

A CASE STUDY OF PUBLIC PARTICIPATION FRAMEWORKS AND PROCESSES IN KISUMU COUNTY



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ACRONYMS AND ABBREVIATIONS

CBEF	County Budget and Economic Forum
CBO	Community-Based Organization
CBROP	County Budget Review and Outlook Paper
CFSP	County Fiscal Strategy Paper
CIAG	Community Initiative Action Group – Kenya
CIDP	County Integrated Development Plan
CRA	Commission on Revenue Allocation
DRD	Declaration on the Right to Development
FBO	Faith-Based Organization
FGD	Focus Group Discussion
IEA	Institute for Economic Affairs
IGRTC	Inter-Governmental Relations Technical Committee
KCPPPF	Kisumu County Public Participation Partners Forum
KEFEADO	Kenya Female Advisory Organization
KII	Key Informant Interview
KLRC	Kenya Law Reform Commission
KMET	Kisumu Medical and Education Trust
KSG	Kenya School of Government
LASDAP	Local Authority Service Delivery Action Plan
LRA	Local Research Assistant
MCA	Member of the County Assembly
MERL	Monitoring, Evaluation, Reporting and Learning
NCCK	National Council of Churches of Kenya
NDP	National Decentralization Policy
NPPP	National Public Participation Policy
OECD	Organization for Economic Co-operation and Development
PMC	Program Management Committee
PSO	Public Sector Organization
PWD	Persons With Disabilities
SCES	Sub-County Education Coordinator
SID	Society for International Development
SPSS	Statistical Package for Social Sciences
TEAM	Transform Empowerment for Action Initiative
TI-Kenya	Transparency International Kenya
TISA	The Institute for Social Accountability
UN	United Nations
WPPF	Ward Public Participation Forum



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EXECUTIVE SUMMARY

This report comprises of feedback from stakeholders from Kisumu County drawn from the County Government, local residents and representatives of various CSOs and CBOs in Kisumu County on their assessment on the establishment and effectiveness of public participation frameworks and processes in the County.

The assessment was conducted between the months of November and December 2017, four years of devolution and was necessitated by the need to undertake a comprehensive study of established county public participation mechanisms and processes and their effectiveness towards realizing transparency, accountability, good governance and promoting service delivery through citizen engagement as entrenched in the 2010 Constitution of Kenya under Articles 10, 174 and 201 which provide for public participation.

The assessment harnessed best practices on public participation in Kisumu County through a review of existing legal frameworks and guidelines on public participation at the national level. It also identified mechanisms and processes put in place by the Kisumu County Government towards promoting public participation and assessed on the level of local residents involvement in governance issues through public participation. The study culminated in a presentation of salient findings and recommendations that will accord stakeholders an opportunity to strengthen and improve citizen participation processes and mechanisms by learning and reflecting on emerging lessons and issues and through formulation of comprehensive policies and review of existing frameworks to facilitate the process.

Data was collected through desk review of relevant legislations guiding public participation at the National level and in Kisumu County and semi-structured interviews with key informants.

Samuel Kimeu
Executive Director
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SUMMARY OF FINDINGS

Established Frameworks, Mechanisms and Processes of Public Participation

Different mechanisms of public participation were found to have been established in Kisumu County. These mechanisms included:

Enactment of the Kisumu Public Participation Act 2015

It was established that the Kisumu County Government had in place a legal regime to govern public participation processes in the County. However, there was no sound policy in place to effectively govern the process and, further, that the Public Participation Act although enacted and passed was yet to be fully operationalized and implemented as a result of impugned sections which required to be amended for it to be operational.

Another legislation that has been enacted is the Kisumu County Access to information Act 2015 which seeks to give the public the right to access information as provided for under Article 35 of the Constitution.

The County Budget and Economic Forum (CBEF)

The assessment established that the previous County Government leadership had put in place the CBEF in line with the requirements of sections 137 of the Public Finance Management Act 2012. The Forum has been critical in promoting consultation processes between citizens and the County Government.

County Offices

In line with the provisions of the County Governments Act 2012, the County had set up sub-county and ward administration offices in a bid to decentralize services including access to information and public participation exercises. These offices are critical in mobilizing the public for public participation exercises and dissemination of information. However, at the time of the assessment, processes like public participation in budget processes had not yet been devolved to the ward level. Additionally, the County was yet to set up Village Administration Units as required by law. The delay was attributed to inadequacy of funds and resources by the County Government.

County Website

The County website which can be accessed through www.kisumu.go.ke is meant to be a one stop shop where citizens and local community members can obtain information regarding the county. Through this platform, community members are able to know important matters taking place in the County and also when their participation is required in certain governance processes. The Kisumu County Assembly has also has its official website accessible through <https://kisumuassembly.go.ke>

Other avenues of information and communication dissemination by the County

Apart from the County Executive and the Assembly Website, Kisumu county was found to be employing other avenues to disseminate information to its residents This was mainly done through the use of notice boards at the County offices, newspapers of national circulation, local language radio stations and formal invitations of organized groups and opinion leaders.



Contribution of County based Civil Society Organizations and Community Based Organizations in Public Participation Processes.

The assessment established the presence of a number of civil society organizations (CSOs) and community based organizations (CBOs) working in partnership with the County to promote effective public participation, transparency and accountability in governance matters. The existence of local CSOs and CBOs implementing governance programmes in Kisumu County complements the role of the county government in establishing forums for participatory engagement and facilitating effective public participation. These institutions design and execute civic education programs that educate people on their rights and obligations as democratic citizens. They support in the development of citizens' skills to work with one another to solve common problems, to debate public issues, and express their views. The CSOs and CBOs include: Kisumu Medical and Education Trust (KMET); Community Initiative Action Group (CIAG), Concerns World Wide, Transform Empowerment for Action Initiative (TEAM) and Grassroots Trust, among others.

Gaps and Recommendations

Gaps

The study found the following gaps relating to the establishment of effective mechanisms for facilitating public participation in Kisumu County;

- Kisumu County is yet to establish Village Councils and the Office of the Village Administrators for purposes of fully devolving public participation to the village level;
- The Public Participation Act 2015 has not yet been operationalized;
- Lack of a policy on public participation which should have preceded the enactment of the Public Participation Act;
- Inadequate funding for CBEF and lack of commitment from county government representatives;
- Inexistence of a particular office or organ with a specific mandate to spearhead the public participation process;
- Lack of formal procedures to host public views and lack of proper channels for feedback and association of public input;
- Lack of awareness amongst citizens on the frameworks, structures and opportunities for public participation in Kisumu County;
- Financial challenges associated with inadequate funding for public participation;
- The government agencies and officials share information for public participation in bulky documents that are not user-friendly.



Recommendations to the County Government

- Review and operationalize the Kisumu County Public Participation Act, 2015 especially aspects that creates the public participation office;
- Implement the Access to Information Act 2015 and review existing platforms for information dissemination;
- Establish an effective County Budget and Economic Forum (CBEF) through capacity building of the members and increased funding for public outreach, consultation and feedback;
- Put in place village administration units to further decentralize administration and public participation undertakings;
- Undertake extensive civic education to create an empowered citizenry;
- Structure the working relationship with CSOs through negotiated and signed Memoranda of Understanding;
- Build the capacity of sub-county and ward administrators to undertake more effective public participation and educate citizens on the functions of the county government, among other issues of importance;
- Develop a formula to calculate costing for public participation and deliberately allocate funds for the same;
- Set up a stakeholders' register based on the various sectors in the county to serve as a reference point to invite stakeholders relevant to a specific proposed policy, legislation or development plan;
- Develop a structured feedback, compliment or complaint, grievance and redress mechanism for public participation.

Recommendations for CSOs and Other Stakeholder Groups

- Work in collaboration with the county government to implement the Public Participation Act and the Access to Information Act;
- Work towards a more structured working relationship with the county government through Memoranda of Understanding;
- Put in place a CSO network for more collaborative CSO work including thematic networks to enable better management of public participation;



- Advocate for the further decentralization of public participation through formation of village administration units;
- Collaborate with the county government in building the capacity of sub-county and ward administrators to undertake more effective public participation and educating citizens on the functions of the county government, among other issues of importance;
- Collaborate with the county government in undertaking civic education;
- Advocate that county government deliberately allocate funds for public participation, and monitor and evaluate the process of implementation

CHAPTER 1:INTRODUCTION

1.1 Background to the Study

The promulgation of the new Constitution of Kenya in August 2010 marked the end of the centralized system of governance and ushered in the devolved system of governance that led to the creation of 47 counties with the aim of decentralizing power, services and public resources among others.¹

At the heart of the 2010 Constitution and the devolved system of governance lies the principle of public participation. Article 10 on National Values and Principles of good governance expressly enjoins state organs and public officers to ensure participation of the people whenever they enact, apply or interpret any law and whenever they implement public policy decisions.² By virtue of Article 174 of the Constitution, county governments are mandated to promote public participation of the people while exercising their powers and while making decisions affecting them.

Citizen participation being one of the national values and principles of good governance is, therefore a critical element in promoting transparency, accountability and efficient service delivery both at the national and county level. A cursory glance at majority of the counties public participation processes reveals that much is yet to be achieved despite the robust legal framework. Four years down the line into devolution, several counties are still grappling with a myriad of challenges in a bid to operationalize the provisions of public participation under the law. The challenges to effectively engage citizenry in public participation processes.³ have majorly been attributed to, among others, inadequate capacity issues, inadequate structures, poor planning, inadequate resources, etc.

Additionally, most legislative arms of the counties still lack technical capacity to come with sound laws to guide the process. This has been attributed to, among others, the limited number of legislative drafters in the country.⁴ Consequently, 80% of the Bills emanating from the counties during the first phase of devolution failed to meet the constitutional threshold required of them.⁵ Additionally, it was noted that the public from most of the counties was never involved in the formulation processes of the respective legislations that were being drafted by the counties.

It is clear from the Objects of Devolution under Article 174 of the 2010 Constitution that the system was designed to delegate power, transfer resources and to provide extensive representation down to the local level. As such, the greatest expectation of the Kenyan people is to regularly participate in their own governance, witness affirmative action for the minorities and marginalized groups and experience faster development and access to amenities and services.

¹Chapter 11 and Article 174 lays down the objects of Devolution

²Article 10 (1) & (2).

³Christopher Finch and Annette Omolo; (February 2015) *Building Public Participation in Kenya's Devolved Government: Overview of key challenges and opportunities for enhancing participation in newly devolved institutions and systems: A summary of the working paper series.*

⁴Office of the Attorney General and Department of Justice, *Law Drafters Challenged* <http://www.statelaw.go.ke/law-drafters-challenged/>, accessed 20/11/2017

⁵Odhiambo & Odhiambo Advocates, *Law Society of Kenya to Help Counties Develop Better Laws*, <http://odhiamboandodhiambo.co.ke/news/16-news/17-law-society-of-kenya-to-help-counties-draft-better-laws>, accessed 04/12.2017



For effective public participation to be realised, stakeholders from across the divide must work together and put in place the necessary mechanisms. Similarly, citizens must be empowered to enable them take part and engage in the decision making processes in their respective counties meaningfully. According to the County Governance Status Report 2016 by TI-Kenya, only 23 counties out of the 47 reported having put in place policies and legislations to guide public participation and only 29 reported having an office or officer to ensure public participation and access to information.

This assessment is an initiative commissioned by TI-Kenya's Governance and Policy Programme under the project on "Democracy, Governance and Human Rights" whose objective is to contribute to increased respect for human rights, gender equality and strengthened democratic governance at the national and subnational levels. The assessment aims to fill an important knowledge gap on public participation frameworks and processes at the subnational level with a specific focus in Kisumu County. The collective experiences of counties in entrenching participatory frameworks are yet to be harnessed through comprehensive research. The analysis of mechanisms, and frameworks of citizen participation will accord stakeholders an opportunity to improve public participation processes by learning and reflecting on emerging lessons and issues.

The ability of counties to design more effective mechanisms of participation is a critical concern of this study as it is a concern for the project on "Democracy, Governance and Human Rights". The study will inform both policy dialogues and community based participation dialogues.

1.2 Problem Statement

The devolution system, introduced by the Constitution of Kenya and which began to be implemented after the March 2013 general elections, is expansive in scope and timelines. This ambitious-system shifts some of the key decision-making roles from national to county governments, creating a window of opportunity for more bottom-up engagement, backed by a Constitution and legal framework that include provisions for government to share information, consult the public and regularly gather citizen feedback.

Considering that public participation processes and the citizens' dynamics in the counties is a relatively new process, a number of studies have been undertaken around devolution in Kenya and its interface with public participation. In 2012, the Society of International Development (SID) undertook a baseline survey on the status of governance in Kenya.⁶ From the findings of the survey, only 24.7% of the public understood how devolution operates; 71% did not understand the county structures of devolved government; and a paltry 1% of the population mentioned being engaged in developing policies on devolution.⁷

This study seeks to provide an in depth assessment of the practical realities of public participation in Kisumu County after four years of implementation of devolution. It strives to address the problem of the extent to which public participation frameworks and mechanisms have been established and the level of their effectiveness.

⁶ *The Society for International Development (SID) (2012). The Status of Governance in Kenya: A Baseline Survey Report.*

⁷ *Ibid, Pg. 24.*

1.3 Study Objectives

The main objective of this assessment was to review and establish the status and effectiveness of public participation frameworks and mechanisms in Kisumu County. Specifically, the study focused on;

- a) Reviewing the Constitutional provisions, policies and existing laws that promote public participation in Kenya;
- b) Identification and reviewing of the existing public participation frameworks and mechanisms put in place by the Kisumu county government to promote public participation;
- c) Identification of information sharing mechanisms put in place by Kisumu county and establish their effectiveness; Providing recommendations including best practices on how identified gaps could be addressed to inform policy, legislative and institutional reforms.

1.4 Study Questions .

The assessment was guided by the following broad study questions:

- i. What are the existing mechanisms of citizen participation and engagement in county governance?
- ii. How do the existing mechanisms of participation in county governance compare and contrast?
- iii. Are there guidelines at the national and county government levels on public participation? To what extent do these guidelines add value to citizen participation? What are the gaps in the guidelines?
- iv. What are the success stories in public participation at the county level?
- v. To what extent has the county involved marginalized groups such as women, children, older persons, youth, and persons with disabilities in decision-making?
- vi. What are some of the best practices that can be harnessed from the existing mechanisms of participation to enhance future public participation?
- vii. Are there specific mechanisms that have promoted the participation of women, children, older persons, youth persons with disabilities in decision-making?
- viii. What is the status of implementation of devolved government from the point of view of public participation? What are the gains and lessons learnt?

1.5 Rationale of the Study

As Kenya enters the second phase of devolution under the second term of the devolved government, there is increased focus on the role of public participation in promoting accountability and enhancing-service delivery. The emphasis on public participation resonates with global experience, which shows that building bottom-up participatory mechanisms is a key ingredient to effective decentralization.⁸

Article 174 of the 2010 Constitution provides for two fundamental objects of devolution which include enhancing the participation of the people in decision making processes and the right to self-governance and empowerment. It is an obligation of the county government under the law to establish mechanisms and platforms for public participation. Similarly, citizens are obligated to utilize the mechanisms and platforms created to take part in decision-making processes. The High Court in interpreting the importance of public participation and the role of the county government in establishing structures for public participation expressed itself as follows:⁹

“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 rationale of this assessment is thus to establish the mechanisms and platforms for participation created by the county government of Kisumu and how effectively the citizens have utilized these platforms to participate in decision-making processes. An analysis of structures established will provide answers as to legal, policy and infrastructural frameworks while the assessment of the utilization of the structures by the citizens will provide answers relating to the implementation of public participation both qualitatively and quantitatively as directed by the High Court in the above decision.

⁸ Whaites et al. (2015), *A Governance Practitioner's Notebook: Alternative Ideas and Approaches*, OECD, Paris,

⁹ <http://www.oecd.org/dac/governance-peace/governance/governance-practitioners-notebook.htm>.
Petition 532 of 2013 & 12, 35, 36, 42, & 72 of 2014 & Judicial Review Miscellaneous Application 61 of 2014 (Consolidated).

1.6 Methodology

1.6.2 Research Design

The assessment was undertaken in Kisumu County and utilized a mixed-method approach involving both qualitative and quantitative aspects using both primary and secondary sources of data.

Secondary data was harvested through review of various laws, researches on public participation, reports on participation compiled by various stakeholder organizations including Non-Governmental Organizations (NGOs) and Faith-Based Organizations (FBOs). Specifically, the study on the status of public participation by the Inter-Governmental Relations Technical Committee (IGRTC), the Sessional Paper on Devolved Government under the Constitution of Kenya, 2012, the County Government Act, the Public Financial Management Act, the Urban Areas and Cities Act, and the Public Participation Guidelines for County Governments developed by the Ministry of Devolution and Planning were important sources of information.

Primary data was collected through a survey and key informant interviews targeting both duty bearers and interested stakeholders. Convenience sampling (using the criterion of availability) and snowball sampling was applied for all categories of respondents. These methods were utilized to purposefully vary the sample by considering marginalized groups including women, Persons with Disabilities (PWDs) and youth.

Three categories of respondents were engaged:

A. Citizens

The first category comprised of ordinary citizens who have participated in county activities and forums. This approach was important as the objects of the assessment required persons with knowledge on public participation mechanisms being utilized by the county government and thus the ability to gauge their effectiveness against the pre-identified parameters. In this regard, the researchers worked closely with TI-Kenya's staff in the Kisumu office, CSO partner organizations working within the county and county government officials to map citizens who had previously been engaged in county public participation forums. A multistage sampling design was adopted and cascaded to the sub-county level. Each sub-county had a pre-determined number of respondents reaching both rural and urban populations as seen below:

<i>Sub County</i>	<i>Citizens</i>
1. Kisumu West	4
2. Kisumu Central	8
3. Kisumu East	3
4. Seme	6
5. Muhoroni	6
6. Nyando	3
7. Nyakach	6
Total	36

Table 1: Distribution of the citizen survey sample in Kisumu County

B. Various stakeholders

The second category involved stakeholder groups such as Non-Governmental Organizations (NGOs), Private Sector Organizations (PSOs) and Faith Based Organizations (FBOs) which play a role in educating citizens about participation and mobilizing them to take part in county activities and county government officials. These included:

- Transparency International Kenya
- Transform Empowerment for Action Initiative
- Kisumu Medical and Education Trust
- National Council of Churches of Kenya
- Kenya Female Advisory Organization
- Community Initiative Action Group – Kenya
- Women groups, youth groups and PWDs
- Health Committees

C. Kisumu County Government Officials

The third category consisted of Kisumu county government officials who are obligated under the law to facilitate public participation in governance processes. These included:

- Kisumu County Assembly
- Office of the County Secretary
- Ward Administrators.
- The County Budget and Economic Forum

The second and third categories were treated as key informants. The sampling for the Key Informant Interviews (KIIs) was purposeful and based on the criterion of availability (convenience sampling) and snowball sampling. A total of 9 Key Informants were interviewed.

At the inception of the study, the researchers had purposed to undertake Focus Group Discussions (FGDs) which would serve as a means of triangulation of information to confirm what was collected through the KIIs and citizens' questionnaires regarding the effectiveness of public participation in Kisumu County. However, due to the instability caused by the prevailing political climate during the repeat election period in October 2017 rendering gathering groups of people together infeasible, the researchers preferred to rely solely on KIIs.¹⁰

1.6.2 Data Analysis and Presentation

All primary data collected using questionnaires was coded, entered and analyzed using the Statistical Package for Social Sciences (SPSS) software. The Key Informants Interviews' data was thematically analyzed using content analysis logic and corroborated with quantitative analysis for purposes of triangulation and consistency. Descriptive statistics were employed in the analysis while the presentation was done using computer generated tables, pie charts and bar charts.

¹⁰ The election period covering both the first round general election on 8th August 2017 and the repeat presidential poll held on the 26th October 2017 was marked with sporadic violence and attack by rowdy youths which targeted peaceful meetings on allegations of vote buying. See, *The Star Newspaper, Arrest youths behind Kisumu meeting attack, religious leaders tell police, 14th September 2017* https://www.the-star.co.ke/news/2017/09/14/arrest-youths-behind-kisumu-meeting-attack-religious-leaders-tell_c1635741 ; *Daily Nation, Mash stops bus services in Kisumu and Kakamega over post-election insecurity, http://www.nation.co.ke/news/insecurity-low-business-Mash-bus-stops-Kisumu-Kakamega-routes/1056-4161874-75y1g6z/index.html 30th October 2017 accessed 4th December 2017.*

1.6.3 Demographics of the respondents

As shown in Table 2 below, citizen respondents were interviewed with men accounting for 58.33% while women accounted for 41.67%. In terms of age, none of the respondents was between 18 and 24 years while 52.77% were below 35 years. A significant proportion had attained post-secondary education (88.89%) with 11.11% of the respondents having a university degree.

Characteristics	Categories	Percentage (%)
Gender	Male	58.33
	Female	41.67
Age	18-24	0
	25-34	52.77
	35-44	38.90
	45-60	8.33
	60 and above	0
Highest Level of Education Attained	No formal education	0
	Primary education	0
	Secondary education	11.11
	Tertiary education	77.78
	University degree	11.11
Marital Status	Single	25.0
	Married	69.4
	Divorced/Separated	5.6
	Widowed	0

Table 2: Demographics of the respondents

1.7 Conceptualization of Effective Public Participation

The Constitution has expressly provided for public participation in key decision-making processes at both the national and county levels of government. However, the progress towards achieving this goal has been slow as there has been very minimal citizen participation since the promulgation of the Constitution.

Facilitating effective participation is a costly affair and one that is difficult to manage especially in counties that are vast and ethnically diverse.¹¹ There is no one-size-fits-all model for civic engagement and public participation. A flexible approach is important to account for the significant variations and dynamics that exist within a county and between different counties when it comes to issues such as population density, literacy levels, and media use. It is therefore important that a county tailors its engagement and participation activities to fit local realities.

¹¹ Dominic Burbidge & Nic Cheeseman (2015-2016). *Devolution in Kenya: Research Literature Digest*.

One of the greatest challenges facing public participation is the lack of a standard definition and measure as to what comprises effective participation. The Inter-Governmental Relations Technical Committee (IGRTC) notes that while there is a lot of public participation efforts at both the national and the county government, there lacks clarity on what constitutes adequate participation, the nature of participation that meets the constitutional threshold, or the most effective mechanism for public participation.¹²

The standard of participation, described in the Declaration on the Right to Development (DRD) of 1986, as 'active, free and meaningful', is considered the most robust articulation of participation in any international legal instrument.¹³ Active, free and meaningful participation moves beyond provision of information and consultation to authentic and empowered participatory governance. This requires creating opportunities for citizens to safely and freely influence decision-making at all stages.¹⁴ The basis for citizen participation is drawn from their statutory duty to pay taxes for service delivery. This means that they are not only consumers of services but essential financiers of government. Citizen participation in administrative decision making is thus inclusive of goal setting, determination of strategies, policies, and monitoring and evaluating government services. Citizen participation activities would then relate to the techniques and mechanisms to arrive at these. The techniques include, but are not limited to, public hearings and sittings, citizen advisory councils and citizen panels, neighbourhood or resident association meetings and citizen surveys. The functional or practical areas for citizen involvement are economic development, education, environmental protection, public health and policing and public safety amongst others.¹⁵

This assessment adopts the definition of public participation in the National Public Participation Policy (NPPP). It defines 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."¹⁶

Effective public participation in devolved government's systems thus implies the involvement of citizens in planning, decision-making process of the County Governments' measures and/or institutional arrangements so as to increase their influence on service delivery, equitable distribution of devolved resources, enactment of favorable policies and programmes to ensure a more positive impact on their social and economic lives. It is a two-way process where the government provides opportunities and creates frameworks for citizen involvement and the citizens choose whether or not to utilize these opportunities based on their interest among other things.

¹² Inter-Governmental Relations Technical Committee (2016). *The Status of Public Participation in National and County Governments (Mimeo)*.

¹³ United Nations (UN) (2014; 6) *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*.

¹⁴ *Ibid.*

¹⁵ *The Institute for Social Accountability (TISA), Policy Proposals on Citizen Participation in Devolved Governance in Kenya*.

¹⁶ *Republic of Kenya, State Law Office. Draft National Public Participation Policy, January 2017.*

CHAPTER 2: LITERATURE REVIEW

2.1 Overview of the Literature

The concept of public participation in Kenya has over the years attracted much attention since the promulgation of the Constitution in 2010. Being a critical principle towards the realization of the objects of devolution, several attempts have been made to define it and a number of mechanisms developed to actualize effective public participation. Guidelines and legislation have since been developed both at the national and county levels to create a framework of interpreting, understanding and implementing public participation especially at county level.

The review of literature focused on both global and local trends in organizing and implementing public participation. It is organized in the following four sections: Global Literature on Public Participation, Constitutional and Legal Framework Guiding Public Participation in Kenya, Existing Mechanisms of Public Participation, and Case Studies of Public Participation in other Jurisdictions.

2.2 Global Literature on Public Participation

Public participation is a global concern in line with the tenets of modern democracy. Thus many democratic governments have devised mechanisms for citizens to participate directly in decision-making and implementation of those decisions in actual programs and projects.¹⁷ In theories of public participation in governance, Quick and Bryson,¹⁸ note that in democracies citizens are important stakeholders who are able to participate either directly or indirectly in governance. Indirect participation involves electing leaders to represent the interests of citizens while direct participation involves taking actions as citizens. According to Roberts (2016), public participation is a fundamental part of the public—government relationship in democratic governance.¹⁹

In addition, public participation involves interaction between stakeholders and various governmental and non-governmental agencies.²⁰ Other actors important in the process of participation are business organizations and political leaders. Quick and Bryson also aver that public participation may be limited to acts such as town hall meetings or “a set of practices” such as convening public hearings and other processes of consultation that bring stakeholders together.²¹

¹⁷ Inter-Governmental Relations Technical Committee (2016). *Op cit.*

¹⁸ Quick, Kathryn S. and Bryson, John M. (2016). *Theories of public participation in governance:*

https://www.researchgate.net/publication/282733927_Theories_of_public_participation_in_governance accessed 19/01/2017

¹⁹ Roberts, Nancy (2004), 'Public deliberation in an age of direct citizen participation', *American Review of Public Administration*, **34** (4), 315–353:

<http://hubert.hhh.umn.edu/Stuck/Asset5PublicDeliberationInAgeOfDirectCitizenParticipation.pdf> accessed 19/01/2017

²⁰ Quick, Kathryn S. and Bryson, John M. (2016). *Op cit.*

²¹ Quick, Kathryn S. and Bryson, John M. (2016). *Op cit.*

Quick and Bryson discuss the purposes of public participation. These include fulfilling legal requirements; embodying the ideals of democratic participation and inclusion; advancing social justice; informing the public; enhancing understanding of public problems and exploring and generating potential solutions; and producing policies, plans and projects of higher quality in terms of their content.²² Advantages of public participation are its ability to make government officials more informed about development issues²³ from a citizen perspective, which can also contribute to championing more equitable distribution of resources.²⁴

Sherry Arnstein's Ladder of Public Participation²⁵ has been an influential input into the participation debate. Her core problem was to provide an answer to the problematic question of what really constitutes participation and what does not. Her efforts led to development of essentially a typology organized in a ladder pattern with each rung of the ladder indicating the level of power of citizens to actually influence decision-making. Her model also contextualizes participation as an issue of power relations in society hence introducing important ideological questions. Characterizing citizen participation as citizen power, she defines it as "... the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future".²⁶

While asserting the need to entrench citizen participation, Owiti (Year) notes that "greater citizen participation has been touted to harbor great potential to stabilize and consolidate gains made, and to improve the state of affairs where it is unsatisfactory or declining."²⁷ Owiti identifies two forms of participation—participation in projects and political participation. From these forms, two further strands are identified in the realm of development and service delivery—these are "collective action based on experiences of oppression" and "a means by which the populace asserts citizenship through demanding accountability from service providers and development partners."²⁸

Mitullah (2002) analyses the pitfalls of centralized planning. Her core argument is that this type of planning relegates citizens to observers in the development process. In this case, "citizens have to contend or to comply with the policies, decisions and actions that officials bring to bear upon them".²⁹ She further notes various reasons for participatory planning including the need to harness information from local communities which are the "more accurate source of information about the felt-needs of any region". In addition, local populations are more predisposed to make material contributions as well as provide other forms of support to programs whose formulation they are part and parcel of.³⁰

²² Bryson, John M., Kathryn S. Quick, Carissa SchivelySlotterback and Barbara C. Crosby (2013), 'Designing public participation processes', *Public Administration Review*, **73** (1), 23–34: https://www.researchgate.net/publication/236735946_Designing_Public_Participation_Processes accessed 19/01/2017

²³ Fung, Archon (2007), 'Democratic theory and political science: A pragmatic method of constructive engagement', *American Political Science Review*, **101** (3), 443–458: <http://archonfung.net/docs/articles/2007/FungAPSA0708.pdf> accessed 19/01/2017

²⁴ Abers, Rebecca (2000), *Inventing Local Democracy: Grassroots Politics in Brazil*, Boulder, CO: Lynne Rienner

²⁵ Sherry R. Arnstein (1969) A Ladder Of Citizen Participation, *Journal of the American Institute of Planners*, 35:4, 216–224, DOI: 10.1080/01944366908977225: <http://www.participatorymethods.org/sites/participatorymethods.org/files/Arnstein%20ladder%201969.pdf>

²⁶ *Ibid.*

²⁷ Owiti, ... African Centre for Economic Growth (ACEG), *Kenya's Democratic Transition: Challenges and Opportunities*, pg. 61

²⁸ Odhiambo, Mitullah and Kichamu (2005). *Management of Resources by Local Authorities: The Case of Local Authority Transfer Fund in Kenya*, pg. 42

²⁹ W. Mitullah, "Local Level Governance in Kenya: A Review and Critique of Key Issues, paper prepared for African Centre for Economic Growth Project on Governance in Kenya, October 2002, pg. 2

³⁰ Odhiambo, Mitullah and Kichamu (2005). *Management of Resources by Local Authorities: The Case of Local Authority Transfer Fund in Kenya*, pg. 43/4.

2.3 Constitutional and Legal Framework Guiding Public Participation in Kenya

Mechanisms of participation are spelt out in the Constitution as well as various laws that inform implementation of devolved government including the County Government Act, 2011, and the model law on public participation developed by the Kenya Law Reform Commission (KLRC).³¹ Table 2 below summarizes the relevant constitutional provisions that inform public participation.

Article	Provisions
Article 1: Sovereignty	All sovereign power belongs to the people of Kenya and may be exercised by them directly or through their elected representatives
Article 10: National Values and Principles of Governance	10(2) (a) The national values and principles include patriotism, national unity, democracy and <i>participation of the people</i>
Article 33: Freedom of Expression	Every person has the right to freedom of expression the right to receive and impart information or ideas
Article 34: Freedom of Media	The state shall not control or interfere with public or dissemination of information or penalize persons for holding opinions or views
Article 35: Access to Information	35 (1) (a) Every citizen has the right of access to information held by the State&35(3) The state shall publish important information
Article 69: Obligations in respect of the environment	69 (1) (d) The State shall encourage public participation in the management, protection and conservation of the environment
Article 118: Public Access and Participation	Provides for public access and participation in sittings of Parliament and of its committees
Article 119: Right to Petition Parliament	Provides for the right of anyone to petition parliament.
Article 129: Principles of Executive Authority	Provides that Executive authority derives from the people of Kenya
Article 159: Judicial Authority	Provides that judicial Authority is derived from the people of Kenya
Article 174: Objects of Devolution	174(c) To give powers of self-governance to the people and <i>enhance the participation of the people in the exercise of the powers</i>
Article 184: Urban Areas and Cities	184 (1) (c) National legislation shall provide for the governance and management of urban areas and cities and shall, in particular, provide for participation by residents
Article 196: Public Participation and County Assembly Powers, Privileges and Immunities	196 (1) (b) A county assembly shall-facilitate public participation and involvement in the legislative and other business of the assembly and its committees
Article 201: Principles of Public Finance	201 The following principles shall guide all aspects of public finance in the Republic (a) there shall be openness and accountability, including public participation in financial matters
Article 221(5): Budget Estimates and Annual Appropriation Bill	221 (5) In discussing and reviewing the estimates, the committee shall seek representations from the public and the recommendations shall be taken into account when the committee makes its recommendations to the National Assembly
Article 232: Values and Principles of Public Service	232 (1) (d) The values and principles of public service include involvement of the people in the process of policymaking
Fourth Schedule Part 2	The functions and powers of the county governments are
	14. Ensuring and coordinating the participation of communities and locations in governance at the local level

Table 3: Constitutional provisions on public participation

³¹ Inter-Governmental Relations Technical Committee (2016). *Op cit.*

1. The County Government Act 2012

The County Governments Act, 2012, elaborates the principles of public participation and enjoins county governments under section 6 to ensure efficiency, effectiveness, inclusivity and participation of the people while exercising their powers and /or performing any of their functions. The Act further provides for principles of citizen participation under Section 87 and modalities and platforms that must be established by county governments for citizen participation under Section 91. Some of the modalities include:

- Establishment of Information communication technology-based platforms;
- Town hall meetings;
- Budget preparation and validation forums;
- Development project sites; and
- Notice boards: announcing jobs, appointments, procurement, awards and other important announcements of public interest.

For citizens to meaningfully participate in decision making processes, it is imperative for them to be empowered and organized to engage with their respective governments. Towards this end, the County Government Act provides for modalities of public communication, access to information and further places an obligation on county governments to undertake civic education to enhance public participation.³²

Other relevant provisions include sections on citizen engagement in planning, obligation on County to establish citizen service centres and rights of citizens to petition County Governments.³³

2. The Public Finance Management Act 2012

The Public Finance Management Act, 2012, on the other hand, provides an elaborate public finance framework for both levels of government. For counties, the Act provides for the establishment of the County Budget and Economic Forum (CBEF) as one of the structures of consultation on budgetary matters. According to the Commission on Revenue Allocation (CRA), the CBEF assists the county to analyse and identify its priorities as they budget for programs, improve coordination between the citizens and government and improve harmonization of project implementation and funding.³⁴ The Forum, among others, provides a mechanism for consultation when it comes to development of the County Fiscal Strategy Paper (CFSP) and the County Budget Review and Outlook Paper (CBROP). These two are important documents in the budgeting process.

Sections 125 to 136 of the Public Finance Management Act, 2012 further provide an elaborate framework for county budgeting. Under Section 125(2) the County Executive Committee member in charge of Finance is required to ensure there is public participation in the budget process.

³² Part IX of the County Governments Act, Sections 96, 98, 99 and 100

³³ Part X, Sections 105, 119, 15

³⁴ CRA, Guidelines on Formation of the County Budget and Economic Forum (CBEF):

<http://www.internationalbudget.org/wp-content/uploads/Signed-Circular-Cheserem-CRA-CBEF.pdf>

After elaborate investigation into the current status of participation, the report on public participation by the IGRTC concludes that neither the national nor the county governments have achieved “the nature and extent of participation contemplated by the Constitution and the laws”. It further states that, “while a lot of public participation efforts have been made in both levels of government, there is no clarity on what constitutes adequate participation, the nature of the participation that meets the constitutional threshold, or the most effective mechanisms for public participation.”³⁵

Finally and importantly, the report notes that the “... form, nature and levels of public participation are, however, unsatisfactory in both the national and county”³⁶ levels of government.

2.4 Guidelines on Public Participation

Effective implementation of devolution has been an issue of concern since the passage of the 2010 Constitution. The earliest intervention towards implementation of devolution was the formation of the Task Force on Devolved Government, which among other instruments, came up with a raft of laws for implementing devolved government. One of the key areas of emphasis has been proper implementation of provisions relating to public participation.

The Ministry of Devolution and Planning and the Council of Governors finalized the County Public Participation Guidelines in January 2016. The development of the policy was informed by the need to fulfill the objects of devolved government. One of the objects is encapsulated in Article 174 (c) of the Constitution, that is, to “enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them.” The guidelines were developed in a participatory process that involved key stakeholders such as CSOs, FBOs, county governments, academia, the private sector, professional bodies, international experts as well as national and county government officers.

The introductory section of the guidelines gives a background on public participation. Among others, it explains the constitutional and legal underpinning of public participation, principles of public participation the rationale thereof, the rights and duties of the members of the public and conditions for meaningful public participation.

Further, the guidelines provide a general framework for the content of a public participation process. These content issues include: legislative process/policy and law-making; planning and budgeting for county public service delivery; implementation/delivery of county public services; and performance management. Other areas are oversight through Monitoring, Evaluation, Reporting and Learning (MERL) and vetting of public officers.³⁷ The processes and mechanisms to be used in each subject area are also proposed in the policy. Clearly, these are not exhaustive as each county has peculiarities that have to be taken into account in each and every public participation event. Importantly, the guidelines provide the roles of duty bearers as well as rights holders.³⁸

³⁵ *Inter-Governmental Relations Technical Committee (2016).Op cit.*

³⁶ *Ibid.*

³⁷ *Ministry of Devolution and Planning and Council of Governors, County Public Participation Guidelines, January 2016:*
<http://www.devolutionplanning.go.ke/wp-content/uploads/2016/04/County-Public-Participation.pdf>

³⁸ *Ibid.*

The guidelines also provide for the rights and duties of members of the public. The basis for the rights and duties of members of the public is stated as Article 1(1) of the Constitution which provides that all sovereign power belongs to the people of Kenya and can be exercised directly (through mechanisms of public participation) or indirectly (through elected leaders). The duties and responsibilities add value to public participation by creating a human rights-based and citizen centered framework for public participation. Table 3 below summarizes the duties and responsibilities, which are an important reference point for counties implementing public participation.

Table 3: Duties and responsibilities of citizens in public participation

Duties and responsibilities	Comment
Equality	Article 27 of the Constitution provides that the state shall not discriminate directly or indirectly on any ground. This directly or indirectly on any ground. This guarantees equal participation in decision making processes at the county
Freedom of Expression	Article 33 of the Constitution guarantees the freedom of expression including the freedom to seek, receive or impart information or ideas. Hence, every person should feel constitutionally empowered to share information and ideas during public participation processes
Right to access information	Article 35 of the Constitution guarantees every citizen the right to access information held by the state. This includes information required for effective public participation
Planning	The public should be involved in strategizing, mapping, prioritization and codification of issues that may be subjected to public participation be they draft policies, legislation or development plans. Members of the public have the duty from the onset to ensure that what is documented actually represents issues that are crucial at the most basic unit of the county. After mapping, prioritization and codification of issues, members of the public should be clear on who the issues are to be addressed to, the county department involved, the statutory period for civic education and form of participation
Organisation	Members of the public may participate in decision making processes as individuals or representative groups. County residents should determine the most effective grouping to engage the county governments. Such organization may be in the form of youth and women groups, Saccos, chambers of commerce, civil society or religious entities
Participation	The public has a duty to fully participate in county civic education initiatives and other processes
Monitoring and Evaluation	The public has a duty to monitor and evaluate the implementation of policies, legislation, development plans, citizens participation and the civic education process

Table 3: Duties and responsibilities of citizens in public participation (Adapted from the County Public Participation Guidelines developed by the Ministry of Devolution and Planning and the Council of Governors)

The document puts emphasis on various aspects that are critical to promoting public participation. These include the duty to take part in civic education, the duty of members of the public to organize themselves into groups thus amplifying their voices as well as the duty to be involved in strategizing, mapping, prioritization and codification of issues that may be subjected to public participation. These include draft policies, legislation or development plans. One of the weaknesses of the guidelines is the lack of clear direction on the thresholds for meaningful and effective public participation.

The guidelines on setting up the County Budget and Economic Forum (CBEF) produced by the Commission on Revenue Allocation (CRA) equally set out important parameters for enhancing public participation. The basis of the guidelines is section 137 of the Public Finance Management Act, 2012. According to the document, the guidelines are "are structured to clarify the establishment of the CBEF, and then provide administrative guidance for the CBEF and how its members are nominated."³⁹

³⁹ CRA, Guidelines on Formation of the County Budget and Economic Forum (CBEF): <http://www.internationalbudget.org/wp-content/uploads/Signed-Circular-Cheserem-CRA-CBEF.pdf>

The guidelines add value to the participation process by ensuring clarity in the composition of the CBEF, highlighting the legal provisions that guide the setting up of the CBEF and, more importantly, detailing the procedure through which appointment of members to the CBEF is done. Like the guidelines on public participation developed by the Ministry of Devolution and the Council of Governors, the CBEF guidelines do not address the issue of threshold.

2.5 Mechanisms of Public Participation

Part eight of the County Governments Act, 2011, details principles of public participation before delving into more specific actions required of county governments to give effect to participation. The principles are as follows:

- (a) Timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;
- (b) Reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;
- (c) Protection and promotion of the interest and rights of minorities, marginalized groups and communities and their access to relevant information;
- (d) Legal standing to interested or affected persons, organizations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities, including women, the youth, and disadvantaged communities;
- (e) Reasonable balance in the roles and obligations of county governments and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide complementary authority and oversight;
- (f) Promotion of public-private partnerships, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development; and
- (g) Recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight.

The specific mechanisms and actions that are spelt out in the law aim to fulfill the above principles. These specific mechanisms are:

- The right of citizens to petition and challenge the actions of county governments under Section 88. The law further requires that citizen petitions are done in writing and also that the counties provide legislation to give effect to the right to petition and challenge;
- The duty bestowed on county authorities, agencies and agents to respond to petitions from citizens;

- The discretionary power vested on county governments to organize local referenda to solve local problems. Referenda may be organized on county laws and petitions or on planning and investment decisions affecting the county for which a petition has been raised and duly signed by at least twenty five percent of the registered voters where the referendum is to take place;
- Establishment of structures for citizen participation including;
 - (a) Information, communication technology based platforms;
 - (b) Town hall meetings;
 - (c) Budget preparation and validation fora;
 - (d) Notice boards: announcing jobs, appointments, procurement, awards and other important announcements of public interest;
 - (e) Development project sites;
 - (f) Avenues for the participation of peoples' representatives including but not limited to members of the national Assembly and Senate; or
 - (g) Establishment of citizen fora at county and decentralized units.

Establishment of county administration units (decentralized units) as per the County Governments Act, 2011, is also geared towards promoting public participation. Both the ward and sub-county administrators have a role to play in public participation. The law requires them to facilitate and coordinate "citizen participation in the development of policies and plans and delivery of services". Decentralized units are therefore part and parcel of the structures and mechanisms of public participation.

Whereas these mechanisms are provided for in law, there have been challenges in putting them in place. As pointed out by the IGRTC, both the National and County levels of government are yet to develop effective frameworks to facilitate public participation. A good number of Counties have enacted legislation on public participation. However, little has been done to operationalize the legislation through regulations, setting up of relevant offices and institutions required to implement the laws or developing the systems, guidelines and procedures or providing adequate budgetary provisions for public participation.⁴⁰

Access to information is one of the cardinal requirements in participation of citizens. Under the County Governments Act, 2011, Counties are required to use the media to create awareness on devolution and governance, promote citizens understanding for purposes of peace and national cohesion, undertake advocacy on core development issues such as agriculture, education, health, security, economics, sustainable environment, among others; and promotion of the freedom of the media.

⁴⁰ *Inter-Governmental Relations Technical Committee (2016). Op cit.*

Under Section 95(1) Counties are required to facilitate public communication and access to information in the form of media with the widest public outreach in the County, which may include television stations; information communication technology centers; websites; community radio stations; public meetings; and traditional media. Additional requirements under Section 96 include the duty of designating an office for purposes of enabling access to information; and, subject to national legislation on access to information, enact legislation on access to information. Further, Counties are required to create avenues for promoting effective participation of marginalized and minority groups in public and political life.

Civic education is also an important requirement for public participation. It is aimed at promoting empowerment and enlightenment of citizens and government; enabling continual and systemic engagement of citizens and government; and disseminating the values and principles of devolution in the Constitution. The purpose of civic education is to have an informed citizenry that actively participates in governance affairs of the society on the basis of enhanced knowledge, understanding and ownership of the Constitution.

Among the objectives of civic education under the Act is to realize heightened demand by citizens for service delivery by institutions of governance at the County level. This objective anticipates both public participation and advocacy by citizens geared at improving service delivery. In order to realize this and other objectives of civic education, the County Governments Act, 2011, under Section 100 requires county governments to put in place an appropriate civic education program and establish a civic education unit.

The design and implementation of civic education by Counties requires the participation of registered non-state actors as prescribed by legislation. Under Section 101, County legislation is required to provide the requisite institutional framework for purposes of facilitating and implementing civic education program. Furthermore, under Section 104, the county governments are required to incorporate non-state actors in the planning processes. Under Section 105, County planning units have the mandate of ensuring meaningful engagement of citizens in the planning process. Section 115 emphasizes that public participation is mandatory in planning.

Under Section 2 of the Urban Areas and Cities Act of 2011, urban areas and cities are required to put in place Citizen Fora as an avenue for citizen participation. Section 3 (c) identifies 'participation by the residents in the governance of urban areas and cities.' In Section 11 (d), it establishes 'institutionalized active participation by its residents in the management of the urban area and city affairs' as one of the principles of governance and management of urban areas and cities.⁴¹

Section 21(1) (g) of the Urban Areas and Cities Act empowers 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. The Second Schedule of the Act details the rights of residents in participating in the affairs of their city or urban area. Among others, the authorities are obligated to 'develop a system of governance that encourages participation by residents in its affairs'.⁴²

⁴¹ *Institute of Economic Affairs, Review of Status of Public Participation and County Information Dissemination Frameworks: A Case Study of Isiolo, Kisumu, Makueni and Turkana counties.*

⁴² *Ibid*

Although many Counties have put in place some of the infrastructure required to enhance public participation, there are differing levels of success in their actual implementation. In its study of public participation in four counties (Makueni, Isiolo, Kisumu and Turkana) the Institute for Economic Affairs (IEA) notes, for example, that Kisumu County had established processes and platforms for effective public participation, which included decentralized structures to the Ward and Sub-County levels and appointment of the administrators. The existence of these platforms has enabled citizens to attend public forums on development projects at these two levels. However, when it comes to mobilization by Members of County Assemblies (MCAs) of citizens to participate in meetings, a bias was noted against citizens who hold contrary opinions.⁴³ This weakness undermines public participation.

In regard to Turkana County, it was noted that it had generally succeeded in providing infrastructure for public participation. It has a Public Participation Act in place and has established the offices of Sub-County and Ward Administrators. However, the report noted that the county has not effectively involved citizens in legislative processes. The county is also yet to establish the offices of the Village Administrators and Village Councils due to lack of policy to define their operations.⁴⁴

Isiolo County was found to have established offices of Sub-County and Ward administrators. However, as compared to the other Counties that were studied, the offices were neither well established nor well equipped to handle their functions including facilitating public participation. It was established that most of the Sub-County and Ward Administrators lack physical office space and facilitation such as motorcycles and vehicles.⁴⁵

The budgeting process for Isiolo County (FY2013/2014) was also found to be inadequate in terms of public participation. Whereas the County held public consultations at ward level moderated by the Executive and MCAs, the public was not given an opportunity to propose projects.⁴⁶ They were instead presented with a list of predetermined projects. Their role in this context was limited to giving opinions about the proposed projects. These shortcomings mirror those noted in past participatory frameworks such as the Budget Day under the previous system of Local Authorities and the Local Authority Service Delivery Action Plan (LASDAP).⁴⁷

Makueni was found to have some of the best infrastructure of facilitating citizen participation. Its civic education infrastructure was found to be especially well developed with an elaborate structure operating under the office of the County Executive Committee member in charge of devolution and public service. The Public Participation Office is run by the Public Participation Coordinator who works through six Sub-County Education Coordinators (SCECs). In turn, these coordinators work with the Ward Public Participation Facilitators (WPPF) at the ward level.⁴⁸

In management of projects, the county was found to have established and entrenched a Program Management Committees' (PMCs) approach that enables citizens to not only take part in decision-making and implementation but also to provide oversight in the process. However, the County was found not to have put in place the County Budget and Economic Forum (CBEF), which undermined the participation of citizens in budgetary matters.⁴⁹

⁴³ *Institute of Economic Affairs, op cit. pg. 14*

⁴⁴ *Ibid. pg. 20*

⁴⁵ *Ibid. pg. 23*

⁴⁶ *Ibid. pg. 23*

⁴⁷ See, for example, Mbeya, Opiyo and Odhiambo (2011). *Participatory Planning in Kenya's Local Authorities: A Study of the Budget Day*. CLARIPRESS and Odhiambo, Mitullah and Kichamu (2005). *Management of Resources by Local Authorities: The Case of Local Authority Transfer Fund in Kenya*. CLARIPRESS.

⁴⁸ *Institute of Economic Affairs, op cit. pg. 28*

⁴⁹ *Ibid. pg. 28.*

CHAPTER 3: RESEARCH FINDINGS AND DISCUSSIONS

3.1 Effectiveness of Public Participation in Kisumu County

This chapter presents a discussion of the findings of the assessment on effective public participation mechanisms in Kisumu County. The findings and discussions are categorized into two: citizen participation avenues and dynamics and citizen participation relevance and legality. The significant gains made in effecting public participation in Kisumu County as well as the best practices are also highlighted.

3.1.1 Citizen Participation Avenues and Dynamics

Based on the findings of this study, the County government of Kisumu employs various mechanisms to implement public participation which include the following:

- Public forums and meetings

According to the Office of the County Secretary, the public participation forums and meetings (including budget preparation and validation forums), have been devolved from the Sub-County level to the Ward level. Indeed, the government has established seven Sub-County Administration Offices and thirty-five Ward Administration Offices to facilitate effective public participation.

The forums and meetings bring together diverse stakeholders to discuss different issues of public concern including laws, county plans (such as the County Integrated Development Plan – CIDP) and the county budget. The Sub-County and Ward Administrators play the crucial role of mobilizing citizens to take part in the preparation of county budget estimates, formulating public participation plans, preparing periodic reports, facilitating a government-citizen feedback and vice versa mechanism and undertaking civic education. It was however noted that the decentralization of public participation is yet to reach the Village level as the county has not enacted the Administrative Bill that will facilitate the same.

Initially, the County Government was organizing public participation meetings at the sub-county level. However, due to the low number of people reached at this level, we realized that we were not able to meet the threshold requisite for effective public participation. This informed the devolution of the same to the ward level.”
Kisumu County Assembly Officer – KII – November 27th 2017.

Public meetings at the ward level are held on quarterly basis to engage the public on planning and policy development. The members of the public usually attend these meetings so as to give their views on development projects in their ward and contribute to policy issues.

The Civil Society Organizations (CSOs) in Kisumu County have made great use of petitions and memoranda to engage the County Assembly. A case in point is where the Kisumu County Public Participation Partners Forum (KCPPPF) - a loose network of civil society organizations in Kisumu County – petitioned the County Assembly to gazette the County Public Participation Act in 2015 after its enactment. This petitioning was occasioned by the delay by the County Assembly beyond the legal timelines to gazette this fundamental piece of legislation thus rendering the county to lack a legislative framework providing for the structure and modalities for effecting public participation in Kisumu.

The findings of the survey reveal different sources of motivation for public participation. The single largest proportion of citizens (69%) noted the need to participate in county government planning and monitoring county government projects in order to ensure accountability. Other responses included the need to be part of the county decision making processes (31%).

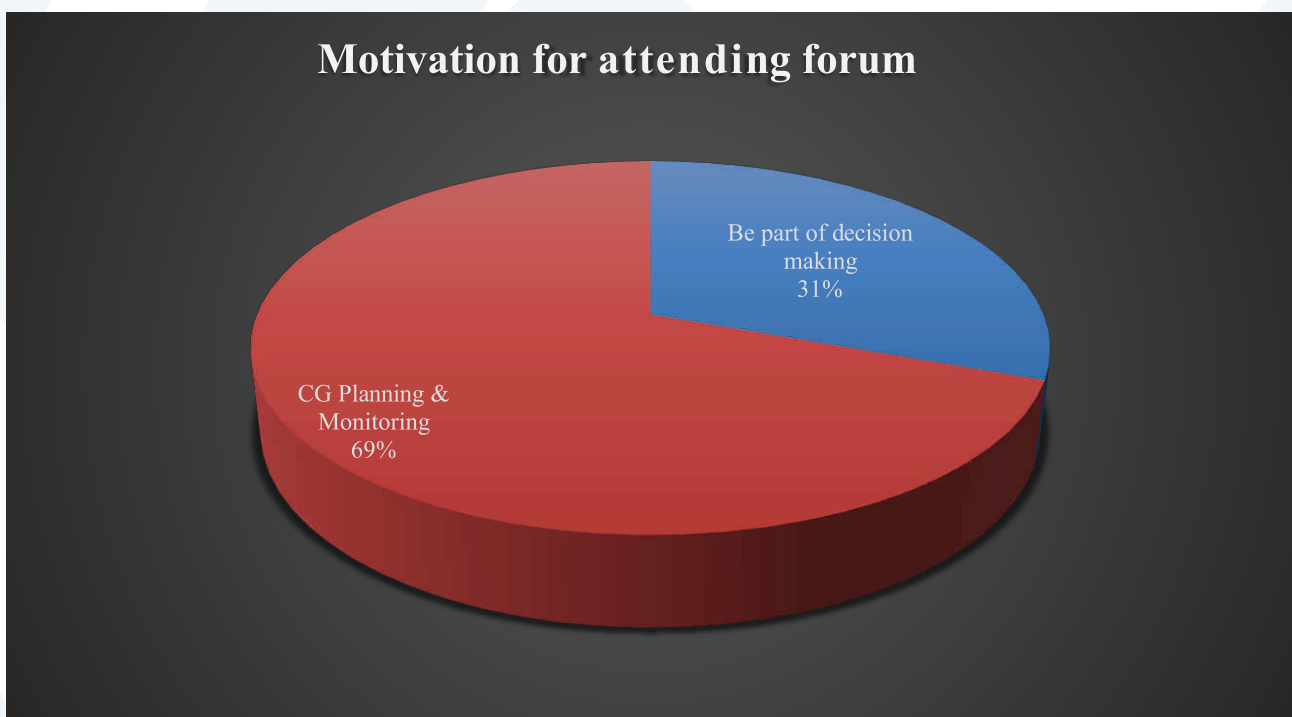


Figure 4.1 Motivation for the Citizens to Attend Public Forums in Kisumu County

- Information communication & Dissemination platforms

The importance of communication and information in public participation cannot be overestimated. The county was found to employ gatherings at the local level for deliberation on matters of public concern (public barazas) including enlightening the public on resources that have been allocated to specific community projects. This enables the public to effectively play the role of monitoring government projects during their implementation. Further, the government utilizes newspapers with national circulation and local radio and notice boards to disseminate information on the existing opportunities for public participation including budget formulation and validation meetings, tendering processes and job opportunities.

Other media used by the County government include the official county government website; local radio; chiefs and Members of the County Assembly (MCAs); NGOs and church leaders. The citizens receive important documents requisite for public participation through the government website. Hard copy documents are also availed during public participation meetings. A majority of the citizens expressed the need for the county government to share simplified and user-friendly documents on a timely basis to enable effective participation.

“Most of the County Government public documents are sometimes posted on the website. They are also available at the Ward level. At the Ward level, they are placed where citizens can go and get all the information they need relating to their region.”

Chairperson of the Non-State Actors within CBEF – KII – November 24th 2017.

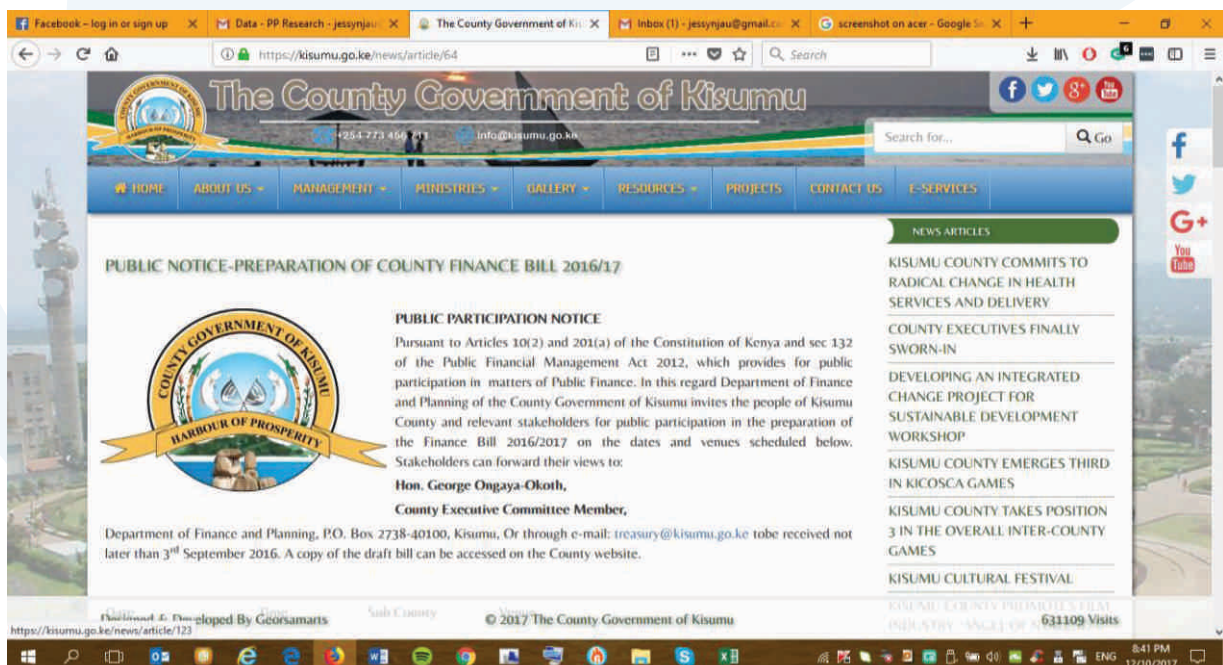


Figure 2: Public Participation Notice on the Kisumu County Government Website - Source: Kisumu County Government Website

As highlighted in the chart below, the main sources of information for the interviewed citizens were listed as media (39.8%), county government officers (33.7%), leaders (14.5%), NGOs / CBOs (8.4%) and churches / mosques (3.6%). During the KIIs, the CBOs, NGOs and FBOs were seen by the County officials as participants and not collaborators, despite playing active roles such as educating, inviting and mobilizing citizens to participate in county forums.

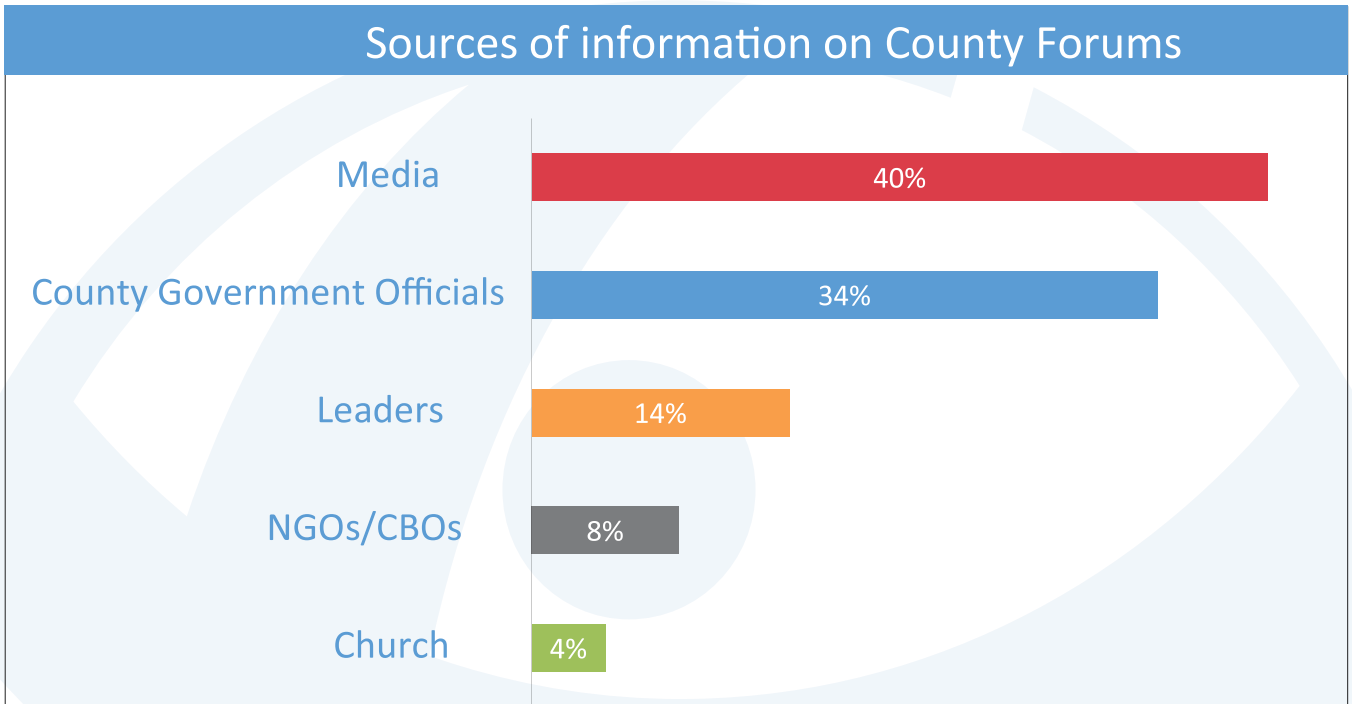


Figure 3: Sources of Information relating to County

The most preferred mode of public participation is through demonstrations and picketing (72%). The other modes employed by the citizens include petitions, letters and memoranda (20%) and County Assembly sittings (8%).

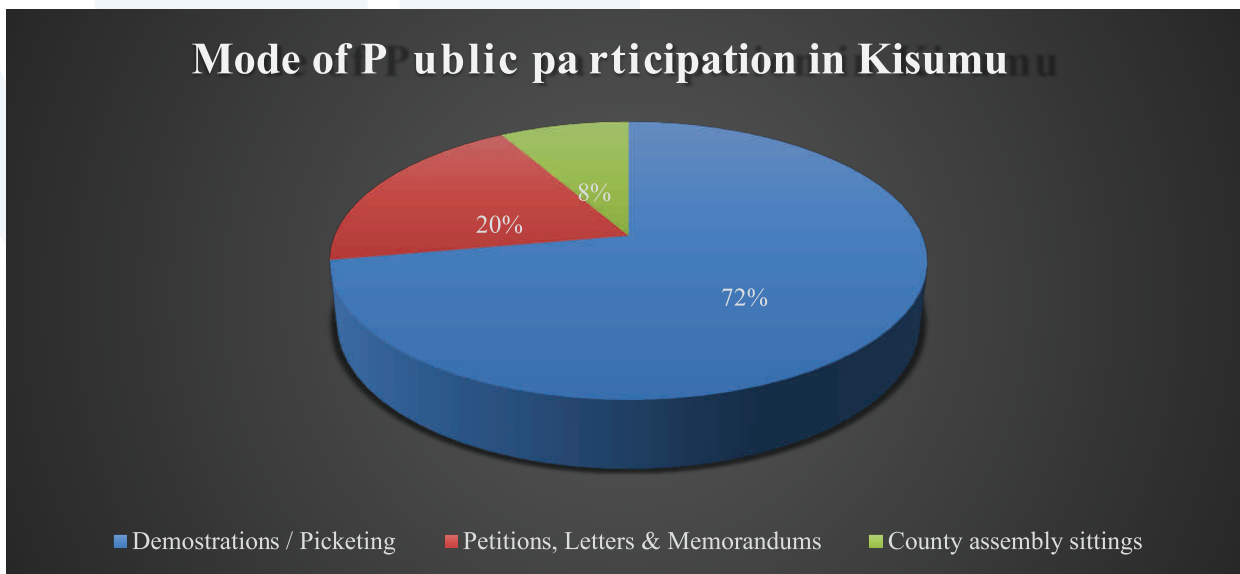


Figure 4: Modes of Public Participation in Kisumu County

- Establishment of the County budget & Economic Forum (CBEF)

The county established the Kisumu County Budget and Economic Forum (CBEF) in 2014 as required by the Public Finance Management Act, 2012. The CBEF has been a crucial tool for ensuring public participation in matters relating to public finance by coordinating and collecting views from the public during the budgeting process in addition to functioning as a think-tank for the Kisumu County government in terms of financial and economic management.

The composition of CBEF during the former regime was made up of twenty-two members including the governor, the deputy governor, nine county executive committee members and eleven other representatives of non-state actors. The representatives of non-state actors were appointed to represent the interests of professionals, businesses, labour, women, persons with disabilities, the elderly and faith-based groups at county level. At the time of undertaking this assessment, the newly formed County government elected on 8th August 2017 had yet to appoint members of CBEF. The members served for an uninterrupted term until 2017 when the governor is required to appoint a new CBEF. It was noted however that some of the members who resigned before the expiry of their term, for instance the representative of CSOs in the forum, were never replaced.

The study revealed that the process of nomination of representatives from organized special interest groups in Kisumu County flouted the CRA guidelines on the establishment of CBEF. The guidelines anticipate an open nomination process that allows all organized groups in the county to nominate candidates. According to one of KIIs with a former CBEF member, the nominations in Kisumu County were done through open advertisement in the media stations.

In terms of facilitating public participation, the Kisumu County CBEF faced numerous challenges including lack of funding to facilitate regular engagement with their constituents, poor outreach and failure to share information with the public in advance which resulted in limited public participation. Further, the lack of a formal calendar and an organized structure made the CBEF heavily dependent on the governors and/or CECs for Finance to call meetings and share information. This appears to have led to relatively infrequent meetings, called late, and with limited information shared in advance. Finally, the representatives of the County government (CECs) needed increased capacity and knowledge on their roles and the county budget process. This is necessitated by their infrequent participation in CBEF meetings and lack of active participation.

3.1.2 Citizen Participation Relevance and Legality

- Enactment of the Kisumu Public Participation Act 2015

In a bid to institutionalize effective public participation, the county has enacted the Public Participation Act, 2015 whose objective is to give effect to paragraph 14 of part 2 of the Fourth Schedule of the Constitution and to establish modalities and platforms for public participation in the governance of the county. Section 5 of the Act establishes the Office of Public Participation which is mandated to facilitate and co-ordinate public participation in the governance of the County including the participation of communities, organizations and citizens forming the public in the decentralized units within the county.

The specific roles of the Public Participation Office are as follows;⁵⁰

- a) Establish structures for public participation as is required under section 9I of the County Governments Act;
- b) Ensure that public participation activities are inclusive of the broad spectrum of the public and not limited to the traditional sector stakeholders;
- c) Formulate policy relating to public participation;
- d) Advise county government on the operations of the Office;
- e) Formulate training, development and capacity building for its employees;
- f) Collaborate with relevant institutions in the county to promote access to information and civic education programmes;
- g) Provide the public with a clear context for which public participation is to be undertaken and how decisions will be made;
- h) Inform the public of existing or potential linkages with other policy initiatives, issues or public participation activities;
- i) Inform the public on whether financial resources correspond to the nature and scope of the public participation planned;
- j) Provide information on whether there is sufficient and adequately trained staff to carry out the planned public participation;
- k) Ensure that clear and reasonable timelines are established for public input and comment and that these timelines are communicated to the participants;
- l) Ensure that the public participation device used is appropriate to the nature of the policy initiatives, issues involved, the target groups affected and the staff and resources available;
- m) Establish a feedback process to the public including opportunities for the public to forward additional comments or input to the decision taken;
- n) Develop an evaluation framework to the public participation plan;

⁵⁰ *The Kisumu County Public Participation Act, 2015 (No. 11 of 2015), Section 8 (2).*

- o) Ensure that the public, affected groups, and stakeholders are informed of the results of the public participation process and how their input was used in the decision taken;
- p) Ensure that public participation processes adhere to the relevant legislation, regulations, policies or guidelines affecting the rights and responsibilities of the public, officers and the different participants involved;
- q) Establish whether there is support for the development of new public participation techniques and technologies;
- r) Provide logistical support and strategies to the County Assembly, including the development of consultation plans and information facilitating public participation in any matter before the Assembly;
- s) Maintain an up to date database or inventory of all its activities;
- t) For the purpose of creating the culture of, and respect for the principles of public participation, facilitate public education and training programmes in relating to public participation;
- u) Carry on research on matters relating to public participation generally;
- v) Prepare and submit reports to the County Assembly on the status of the implementation of its functions and obligations under this Act;
- w) Prepare and submit an annual report to the Governor for submission to the county assembly on the status of public participation in the affairs of county governance;
- x) Monitor and evaluate the performance of the Office mandate; and
- y) Perform any other function as may be assigned by legislation.

Despite the enactment of the Public Participation Act 2015, all CSOs representatives that were interviewed expressed concerns emanating from the lack of implementation of the Act. This failure has resulted in the lack of proper structures for public consultation and feedback mechanisms. In terms of citizens' awareness of the existence of the law governing public participation in Kisumu County, 66.7% of the respondents confirmed knowledge on the existence of the Kisumu County Public Participation Act, 2105. As such, a third of the population that was interviewed lacked awareness and thus underscoring the need for increased civic education initiatives.

Awareness of the existence of the law guiding public participation in Kisumu County

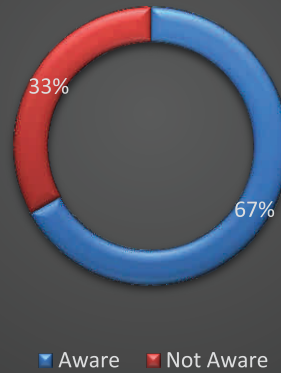


Figure 5: Citizens Awareness of the Existence of the Law Guiding Public Participation in Kisumu County

Conversely, many of the KII participants, particularly those from the CSOs, were aware of the laws guiding public participation in the county. As a matter of fact, most of the organizations interviewed were involved in the formulation of the County Public Participation Act through advocacy and technical support to the County Government. Considering that there was a concern raised by a majority of the respondents with regards to the recalcitrance by the county government to commence the implementation of the Act, the same spirit of collaboration between CSOs and the County Government and advocacy by CSOs should underscore the efforts to have the Act implemented.

The failure to implement the Public Participation Act has been attributed to disharmony between the members of the County Executive and those of the County Assembly during the development of that legislation. Resulting from this failure, co-ordination of public participation has been happening through the various county departments as there is no public participation office that has been established as anticipated under the law to manage effective and meaningful participation.

“The enactment of the Public Participation Act was driven in its entirety by the County Assembly without the full involvement of the Executive. For this reason, it has stagnated its implementation”.

Kisumu County CBEF Member – KII – November 24th 2017.

The collaboration between CSOs and the County Government should extend to the facilitation of civic education in the County. This need is informed by the dismal number (13.8%) of respondents who said they had benefitted from civic education carried out by the County. This is despite the presence of the Public Participation Act with clear mechanism and principles on implementation of civic education programmes.

The fact that those exposed to civic education rated it as very relevant (40%) and relevant (40%) further underscores the need for collaboration between the County and CSOs in designing and carrying out civic education programmes. These ratings are shown below in Chart 4.22.

“Civic education has become a big issue because it has been contested at the national and the county level. When devolution was being rolled out, resources followed functions. This function was not given proper resources.”

Kisumu County Assembly Officer – KII – November 27th 2017

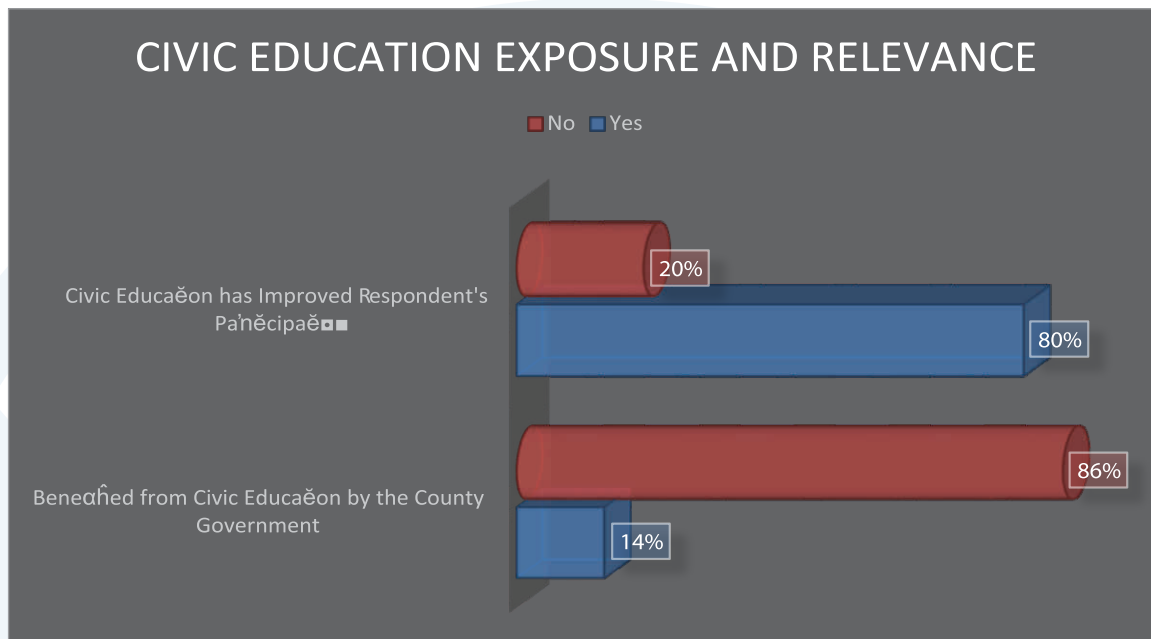


Figure 6: Civic Education Exposure and Relevance

- **Enactment of the Access to Information Act**

In addition to the Public Participation Act, 2015, the County has further enacted the Kisumu County Access to Information Act which seeks to give effect to the right of access to information by citizens as provided under Article 35 of the Constitution. Access to information is critical for enabling citizens to exercise their voice, to effectively monitor and hold the government to account, and to enter into informed dialogue about decisions which affect their lives. It is seen as vital for empowering all citizens, including vulnerable and excluded people, to claim their broader rights and entitlements.

“The enactment of the public participation law was majorly realized from a lot of push from members of the civil society. Indeed, it is not only this legislation, but also the law on access to information. Kisumu County is one of the few Counties in the country that has enacted both the Public Participation Act and the Access to Information Act.”

CSO Participant – KII – November 23rd 2017

3.1.3 Public Participation Best Practices and Gains in Kisumu County

Various aspects of public participation stand out in Kisumu County. The county government has put in place elaborate infrastructure for citizens engagement that have devolved public participation to the Sub-County and Ward level. In this regard, the County has established seven Sub-County Administration Offices and thirty-seven Ward Administration Offices. Through this structure, public meetings at the ward level are held on a quarterly basis to engage the public on planning and policy development. Members of the public usually attend these meetings so as to give their views on development projects in their ward.

The Sub-County and Ward Administrators were found to be the core of public participation, especially mobilization of citizens and dissemination of information to the community at the lowest level. The administrators are of great utility to the various county government departments as they provide an entry point, especially at the ward level when conducting public participation forums and meetings. The County Assembly on the other hand use the MCAs' own local networks to mobilize citizens whenever they need to undertake public participation forums.

The enactment of the Public Participation Act, 2015 and the Access to Information Act in Kisumu County provides the requisite legislative infrastructure for public participation. The two laws create structures, platforms and a conducive environment to encourage active participation from citizens so that they can make valuable contributions to the decision making processes. The Public Participation Act establishes citizen participation forums that decentralize engagement of the people up to the village level. Further, it provides for petitions as a means through which citizens can engage with the county government in an effective manner. The Access to Information Act guarantees the citizens' rights to access crucial information which as a consequence enables citizens to make more informed political choices, contribute to public initiatives, and advocate for policy improvements on issues.

The existence of local CSOs, CBOs and FBOs implementing governance programmes in Kisumu County complements the roles the county government in establishing forums for participatory engagement and facilitating effective public participation. These institutions design and execute civic education programs that educate people on their rights and obligations as democratic citizens. They support in the development of citizens' skills to work with one another to solve common problems, to debate public issues, and express their views.

The organizations act as watchdogs by putting in place mechanisms that enable the citizens monitor county government projects and processes. Some of the organizations include Transparency International-Kenya, Transform Empowerment for Action Initiative (TEAM), Concern Worldwide, Community Initiative Action Group – Kenya (CIAG-Kenya), Kisumu Medical and Education Trust (KMET) and the Kisumu Youth and Development Working Group.

3.1.4 Conclusions and Recommendations

Conclusions

Kisumu County was found to have put in place some of the required mechanisms of public participation. These include the establishment of a County Budget and Economic Forum (CBEF) and the enactment of the Public Participation Act, the main law required to guide public participation. Further decentralization through sub-counties and wards had improved public participation by decentralizing forums from the county headquarters to the lower units.

In particular, ward administrators were found to play an important role in linking citizens to various County activities and therefore act as key avenues of mobilizing and informing citizens on what is happening in the County. Citizens in Kisumu use the established mechanisms including petitions to engage with both the executive and the legislative arms of the government. Citizens were mainly invited to the forums through County notice boards, newspapers of national circulation, word of mouth by the County officials and leaders, radio, website, and formal invitation of organized groups and opinion leaders.

The following gaps were noted;

- Kisumu County is yet to establish village councils and the Office of the Village Administrators for purposes of fully devolving public participation to the village level.
- The Public Participation Act 2015 has not been operationalized.
- Lack of a policy on public participation which should have preceded the enactment of the Public Participation Act.
- Inadequate funding for CBEF and lack of commitment from County government representatives.
- Inexistence of a particular office or organ with a specific mandate to spearhead the public participation process.
- Lack of formal procedures to host public views and lack of proper channels for feedback and association of public inputs.
- Lack of awareness amongst citizens on the frameworks, structures and opportunities for public participation in Kisumu County.
- Financial challenges associated with inadequate funding for public participation.
- The government agencies and officials share information for public participation in bulky documents that are not user-friendly for public participation.

- Review and amend disputed sections of the Public Participation Act, 2015 especially aspects that guide civic education to pave way for its implementation.
- Implement the Access to Information Act;
- Establish an effective County Budget and Economic Forum (CBEF) through capacity building of the members and increased funding for public outreach, consultation and feedback;
- Put in place village administration to further decentralize administration and public participation undertakings;
- Undertake extensive civic education to create an empowered citizenry;
- Structure the working relationship with CSOs through negotiated and signed Memoranda of Understanding;
- Build the capacity of sub-county and ward administrators to undertake more effective public participation and educate citizens on the functions of the county government, among other issues of importance;
- Budget for public participation and deliberately allocate funds;
- Set up a stakeholders' register based on the various sectors in the county to serve as a reference point so that participation is sector specific and representative as necessary;
- Development of a structured feedback, compliment/complaint, grievance and redress mechanism for public participation.

Recommendations for CSOs and Other Stakeholder Groups

- Work in collaboration with the County government to implement the Public Participation Act and the Access to Information Act;
- Work towards a more structured working relationship with the county government through Memoranda of Understanding;
- Put in place a CSO network for more collaborative civil society work including thematic networks to enable better management of public participation;
- Advocate for the further decentralization of public participation through formation of village administration units;

- Collaborate with the County government in building the capacity of sub-county and ward administrators to undertake more effective public participation and educate citizens on the functions of the county government, among other issues of importance;
- Collaborate with the county government in undertaking civic education;
- Advocate for County government to deliberately allocate funds for Public participation, including monitoring and evaluation of the process.



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