further, low capacity building, sensitization and civic education to the public were the major challenges limiting effective public participation in the Country as demonstrated by the findings under Table 3. To address this findings there is a need for Attorney General of Kenya to fast-track approval of the pending National Public Participation Policy that will form the basis for other legislations both at the national and county level. Further, the government needs to improve on the methods used to disseminate information to the citizenry including preparing a citizen friendly language. This will increase the level and quality of participation.

Finally, the need to facilitate 'Mwananchi' remains critical in wake of strained socioeconomic environment, there should be a moderate facilitation to enable people to travel and participate in public policy making in the country.

1. Background of The Study

Research and Development (R&D) is defined as any systematic and creative work undertaken in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this knowledge to devise new applications (Cororaton, 1998). It is through research that new ideas/Methods are tested and validated. In view of these, research is a critical tool in design and packaging information that is disseminated to various specific Audiences. For people to give feedback that adds value to the debate, the information material, means of distribution and the architect of the information must be to their level of understanding and appealing. Mikko Rask, (2018), in their study on the 'Effectiveness of Public engagement', notes that responsible research and innovation approach in the context of public participation has been considered as a social – science for society. The need for dynamic governance therefore, demands inclusion of the citizen views in decision making. This is due to the fact that society has evolved from post-industrial society, (Bell, 1974) to information and knowledge society (Rosa, 2013). It's against this background, that the role of research in promoting effective public participation needs to be examined, documented and leveraged on in fostering accountability and openness in democratic process.

1.1 Problem Statement

The Constitution of Kenya, 2010 mentions public participation 15 times under Articles 10, 69, 118, 174, 184, 196 and 201. The building blocks that gives life to this Articles is the need to achieve information access and inclusivity under Articles 33 and 35 of the Constitution of Kenya. Since independence, the public have been invited to participate in government programmes without proper thought and structured way to allow them make decisions that are informed, sound, timely and financially feasible. This is because, there has not been comprehensive findings showing the nature and needs of the public, level of information required, the format and dissemination mediums that are most appropriate to reach out to the citizenry. This informational gap hampers success and effectiveness of public engagements in public governance. This study seeks to investigate the role of research in promoting the effectiveness of public participation.

2. Literature Review

2.1.1 The Rational Choice Model

Rational choice theory has played an important role in the analysis of political participation. The rational choice model is summarized succinctly in the following terms: “A rational man is one who behaves as follows: he can always make a decision when confronted with a range of alternatives; he ranks all the alternatives facing him in order of his preferences in such a way that each is either preferred to, indifferent to, or inferior to each other; his preference ranking is transitive; he always chooses from among the possible alternatives that which ranks highest in his preference ordering; and he always makes the same decision each time he is confronted with the same alternatives (Downs, 1957). This theory is at the core of the study as it speaks to consistence of decision making by the members of the public that promotes effectiveness of public participation.

2.1.2 The Communicative Action Theory

Communicative action is a theory which aims to explain human rationality as the necessary outcome of successful communication (Mitrovic, 1999). The theory argues that the potential for rationality is inherent in communication and action, and represents a critical synthesis (Habermas, 1987). Habermas’ general theoretical objective is to link communicative action theory, as a variant of action theory, with systems theory into a comprehensive approach to social theory (Mitrovic, 1999). The theory of Communicative Action has influenced thinking about the way in which planning and policy-making should happen. The theory emphasizes two key concepts to the study of public participation in these processes: argumentation and the role of culture and language.

The ladder of participation model perhaps the seminal theoretical work on the subject of community participation was by Arnstein (1969). The particular importance of Arnstein’s work stems from the recognition that there are different levels of participation, from manipulation, through to consultation, and to what we might now view as genuine participation, i.e, the levels of partnership and citizen control. The limitations of Arnstein’s framework are obvious. Each of the steps represents a very broad category, within which there are likely to be a wide range of experiences. For example, at the level of ‘informing’ there could be significant differences in the type and quality of the information being conveyed. Realistically therefore, levels of participation are likely to reflect a more complex continuum than a simple series of steps. The use of a ladder also implies that more control

is always better than less control. However, increased control may not always be desired by the community and increased control without the necessary support may result in failure.

2.1 Empirical Literature Review

Mikko (2018) in their study on the ‘Effectiveness of Public Participation’ found out that social-science research for society is increasingly becoming critical in strengthening democratic process. They noted that, for public engagement to be effective, it must be founded on four pillars; Policy, Science, Industry and Society.

Okindo, (2017) in his paper on the ‘role of information in public participation at the County levels’ reviewed various laws, government reports and journals on methods used to disseminate information. From the review, it was found that, an informed citizen is at the core of effective public participation and that information access to the local citizenry is limited. The study recommended that the County government should improve citizen access to information and that citizen should demand access of this public information and make use of the information to influence decision making.

Kaseya and Kihonge, (2016), in their study on ‘Effectiveness of Public Participation in the County Government’ assessed the extent to which civic education influences public participation, how financial incentives affect public participation and the effects of scheduling of public participation. A sample size of 240 was purposively selected. From the analysis, it was found that Civic Education has significant positive influence on public participation and that financial incentives also played a major role in the outcome and participation of the public.

According to Kugonza and Mukobi (2011) public participation is affected by access to information which enables citizens articulate their voice, effectively monitor, hold government accountable and enter into informed dialogue about decisions which affect their lives. According to them, information empowers all citizens including vulnerable and excluded people to claim their broader rights and entitlements. They found out that informed citizens can stand up for their rights and hold public officials accountable for their actions and decisions. According to the findings, majority of the respondents disagreed with the view that all the information on government projects is available and accessible to the community members. The study established that information was not provided in a timely manner. Dissemination of information was not effectively and timely done by both

the general public and the government. They concluded that there is a positive relationship between information accessibility and participation in lower local government projects. Kakonge (1996) pointed out that public participation is affected by lack of communication between the government and the people. He said that projects are formulated without the dissemination of information by the government among local people.

On the other hand, Arnstein (1969) argues that the ability of citizens to influence decisions depends on the quality of technical assistance they have in articulating their priorities; and the extent to which the community has been organized to press those priorities. From the empirical and theoretical literature review it is demonstrated that a number of factors contribute to effectiveness of public participation. This study therefore, sought to fill this gap through the following objectives:

2.2 Objectives of The Study

The primary objective of the study is to investigate the role of research in promoting effective public participation.

The secondary objectives of the study are:

- (i). To establish the relationship between research and public participation
- (ii). To identify, the factors affecting Public Participation

2.3 Research Questions

- (i). What is the relationship between Research and Public Participation?
- (ii). What are the factors affecting Public participation?

3. Methodology

The study adopted a descriptive research design. This is because, Churchill (1991) postulated that the design describes the characteristics of certain groups, estimate the proportion of people who have certain characteristics and make certain predictions. The method describes the situation as it is without manipulation. To achieve this, primary data was collected through an electronic questionnaire mailed to the sampling frame. A correlation analysis between research and Public participation was run to determine the relationship between research and effective public participation. While other descriptive analysis was run to show the interactions of education level and effective public engagement, training and public participation, the role

of incentives and contribution of previous feedback on the citizen priority and how this identified needs fed into the final approved resolutions.

3.1 Sampling

Simple sampling method was used to extract a sample size of 400 from the 25 Wards in Nyandarua County. To obtain a representative sample size Tora Yamane, (1973) sampling formula was used. The confidence interval was computed at 95% significance level and 5% margin of error was allowed.

$$n = \frac{N}{1 + Ne^2} \quad (3.1)$$

Where;

n- is the sample size

N- is the population size

e- is the error

Nyandarua has a population of 638, 289 according to KNBS, (2019) National census. Applying the formula we have.

$$n = \frac{638289}{1 + 638289(0.05^2)} \quad (3.2)$$

n= 400

4. Data Analysis

The study collected primary data that was sorted and coded. The data was analysed using SPSS. Further, correlations was run to determine the relationship between research and public participation. Additionally, a regression analysis was conducted to determine the impact of research on effective public participation. The output of the analysis is as presented below.

4.1 Results and Discussion

The first objective of the study was to establish the correlation between research and Public participation. Richard Gonzalez, (2022) postulated that correlation is a quantitative measure to assess the linear association between two variables. A

correction analysis was run on the responses obtained from the survey. The result is as shown in Table 1.

Tables 5: Correlation analysis between Research and Public participation

		PP	RECH
PP	Pearson Correlation	1	-.333*
	Sig. (2-tailed)		.047
	N	36	36
RECH	Pearson Correlation	-.333*	1
	Sig. (2-tailed)	.047	
	N	36	36

*. Correlation is significant at the 0.05 level (2-tailed).

Source: Author, (2023)

From Table 1. The Pearson’s Correlation coefficient is -0.333 which translates to -33.3%. The analysis results shows that there is negative 33.3% variable level that explains the role of research in effective public participation. In addition, the result are significant at 0.05 significance level.

4.1.1 Level of Education and Public Participation

Further, an analysis of the level of education and participation attendance. This as shown in Table 2

Tables 6: Analysis of Education Level and Public participation

Education Level	Yes	% Percentage	No	% percentage
Degree	15	43%	4	11%
Masters/PHD	5	14%	3	9%
Diploma/College	7	20%	0	0%
O-Level	0	0%	1	3%

Source: Author, (2023)

The study revealed that 43% of those who have participated in Public participation had a Degree, 20% had a Diploma and 14% had Masters.

4.1.2 Civic Education and Public Participation

The level of understanding on why the local citizenry should participate in public affairs and decision making impacts on the effectiveness of Public Participation. Ahadi Kenya, (2016) postulates that the purpose-driven civic education is designed to trigger some reaction from citizens to participate in a specific process or to take specific action in a democratic process. Table 3 shows the analysis of public participation and level of training/ civic education.

Tables 7: Analysis of Public Participation and Training

Descriptions	Participation and Level of education
Participated in Public Participation	28
Participated and Trained on Public Participation	13
Participated and not Trained on Public Participation	14
Participated on Public participation and would like to be trained	15
Participated on Public participation and don't like to be trained	0
Did not participate and would not like to be trained	4

Source: Author, 2023

The findings in table 3 demonstrates that the number of people who participated in a public forum and were not trained was slightly higher than those who were actually trained and participated. This finding is consistent with Kaseya and Kihonge, (2016), in their study on ‘*Effectiveness of Public Participation in the County Government*’ that concluded that civic education has significant positive effects on the level of public participation.

The second objective was to establish factors affecting public participation. This objective was met through content analysis and desk top review of other empirical works. An analysis of the data collected on the incidences of inclusion of the people’s contribution in the final approved decision. Figure 11 shows the results.

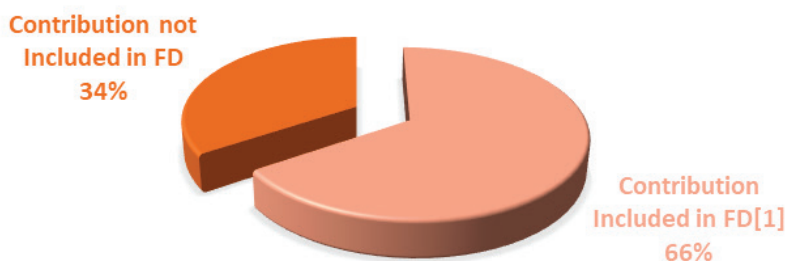


Figure 3: Analysis of Public Contribution in Final Approved Decision

Source: Researcher Computation

The results indicate that 64% of the contributions are never part of the final decision and only 36% is included.

Further, the goal of incorporating public values into decisions is fundamental to democracy and has been the driving force behind challenges to a more managerial, expert-led model of decision making, Slovac,(1992). In view of this, the following have been identified as key challenges affecting effective Public Participation.

Lack of access to public information- as postulated by Kugonza and Mukobi (2011). This limits the nature, value and the extent of public engagement in democratic process. This is in contravention of the requirements of Article 33 and 35 of the Constitution of Kenya, 2010.

Lack of Communication between Government and the People- consistent with konge (2017) who observed that projects are formulated without involvement of the People at all.

Demotivation and failure to incentivise the public- The study finds that, the publics are not given incentives to stirrup their need to participate. These includes; fare reimbursements, writing materials, Airtime and Lunches among others. Table 5 provides results on whether the public would want to be incentivised to participate in Public forums or not.

Tables 8: Public Participation and Incentives

PP and Incentive	No. of Responses	Percentage
Provide Incentives to Public	30	83%
Do not Provide Incentives	6	17%

Source: Author, 2023

The results shows that 83% of the populations require to be incentivised while on 17% indicating that they will participate on their own volition top exercise their civic rights and duties.

The demotivation further deepens due to the fact that even the projects and programmes that are dear to the public largely do not find their way into the final approved decision(s) for instance the approved printed Budget estimates.

Capacity building on the Public The Constitution of Kenya under 10, 69, 118, 174,184,196 and 201 requires that the public participation needs to be facilitated by MDAs. However, the Constitution does not provide for the training of the members of the public to sensitize them on imperativeness of participating in the public forums. This is exacerbated by lack of a National policy and legislation on civic education.

5. Conclusion and Recommendation

5.1 Conclusion

The study examined the theories of communication action and rational choice. The two theories are premised on the fact that the public will make the most rational decision when they are provided with a significant level of information about the options available. Further, the choices made will be consistent and transitive over time. To facilitate this level of public participation and decision making, it’s crucial that government provides easy avenues for access of information, endeavour to communicate effectively in a more transparent and accountable manner. In addition, there is a critical need to entrench civic education to build capacity towards the public, on the purpose of participating in deciding the programmes the government should implement to improve their socioeconomic welfare. It is therefore evident that research is not the only contributor to effective public participation, and that other factors such as facilitation, capacity building, civic

education, level of education and effective communication have a positive impact on the effectiveness of public participation.

5.2 Recommendations

Drawing from the study findings, the following are the recommendations;

5.2.1 Legislative review/enactment

Notable milestones have been achieved towards implementation of the Constitution of Kenya (2010), there is a legislative gap in civic education and public participation that needs to be addressed through enactment of a National law/Policy. The national policy that is in draft if approved will provide a common guide the review of various bills and Act legislated at the County level. Examples of Counties with civic education and public participation Act/ Bill (Nairobi, Makueni, Nakuru, Bungoma, Kilifi and Nyandarua).

5.2.2 Policy

The draft national policy, 2018 needs to be finalized and approved to facilitate rollout of the salient policy activities on public participation, standardization, funding, mechanism for civic education, mitigation measures to avert citizen apathy and communication among others. This will guide on adoption of appropriate models that will be the precursors to effective public participation. The appropriate citizen engagement model adopted should entrench accessibility, openness, accountability, diversity and public interest.

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Promoting Youth Engagement in Development Interventions Through Research and Innovative Involvement Strategies. The Case of Homa Bay County, Kenya

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Abstract

This paper discusses the role of research and innovative youth engagement strategies to secure meaningful youth engagement in development interventions. This paper addresses the overall problem that, despite the government's and non-state actors' implementation of several programs to foster youth development, there still needs to be more scope for enhancing youth engagement. The study employed a fixed mixed method and a parallel triangulation design. Respondents were selected using stratified random sampling, while participants for the qualitative strand were chosen through purposive and snowball sampling procedures. Whereas quantitative data was collected through a survey method, qualitative data were obtained through key informants and in-depth interviews. Quantitative and qualitative data were analyzed statistically while qualitative data thematically and the results were merged at the point of interpretation in conformity with the research design adopted. The findings from this study showed that the youth needed to be adequately engaged in youth development programs, particularly in research. This was occasioned by unsuitable strategies employed to involve the youth. The study found that the extent of youth engagement was significantly associated with mentors' guidance and involvement in decision-making. This paper suggests that the government must make it a far higher priority than it is to develop and execute suitable youth engagement strategies. There should also be an intentional effort to encourage evidence-based youth programming, where the youth are active and co-partners in the research process. It also suggests that those in charge of making laws and policies consider implementing a model in which youth, particularly low-income youth, are empowered to set their priorities and actively participate in developing initiatives that target their needs.

Key Words: *Engagement Strategies, Mentorship, Research, Social media, Youth Development interventions, Youth Engagement*

1. Introduction

Youth engagement refers to the deliberate partnership between the youth and organizations where youth are involved in all stages of developmental programs that affect them directly or indirectly (MacKinnon et al., 2007). With the growing importance of youth, their engagement in initiatives that target them is no longer a choice but a necessary action in the development process (Hope, 2012). Conscient of this fact, the Government of Kenya, together with the support of her development partners, has developed multiple and deliberate youth development programs to address the youth's challenges (Franz & Omolo, 2014). For these programs to meet their goals effectively, the youth need to be legitimate stakeholders in all decisions that are being made (Kara, 2007). Therefore, contrary to the conventional conceptualization of youth engagement as merely involving co-opting youth as passive actors, it should be recognized that youth must be engaged meaningfully in national deliberations, particularly on matters indirectly or directly affecting them (MacKinnon et al.). Because of this, youth policymakers need to ensure that the youth are involved meaningfully at all stages of the policy-making process (Cammaerts et al., 2016).

Kenya's constitution defines *youth* as males and females aged 18-34 (Kenya, 2013). According to the 2019 census report, youth aged 18–35 accounted for 29%, while in Homa Bay County, the youth accounts for about 27%, while children below 15 years are at 45%, above the national figure of 39% (KNBS, 2019). These statistics show that Homa Bay County and Kenya generally experience youth bulge. A youth bulge happens when a country has more than 20% of its population made up of youth (Hope, 2012). As Sikenyi (2017) observed, in as much as the youth bulge may present an opportunity, especially for African countries, it also comes with significant social, political, and economic challenges if not well managed.

Contrary to popular belief, the younger generation in Kenya is poised to offer the country a significant demographic dividend. The demographic dividend signifies an enhanced socio-economic development achieved by a country when there is a reduction in population growth rate combined with strategic investment in education, health, governance, and economic sectors, mainly targeting the youth who are bound to assume the responsibility of taking care of dependents (Lutz et al., 2019). However, these benefits can only be made possible through meaningful investments and engaging youths in knowledge and skills development, health, governance, and economic policies, which are vital to securing their future (NCPD, 2017).

For instance, the Kenya Youth Development Policy was developed in 2019, as an initiative and a multi-dimensional plan to help the youth in Kenya deal with their problems. The National Youth Service was revived in 2013 and transformed into a state corporation to boost the number of young people who can work. In 2006, lawmakers established the Youth Enterprise Development Funds to give the youth access to low-interest loans for starting and growing enterprises. Non-governmental organizations have also invested more in youth development programs, particularly in the agricultural sector. Despite numerous initiatives, the government and its development partners have undertaken to ensure youth development, engagement needs improvement. This study sought to examine the overall question of what the nature of youth engagement in development interventions is and which innovative strategies can be employed to ensure meaningful youth engagement.

2. Literature Review

2.1 Introduction

This section presents a critical review of literature related to youth engagement. Specifically, it focusses on the role of research and engagement strategies as ways of promoting meaningful youth engagement.

2.2 Youth Engagement in Development Interventions

The topic of youth engagement in development interventions has been widely researched, and the results have been mixed. While some studies have shown that youth who are engaged in development programs can benefit from them, the extent of the benefit seems to be directly proportional to the level of engagement (Evely et al., 2011; Kilmurry, 2017; Mohamad et al., 2019; Nation et al., 2011). In addition, further research has also revealed that increased youth engagement can present them with opportunities to identify their needs and plan, shape, and implement programs in ways that can introduce transformation in their communities (Hurd, 2020). This suggests innovative strategies to increase youth engagement might be necessary to ensure meaningful involvement and long-term impact.

The measurement of youth engagement depends on its duration, breadth, and intensity. Duration of youth engagement refers to the length of time an individual youth has been in a particular program. Research suggests that the amount of time youth spend in activities over multiple years indicates their exposure and motivation, interest, engagement, and identification with activity (Zarrett et al., 2021). Breadth is the number of activities youth engage in, their choices and

program quality, their motives and level of satisfaction, and the environment in which activities are implemented (Riemer et al., 2014). Concerns have been raised about the range of program activities, specifically how they affect the youth's participation and the overall results of engagement (Bennett et al., 2022). Besides, when youth are sufficiently engaged in program activities, they get acquainted with the engagement process and its outcomes. So, before committing to a particular path, youths must explore various activities and identities. Therefore, it is worthwhile to argue that youth participating in various activities in various settings are more likely to create an extensive support network and enhance their exposure to peers.

The intensity of engagement is the frequency of engagement in program activities. Research suggests that higher intensity is linked to more youth engagement and enhanced positive development (Bathgate & Schunn, 2016). Additionally, Zarrett et al. (2021) found that the quality of the youth's character was positively associated with the amount of time they spent participating in various activities. Assessing intensity is essential for several reasons, such as organized activities that offer growth and development opportunities, chances to meet new people, and better skill absorption. Additionally, more involvement may help the youth build better, more meaningful relationships with their peers and adults. However, further research is needed to understand the efficacy of intensity for the youth involved in multiple programs, particularly those with conflicting schedules. Therefore, the subsequent sections present an analytical discussion on the potential of research, youth-management partnerships, and innovative youth engagement strategies to promote youth engagement in development interventions.

2.3 Engaging Youth Through Research

Involving youth as co-researchers during program development, monitoring, evaluation, and general inquiries can effectively get them more engaged in interventions targeting them. Research suggests that evidence-based programming is achievable when all stakeholders, and more critically, the would-be beneficiaries, are involved in the process (Gorman-Smith, 2006; Zhongming et al., 2018). When program organizers form productive relationships with the youth and involve them in analyzing local problems, deciding the value of research, planning, conducting, supervising research, and incorporating research into the program management system, sustained and meaningful youth engagement is achievable (Tindana et al., 2007).

Moreover, including youth in the research process also ensures that program activities are responsive to the needs of the youth. Besides, youths learn from one another during the research process, thus increasing their comprehension and confidence to engage in similar activities (Iwasaki, 2015). Therefore, youth involvement in research on initiatives that target them can transform both the process and the outcomes, requiring researchers to trust youth and provide them with the needed mentorship and support. However, research further shows that even though the youth are often involved in research, they rarely participate in activities that give them equal decision-making power with adults or give them chances to lead, especially in deciding how to conduct research (Asuquo et al., 2021). From the preceding, it is evident that youth involvement as co-researchers in program development, monitoring, evaluation, and general inquiries effectively increases their engagement in interventions aimed at them. However, research suggests that youth participation in research activities is often limited to being research subjects rather than equal partners. This highlights a research gap that needs to be addressed by focusing on the potential of working with youth as co-partners in research activities related to youth development interventions.

2.4 Youth-Management Relationship on Youth Engagement

Supportive youth-management relationships in decision-making, the role of program staff networks, adult mentorship roles, and the general mutual relationship between youth and adults in the program can play a critical role when working together in development programs. Research suggests that involving youth in decision-making in programs that target them promotes skill-building, problem-solving abilities, motivation, and a general alignment with their interests and skills (Akiva et al., 2014). Likewise, engaging youth in decision-making enables them to build confidence, explore identity, master skills, and realize emotional well-being (Zeldin et al., 2013). Previous research also indicates genuine decision-making is possible when youth share responsibilities with adults and engage authentically by fully participating in conversations (Wu et al., 2016). Consequently, regardless of age, youth and adults should make decisions based on the skills, clear inspiration, and networks each party brings. Similarly, instead of forcing pre-determined solutions on the youth, adults should negotiate with them to get the most out of youth programs by promoting their active involvement. Besides, policymakers should consider youth needs and give the youth more opportunities to make decisions and have more say in the decision-making process.

A mutual relationship where adults and youth play complementary rather than contradictory roles is also vital to youth engagement. The youth and adults are supposed to learn from one another in a working relationship characterized by reciprocity (Wu et al., 2016). Equally, affiliation is where youth and adults act like partners as they exchange ideas and mutually develop their agendas. With positive relationships, the youth are likely to develop essential social capital, become active contributors, and connect to their communities (Wu et al., 2016; Zeldin et al., 2013; Zeldin et al., 2014).

The mentoring role played by adults could also be significant in youth engagement in development interventions. Previous studies have indicated that adults are responsible for mentoring youth, even though they may have different ideas about meeting their needs (Majee & Anakwe, 2019; Majee et al., 2020). Therefore, adults must intentionally develop supportive and working relationships with youth to provide the needed mentorship (Zeldin et al., 2013). Moreover, for mentorship to be effective, adults should support youth in developing skills and experiences within defined boundaries (Wu et al., 2016). While youth mentorship is essential for youth development initiatives, inadequate or lack of mentorship can have a negative impact (Kiiru & Barasa, 2020). While previous research has highlighted the importance of supportive youth-management relationships, program staff networks, and adult mentorship roles, there was a need to explore the specific influence of mentorship on youth engagement. Bridging this gap required exploring the experiences of youth and adult mentors in development programs and understanding how mentorship influences the nature of youth engagement.

2.5 Promoting Engagement Through Innovative Youth Engagement Strategies

A youth engagement strategy is a coordinated approach to ensure the youth are engaged and own the decisions that affect them. It involves finding, enlisting, and maintaining the involvement of the youth in development interventions through ongoing interaction. Whereas several youth engagement strategies exist, there is a need to develop a multidimensional approach that can maximize the ultimate goal of bringing youth on board to promote their engagement (Dunne et al., 2017). Some of the strategies that can be adopted to promote youth engagement include the use of technology (Kamau, 2016), engaging parents, families, and communities, relational strategy (Campbell & Erbsstein, 2012), social marketing and institutions and activities that bring the youth together like sports, arts, and music (Barrett & Baker, 2012; Barrett & Bond, 2015; Barrett et al., 2012; Dunne et al.).

Using technology through video sources and social media is an effective means of getting input and feedback from the youth, given the ability to provide platforms to hold virtual conversations and survey youth on their opinions (French et al., 2014). The use of social media to share organizational opportunities for the youth, for instance, job openings, internships, or leadership opportunities, has been a more effective way of reaching out to the youth (Ching et al., 2019). Moreover, research also suggests that social media are progressively playing a prominent role in engaging the youth as the number of youths joining social media continues growing (Kamau, 2016). However, reaching all the youth through online media has proven challenging, given that not all youth have access to online platforms.

The relational strategy prioritizes establishing deep relationships with the youth by meeting them where they are, spending time with them, discovering their unique talents and gifts, and listening to their concerns (Campbell & Erbstein, 2012). While calling on the youth may be a vital strategy, more needs to be done to suggest how it can impact youth engagement. Besides, its practicality in light of limited resources also needed research and suggestions made.

Social marketing is another youth engagement strategy involving advertising campaigns to alert the youth on available engagement opportunities and their accessibility. According to Dunne et al. (2017), to influence the youth to be engaged, there is a need to strategically design such social marketing campaigns to achieve a population-level behaviour change. Given the various strategies that can help promote youth engagement and the fact that no single strategy can effectively involve the youth, there is a need to determine which combination of strategies can produce the most desirable youth engagement outcomes within a given setting and existing resources.

While several strategies exist, more research was needed on which strategies can produce the most desirable youth engagement outcomes within a given setting and existing resources. Additionally, the practicality of specific strategies, such as the relational strategy, needed to be researched further. Moreover, while technology and social media have proven effective in engaging with the youth, not all youth have access to online platforms, which poses a significant challenge in reaching out to all the youth. This paper explores innovative engagement strategies that can promote youth involvement in initiatives targeting their development in an attempt to address the existing gap.

3. Methodology

Informed by pragmatic research philosophical orientation, this study adopted a mixed method research approach. The mixed-method research approach made it possible to collect, analyze, and integrate qualitative and quantitative data during interpretation in a single study, resulting in a comprehensive understanding of youth engagement in development interventions (Denzin & Lincoln, 2018; Leavy, 2017; Tashakkori & Creswell, 2007). This research further applied a concurrent triangulation design, which allowed for the collection of complementary data on the breadth, intensity, and duration of youth engagement in development initiatives and the concurrent analysis of quantitative and qualitative data (Creswell & Clark, 2017; Edmonds & Kennedy, 2016).

To examine the role of research, youth-management relation, this study examined six youth-focused programs across different sectors in Homa Bay County. The programs primarily encouraged meaningful youth involvement in their activities, mainly in loaning, environmental conservation, agri-entrepreneurial activities, business enterprise development, employment creation, capacity building through training, and other activities that seek to expand youth developmental assets. The choice of the study area was based on the presence of government and non-government interventions targeting the unique needs of youth, though youth engagement has been a concern.

For the quantitative strand, a stratified random sampling procedure was used to select 329 respondents, drawn from a target population consisting of all out-of-school youth, the youth who had graduated from colleges or universities, enrolled in specific development programs, aged 18–35 years, and were residents of Homa Bay County. In addition, 18 participants were selected using purposive and snowball sampling techniques for the qualitative component.

Gathering quantitative data was through a survey method using interviewer-administered questionnaire as the tool for data collection, while qualitative data was collected using key informants and in-depth interviews. Quantitative data was analyzed using chi-square, Fisher's Exact Test, and percentages.

Qualitative data was analyzed using thematic analysis to identify and examine patterns. The data was collected through in-depth and key informant interviews, which were transcribed, condensed and coded. Provisional sub-themes were generated from the coded data. Final themes were then agreed upon based on study objectives, reflection, and discussions with co-authors. The quantitative and

qualitative data were analyzed separately and combined during the interpretation process, following the concurrent triangulation design.

3.1 Measurement of Youth Engagement

This section explains how an index for measuring youth engagement was computed. The Youth Engagement Index was calculated using the intensity, breadth, and length of youth engagement. First, a reliability analysis revealed that the items used to compute the index were internally consistent, producing a Cronbach's alpha value of .862. Before constructing the index, items were changed from individual responses to scale items to ensure they were standardized. Standardization was necessary because potential bias could have arisen from individual items contributing unequally. SPSS version 26 aided the index computation, automatically generating a mean average score for each case. The extent of engagement was determined by categorizing the range into three groups: low, medium and high.

Based on the index scores, of the 329 respondents, 41.7% said they had low engagement, while some were moderately engaged (32.2%), and the rest had higher extent of engagement (26.1%). Engagement in multiple activities, spending more time on program activities, being involved in critical stages of program development, being satisfied with their involvement, and being in the program long enough to evaluate the process and outcome are all indicators of a high engagement index. If youth engagement is measured by the metrics described above, low levels of engagement indicate very little or no engagement at all, while high levels of engagement indicate significant engagement.

4. Results and Discussions

4.1 Results

The study focused on the characteristics of young individuals between the ages of 19 and 35, with a particular emphasis on their age groups. The research revealed that a large proportion of participants (66.9%) were in the senior category, while the remaining (33.1%) were in the junior category. The study involved male and female youth, with females accounting for over half (55.6%) of the population and males making up the rest. Most participants were young women living in rural areas who were primarily unemployed, while men were also involved but had difficulty succeeding in business ventures. The majority of respondents were married, and 92.4% of them had family responsibilities beyond self-care. The study also found that the youth had varying levels of education, with the highest

percentage (43.8%) having primary education. This low education level might be because many of the youth in the sample were out-of-school youth, and there were only a few graduates.

When the respondents were asked whether or not they were involved in activities related to research, those who were involved in the co-creation were 12 (3.6%), research as assistants 43 (13.1%), hosting researchers 92 (28.0%), monitoring 83 (25.2%), evaluation 42 (12.8%), and need gap assessment 21 (6.4%). These results show that most respondents did not participate in the research activities that were critical for their contribution towards the development of interventions targeting them.

This study also examined whether the youth were involved in decision-making and how their involvement affected the extent of their engagement in development interventions. Results showed that most youth who never took part in decision-making had a low engagement, while those who had higher engagement participated in decision-making. Additionally, most respondents thought their participation in program decision-making was meaningful, allowing them to learn from one another, interact with program staff, and receive mentorship.

Results further showed that some programs promoted youth involvement in decision-making through their leaders, particularly supervisors, youth group leaders, or heads of management units at the local community level. Programs relied on the youth leaders to ask the youth for their opinions because they believed this may be a quicker and more trustworthy method of getting the views of the youth. Additionally, program staff would visit the youth to solicit their opinions on issues requiring participation. However, this kind of involvement was rarely conducted during the formative stages of program development, as the national assembly and decisions were made at a higher level. Additionally, youth officers stressed the need to get feedback from the youth when reporting challenges and gathering grievances.

The chi-square test of independence revealed a statistically significant association between access to mentorship opportunities and the extent of youth engagement in development interventions, $\chi^2(2, N=329) = 10.293, p = .006$. The youth exposed to mentorship opportunities tended to report higher engagement in development interventions than those who were not explicitly exposed. Additionally, qualitative results also revealed that the youth who acknowledged receiving mentorship from their particular programs emphasized problem solving and personal growth as

significant areas of mentorship. Besides, mentorship opportunities were interest-based and only those who had interest could be considered in most cases. Furthermore, the majority of participants felt that programs provided opportunities for the youth to network with organizations and individuals who improved their personal growth.

After assessing the nature of youth engagement in various activities, which in this case was low, respondents were asked to suggest innovative engagement strategies needed to promote access and sustained meaningful involvement in development interventions. The findings show that 224 (68.1%) approved using social media as the most effective approach to youth engagement. Others mentioned meeting the youth in their setting (relational approach), 175 (53.2%), social marketing 134 (40.7%), sports, arts, and music 111 (33.7%), the use of small business enterprises 92 (28.0%), peer-to-peer influence 83 (25.2%), involving the youth early in the program 72 (21.9%), and the use of video sources like YouTube 67 (20.4%). Others mentioned involving families (18.2%), using SMS (19.8%), getting feedback from the youth on their experiences (16.7%), having flexible terms of engagement (10.6%), inviting the youth to showcase their achievements (12.2%), and offering multiple and challenging activities.

A Fisher's Exact Test revealed a statistically significant relationship between the respondents' extent of engagement and some of the youth engagement strategies mentioned above. For instance, there were significant associations between the use of social media ($p = 0.021$), the use of SMS ($p = .019$), showcasing achievements ($p = .036$), feedback from the youth ($p = .007$), and flexible terms of engagement ($p = .009$) and the extent of youth engagement. These findings implied that respondents who mentioned the above strategies were more inclined to report greater engagement than their counterparts with low levels of engagement.

4.2 Discussions

Studies have shown that involving the youth as co-researchers in creating programs, monitoring progress, evaluating results, and conducting general inquiries about a program already in operation might be a practical approach to engaging youth in interventions that target them (Asuquo et al., 2021). Involving youths in the research process also helps to ensure that program activities meet the needs of the involved youth (Tindana et al., 2007). In addition, youth involvement in research on initiatives explicitly aimed at them has the potential to transform not

only the process but also the outcomes; therefore, researchers must build trusting relationships with the youth and give them the necessary guidance and support.

While research suggests that involving the youth in research promotes youth engagement in development interventions, this study found that respondents needed to be more engaged in the development initiatives that target them adequately. These findings are consistent with Asuquo et al. (2021), who found that youth are rarely involved in activities that give them equal decision-making power as adult researchers, such as deciding how to conduct research. Typically, youth are engaged in the intervention's implementation because they are the ones who actualize and disseminate it to their peers. Moreover, this study further found that only a few youths had the chance to be involved in the formative stages, characterized by extensive research efforts. In addition, it also emerged that most program interventions are pre-designed without meaningful youth engagement.

From the preceding, engaging youth in research provides a multidimensional problem-solving method. Moreover, involving the youth in research can help break down the barriers between youth and program management and promote the optimal use of youth expertise. This paper suggests active youth involvement in research activities, such as designing research regarding the methods and tools used in data collection. Consequently, a commitment is needed to have the youth serve as research participants and assistants to boost their confidence and experience, as this will also promote ownership of the process outcomes that reflect the needs of the youth.

Youth play significant roles in decision-making during the development of programs, but they need to be adequately involved in goal-setting or program design. Research has revealed that integrating the youth in programs that target them is vital in fostering skill development, problem-solving ability, motivation, and alignment with their current interests and capabilities (Akiva, 2014). Real decision-making can be realized when youth share responsibilities with managers, engage in authentic decision-making, and participate in conversations (Wu et al., 2016). This study found that youth participation in decision-making influenced the extent of youth engagement in development interventions. However, most youths were not involved in decision-making, particularly during programs' conceptualization and design. This low youth involvement could explain low youth engagement in development intervention.

Studies have also shown that having a mentor can positively affect young people's desire to participate in programs aimed at their development (Chapman, Deane, Harré, Courtney, & Moore, 2017; Kaki, Mignouna, Aoudji, & Adéoti, 2022). Past research has also demonstrated that mentoring benefits the youth by boosting their self-confidence, offering valuable career guidance, facilitating networking, and presenting a practical outlook on the professional world (Hamilton, Boman, Rubin, & Sahota, 2019; Pittman, Irby, Tolman, Yohalem, & Ferber, 2011). This study also found consistent results on youth mentorship's significant role. However, there was compelling evidence from the qualitative results implying that youths involved in self-employment had low levels of entrepreneurial competency due to inadequate or lack of mentorship. In order to equip the youth before they join the self-employment arena, this study found that there are capacity-building gaps in business planning, time and risk management, communication skills, confidence, and talent development that need to be bridged. Thus, mentors needed to possess knowledge and abilities needed to offer meaningful mentoring.

This study further established that the network that programs provided gave the youth excellent openings to meet and learn from the experiences of successful individuals. Other programs that were offering capacity building through training and internship or work study programs were also instrumental in connecting the youth to potential employer, funders or even donors who could give grants to fund their businesses. While these valuable opportunities for networking could be available to the youth, this study revealed that the extent of youth involvement in development interventions was influenced by how well the youth were able to network.

Concerning innovative youth engagement strategies, this study found that using social media to reach out to the youth has become an effective strategy for reaching the youth. Studies indicate that social media is a significant factor in involving young people. Nevertheless, it presents a challenge to reach all of them since some need access to online platforms (Dunne, 2017). By pairing them with face-to-face and offline messaging strategies, online sources can be more effective. Moreover, social media has been instrumental in sharing organizational opportunities, for instance, job openings, internships, or leadership opportunities (Ching et al., 2019). The finding of this study is consistent with previous studies; however, the current finding further ascertained that the use of social media as youth engagement strategy was associated to greater youth engagement in development interventions. While the use of major social media platforms like WhatsApp, Facebook, video sources like

the YouTube has been effective, this study also found that not all youth had access to online platforms and this denied them vital information about opportunities and the general communication from the various programs. To this end, this study suggests the use of multiple online sources as well as offline ones like SMS and local leaders to reach out to the youth.

Relational approach, which involve program managers calling on and engaging the youth in their setting is another strategy that needs to be applied to promote youth engagement. Research has revealed that engaging the youth in their own setting seeks to build strong bonds, trust, and loyalty between the youth and programs. However, the strategy is bound to be resource and time intensive and relies on mentors' capacities that may sometimes be lacking (Campbell & Erbstein, 2012). This study found that inadequate resources in terms of funds and human resources made it difficult to use this approach as only limited appointments to the youth in their settings were possible. While some programs required that the youth go to them, some had made it a routine to work with the youth in their location and they reported significant commitment to be involved in program activities particularly training. Despite its significance over the year, this study revealed that chief *barazas* (meetings), a possible method of relational approach to youth engagement, have become unpopular among the youth. It was not immediately clear why the new development but the argument was that the youth viewed chief *barazas* as pro-elderly people and unable to articulate their issues.

Social marketing (advertisement) has been a strategy for reaching out to the youth; however, with the emerging decline in the youth interest and access to the traditional channels like radio and television deserves attention. While previous studies suggest the need to strategically design social marketing campaigns to achieve a population-level behavior change Dunne et al. (2017), the emerging concern ought to be more on the channels to use in conveying the message. Therefore, there should be efforts to diversify the channels through which social marketing messages can be pushed. As discussed earlier, social marketing could be more effective in the when multiple media are used, thus, if advertisement is to be done, then, roadshows, youth friendly television and radio shows, arts, sports and music, and social media become critical in promoting social marketing message to reach the majority of the youth.

While this study revealed various engagement strategies for enhancing youth engagement in development interventions, the youth with greater extents of

engagement were more inclined to suggest strategies such as the use of social media, SMS, showcasing achievements, getting and using feedback from youth, and flexible terms of engagement. As a result, it is essential to look into the combinatorial potential of integrating more than one strategy to create a combined impact on youth engagement.

5. Conclusions

This paper has critically discussed research, effective youth-management relations, and innovative engagement strategies to promote youth engagement in development interventions. Engaging youth in research, program design, and decision-making is crucial for promoting their engagement in development interventions. Mentoring and networking opportunities, innovative youth engagement strategies such as using social media and a relational approach, and social marketing can effectively engage youth. However, it is essential to address capacity-building gaps in business planning, time and risk management, communication skills, confidence, and talent development to equip youth before they join self-employment. Programs must also create a combined impact on youth engagement by integrating more than one engagement strategy. Youth development can be realized by promoting the optimal use of youth expertise, breaking down barriers between youth and program management, and ensuring that program activities meet the needs of the involved youth.

6. Recommendations

This paper recommends that development interventions prioritize involving youth in research, programme design, and decision-making. It is possible to accomplish this goal by offering guidance and support through mentorship, networking opportunities, and innovative engagement strategies like social media, a relational approach, and social marketing. Development interventions can achieve more effective and sustainable outcomes by engaging young people in the process and gaining a better understanding of their needs and preferences. Overall, prioritizing youth engagement in development initiatives is crucial for ensuring the success and relevance of interventions in today's rapidly changing world.

This paper also recommends equipping the youth with the necessary skills and knowledge before joining self-employment programmes; by bridging capacity-building gaps in business planning, time and risk management, communication skills, confidence, and talent development should be addressed. By addressing

these gaps, young individuals will be better prepared to navigate the challenges of entrepreneurship and contribute effectively to their communities. Providing mentorship and support throughout the process will also be essential in helping youth develop their potential and thrive in their chosen endeavours.

It is also important to integrate multiple engagement strategies to create a combined effect on youth engagement and ensure that programme activities meet the needs of the youth involved. It is possible to provide young people with various avenues to engage in decision-making activities, take leadership positions, and participate in skill-enhancing programs. The youth can explore different interests and develop well-rounded skills by incorporating multiple engagement methods, such as workshops, training, and networking events.

This paper also suggests that those in charge of designing youth development interventions consider implementing a model in which youth, particularly low-income youth, are empowered to set their priorities and actively participate in developing initiatives that target their needs. This approach will make the initiatives more effective and encourage the youth to take ownership of their issues and actively participate in finding solutions.

Breaking down barriers between youth and programme management and promoting the optimal use of youth expertise can help realize youth development. Furthermore, creating opportunities for youth to take on leadership roles within the programme can empower them to make meaningful contributions and take ownership of their development. Youth can feel confident expressing their ideas and taking on new challenges by fostering a supportive and inclusive environment. Additionally, providing skill-building activities that cater to diverse interests and talents can help youth discover their strengths and passions, ultimately preparing them for future success. Through these initiatives, we can break down barriers and create a more collaborative and empowering space for youth to thrive and grow.

7. Disclosure Statement

The researchers involved in this study have declared that they have no competing interests.

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9. Compliance With Ethical Standards and Research Permit

The Ethical Review Board of the United States International University in Kenya (USIU-ERB) granted us ethical approval. The National Council for Science, Technology, and Innovation in Kenya (NACOSTI-Kenya) Authorized our research.

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Thematic Area 5: Capacity Building and Curriculum Development in fostering best practices in Public Participation

Capacity Building and Curriculum Development for Public Participation Empowering Youth Participation in Delivering a Peaceful 2022 General Election in Kenya - a Case of Kisumu County

By Jescah A. Otieno & Regina Mutiru Mwendwa

Abstract

The youth have multi-faceted roles in the history of elections in Kenya. They have been active perpetrators of violence, as well as victims and vulnerable people during political crises. In fact, the thought about youth and conflict is often overly negative with young people often seen as ‘a problem’. This is probably mainly due to the challenges of youth bulge and high unemployment rates in the country. Historically, Kisumu County has experienced violence in the past electioneering periods. In March 2022, the National Cohesion and Integration Commission (NCIC) termed Kisumu County a hotspot, with a rating of 72.46% in Kenya’s Electoral Violence Index. This followed the implementation of a robust programme dubbed Elections Bila Noma that put in place mechanisms including sensitization and capacity building programmes, dialogue, and reconciliation programmes and research to mitigate the occurrence of violence in the county. This study thus, aimed at determining the role of capacity building in enhancing youth participation in contributing to a peaceful 2022 general election. Through a qualitative approach, the study sought to determine the perceptions of youth in matters peacebuilding around electoral cycles in Kisumu County; the capacity building initiatives put in place towards enhancing youth participation for a peaceful 2022 general election; and the initiatives youth put in place to ensure a peaceful election. Data collection involved 10 Focus Group Discussions consisting of 15 participants each and 15 interviews with key gatekeepers and influencers in the county. Data was also generated through participant observations of initiatives put in place by youth across different sectors including boda boda, university students, opinion shapers, bunge la wananchi, and women. The collected information was analyzed based on study themes and presented in line with the study’s thematic areas. Findings of the study point to the fact that although youth have been viewed as violent, dangerous, apathetic, and a threat to security, implementation of capacity building initiatives marks a shift of thinking towards the youth. More precisely, it was found that the youth in Kisumu County have underscored the importance of strengthening the

capacity of young people not only in delivering a peaceful election, but also in transforming a predominantly negative discourse on the role of youth in societies with a history of electoral violence. This paper advances the thesis that young people in post-conflict societies, if capacity built, are able to take charge and develop initiatives to ensure peaceful co-existence. The study recommends that continuous capacity building initiatives be put in place at the grassroots level for the attainment of sustainable peace during elections.

Key Words: Capacity building, Elections, Participation, Youth, Sustainable peace, Electoral violence.

1. Introduction

Within the context of examining youth participation in the 2022 Kenyan General Election in Kenya, the study defines “youth” as individuals between the ages of 18 and 35, according to the United Nations Department of Economic and Social Affairs’ operationalization (DESA, 2018). This age range aligns with Kenya’s national youth policy framework, which recognizes youth as a critical demographic for national development (Ministry of Public Service, Youth and Gender Affairs, 2019). This definition acknowledges the specific social, political, and economic circumstances faced by young Kenyans as they transition into adulthood and gain increased agency in civic life.

1.1 Global Context

Around the world, young people have been active players in the political processes and resistant movements. In political processes, young people have participated in multiple ways; being in the ballot, agents of mobilizing citizens to vote, political part agents among others. Despite the role that young people can play in effecting positive change in democratic societies, they can and have been involved in election-related violence over the years (Udeh & Mohamed, 2019). Frimand and Knutsen (2020) note that in almost all countries where election related violence has erupted, young people have been in the frontline. Besides, when youth are not involved or disengage from political processes, a significant portion of the population has little or no voice.

1.2 Regional Context

Youth in Africa represent a significant and growing demographic with immense potential to shape the continent's future. They have been at the forefront of political movements and campaigns, both violent and nonviolent. However, their participation in civic and democratic processes remains uneven (OHCHR, 2019). While social media and new technologies are fostering youth engagement (UNECA, 2017), traditional political structures and socio-economic barriers often limit their influence. Studies suggest that educational opportunities, access to information, and inclusive political spaces are crucial for promoting meaningful youth participation in Africa's democracies (Mindes-Africa, 2020).

1.3 Kenyan Context

Since the re-introduction of multi-party politics in the early 1990s, Kanyinga (2002), Kenya has witnessed an increase in violent and non-violent conflicts to a greater or lesser degree before, during and after general elections. At the core of all these, are the youth. Lynch (2017) notes that youth have both been victims of political violence, but also played an active role as perpetrators of violence. Mercy Corps (2017) adds that 70 percent of those who engaged in post-election violence in 2007/8 were youth. Kenya, like many other developing countries, has a large population of youth but faces formidable challenges in terms of youth capacity building and participation in socio-economic development. Into perspective, the country's population aged between 15 and 34 years was estimated to be 17.9 million in 2019 with an estimated population of 49.7 million people and a youth dependency ratio (number of youth aged 0-15 divided by those aged 16 and above) of 1 (Kenya National Bureau of Statistics Kenya, 2019). The challenges faced by Kenyan youth are characterized by the poverty epidemic, unequal access to education, coupled with the lack of skills, and the low level of entrepreneurship activities that leads to limited employability and entrepreneurship. This further engenders their post-school transition challenges, fosters youth vulnerability, and contributes to their exclusion in the society.

1.4 Rationale

Kisumu County, which is in the Western region of the country, has experienced violence in the past electioneering periods. The County was at the center of the 2007/8 Post Election Violence (PEV), where property was destroyed and hundreds of people lost their lives. To date, there are still Internally displaced Persons (IDPs) living in displaced camps. However, the 2022 election in Kenya was greeted with

celebrations both locally and internationally as the most peaceful election ever to be conducted since the PEV in 2007. The election was also celebrated because of the role the young people of Kenya played to prevent possible violence in their respective counties.

Research has shown that poverty, marginalization and political exclusion have been cited as some of the factors that influenced youth involvement into 2007/8 PEV (Lynch, 2017). Besides, lack of effective civic education and general capacity building have remained challenges that have continuously affected political participation of young people in Kenya. However, Kanyinga and Njoka (2002) suggest that young people can become active, productive citizens who can contribute to the growth of their communities with the aid of capacity building. In March 2022, the National Cohesion and Integration Commission (NCIC) termed Kisumu County a hotspot, with a rating of 72.46% in the Kenya Electoral Violence Index. This followed the implementation of a robust programme dubbed *Elections Bila Noma* that put in place mechanisms including sensitization and capacity building programmes, dialogue and reconciliation programmes and research to mitigate the recurrence of election violence in Kisumu County. It is against this backdrop and in light of the peaceful election observed in the country, this study sought to investigate the role of capacity building of young people in Kisumu County during the 2022 general elections and how it influenced the outcome of the elections. More specifically the study sought to answer the following questions:

- (1). What capacity building initiatives have NCIC put in place towards enhancing youth participation for a peaceful 2022 general election in Kisumu County?
- (2). What determines youth perceptions on matters peacebuilding around electoral cycles in Kisumu County?
- (3). What initiatives are youth putting in place in Kisumu County to ensure peaceful elections?

2. Conceptualizing Capacity Building

This study explored the phenomenon of capacity building, the role of youth in caxation in electioneering periods. Capacity building, when broadly conceptualized, is defined as the process of promoting responsible participation in political life and developing citizenship skills among young people. In Kenya, participatory activities such as elections and civic education programs are a crucial part of the country's democratic process. These programs seek to teach young people about

their civic obligations and engage them in politics (Kabira & Manyeki, 2020). Nevertheless, there are a number of challenges to youth participation in civic education programs in the context of youth and elections in Kenya.

There is evidence that young people feel disillusioned with political processes, perceiving a lack of responsiveness from established parties and politicians. This disengagement can lead to apathy and a reluctance to get involved (UNDP, 2020). Secondly, structural barriers including restrictive voter registration processes or limited access to political education can disproportionately affect young people, hindering their ability to participate meaningfully. Benedetto and Del Moro (2017) observe that misinformation and social media manipulation contribute to fake news, which may affect the ability of young people to discern clearly. Overcoming these challenges requires a concerted effort from election authorities, civil society organizations, and established political actors to create a more inclusive and accessible environment for youth participation.

More precisely, capacity building constitutes an array of strategies and initiatives used by public and private sector organizations to build skills and knowledge, foster collaboration, and increase organizational effectiveness to achieve economic and social development (Bouamrane & Gowing, 2015). It consists of ongoing efforts to create an organizationally or socially optimal environment in which an individual or organization can grow and evolve. Despite the range of activities included in capacity building, there is consensus that the key components of capacity building in organizational contexts include assessment, relationship building, instruction and training, staff development, and sustainability.

Assessment entails analyzing the organization, its employees, its values, and its environment is critical for understanding the relative strength and weaknesses of an organization and developing a plan for improvement (Kumar, Krishnakumar & Arne, 2020). Relationship building fosters trust and collaboration between facilitators and participants, creating a supportive environment for learning. Instruction and training equip staff with the knowledge and skills necessary to achieve organizational goals. Staff development goes beyond one-time training, providing ongoing opportunities for growth and skill refinement. Finally, sustainability ensures that the capacity-building efforts have long-term impact, with strategies in place to embed new knowledge and practices into the organization's culture. This holistic approach ensures that capacity building is not a one-off

event, but rather a continuous process that empowers individuals and strengthens the organization as a whole.

Youth participation in capacity building programs and elections in Kenya is an important issue since 70% of the population is composed of adolescents and young people (KNBS, 2019). To ensure that the voices and values of Kenyan youth play an important role in the running of their nation, it is important to investigate the challenges posed to youth participation in capacity building programs in the context of youth and elections in Kenya.

2.1 Youth and capacity building in Kenya

Kenya is a multiparty democracy holding elections every five years. The country's vibrant democracy provides an environment to promote the active participation of its citizens in political life and elections, particularly the youth. To ensure the meaningful contributions of Kenyan youth to the electoral processes and thus, political stability, the importance of capacity building within the youth sector cannot be underestimated. Capacity building in the context of youth and elections in Kenya is essential for the ongoing development of the country's democratic system.

The scholarly literature on capacity building for youth and elections in Kenya is limited. In 2008, Ndanu and Mutunga undertook a qualitative study, investigating the extent and effects of civic education on Kenyan youth's participation in political and electoral activities. They found that without proper training and capacity building, the participation of Kenyan youth was low. Therefore, the authors suggested that policy makers and civil society actors should provide necessary training and knowledge to youth on the electoral process to promote youth engagement in the democratic process. The same year, Mseru et al. (2008) reported on their research of the challenges to youth participation and civic engagement in politics, culture and elections in Kenya. The authors concluded that there is an urgent need to strengthen the capacity of Kenyan youth to engage in political activities and elections better. They noted that training should focus on developing individual skills and the ability to interact with peers, the media, and the government to participate in the political arena effectively.

In 2011, Mwangi and Matsike examined Kenyan youth's ability to exploit their vote in the 2007 elections. Their findings indicated that while the majority of young voters exercised their Franchise, a significant number failed to do so due to lack

of knowledge on the electoral processes and information on the candidates. The authors concluded that for youth to better participate in politics, the government and civil society should promote capacity building, including conducting voter education and youth civic clubs, to improve theory formation, create rapport with responsibility, and inspire youth engagement. In 2014, Ruto et al. studied the youth's participation in the 2013 Kenyan elections. Their results revealed that the majority of respondents were unaware of the electoral process and had very little knowledge of political parties, candidates, and their mandates. In addition, the authors highlighted inadequate access to political information as one of the greatest challenges to youth participation in the electoral process. They suggested that the Kenyan government should promote capacity building through the introduction of civic education classes, youth empowerment programs, and improved political communication strategies to enhance the youth's political literacy.

In the same breadth, Shah et al. (2008) proposed the importance of utilizing social media to promote youth engagement in the electoral process. They stressed that social media provides more accessible and interactive ways of engaging the youth, allowing them to become more knowledgeable and active in the electoral process. The authors argued that the Kenyan government and civil society should use a variety of online and offline means to increase public knowledge on the electoral process and create accessible platforms for civic participation. In 2016, Chege et al. conducted a study to investigate the relationships between youth organizations and democracy, youth participation in elections, and capacity building. Results showed that the organizations played a crucial role in promoting youth political participation and literacy. The authors argued that youth organizations should promote capacity building through mentoring, engaging in civic dialogue, and developing awareness campaigns to enable the youth to engage in politics.

2.2 Challenges to Youth Participation in Civic Education Programs

According to Repko et al. (2020), youth participation in capacity building programs related to youth and elections in Kenya are limited by several factors. One major barrier is access to such programs, as they are typically not distributed equally across society. Many youth face obstacles to accessing these programs due to their socio-economic status and the lack of resources, such as the internet or public transportation (Livingstone, 2018). Additionally, the high cost of participating in such programs is often prohibitive for many Kenyan youth. In terms of actual participation, there are also several challenges that are faced. The most important

one is lack of engagement in such programs (Livingstone, 2018). Schindola (2019) observes that this is commonly attributed to the lack of awareness among Kenyan youth on the importance of these programs and the benefits they can bring. Furthermore, there is often a lack of trust in such programs and in the electoral process more generally. Many youth are not aware of how their participation can make a difference in the process, or how their votes can be accurately counted or fairly considered (Schindola, 2019).

One of the main issues is that many of these capacity building programs are not adequately tailored to the needs of Kenyan youth and are instead designed for older people (UNESCO, 2023). This lack of youth-specific programming can lead to a lack of engagement in such programs and make it more difficult for the traditional system to reach younger people. Another issue as highlighted by Kgotso is the lack of resources and opportunities for youth to engage in such programs meaningfully. This can include legally binding provisions that limit the number of youth that can speak at capacity building events (Kgotso, 2015). In addition to these structural issues, Mudida and Akeyo note that the inter-generational conflict related to attitudes and values of older generations also affects proper implementation. This encompasses a lack of recognition for the value of youth contributions and an unwillingness to listen to what young people have to say (Mudida & Akeyo, 2018). This can lead to a feeling of powerlessness among youth, who can become disengaged with politics and elections.

The literature points to a wide range of systemic issues that prevent youth in Kenya from participating in capacity building programs related to youth and elections. A lack of access due to socio-economic status, the high cost of participation, and a lack of necessary resources can limit the ability of youth to get involved. Additionally, a lack of awareness and trust in the electoral process, as well as a lack of youth-specific programming can prevent meaningful involvement. Finally, the attitudes and values of older generations can be a major obstacle, as they often have little appreciation for the value and voices of their youth. To increase youth participation in the electoral process, many solutions have been proposed, such as providing more resources for youth to get involved in the electoral process, creating more youth-focused programming, and fostering more open dialogue between older and younger generations about the importance of youth involvement (Zwambila et al., 2020). Additionally, legal changes should be put in place to ensure that youth voices and needs are taken into consideration when planning, organizing, and implementing such activities (UN, 2020).

UNDP (2020) identified the lack of civic education programs aimed at young people as a challenge to capacity building related to youth engagement in politics and elections in Kenya. Civic education programs are vital for ensuring that young people understand their rights as citizens, and how to participate in elections as per the law. However, many civic education programs are geared towards older generations who may already have significant knowledge of the electoral system (Mburu et al., 2018).

Finally, the literature reviewed has demonstrated that there is limited research on capacity building in the context of youth and elections in Kenya. Nevertheless, the existing studies have highlighted the importance of capacity building as a means to actively engage Kenyan youth in the electoral process and improve their knowledge and skills related to political activities. The literature has also provided a comprehensive overview of the challenges to youth participation in capacity building programs in the context of youth and elections in Kenya. It has identified several systemic issues—including a lack of access to resources and opportunities, low awareness, a lack of trust and the value of youth voices, and the attitudes of older generations—that prevent youth from meaningfully participation.

3. Methodology

This research was conducted using a qualitative case study approach to explore the relation between capacity building and public participation among the youth in Kenya using the 2022 general election as a case study. Fifteen youth aged between 18 and 25 years were given an opportunity to share their experiences and opinions through the use of in-depth interviews. Participants were selected purposively to reflect a diversity of opinions and experiences across gender, sector and geographical location. The interviews were conducted in person, in the participants' preferred language, Kiswahili/English, and were then audio-recorded and transcribed verbatim. Ten Focus Group Discussions consisting of 15 participants each were also held with various groups including young women, persons with disabilities, youth in and out of school, as well as those in formal and informal sectors. Youth in school include university students.

To ensure the validity and trustworthiness of the results, a rigorous process of data collection and analysis was conducted. The data was analyzed using thematic analysis, which is a method of identifying, analyzing and reporting patterns or themes within data. Themes were identified by focusing on the content of the interviews and how the participants discussed their experiences. The data was coded

and organized into categories, which were then analyzed for recurring patterns and themes. In line with this, several steps were taken. First, a pilot study was conducted prior to the main interviews to ensure that the interview questions were appropriate and that the interview approach was effective. Second, the interviews were transcribed verbatim and checked for accuracy. Third, the data was coded and grouped into themes, then a report written.

4. Findings

The inquiry into youth participation in capacity building programs and elections in Kenya has yielded some key findings. This section delves into the perceptions of youth peacebuilding during the electioneering period, the capacity building initiatives put into place, and the youth own initiatives towards a peaceful 2022 general election.

4.1 Perceptions of youth peacebuilding during the 2022 general elections

Results reveal that youth have positive perceptions toward peacebuilding related to electoral cycles. Specifically, participants reported that they have community-level interest in promoting peace through respectful discourse and dialogue, as well as collaboration and empathy. Moreover, participants reported that they would actively participate in peacebuilding initiatives and activities in their community, including engaging in dialogue, educating and rallying others, providing support to those affected by conflict, and confronting marginalization and discrimination.

Furthermore, the youth in Kisumu County reported a desire to engage positively in the electoral process, from helping to raise awareness around issues relating to elections and voting, to having confidence in the electoral process and feeling optimistic about participating actively in the electoral cycle. The results further outlined that youth are playing a critical role during electoral cycles in Kisumu County by serving as agents of peace. Youth in particular are seen as having a bridge-building role due to their creativity, energy, and relevance. They have a lot of energy that can be put to use in advocating for peaceful coexistence. Njogu however notes that in the past youth have not put this “energy” to the right use and therefore will need to marshal their energies and stay focused on the things that are important for the county (Njogu, 2013). Evidently, it was observed from an interview with one participants that:

The youth within Kisumu are energetic, innovative and can decide to change the world if they want to. However, they are also the highest number of

abusers of drugs and substance and therefore being highly culpable to manipulation by the political actors. The form of manipulation revolves around access to the drugs and therefore allowing vulnerability to do anything for the same. Most often, the youth are used to create chaos i.e., while disrupting campaigns and public gatherings. This is simply because we are not engaged. So if we are treated this way we don't trust ourselves and we feel so powerless. We assure you that the moment we were brought on board and empowered to take charge, we worked without looking back. The future is bright (NGO Youth member)

Some of the respondents saw an opportunity in the Constitution of Kenya for the youth to demand accountability and transparency in the conduct of national affairs, especially in regards to their involvement in matters peace. They noted that the United Nations Security Council Resolution (UNSCR) 2050 (2015) recognizes the role of youth in peace processes and urges member states to set up mechanisms that enable young people to meaningfully participate in peace processes and dispute resolution, United Nations (2015). However this observation depends on the level of education of interviewees. Those with high level of education were more conversant with the laws and policies of the country on the place of the youth involvement in peaceful engagements.

In the same vein, study participants voiced their sentiments regarding the feeling of loss regarding electoral results. A section of the residents remained disillusioned irrespective of the peace levels observed in the country, which affects peace building and engagement at community level. Specifically, the research affirms that youth can have a positive impact on the peacebuilding processes taking place around electoral cycles in Kisumu County. Given the increased presence of youth in the electoral processes, there is a great opportunity for them to be consulted and considered concerning the promotion of peaceful process.

4.2 Capacity Building Initiatives by NCIC towards Enhancing Youth Participation to a Peaceful 2022 General Election

Most of the youth in Kisumu County perceive that capacity building initiatives are key towards achieving a peaceful election in 2022. Through the capacity building initiatives conducted by the NCIC through their roadmap dubbed '*Elections Bila Noma*', the youth feel empowered and have developed confidence in participating in peacebuilding activities during the electoral cycle.

The initiatives have also helped the youth to acquire essential skills such as civic education and voting policies. To ensure a peaceful 2022 general election, the youth put in place various initiatives such as mediation, dialogue, civic education sessions, and online campaigns. The mediation process as part of the capacity building, enables the youth to engage with all stakeholders including the political leaders and political parties. The engagements have led to increased knowledge of peacebuilding concepts, voting policies, and better understandings of the electoral process. Furthermore, the youth have been organizing civic education sessions that inform and educate the community on the need for peaceful elections.

Moreover, the youth have been utilizing online campaigns as a means of educating and popularizing peaceful elections among the people. The campaigns have been hosted through various social media platforms such as Facebook, twitter, and Instagram and has increased the number of people engaging in discussions and activities related to peacebuilding in the run-up to the 2022 general elections. Ultimately, the findings of this study provide evidence for the importance of capacity building initiatives to ensure a peaceful 2022 general election. The initiatives have proved to be successful in empowering the youth to participate in peacebuilding activities and develop essential skills with respect to electoral processes and voting policies. Furthermore, the initiatives have also provided the youth with the necessary platform to engage in various peacebuilding initiatives and online campaigns to educate the public on the importance of peaceful elections.

4.3 Initiatives by Youth to Ensure a Peaceful 2022 General Election In Kisumu County

Participants identified various means through which youth championed peace during the 2022 electoral cycle. These included running peace campaigns, promoting peaceful dialogue and reconciliation, and advocating for youth engagement in the electoral process as voiced by one of the participants:

We know that politicians want us to cause chaos. But we have been empowered by institutions like NCIC. We know that we suffer more when we cause chaos. We are aware that our colleagues are being recruited to engage in crime. But we are working round the clock to bring them onboard through empowering them and running our peace campaigns door to door, village to village, estate to estate (Youth Leader).

Observations also point towards the fact that NCIC had several initiatives including peace messages through vernacular radio stations, town hall meetings, public forums with the youth, as well as peace caravans.

5. Conclusion

The findings of this study affirm the role of capacity building in enhancing youth participation to ensure a peaceful 2022 general election in Kenya. As such, the article concludes that there is great potential for youth to contribute to peacebuilding activities in electoral cycles. However, it is critical that the youth are well equipped, and platforms for them to engage in meaningful dialogue, voice their opinions and exchange ideas on how to create a peaceful electoral process are provided. Furthermore, the article concludes that young people do not just need resources such as training and capacity building, but also access to resources and networking opportunities that are critical to increase their participation in Kisumu County specifically, and Kenya in general. Ultimately, through the implementation of these various strategies, there is the potential to cultivate a peaceful, inspiring and secure electoral cycle.

6. Recommendations

To promote meaningful engagement of the youth in the elections, the Kenyan government and civil society should focus on providing civic education classes and voter education, as well as utilizing new media technology to reach a wider audience.

Engage youth in civic education and voter education campaigns: Engaging youth in civic education and voter education campaigns will not only build their capacity and knowledge on the electoral process but also motivate them to participate and even go out and vote. This can be done through workshops, seminars, radio/TV programs, and other forms of media.

Mobilize youth to register as voters: Capacity building of youth can enhance their participation and ease their mobilization to register as voters and get involved in the electoral process. This can be done through social media campaigns, door-to-door campaigns, and other forms of outreach.

Involve youth in the political process: Capacity building of the youth to participate in electioneering can enhance their involvement in the political process by encouraging them to join political parties and participate in party activities. This

will provide them with an opportunity to understand the electoral process and be part of the decision-making process.

Create awareness of the importance of peaceful elections: Capacity building to participate in the electoral process by the youth can enhance awareness on the importance of peaceful elections and the consequences of violence. This can be done through workshops, seminars, and other forms of media.

Encourage youth to take part in peacebuilding initiatives: When youth are capacity built, they have the motivation to participate in the political process. Accordingly, youth should be encouraged to take part in peacebuilding initiatives such as peace marches, peace dialogues, and peace rallies. This will help to create and maintain a conducive environment for peaceful elections.

Enable a platform for youth to report voter intimidation and other electoral offences: Youth should be enabled through capacity building and robust political participation in platforms that can enable reporting of voter intimidation and other electoral offences that they might encounter or witness. This will help to ensure that General Election are peaceful and free of intimidation or violence.

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Bottom-Up Economics Political Rhetorics In Kenya: A Public Participation Analysis

By TerryRuth Wanjiku Muriithi

Abstract

Public participation is becoming the central issue of our time to which we add, and participation requires communication. This study sought to analyze the bottom-up economic model through which the current President of Kenya, H.E. Dr. William Samoei Ruto garnered votes as his main political rhetoric. The bottom-up economic framework was anchored on a deliberate program that promotes investments. The presidential general elections in Kenya have stirred excitement among Kenyan citizens almost in every cycle of elections. This excitement draws from the peculiar dynamic perfected by a specific pattern in which a majority of people passionately desire to have a leader from their ethnic identity ascend to the presidency. During elections, voters tend to be wooed by political leaders to vote for them on the issues that are affecting them. Often, the veritable issues include – prices of flour, and fuel, inflation rates poverty, corruption, unemployment, high crime rates by the youth in Kenya, and state capture among many other factors. From this problem, the researcher sought to find out if the bottom-up economic model was better for Kenyans than the “Yes We Can” initiative by the Azimio coalition in the 2022 elections. The objectives of this study were to establish ways in which public participation and the bottom-up economic model determined Kenya’s Presidential election and to investigate whether the bottom-up economic approach influenced the outcome of the 2022 Kenya general elections. This study made use of the rhetorical theory. A mixed research approach was used, with the research having both qualitative and quantitative data. This study was conducted in Kiambu and Nairobi counties in Kenya. The findings of this study are that there was no public participation in the bottom-up economics political rhetoric in that Kenyans are now complaining after barely two months of Dr. William’s Ruto government. This study concludes that Kenyans should find a solid reason why a presidential candidate is suitable before making their decision on who to vote for. The recommendations are that public participation should be made mandatory for every political leader as this will leave no Kenyan citizen feeling cheated once a new government takes over power.

Keywords: Bottom-up economics, Political rhetoric, Public participation, Political Communication.

1. Introduction

Rhetoric refers to the art of using language well, particularly in terms of written and spoken discourse. Effective rhetoric utilizes various tools to persuade, move, entertain, and please its audience. The word rhetoric first appeared in English in the early 14th century. It derived from the Old French *rethorique*, which came from the Latin *rhetorice* and the Greek *rhētōr*, meaning “speaker, master speaker, orator; artist of discourse” (SuperSummary, 2023).

There are different kinds of rhetoric used in the world by different professionals. When it comes to politicians, they have a way to woo the people they wish to vote for them. Advertisers on the other hand try and come up with attractive slogans that could make their prospective customers come and buy from them. Lawyers also present to judges arguments that could alter how a judgment would be unleashed. These are just examples of how language is designed to persuade, inform, and motivate.

Rhetoric played an important role in Mesopotamian Akkadian writings (2285-2250 BCE), as well as the Middle Kingdom period of ancient Egypt and the era of Confucius (551-479 BCE) in China. However, ancient Greece in particular prioritized rhetoric as a mode of civic life (SuperSummary, 2023).

Politicians have for long brought about fake news especially to citizens when it comes to a period of general elections. In the 2016 U.S. presidential elections, a lot of the same fake news was discussed a lot within the country and worldwide especially because it is a superpower country. This is hence proof of rhetoric being part of our social, political, and personal lives.

Public participation allows stakeholders (those who have an interest or stake in an issue, such as individuals, interest groups, and communities) to influence decisions that affect their lives (Kandil, 2023).

According to the Kenyan Constitution, public participation is one of the national principles and values of governance and one of the key objectives of devolution “...to give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them”(Article 174c, Constitution of Kenya)

According to (Karanja, 2022), Politicians have always been fascinated by the power of language and rhetoric in their quest to influence voters. For decades, ethnic-based political rhetoric has dominated African politics.

This study will focus on bottom-up economics as political rhetoric that the current President of Kenya, Dr. William Ruto used to woo voters during his campaigns for the 2022 elections.

2. Statement of the Problem

According to (Keter, 2021) Ruto was rallying supporters around his hustler narrative, which he said was a “bottom-up-middle-out economic approach” that has been received with admiration and criticism in equal measure.

“The bottom-up economic model is a blueprint targeting to promote investments of ordinary Kenyans and empowering them financially so the country can generate taxes to spur the economy, Deputy President William Ruto said”.

The gap of this paper on “Bottom-up economics political rhetorics in Kenya” is that the Kenyan electorate was wooed by the 2022 Presidential candidates to vote for them on the issues that were affecting them at the moment. These issues included the inflation rates in Kenya for key items such as food mainly the staple food being maize flour, locally known as “Unga”, and fuel, among other factors are poverty, corruption, unemployment, high crime rates by the youth in Kenya, and state capture. Politicians majorly focused on highlighting to Kenyans what change, policies, and development they would bring to the country once voted in..

Kenyans should have been involved through public participation in the political campaigns especially when it came to unleashing the political parties’ manifestos. There was no actual participation where people living in diverse parts of the country were asked to put in ideas of issues they wanted to see addressed. It was the usual deceptive language from the politicians to the voters’ ears that pushed them toward making their decisions on who would become their President for the next 5 years.

The motivation for doing this paper is to find out how public participation played a pivotal role in the bottom-up approach economics campaign before Kenya’s 2022 general elections.

Previously politicians especially presidential candidates in Kenya wooed voters to their side through ethnic rhetoric and hardly with no public participation involved. However, the 2022 elections brought about the economic aspect of the country. This is because the Kenyan folk were hard-pressed by the inflation of basic goods and massive unemployment cases in many parts of the country. This paper then

went out to investigate if citizens were part of parcel of the decision-making of what the leading party settled on to give the country before and after the elections.

The researcher particularly put a niche to the Presidential elections and specifically researched two leading candidates of the 2022 general elections, President Dr. William Samoei Ruto and His Excellency, the former Prime Minister, Raila Amollo Odinga.

It is the Kenya Kwanza government in power that successfully wooed Kenyans into voting them in and I was intrigued to research if public participation played a critical role in the decisive elections

The purpose of the study was to analyze if public participation was part and parcel of the bottom-up economics approach.

2.1 General Objective

To find out how public participation played a pivotal role in the bottom-up approach economics campaign before Kenya's 2022 general elections

2.2 Specific Objective

- (4). To establish ways in which public participation and the bottom-up economic model determined Kenya's Presidential election.
- (5). To investigate whether the bottom-up economic approach influenced the outcome of the 2022 Kenya general elections.

3. Research Questions

- (1). In what ways were public participation and the bottom-up economic model pertinent in determining Kenya's 2022 Presidential elections?
- (2). To what extent did the bottom-up economic approach influence the outcome of the 2022 Presidential general elections?

4. Literature Review

According to (Condor, Tileaga, & Billig, 2013), the topic of political rhetoric concerns the strategies used to construct persuasive arguments in formal public debates and everyday political disputes. The study of political rhetoric, therefore, touches upon the fundamental activities of democratic politics. As Kane and Patapan (2010, p.372) observed, “because public discussion and debate are essential in a democracy, and because leaders are obliged to rule the sovereign people using constant persuasion, rhetoric is central”.

In the United States, the road to the White House is long, expensive, and exhausting. Becoming a candidate is only the beginning of the election process. Successful candidates must both persuade voters that they deserve their votes and garner the critical votes of electors in the Electoral College.

Persuading voters is the essence of a political campaign. Advertising, theme songs, stump speeches, and even negative campaigning have been around since our country began, and each advance in technology since then has offered new opportunities for candidates to persuade voters (LibraryofCongress, 2023).

Before the 2022 elections, the ‘bottom-up’ and ‘trickle-down’ economic approaches became political buzzwords. A heated debate brewed on the relevance of the ‘bottom-up’ approach, with its proponents citing failures of the ‘trickle-down’ approach, which they claim has been adopted by the previous regimes, to spur economic development (Owour, 2021).

Bottom-up economics politics is also relatively a new campaign talk in Kenya. Having been conceived by the current President H.E. Dr. William Samoei Ruto when he began his politics back in 2018. This idea pulled in a huge crowd wanting to know what Dr. Ruto was up to in his political agenda.

The United Democratic Alliance (UDA) Party chaired by his H.E. Dr. William Ruto was the party that steered on the bottom-up approach initiative. Its basic fundamental points run across the need to address vulnerable groups, reduce the price of making basic foods, and address the governance gap. The party specifically drove the Kenyan masses championing the urgency to make the common man a “hustler nation” and let go of the leadership of the dynasties.

The bottom-up economics political rhetoric is however relatively new in the African continent. President Ruto, then the deputy president of Kenya campaigned started

to do his campaigns with that ideology. President Ruto approached the public with the notion that the dynasties will for once not be given power in Kenya.

President William Ruto referred to the Kenyatta and Odinga family as the dynasty families. This was a direct attack on his campaigns for the 4th president of Kenya, Uhuru Kenyatta, and the former prime minister of Kenya, Raila Amollo Odinga. Ruto convinced the Kenyan folk that for a long the poor person had been neglected and never left behind.

When he unveiled his manifesto, he dedicated it to the hustlers- those “at the bottom of the pyramid”. He has pledged to bring them “durable growth while maintaining macroeconomic stability” (Africanews, 2022).

President Ruto, who was 55 years old during the campaign period used the symbol of a wheelbarrow to sell out his political idea to the masses. He was famously known as the “Chief Hustler”. He did his best to keep campaigning even when the COVID -19 economic crisis sprout out in Kenya. The term “Chief Hustler” was what would lots of Kenyans to his political side as majority could relate to what the term hustler means.

Many Kenyans hardly make enough money to give them a decent meal, their children are often thrown out of school for lack of school fees and many walk to their places of work.

The fact that Dr. Ruto came out promising Kenyans that once he was voted in, life would take a turn around, and then many were sold out to him and his political allies.

Public participation can be any process that directly engages the public in decision-making and gives full consideration to public input in making that decision. Public participation is a process, not a single event (SuperSummary, 2023).

There are several ways in which politicians can engage the public: They inform the public with objective and balanced information. This is a one-way flow of information. Politicians also consult with the public by informing them and then requesting input. They involve the public in the decision by accepting input and reflecting this input in the choice. Collaborate by engaging with the public and sharing the decision-making with them and finally politicians empower the public by putting the final decision in their hands (Radke, 2023).

The researcher made use of the rhetoric theory. Rhetorical theory is fundamentally concerned with composition, forms, functions, means, venues, producers, audiences, effects, and criticism of discourse.

Rhetorical theories differ from one another depending upon the definition of “rhetoric” that serves as their starting point. The proponent of rhetorical theory is Robert N. Gaines. In the early 21st century, three definitions of rhetoric dominate rhetorical theory.

According to these definitions, rhetoric may be identified as (1) precepts for discourse making, (2) discourse, or (3) criticism of discourse. Rhetorical theory is subject to advancement through an empirical investigation of discourses and their sequels. However, research in rhetorical theory is typically conducted through methodical recourse to investigative heuristics (Gaines, 2017).

The primary strength of the Rhetorical Theories Paradigm is its ability to help us produce and evaluate effective messages. Rhetorical theories provide a way for us to consider the context when we examine messages.

The rhetorical theory has also seen a shift away from a strict focus on persuasion as the central focus of rhetoric to an interest in all of the reasons for which humans create rhetoric. For some rhetorical theorists, all human symbol use is inherently persuasive—no matter what our intent, anything we say or write, whether intentional or not, affects those around us (Karen, 2012).

The rhetorical theory has come a long way from theorizing designed to help litigants in ancient Greece and Rome. The rhetorical theory now addresses all aspects of the rhetorical situation—exigence, audience, and rhetoric—as well as the larger contexts in which any given rhetorical act occurs. Rhetorical theory cannot be divorced from questions about human agency, the role of symbols in the creation of the human world, and the power of audiences to co-construct that world (Karen, 2012).

5. **Methods Used**

This chapter outlines the research design used, the population of the research study, the target population, the sample size, the sampling design, and the pretesting of the research study.

This study used a descriptive research design. A descriptive research design can use a wide variety of quantitative and qualitative methods to investigate one or

more variables (McCombes, 2019). The research design used in this study was mixed-method research. The researcher used quantitative research methods to substantiate the number of voters that participated in the bottom-up economic approach forums, how many found it to be honest, and how many did not find it to be honest nor say the truth of their promises to Kenyans.

The study further used qualitative research methods to analyze the 10 videos that the researcher watched to find out what people said about the bottom-up approach to political rhetoric and if they found it necessary for future presidential candidates in future to have public participation forums as a mandatory initiative for their campaign strategies.

The population for this study was Kenyan voters from different parts of the country majorly Kiambu, Nairobi, and Uasin Gishu and Kirinyaga counties. There were 83 research responses from the questionnaires distributed.

The researcher made use of research assistants to collect data from people who were illiterate but knew the bottom-up economic approach. The researcher further included secondary data in the study's data collection by watching 10 videos from 3 main media channels – Citizen TV, NTV, and KTN News. These videos would assist the researcher find out what issues the initiators of the bottom-up economics approach and elites had to say about it through the interviews held by the media stations and the campaigns done in various parts of the country.

6. Sampling

This study made use of snowball sampling and purposive sampling techniques. Snowball sampling relates to what you get as a representative of the other people who did not participate in the study but would have had great input in the study.

Snowball sampling can be a useful way to research people with specific traits who might otherwise be difficult to identify (e.g., people with a rare disease).

Purposive sampling, also known as judgmental, selective, or subjective sampling, is a form of non-probability sampling in which researchers rely on their judgment when choosing members of the population to participate in their surveys.

The study considered the validity and reliability of the data collection instruments to draw meaningful conclusions from the data collected. The validity of a measurement tool is the extent to which the instrument yields certain results when the entity being measured has not changed (Leedy & Ormond, 2005). The relevance of

the questions was determined by how well the questions related to the research objectives. Subsequently, the clarity of each question was checked to communicate to the respondent what is intended and hence obtain desired responses.

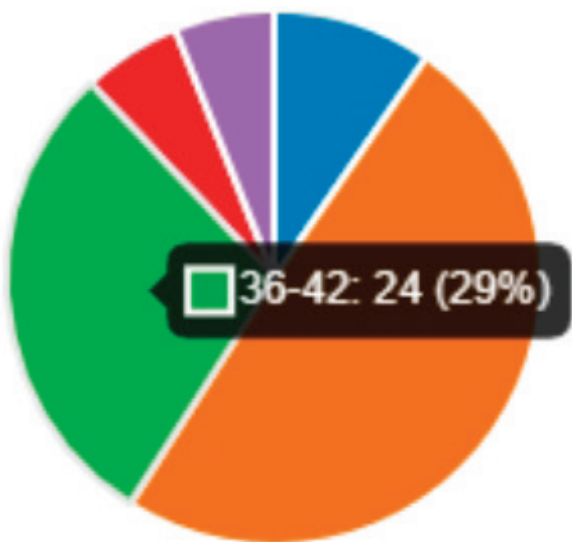
7. **Ethical Considerations**

The researcher observed all ethical principles in the analysis and presentation of data. The principles included protecting the confidentiality of respondents and assuring them that the information they provide will only be used for the study.

8. **Results and Discussions**

The study collected data by distributing questionnaires to people from various counties – Nairobi, Kiambu, Kajiado, and Kirinyaga counties. The majority of the respondents who took part in this research said that the bottom-up approach exists in theory but not in real life.

Age brackets of the study



Source: Researcher's own finding

Pie Chart 1: - Age Bracket of the Respondents

18-25 – 10%

26-35 – 49%

36-42- 29%

43-47 – 6%

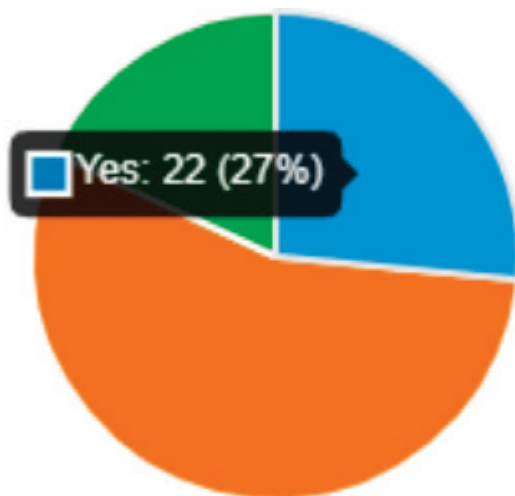
50 and above – 6%

There was a clear indication that the majority of the Kenyan youth did not participate in the 2022 elections. This was particularly because very few people within the age bracket of 18 to 25 took part in this study.

The majority of the respondents 28 % voted in Nairobi County in the 2022 elections, followed by 11%, in Kajiado County, and 8%, in Kiambu County while the least came from under the age brackets of 26 to 35, 36 to 42, and 43 to 47.

Because the study made use of snowball sampling, the respondents whom the study's research assistants reached out to with questionnaires involved their friends and colleagues. From Kirinyaga county 7%. The other counties that were involved in this study but had minimal responses 1% were Uasin Gishu, Murang'a, Kakamega, Isiolo, Nakuru, Nandi, Machakos, Meru, and Vihiga counties.

55% of the respondents said they did not think the bottom-up economic approach was honest in bringing the not-so-able Kenyan dubbed (hustler) to the better side of life, while 27% believed the bottom-up approach would do as promised. The rest 18% were not sure about where the bottom-up would lead them to.

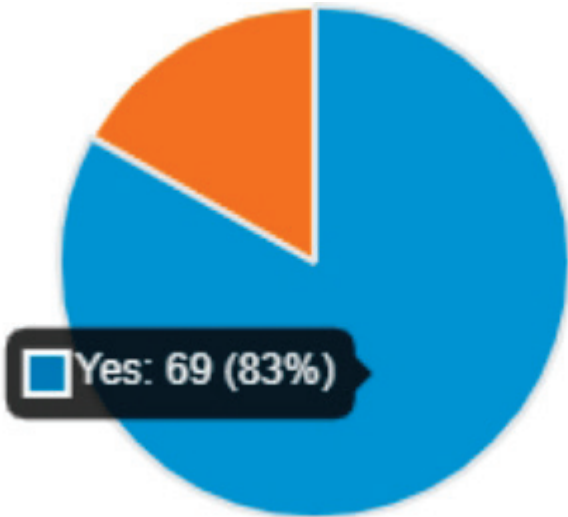


Source: Researcher's own finding

Pie Chart 2: - Responses on whether the bottom-up approach was honest in bringing the not-so-able Kenyan (Hustler) to the better side of life once they were voted in. 55% said No, 27% Yes, and 18% Maybe.

Public participation was not exhaustively done in all parts of the four counties in which this study collected its data. Many respondents advocated for public participation to be made mandatory in upcoming presidential elections in Kenya. A majority of the study’s respondents 74% agreed that public participation is important when Presidential candidates are doing their campaigns. The study reveals that 83% of the respondents agreed that publication participation is extremely important during political campaigns. This is congruent with the (Kandil, 2023) study which highlights the impeccable role of public participation during political campaigns.

A big chunk of this study’s respondents looked at public participation being the practical presence of politicians on the ground. The politicians coming to speak to them and ask them what exactly they will need their leaders once they are voted in and not just speaking about it and then not implementing what they promised to do.



Source: Researcher’s own finding

Pie Chart 3: A large portion of respondents agreed that public participation forums should be made mandatory for all Presidential candidates in the future national elections in Kenya with 83% saying Yes and 17% No.

There were also hopes that women and young people would get a big share in the KK government.

Various respondents said that they understood the bottom-up approach by the UDA team as building the economy from the common man, that it is an approach that caters to everyone within the political divide, and that it prioritizes those at the bottom of the pyramid. A few others also had a different response that the bottom-up approach was a hoax, a campaign trick rather than a campaign slogan that ended on 9th August 2022 and that the approach was nothing but lies.

This generally brought out a mixed understanding from the respondents, in that some saw it as a beneficial approach towards the Kenyan voter at the grassroots while others saw it as just a ploy to hoodwink and rip off the gullible masses.

Find below Table one illustrating the 10 videos from three mainstream media in Kenya that the researcher watched in pursuit of secondary data for this study. The researcher derived these videos from three mainstream TV stations in Kenya namely Citizen TV, NTV, and KTN News YouTube channels.

Tables 9: Videos from three mainstream media in Kenya

Date the video was posted on YouTube	Title of the YouTube clip	Clip from which Kenyan Media Station	URL for the Video	Venue of the Campaign	Main Speakers
4th August 2021	DP Ruto explains what the 'Bottom economic model' means	Citizen TV Kenya	DP Ruto explains what the 'Bottom Up economic model' means - YouTube	Karen Live =- The Dp's residence	Deputy President – Dr. William Ruto
28th June 2022	Ahmednasir Abdullahi and Adams Oloo differ on manifestos and bottom-up	NTV Kenya	Ahmednasir Abdullahi and Adams Oloo differ on manifestos and bottom-up #WADR - YouTube	NTV Studios	Ahmednasir Abudullahi, Adams Oloo

21st January 2022	DP Ruto takes bottom model campaigns to West Pokot	KTN News	DP Ruto takes bottom-up model campaigns to West Pokot - YouTube	West Pokot Campaign trail	Dp William Ruto
16th November 2021	DP Continues campaigns for the bottom-up economic model	Citizen TV News	DP Ruto continues campaigns for bottom-up economic model - YouTube	DP Ruto continues campaigns for the bottom-up economic model Ruto & allies tell Governor Kiraitu not to impose Raila on the people DP Ruto & allies seek to woo CS Peter Munya to their camp	Dp William Ruto
16th December 2021	DP Ruto takes 'Bottom Up' campaign to western Kenya for his 2022 presidential bid	NTV Kenya	DP Ruto takes 'Bottom Up' campaign to western Kenya for his 2022 presidential bid - YouTube	Vihiga County	DP Ruto campaigning Vihiga County
6th May 2021	Rutonomics-Bottom Up! :: KTN News 19 April 2021:: Stephen Mwakesi	KTN News	Rutonomics-Bottom Up! :: KTN News 19 April 2021:: Stephen Mwakesi - YouTube	Interview on the Rutonomics campaigns – live streaming	Stephen Mwakesi

29th July 2021	State of the Nation: Bottom-up debate DAYBREAK	Citizen TV Kenya	State of the Nation: Bottom-up debate DAY BREAK - YouTube	Interview on the Bottom-up Debate – DayBreak Show	Wamatangi, Samson Cherangenyi, Alfred Mutua and Gladys Wanga
10th May 2022	Raila unveils his masterplan for the informal sector geared to counter the bottom-up economic model	KTN News	Raila unveils his masterplan for the informal sector geared to counter the bottom-up economic model - YouTube	News story of Raila Odinga unveiling his masterplan virtually	Raila Odinga
1st November 2021	DP Ruto akita kambi Nyamira, apigia debe mfumo wa 'bottom up'	Ntv News	DP Ruto akita kambi Nyamira, apigia debe mfumo wa 'bottom up' - YouTube	News story of Ruto campaigning in Nyamira county	Dr. William Ruto
29th July 2021	Economy: Bottom Up... And Downs?	Citizen TV	NEWS GANG Economy: Bottom Up... And Downs? - YouTube	News Gang show discussing the Bottom-Up economic model	Journalists – Joe Ageyo, Linus Kaikai, Francis Gachuri, and Jamila Mohammed

The main point from the people who were featured in the 10 videos highlighted in Table 1 was that the bottom-up economic model was to assist the hustlers to grow their businesses by offering them capital from the hustler fund. Some of the interviewees in the media houses shows said that the bottom-up economic model would ensure that people who do not come from reputable families will get top government jobs once the Kenya Kwanza government is voted in the 2022 elections.

9. Conclusion and Recommendations

This study concludes that Kenyans should find a solid reason why a presidential candidate is suitable before making their decision on who to vote for. The researcher also concluded that politicians campaign just to garner votes for the general elections and once they are voted in, some of the promises they had made to the voters are fulfilled, while others take some time to be fulfilled. This conclusion is evident from Piechart 2 on page 13 showcasing the results of this study.

The study recommends that public participation should be made mandatory for every political leader as this will leave no Kenyan citizen feeling cheated once a new government takes over power. The other recommendation is that members of parliaments should also come up with a bill to discuss why public participation should be made mandatory especially for all presidential candidates in the future general elections in Kenya and later have the bill included in the Kenyan constitution.

The 2022 general elections were full of deceptive communication from the politicians to the Kenyan citizens. Public participation should not be done through political rallies because there the voters will not give feedback. Public participation should be for instance through public forums where people can ask questions and politicians respond and vice versa.

There should also be some evaluation of the issues discussed before the elections after the politicians get into power. This will allow Kenyan citizens to assess if everything is done as promised during the campaigns.

The respondents gave examples of the housing levy and social insurance fund (SHIF) that is supposedly to replace the national health insurance fund (NHIF). These are issues that were hardly mentioned by the UDA party that came up with the bottom-up economics political rhetorics in Kenya. If this was mentioned through a public participation forum then it would not be a shocker to many Kenyans as it is now.

This study finally recommends that politicians should try not to conceal information from the electorates as they will leave their good or bad reputation with them when ending their terms.

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Capacity Building: A Critical Pillar for an Effective Public Participation Exercise

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Abstract

Public participation is one of the core pillars of good governance. In Kenya, it is not only a best practice, but also a constitutional and legal requirement in legislative process and public policies implementations. Despite this being a fundamental principle of democratic governance, there has been challenges and gaps on how to institutionalise the best measures for undertaking a more democratic, equitable and effective public participation process for inclusive governance. Indeed, several laws, regulations and policies have been put aside by courts for lack of 'sufficient' and 'real' public participation. One of the causes of these challenges is attributable to the dearth in knowledge, skills, and strategies in implementing a meaningful public participation exercise. This paper, using a combination of online survey and a review secondary data, examines the role of Capacity Building in facilitating the institutionalization of best practices in public participation. The paper argues that Capacity Building, through the development of comprehensive Public Participation policy and law, adoption training curriculum integrated in the public participation process and provision of resources to support implementation to the same, is an integral component of public participation. Further, to achieve a more inclusive and democratic decision making, public participation process has to infuse capacity building from planning, implementation and monitoring evaluation.

Key Words: Capacity building, public participation, democratic governance, empowerment, access to information, Public Education.

1. Introductions

Public participation (PP) is one of the key pillars of good governance and an essential prerequisite for open and democratic society. In Kenya it is a constitutional and legislative imperative since it is one of the national values and principles of governance which binds all persons in making and implementing public policy decisions. Under the Constitution of Kenya, 2010, all persons and arms of government are required to involve the public through public participation whenever an entity enacts or makes or implement public policy decisions. The rationale is to achieve participatory decision-making essential for democratic governance.

However, in Kenya several policies, regulations and laws have been thrown out by the courts for not meeting the qualitative and quantitative requirements an effective public participation. For instance, it is reported that in the last two years parliament has rejected over twenty-five (25) subsidiary legislations submitted to them by public bodies due to failure to effectively conduct public participation. On the same note, many writers acknowledge the vagueness and lack of clear frameworks for conducting successful public participation as reasons for the gaps of the effective execution of the exercise. Though there are provisions in the Constitutions and many other laws anchoring the requirement for public participation before making or implementing public policy decisions, there are no elaborate mechanisms guiding the mechanisms of conducting a purposeful and meaningful public participation. The closest is the guidelines developed by PSC which limited to policy formulation. The Kenya Draft Policy on Public Participation (2018) indicts public institutions of the mere focus on compliance with the legal provision rather than the quality and outcome of the public participation exercise. The gaps have necessitated the lack of coherence and standard way of conducting public participation and further dented the quality as to the effectiveness of the exercise.

However, there are no comprehensive and specific regulations and guidelines on how to conduct a meaningful and effective public participation exercise. This has made institutions to adopt a more compliance-based public participation exercise defined by giving notice, invitations for memorandum and petitions and limited town-hall meetings. Apparently, what constitute an effective and meaningful public participation has been the main concerns for many. The most critical questions to ask therefore are: can people effectively participate in matters they do not understand? Are the methods used by most institutions enough to objectively and critically engage the people and seek their views on matters of decision-making? It is apparent that the lack of capacity of the people puts questions as to the effectiveness of any public participation exercise. It is this regard that this paper attempts to exam the centrality of capacity building of the targeted public participants in undertaking an effective and meaningful public participation exercise.

The first section of the paper examines the reasons for undertaking public participation as a pillar of good governance. In the second section, the paper will explain the various principles and pillars of public participation with focus on citizen empowerment through capacity building and access to information as central pillars. The paper undertakes an in-depth assessment of best practices in

public participation process and highlights the importance of capacity building in public participation exercise in sessions three and four respectively. Finally, the paper will explain the findings of the study and make recommendations.

2. Rationale of Public participation as a pillar of good governance

This section reviews literature on previous works on the role of capacity building in undertaking an effective public participation. The purpose of this review is to understand the gaps and challenges in the implementation of capacity building exercise during public participation, the importance of the capacity building in enhancing decision-making in government institutions and appreciate the various mechanisms of implementing capacity building activities for effective public participation.

The underpinning philosophy of citizen participation is to help build stronger and democratic society where decisions are made through consultations (Cuthil, 2005, p 14). The Government, as duty bearer, majorly a service provider has to deal with the challenge of the changing needs of the citizens by involving and consulting them always. The Citizens have to be afforded the opportunities to have critical chances to contribute to their affairs (Cuthil & Fien, 2005).

The ranges of the diverse needs of the citizens in terms of the environmental, social, political and economic interests makes even citizen consultation more critical in governance. Cuthil & Fien (2005), also argue that the gathering the diverse knowledge and experiences of the people for better decision machining is important since it help provide relevant context to any decision made.

Cuthill & Fien (2005) argue that the building of collective conscience to understand the different perspectives of political, economic, religious and educational factors is usually influenced by the ‘dominant culture’. Etizioni, (1992) further observes that for any institution to better realize the objectives of public participation, citizens commitment is key. This underscores the need to make the citizens central in decision making.

The participation of public is described as a deliberative process through which the stakeholder including citizens, civil society and relevant government actors are purposely engaged in policy-making and implementation (PSC, 2015). The courts have ruled that the provisions of public participation as core principles core of checks and balance a in governance in the execution of function of the various arms of government. Further, the described public participations as mechanisms to enable

people exercise their sovereign power and aimed at realizing open governance and sustainable developments.

2.1 Pillars, principles and ingredients of effective public participation

There are few literatures about the distinctions between pillars and principle of public participation. While some research work uses the pillar and principles interchangeably by referring what others describe as pillars as principles. For instance, the International Association of Public Participation (IAPP) indicate the provision of information as one of the goals of PP capture in its third board pillar of PP (IAPP,2015). While others recognize empowerment, education and access to information as key principles of effective public participation (ICNL LLC)

The International Center for Not-for-Profit Law LLC explains the following as the principles of Public Participation. Is this a framework? How relevant related with the study? Make these applicable to the study

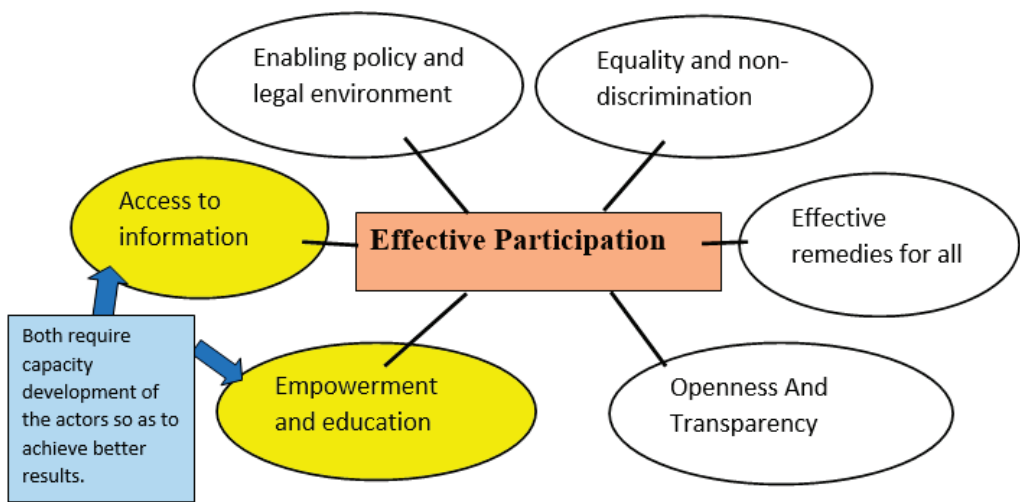


Figure 4: Principles of Public Participation translated from an illustration by International Center for Not-for-Profit Law LLC.

The figure demonstrates that for any public participation to be considered effective a meaningful there should be access to relevant and accurate information and empowerment and education of the stakeholders or the people. Most writers have agreed that mere access to information is not enough and the people should be communicated through simplified and language they understand on the matter under consideration for they to give feedback. Most researches critics the provision of

information by government as just a compliance stunt and not meant to elicit the necessary feedback (Nyabira, 2023).

There are three levels of public participation namely; the information level, the consultation level and the empowerment. (Francesco, UN-Habitat, 2023). As illustrated in *figure 2* below the information level result in low inclusiveness in decision-making and less stakeholder’s involvement. It is described as one-way traffic where a government give information to the public and doesn’t consider their feedback. On the second level, the stakeholders are consulted and there is two-way flow of information however, with limited capacity of the stakeholders, there is meaningful participation. This level is done just for compliance. It is referred to us tokenism level (Fracesso, 2023). The third level is the empowerment level which shows a high inclusiveness and strong stakeholder’s influence. This can be achieved through the building of the capacity of the stakeholders through appropriate resourcing and capacity development.

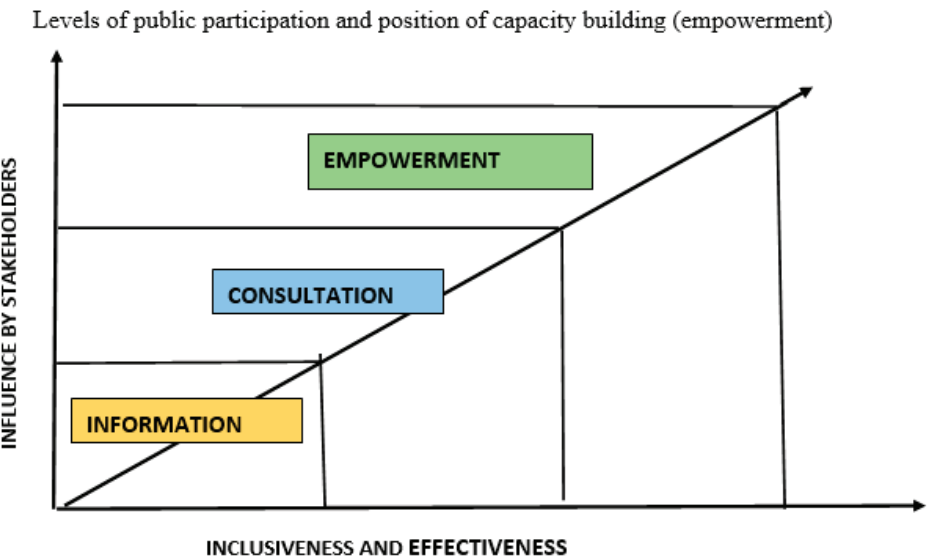


Figure 5: The role of empowerment in determining the levels of effectiveness and stakeholder influence of the in Public Participation.

2.2 The Best practice in public participation

The Courts have, in demarcating the corners effective public participation exercise, guided institutions on the ingredients of an effective, meaningful and purposeful public participation exercise. The Supreme in the *British American Tobacco Kenya*,

PLC vs Cabinet Secretary for Ministry of Health & 2 Others [2019]²⁸, known as *BAT Case*, emphasized on the qualitative and quantitative components of public participations. The Court went further and provided that **an effective public participation must have the following components:**

- (1). clarity of the subject matter for the public to understand;
- (2). structures and processes (medium of engagement) of participation that are clear and simple;
- (3). opportunity for balanced influence from the public in general;
- (4). commitment to the process; e. inclusive and effective representation;
- (5). integrity and transparency of the process;
- (6). capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.

In delimiting the guiding principles and the components of public participation, the Court placed capacity building, through facilitation of stakeholders and sensitization, as critical ingredients of realizing a meaningful public participation. In the absence of any guidelines or policies the above Supreme Court decision stand as strong yardstick of measuring the effectiveness of a public participation exercise.

The Guidelines for the Public Participation Policy Formulation by the Public Service Commission (PSC) 2015, have provided the bellow as the process of undertaking public participation exercise:

- (1). Commencement of the exercise: Involve giving notices to stakeholders, demarcating the legal requirements, plan for logistics and identify the purpose for conducting the public participation.
- (2). Determination of Stakeholders: Identify stakeholders, define their interests, device appropriate ways of sharing information.
- (3). Development of Action Plan: choose appropriate approaches of conducting public engagements for instance the use of interactive websites, public meetings, workshops, print and electronic media. Examine the strengths and

²⁸ Supreme Court of Kenya case: BAT case, NLC case, Robert. Gakuru & Others v Governor Kiambu County & 3 Other [2014]

weakness of each of the mechanisms and strategy. Select the best strategy that is cost effective and meet the stakeholders' expectations, determine the capacity of the organization and the stakeholders and plan to develop the capacities.

- (4). Provide feedback to stakeholders on the outcome of their suggestions and opinions.
- (5). Conduct monitoring and evaluation of the process of public participation with a view to improve.

2.3 Capacity Building

According to the UN Academic Impact, Capacity building is 'the process of developing and strengthening skills, abilities, processes and resources that organization and communities need.'. the purpose is to help undertaken certain roles or face challenges.

Capacity Building is also referred to us Capacity Developing, according to the County Government Toolkit, is the process of strengthening the skills and knowledge of individuals, organizations and communities to achieve a certain goal over a time. It is a continuous process important for an individual or a community to make a meaning contribute on how to face certain matter or challenges. It is therefore more than sharing of information since it involves transfers of knowledge and skills. Capacity building is aimed at creating informed stakeholders so as to make independent reasoning on matters.

Capacity building is argued to be a strong 'catalyst' and enabler in a self-reinforcing' process that strengthens governance. It helps building of social capital for communities and provide a platform for government to work collaboratively towards a sustainable community (Cuthill & Fein, 2005).

Conditions necessary for better capacity building framework to enhance public participation

- (1). Establish common vision by collaborating in planning, fostering trust and preventing conflict of interest.
- (2). Provide information. Use appropriate platforms and channels of sharing information with the stakeholders. The information should be understandable to the stakeholders.

- (3). Put in place an equitable, accountable and transparent participatory policy and process. These Kevin (2008) argues that there is no one-size-fits-all in choice of capacity building for public participation process. He advocates for the use of different clusters of methods for different groups suitable for their capacity gaps and different contexts.

2.4 Capacity Building as a tool for fostering best practice of public participation

In public participation, capacity building facilitates the understanding of issues by stakeholders before making their contribution and suggestion over a matter. It is the best way of ensuring collaboration between stakeholders. Muigua (2014 p.24) argues that citizenry has to be empowered with the relevant knowledge so as to realise meaningful and quality participation by the public in governance of natural resources. In addition, Pretty, (1999) strongly advocates for the government to develop the capacity through sensitization by resource persons so as to obtain accurate and relevant input on a matter. The enhancement of the citizens capacity is also seen as a means of ensuring better ownership of decisions and better implementation of decisions (Lowry, Alma L. 2013).

Further, Knowlton, (2013 p.145) summarises that successful public participation has to have the following prerequisites:

- (1). Standard means of identifying stakeholders,
- (2). Decisions support system to integrate discussions in planning,
- (3). Community capacity building through funding training for staff and community.
- (4). Process of monitoring and evaluation and validation of the capacity building activities.
- (5). Enabling organizational culture that support sharing of information and removes mistrust.

All the above studies and scholars strongly advocate for the citizen to empowered with relevant knowledge for any policy-maker to achieve an effective public participation process.

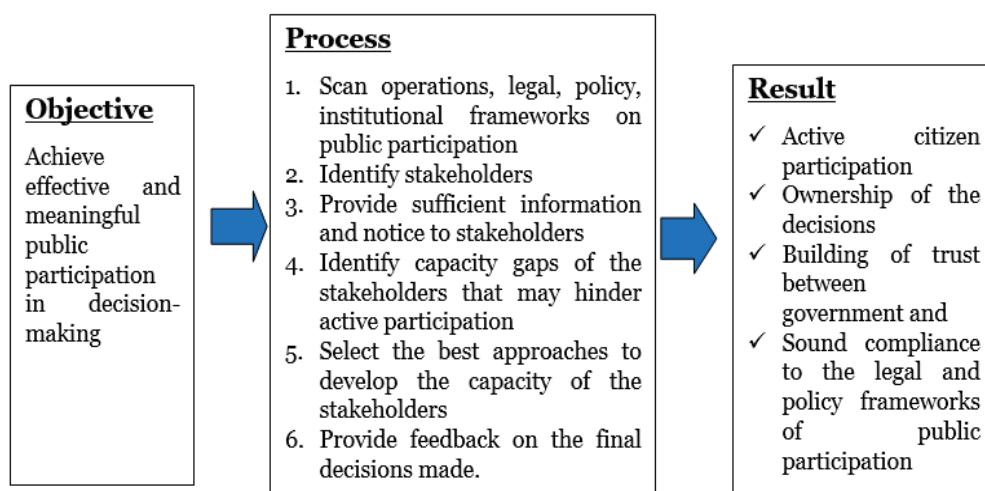


Figure 6: The role of capacity building in the public participation process.

The Kenya Schools of Government's Centre for Devolution Studie's working paper (2015) explains that key strength of citizen participation is defined by the levels of planning, financing of community and stakeholder mobilization, citizens training and capacity development. The paper further adopts the use of various modes of capacity building including sensitisation, public outreaches and barazas and civic education programs that are appropriate to the scope of the task and the capacity gaps of the stakeholders.

Further the Kenya Draft Policy on Public Participation (the draft policy) recognizes Capacity building as a priority area in the policy. It identifies civic education as a strong prerequisite for effective public participation. It questions, what use will it make for a government to seek opinions of citizens who are not aware of the subject matter and what it entails? It suggests that there should be deliberate and well-planned awareness creation programs in the public participation exercises. It emphasizes that capacity building will impact the skills and knowledge of the public to make informed decisions.

In explaining the rationale of capacity building as component of public participations, the draft policy explains that empowered citizens will make meaningful contributions to decision-making. Further, the capacity development will remove the fears and doubts and encourages to seek accountability and chat their path in governance. The policy also emphasis on the need to adopt a uniformed way of conducting capacity building in all public bodies in Kenya for harmony and ease of implementation of the exercise. It therefore, calls for the standardization

public participation activities through use of policies and guidelines and even legal frameworks.

The challenges on effective execution of meaning capacity building is observed to be among other inadequate funding and resourcing the capacity building exercise during public participations process, the lack of strong and clear guidelines on how to conduct the capacity building activities and gaps in skills in conducting capacity building among institutions. It therefore, strong supports for the development of clear structures and guideline and allocation of sufficient resources for capacity building during public participations exercises.

3. Methodology

The paper employs both survey and review of secondary data. First, the study uses purposively-sampled online survey targeting general citizenry conversant with governance in Kenya. The survey was administered online through a google form (The survey link is: <https://docs.google.com/forms/d/1w34TvzPMvSuYGSEfxZ-AM2OJpWFLBFILE7IhohbvxxE/edit#responses>) shared in professional forums. The form contained five multiple choice questions to elicit the respondents' views on the role of capacity building in public participation, the gaps in conducting capacity building during public participation and level of effectiveness public participation exercises in their respective counties. Secondly, secondary data was reviewed the frameworks used by selected counties in Kenya, organization policies and guidelines on public participation in Kenya. The paper used Ms. Excel to analyze and charts, table and graphs to interpret the survey findings. Further, narrations were used to interpret the qualitative data.

4. Result Findings

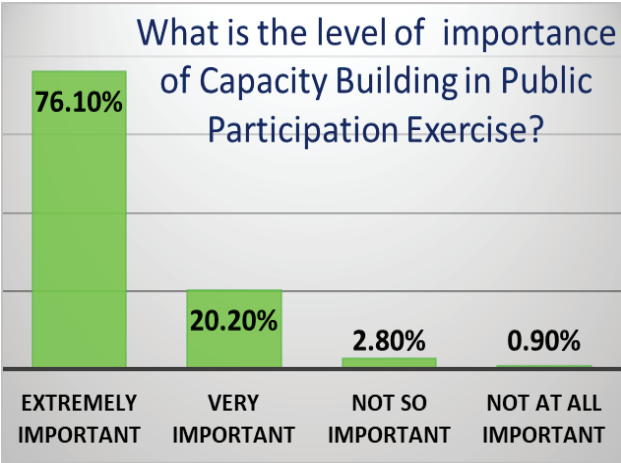
The findings of specific issues addressed in the online survey and the review of secondary data and information can be summarise below:

4.1 The Online Survey

The total sample size for the online survey was 110 persons responded through a google generated/facilitate form/questionnaire The respondents were drawn from 29 out of the 47 counties in Kenya.

The feedback of the main questions are summaries below:

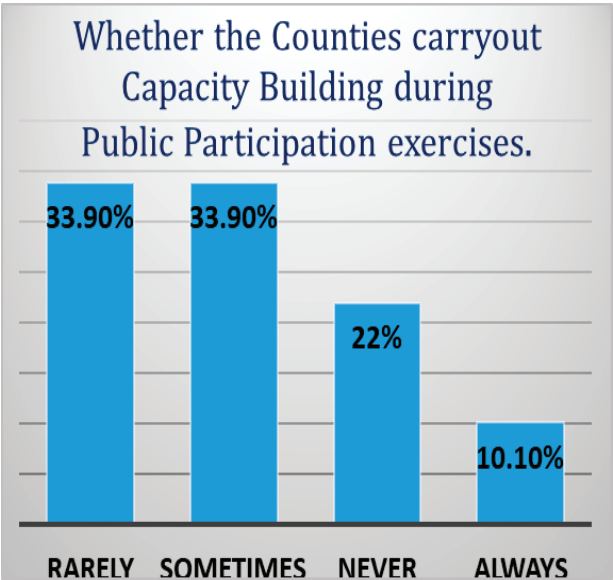
4.1.1 The importance of Capacity Building in Public Participation exercise.



76% of the respondents observe that Capacity building as an extremely important component in public participation exercise while 20% are of the view that Capacity is very important. This indicates that 96% of the respondents agreed that Capacity as a central component of effective public participation.

Source: Researcher's online survey, 2023

4.1.2 Whether Counties undertake Capacity Building during Public Participation exercises.

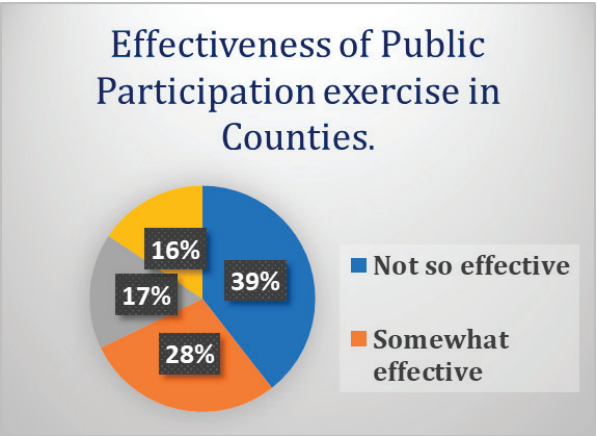


39% of the respondents observe that public participation exercises conducted by Counties are not so effective while 28% find it to be somewhat effective. Only 16% of the respondents view public participation exercise carried out by their respective counties to be extremely effective.

This casts huge doubts on the effectiveness of public participation exercises undertaken by Counties.

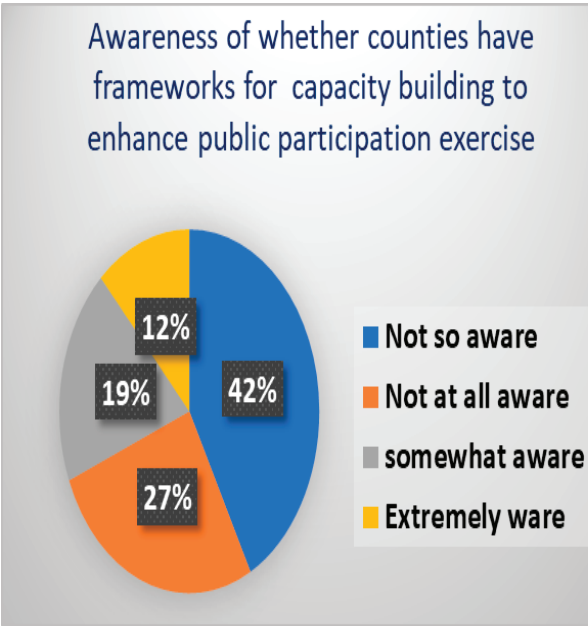
Source: Researcher's online survey, 2023

4.1.3 The effectiveness of Public Participation exercises undertaken by Counties.



Source: Researcher's online survey, 2023

4.1.4 Awareness of whether the Counties have frameworks for Capacity Building during public participation exercises.



39% of the respondents observe that public participation exercises conducted by Counties are not so effective while 28% find it to be somewhat effective. Only 16% of the respondents view public participation exercise carried out by their respective counties to be extremely effective.

This casts huge doubts on the effectiveness of public participation exercises undertaken by Counties.

Source: Researcher's online survey, 2023

4.2 The review of secondary data and information

The existence of frameworks for public Participation and provisions of capacity Building the guidelines and practices in selected counties in Kenya.

Tables 10: Table showing the whether selected Counties have frameworks for capacity building to foster effective public participation exercise

S. NO	County	Any legal/policy framework on Public Participation (PP)	Any Mechanisms or guidelines on Public Participation	Inclusion of Capacity Building in PP frameworks
1.	<i>Makueni</i>	<i>No</i>	<i>Yes.</i>	<i>Yes. Dedicated section in the website for civic education with resources.</i>
2.	<i>Wajir</i>	<i>No act</i>	<i>No clear guidelines</i>	<i>No</i>
3.	<i>Nairobi</i>	<i>Yes. Nairobi County Government Act, 2016.</i>	<i>Yes.</i>	<i>Yes: part of the Nairobi City County Participation Act, 2016. Provide for conducting civil education sessions every financial year.</i>
4.	<i>Mombasa</i>	<i>Yes: The Mombasa County Public Participation Policy 2020</i>	<i>Yes.</i>	<i>Yes. There is provision of Capacity Building.</i>
5.	<i>Nakuru</i>	<i>No</i>	<i>Yes. There is a web-based digital form to fill.</i>	<i>No</i>
6.	<i>Kakamega</i>	<i>No</i>	<i>No.</i>	<i>No</i>
7.	<i>Kisumu</i>	<i>Yes. Kisumu County PP ACT 2025</i>	<i>Yes.</i>	<i>No specific provisions on Capacity Building.</i>
8.	<i>Nyeri</i>	<i>No</i>	<i>No.</i>	<i>No.</i>

Only 3 out of the 8 selected Counties have a specific policy or Act on Public Participation and of the three, two Counties have provisions for Capacity Building while only one of the them have specific provisions for resource allocation for

civic education in the framework. The remaining 5 Counties have no elaborate policy or legal framework and just applied the common mechanisms of calling for memorandum and petitions and town-hall meetings. 5 of the 8 Counties do not have any mechanisms for Capacity Building during Public Participation exercise.

This illustrates the lack of dedicated frameworks on Capacity Building in the Counties which are important units of governance in Kenya. This does not mirror the objectives of establishing County Governments which is *to give power of self-governance to the people and enhance the participation of the people in the exercise of powers of the state and in making decisions affecting them.*

Below is the summary of the key findings:

- (1). Overwhelming majority of respondents in the survey supported the importance of capacity building as a critical part of effective public participation exercise. However, majority also observed that many of the counties do not undertake capacity building during public participation exercise and many counties don't have clear framework for the same.
- (2). Most of the works review strongly advocate for capacity building since it will help the stakeholders acknowledge their roles in decision-making and avoid surrendering their responsibilities to the government. Capacity building is an enabler of active and effective citizen engagements.
- (3). The lack of clear legal, policy and procedural guides on how to conduct a capacity building during public participation activities can often make the process ignored and bring lack of coherence in conducting a successful public participation.
- (4). The government has a capacity and organizational abilities to build the capacity of citizens to achieve collaborative decision-making. The biggest challenges have been the lack of frameworks and will to incorporate capacity development as critical.
- (5). The implementation of capacity building is affected by the government values, policy position and the acknowledgement of long-term commitment of efforts and resources.
- (6). The government efforts to sustain the efforts of working with the citizens through its policies, values and objective of service delivery.

- (7). Capacity building has to be strengthened by developing appropriate structure to enhance standard ways of undertaking the process and ensure compliance with the policies and practices.
- (8). Putting in place enabling and supportive organizational culture will help in institutionalizing a successful capacity building program.
- (9). Capacity building exercise require resources to implement the lack of resources will make the process inadequate and the outcome ineffective.

5. Recommendations

Given the findings above, the paper recommends the following:

- (1). Develop an elaborate curriculum for training of public institutions on how to conduct a meaningful and effective public participation exercise.
- (2). Fasttrack the adoption of the draft policy of Public Participation in Kenya 2018.
- (3). Enact Public Participation Act that clearly defines principles, components, guides to public participation, provides for structural and institutional frameworks for enforcement of compliance. This will enhance uniformity and standardization of the manner of conducting public participation as well as provide for strong obligation to institutions.
- (4). Provide adequate resources for capacity building as a process in public participation.
- (5). Establish high level commitments to capacity building as critical prerequisites to effective public participation.
- (6). Institutions to Develop policies that sets out mechanism for undertaking capacity building as integral part of public participations in line with the PSC Guidelines of Formulation of the policies on Public Participation 2015.
- (7). Develop guidelines with clear standards on public engagements outlining the involvement, support, planning, mechanisms of sharing of information.
- (8). Commitments to feedback and evaluation with view to review and improve on the capacity building to enhance public participation.

- (9). Institution must put in place enabling organizational culture that encourages collaborative decision-making and stakeholders' involvements.

6. Conclusions

From findings it is clear that capacity building is at the heart of any meaningful public participation exercise. Capacity building should therefore be integrated in the process of information sharing, stakeholder identification and implementation of actual involvement of the public. It is also apparent that there will be no meaningful public participation if the stakeholders are not afforded sufficient opportunity to understand the matter through sensitization and awareness creation. It is therefore, imperative for governments institutions to consider capacity building as part of it planning for any public participation exercise. Government institutions have to also consider developing policies and guidelines to streamline the manner of conducting public participation as well as providing for enabling organization culture based on collaborative decision-making.

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