

# Exploring Opportunities and Assessing Obstacles to Public Participation in Kenya's Devolved Governments.

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## Abstract

*This research aimed to investigate the opportunities and challenges associated with public participation in Kenya's devolved governments. Participation is a crucial component of policy making and service delivery, holding considerable promise and benefits. Arguments for public participation emphasize its benefits to individuals, communities, organizations, and society as a whole. Despite notable efforts by counties to engage the citizens in decision making, there are obstacles that impede this essential constitutional principle and value of governance. The barriers to meaningful citizen involvements impact the quality of decisions at the county level. Consequently, this study sought to evaluate opportunities and identify the challenges that prevent citizen participation in devolved governments.*

## Background.

*Kenya's County Governments were first established after the elections in March 2013. After ten years of implementation, devolution is still evolving. The devolution architecture provides localized solutions to societal challenges, with active citizen involvement. The Constitution of Kenya (CoK) 2010 and other various legislation support devolution and prescribe platforms for citizen engagement in devolved governance. Public participation is a key component of decentralized policy-making and service delivery. Despite the emphasis of people's participation by the CoK 2010 and the law, numerous challenges hinder its effective implementation. Against this backdrop, this paper seeks to evaluate the opportunities and challenges of participation in the 47 devolved governments.*

## Methodology

*The current research adopted a qualitative research approach, focusing on 8 counties grouped within various economic blocs: North Rift Economic Bloc (NOREB), Lake Region Economic Bloc LREB, Frontier Counties Development Council (FCDC) , South Eastern Kenya Economic Block (SEKEB), Mt Kenya and Aberdares Economic Bloc, Jumuiya ya Kaunti za Pwani( JKP), Narok and Kajiado Economic Block(NAKAEB) and Nairobi City County. The counties purposely selected to represent each of these economic blocs include: Trans Nzoia, Kisumu, Mandera, Makeni, Meru, Kwale, Narok and Nairobi. The study employed a combination of primary and secondary data collection methods. Primary data was gathered through in-depth interviews with 26 participants, selected from entities such as the Council of Governors, Sub-County Administrators, County Assemblies Forum, County Directors of Communication, and Community Based Organizations. These participants were purposely selected due to their involvement in communication, facilitation and monitoring of public participation processes. Secondary data primarily comprised national datasets, surveys, and reports from ministries, departments, and agencies.*

## Findings

*The findings reveal that the Constitution of Kenya 2010 and relevant laws lay a strong foundation upon which public participation springs. The County Government Act 2012, Urban Areas and Cities Act 2011, policies enacted both at the national and county governments identify priority areas for citizen participation. The key areas include: planning and budgeting, election of different cadres of leaders every five years or during a by-election, public finance management, public procurement, implementation and monitoring of delivery of county public services, selection of public officers, legislative processes, county referendum, petitions and more. The challenges associated with public participation in county governments are diverse and numerous ranging from financial, social, cultural, political, behavioral and communication factors.*

## Conclusion

*Public participation is mandatory in all decisions undertaken by county governments. Evidence suggests that, under the right conditions, meaningful forms of public participation result in better governance, improved*

public service delivery, and ultimately, enhanced development. The opportunities for public involvement are extensive and diverse, primarily occurring during planning and budgeting, elections, public finance management, public procurement, vetting processes, legislation, referenda and petitions. However, several factors impede effective citizen involvement. These include financial constraints, social dynamics, cultural influences, political complexities, behavioural tendencies, and communication factors. It is incumbent upon county governments to address these challenges to benefit from policies supported by citizens.

**Key words: Public Participation, Devolved Governments, Opportunities for Participation, Challenges to Citizen Engagements.**

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## I. Introduction

Public participation has emerged as a critical issue of governance post 2010 constitutional dispensation. While national-level participation has a long history, there is scant information on citizen engagement in the 47 devolved governments. Fundamental to public participation are opportunities for citizens to engage. Effective public participation in devolved governance implies that citizens are at the centre of planning and implementation of policies. The Constitution of Kenya 2010, in Article 10, recognizes public participation as a principle and value of governance. Public participation is mandatory and weaved in every aspect of public administration (Kanyingi, 2016). It is both a key promise and provision of the CoK 2010 (Onyango, 2013). County governments' proximity to the citizens, allows direct, more meaningful forms of participation of citizens in public affairs (Greenberg and Mothokho, 2010).

The architecture of devolution provides localized solutions to challenges given that resources are closer to the people (CMD, 2022). County Governments offer greater voice, inclusion and participation of every citizen in the affairs and decisions at the lowest administrative level (Nyanjom 2011). County governments have made progress on implementing citizen participation mechanisms across development chain. However, recent public participation processes have become contentious and divisive (Mbithi, 2018). It remains unclear how devolved governments intent to implement fully participation to reap dividends of devolution.

Public participation holds considerable promise and benefits. According to Nabatchi & Leighninger (2015), participation is key to democratic accountability. Participation gives legitimacy to the processes (Greenberg & Mathoho, 2010). It enhances political representation of diverse political, ethnic, religious, and cultural factions within decision-making structures and processes (Juma, 2008). Community participation gives citizens especially the underprivileged and marginalized a voice in how decisions are made and carried out (Kimani, 2020). It promotes transparency, inclusivity and fair decision making process (Lin and Kant, 2021). People's involvement in governance encourages ownership of decisions (IEA 2015, Constitution, 2010). According to Casula (2015), participation bridges divides and has the capacity to bring citizens on different sides of a policy debate to find a common ground. It helps to alleviate conflicts by ensuring interests of different stakeholders are addressed (Mokku, 2018). When the public remains vigilant and engaged, they are able to demand accountability from public officers (Carpentier & Ribeiro, 2009). Within Counties, participation, allow citizens to monitor service delivery, and reward or penalize good performance over poor performance (Wanyande, 2016).

County Public Participation Guidelines of 2016 consolidate key processes and procedures of public participation in Kenya. The guidelines form a standard guide to support citizen engagements and decision making in policy, legislation, planning, budgeting and service delivery for devolution (PPG 2016). Additionally, The National Policy of Public Participation developed in 2018 further provides a general framework for the management and coordination of public participation in Kenya. The policy establishes the framework for the management and coordination of public participation in the country (GoK, 2018). Most counties have also enacted laws, policies and adopted guidelines which provide a framework for citizen engagement to ensure attainment of effective public participation. Despite the eagerness to promote public participation in counties, numerous challenges hinder its effective implementation. This paper examines both opportunities and challenges to public participation in county governments of Kenya.

## II. Problem Statement

The controversy of what public participation is, specifically within the meaning of the Kenya 2010 Constitution, has hindered many citizens from engaging effectively with their county governments. The inconsistent interpretations by the Kenyan Judiciary regarding the meaning of participation have further complicated its implementation. As a result, devolved governments struggle to determine the appropriate forms of engagement, how to encourage participation, and the best methods to achieve it (IEA, 2015). The 2016 report by the Intergovernmental Relations Technical Committee Report, reveals that the nature and extend of

public participation contemplated in CoK 2010 had not been realized. According to the Centre of Multiparty Democracy (CMD, 2022), this issue still persists.

The varying levels of understanding of citizen's responsibilities and awareness of opportunities for participation limit their involvement in decision making. Mbithi (2018) concurs that there are indeed differing views on what constitutes effective participation. A 2014 survey by Transparency International-Kenya, revealed that only a small percentage of Kenyans were aware of or participated in important forums discussing county plans and priorities. Adede (2017) acknowledges that each county has its methods and processes for public participation, making them susceptible to manipulation. Additionally, significant challenges in implementing citizen centred initiatives by county governments have failed to meet both qualitative and quantitative standards.

Advocates for public participation often emphasize benefits it brings to individuals, communities, organizations, and the society at large. Existing evidence suggest that, executed under favourable, meaningful forms of public participation leads to better governance, improved public service delivery, strengthened governance and democracy, establishment of constructive relationships between the people and county governments, enhanced processes and legitimacy of county governments decisions, alleviation of social conflicts, and societal consolidation and stability. While participation in devolved governments has been credited with a lot of transformations, there are also challenges to its implementation. This paper examines both opportunities and challenges to public participation in Kenya's devolved governments.

### **III. Literature Review.**

The principle of public participation is emphasized in all chapters of the Constitution. Public participation, according to the Ministry of Devolution entails, a multifaceted process wherein individuals, government entities and non-governmental organizations exert influence over decisions pertaining to policies, legislation, service delivery, oversight, and developmental initiatives. The Institute of Economic Affairs (IEA, 2015) characterizes public participation as an open and accountable process through which individuals and groups exchange views and influence decision making. The International Association for Public Participation (IAP) defines it as any mechanism that enlists public involvement in problem-solving or decision-formulation. Carpentier et al (2009) defines participation as the collective act of all residents and communities consciously engaging in a goal-oriented activity. These perspectives bear a common acknowledgement of participation as a process that involves ordinary people in finding solutions to challenges they face.

There is a growing awareness among Kenyan citizens that effective governance necessitates their active involvement. The CoK 2010 sets key requirements for county governments to provide frameworks for public participation in governance processes. The Fourth Schedule gives County Governments the power to facilitate public participation. This responsibility is affirmed in the County Government Act (CGA), 2012 and requires counties to develop capacities, provide civic education and communicate effectively on participatory initiatives. Part 2 Section 6 of CGA 2012 states that in exercising its powers or performing any of its functions, a county government shall ensure efficiency, effectiveness, inclusivity and participation of the people. Additionally, Section 87 of the Act provides for the principles of citizen participation in county governance, specifically (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.

Devolved governments are now entrenched feature of Kenya's political landscape with three successful transitions in 2013, 2017 and 2022 (World Bank 2022). Devolution was introduced as the main solution to the problems of centralization of power which had been long identified as the country's main governance problem (Kangu, 2021). Decentralization transferred authority, funds, and decision-making authority from the national government to subnational governments (Wanyande, 2016). Implementation powers, functions, responsibilities and resources are now in the hands of legally constituted and popularly elected 47 governments (ICJ Kenya, 2013). These devolved governments are founded on the supremacy of the constitution, sovereignty of the people and the principle of public participation. Public participation is a major element of devolved government policy-making and service delivery. It remains a critical issue to be considered and prioritized by decentralized governments.

Public participation in most counties is executed at three levels. The first level is the ward or village level. Ward or Village public Participation Forum is open to all residents who have a desire to attend. Such meetings are convened by the village administrator or a member of a county assembly in consultation with the office of public participation. The next level is Sub-County Participation Forum coordinated by county departments or the county assembly to discuss issues of interest in the sub counties. The last level is the County Public Participation Forum. The meetings at this level are meant to discuss matters of importance affecting the public by the county government.

Structured way of consulting citizens, groups and entities in counties is designed to give voice to the public to influence decisions that affect them. Each county established the Office of Public Participation responsible for facilitating and coordinating participation of citizens in the governance of county governments. More importantly the office is tasked with communicating to the public concerning matters with regard to which their participation is required. When communicating to the public, county governments are required to take into account language preferences (English or Kiswahili), persons with special needs, and preference to the different mediums of communication. When publishing notice for participation, counties are required to do so in daily newspapers, official websites, radio broadcasts covering the area of county, and in any other media with a wide geographical reach.

Even with such an elaborate participation framework, there are no standards for engaging the public in decision making, and gives no guarantee for consideration to public input. The uneven operationalization of laws, regulations and guidelines negatively affect public participation processes. It violate participation principles which require counties to ensure communities, organizations and citizens affected by a decision have a right to be consulted and involved in the decision making process, and their contribution taken into account as a means to promote sustainable decisions.

Kenya has a long history of citizen participation, and even direct participation in local government (World Bank, 2013). Local Authorities established immediately after the country gained its independence were the first form of decentralization. Planning and implementation of government programmes institutionalized through session papers. Session Paper No 10 of 1965 premiered the development planning and management at local levels. Further, the Physical Planning Act of 1966 provided for community participation in the preparation and implementation of physical and development plans. Districts were epicenter of development programmes in early 1970s.

District Focus for Rural Development (DFRD) introduced in the 1980s encouraged community participation in the identification, planning and implementation of development at the district level. The provincial administration was the primary agency for executing government decisions that in many ways limited the participation of the public. The DFRD were later replaced with Regional Development Authorities as vehicles for integrated planning and management (Kirori, 2015).

Soon thereafter, in the late 1990s development was coordinated within local authorities and constituencies. In 2001, the ministry of local government through its reform program, the Kenya Local Government Reform Program (KLGRP) introduced the Local Authority Services Delivery Action Plan (LASDAP), to improve participatory planning, governance and service delivery in local authorities. LASDAP provided opportunities for the local authorities to constructively engage with local communities on matters planning, budgeting and development. However, LASDAP lacked a coherent coordinating framework and suffered overlaps, duplication, and effective citizen involvement.

In 2003, the Constituency Development Fund (CDF) was created as the main vehicle of community participation in development at the local level. The objective of CDF was to address poverty at the grassroots level whereby at least 2.5 percent of national's ordinary revenue is devolved to constituencies. Even though the CDF Act provide for mechanisms for public participation, the MPs largely influence decisions and allocation of these funds.

Public participation was entrenched in the Constitution of Kenya 2010 after a national referendum. It is now recognized in Article 10 as one of the country's national values and principles of governance. Further, Article 174 provides that the object of devolution is to enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them. Therefore, counties have a responsibility to ensure residents are engaged in processes. The supreme law further identifies equitable and sustainable development as a national value and principle of governance. Devolution and sharing of power between the national and county governments is also identified as important democratic value. The CGA, PFMA and UACA give prominence to public participation.

#### **IV. Theoretical Framework**

This study was guided by deliberative democracy theory which emphasizes equality of all citizens and provision of opportunities for citizens to contribute to decisions at the county level. Deliberative democracy theory emphasizes the importance of institutionalizing procedures that facilitate deliberation, which involves discussion, debate, and exchanges among the public. The theory underscores the need for governance practices where public officials and citizens collaborate. It advocates for maximum citizen involvement in public decisions, promotes an upward flow of communication, and encourages civic actions.

Deliberations in democracies are characterized by two different approaches. The instrumental approach views deliberation as a pragmatic process where experts and citizens provide reasons, understand issues, formulate goals, and make policy recommendations that serve their collective interests. Dialogical approach views deliberation as a social interaction process where community members, without specific goals, interact to

understand themselves and others, create decision procedures, share values, and reason about civic practices. Both approaches emphasize empowering citizens and giving them a voice in government matters, aligning with the ideals of democratic governance.

The theory concludes that when participants reason together, they create mutual understanding, their views reflect the community's consensus on what serves the public interest, and thus, the outcomes of their deliberations are relevant to and valued by policymakers. The features of deliberative processes such as reasoning, openness to refutation, reformation of issues and arguments, creation of consensual agreements among participants are important in county public participation processes.

Deliberative democracy theorists vouch for institutionalization of the procedures that facilitate participation that lead to better decision making. Devolution broadened the democratic space all citizens have opportunity to participate in governance affairs. Participation is a theme that runs through all chapters of the CoK 2010. The County Government Act of 2012 obligates counties to establish structures and communicate effectively if citizens are to genuinely influence policy decisions. The structured way of consulting citizens, groups and entities in counties is designed to give voice to the people. The theory is relevant to the extent that it requires counties to consult and built consensus with citizens in the making and implementation of policies.

## **V. Methodology**

This study explored opportunities and obstacles surrounding public participation within Kenya's devolved governments. It examined potential areas for citizen engagement and identified barriers to meaningful participation. Both primary data and secondary data were analyzed.

Primary data collection involved structured and unstructured interviews with 26 participants from seven economic blocs: North Rift Economic Bloc (NOREB), Lake Region Economic Bloc (LREB), Frontier Counties Development Council (FCDC), South Eastern Kenya Economic Block (SEKEB), Mt Kenya and Aberdares Economic Bloc, Jumuiya ya Kaunti za Pwani (JKP), Narok and Kajiado Economic Block (NAKAEB) and Nairobi City County. The Counties purposefully chosen to represent each of specified economic blocs included Trans Nzoia (NOREB), Kisumu (LREB), Mandera (FCDC), Makeni (SEKEB), Meru (Mt Kenya and Aberdares), Kwale (JKP), Narok (NAKAEB) and Nairobi (Nairobi City County).

In-depth interviews were conducted with representatives from various entities such as the Council of Governors (CoG), Sub-County Administrators, the County Assemblies Forum(CAF), County Directorates of Communication, and Non-Governmental Organizations. These participants were selected based on their roles in planning, coordinating, communicating, and monitoring public participation initiatives in respective counties.

Document analysis was instrumental in supplementing the study's data. Various documents were reviewed, including the Constitution of Kenya 2010, County Government Act 2012, Public Finance Management Act 2012, The public Procurement and Disposal Act of 2005, Policy Guidelines, County Public Participation Acts, Council of Governors(CoG) Reports, Independent Commissions Reports, as well as publications by Civil Society Organizations. As a result of in-depth interviews and comprehensive document review, the study was able to collect extensive data from diverse sources for data analysis whose findings are presented below.

## **VI. Key Findings.**

The aim of this study was to identify both opportunities and obstacles to public participation in devolved governments. Through document reviews and in-depth interviews, notable avenues for citizen engagement and hindrances to effective public participation were unveiled. The findings are organized into two sections: firstly highlighting numerous opportunities inherent in devolved governance, and secondly, outlining the challenges in organizing and implementing public participation initiatives.

### **6.1 Opportunities for Citizen Participation in County Governments.**

Fundamental to public participation is provision of opportunities for citizens to engage. The Constitution of Kenya 2010, County Government Act, 2012, Urban Areas and Cities Act 2011, policies enacted both at the national and county governments identify priority areas for citizen participation. The key areas include:

#### **6.1.1 Planning and Budgeting**

Public participation is mandatory when county governments are preparing development plans to fulfill Article 220(2) (a) of the Constitution. The Article states that, "National legislation shall prescribe the structure of the development plans and budgets of counties". County governments are therefore mandated to undertake elaborate and participatory planning processes. The CGA (section 115), and PFMA (section 207) require the public to be involved in designing County Integrated Development Plans (CIDPs).

The CIDP is 5-year plan informs the development vision of a county and identifies all development priorities and attendant strategies required to achieve the county's development agenda (CoG, 2017). They are equivalent of the Medium Term Plans (MTP) at the National level. Each of the 47 counties is expected to provide a platform for unifying planning; budgeting, financing programs, implementation and performance review (WB 2015). County Government Act under Section 108 highlights key components of a CIDP.

Apart from CIDPs, counties also develop County Sectoral Plans based on a 10 year plan put together by each county department. It provides the basis for budgeting and performance management. It is reviewed every five years and updated annually. County governments also develop Spatial Plans as provided for under Section 110 of the CGA. Spatial plans provide the social and economic development programme of the county land use for a period of 10 years. To implement these plans, counties develop Annual Development Plans (ADPs) which form the basis of budgeting for development projects (Tro'caire, Kenya 2019). Developing and implementing these plans require mandatory participation of citizens (TISA, 2020).

### **6.1.2 Elections**

Elections as a form of participation provide an opportunity to every citizen to exercise their political right to choose their leaders. Elections in Kenya are held pursuant to the CoK 2010, The Elections Act 2011; The Political Parties Act 2011; and The Independent Electoral and Boundaries Commission Act, 2011(Ongoya and Otieno, 2012). Kenya has held regular and periodic elections since independence in 1963. There have been thirteen elections in independent Kenya- in 1963, 1969, 1974, 1979, 1983, 1988, 1992, 1997, 2002, 2007, 2013, 2017 and 2022. County government elections are held at the same time as those for the president and the national assembly.

Citizens participating in an election, elects members of legislative assembly from each ward. They also elect the governor and deputy governor who head the executive arm of government (Wanyande and Mboya 2016). The mandate of these office holders is renewed every five years based on the extent to which they met the aspirations of the people. Apart from participating in elections, the electoral system also provides for every adult citizen to vote in a referendum. No referendum has been held in any county under the Constitution of Kenya 2010.

### **6.1.3 Public Finance Management.**

Public participation in financial management both at county and national level is guided by Article 201 of the Constitution and the Public Finance Management Act 2012. The CoK 2010 and the CGA 2012 provides mandatory extensive public participation in the management of public finances. Section 35(2) of PFMA obliges the Cabinet Secretary of the National Treasury to ensure public participation in the budget process. At the county level, Section 125(2) of PFMA obligates the County Executive (CEC) member for Finance to ensure there is public participation in the county planning and budgeting process. Further, Articles 221 and 232 require that public participation is integrated in budget making process. Citizens also participate in public finance management through various forms of social accountability, such as social audits, public expenditure tracking surveys and citizen report cards among others to monitor the social impact of public spending.

The nature of participation contemplated in the CGA 2012 is throughout the finance management process. The PFMA 2012 establishes the County Budget and Economic Forum as a platform for consultations by the county government on preparation of county plans, the County Fiscal Strategy Papers and Budget Review and Outlook Papers for the county. The forum also discusses matters related to budgeting, the economy and financial management at the county level. The membership for the this consultative body is drawn from organizations representing professionals, business, labour issues, women, persons with disabilities, the elderly and faith based groups at the county level. The public should thus lobby for inclusion or actively engage with these bodies to influence matters finance in their respective wards.

### **6.1.4 Public Procurement**

The Constitution of Kenya gives a lot of lee way for the public to determine how their taxes are used. Article 227 introduces principles when a state organ or public entities contracts for goods or services. The conditions for transactions include a system that is fair, equitable, transparent, competitive and cost effective (CoK, 2010). The public Procurement and Disposal Act of 2005 establishes procedures for efficient public procurement and for the disposal of unserviceable, obsolete or surplus stores, assets and equipment. It also guarantees fairness and integrity to processes of procurement. Since procurement involves substantial amounts of taxpayer's money, the people have a say on how the funds are applied. They need to satisfy themselves that the money is put to good use. This is realized when they take part and interact with public procurement systems. Ensuring easy access to relevant information on business opportunities in procurement is paramount if the public was to participate meaningfully.

### **6.1.5 Implementation and Delivery of County Public Services.**

The Constitution of Kenya 2010 and law contain multiple provisions that require the 47 county governments to consult citizens in planning and budgeting. The County Performance Management Framework (CPMF) detail mechanisms annual monitoring and evaluation of counties (CoG, 2017) The CGA 2012 calls for participation in integrated development planning and throughout the four stages of budget cycle, formulation, approval, implementation and oversight (WB 2015). The County Integrated Monitoring and Evaluation System (CIMES) provide a framework to evaluate projects, programmes and policies of CPMF against pre-set targets objectives.

The Monitoring and Evaluation reports are instruments that assist in counties' decision making. Each county government in collaboration with the office of public participation is required to supply detailed information on a regular basis to citizens about the way annual development plans are being implemented. The public engage simultaneously with the County Executive and the County Assembly through performance management and oversight (County Public Participation Guidelines 2016). Through quarterly implementation reports, counties are required to provide financial and non-financial information on their performance. When citizen participate in tracking the implementation of county programmes, they make their leaders accountable for the promises and resources received from the exchequer

### **6.1.6 Selection of Public Officers**

Public vetting is among the most revolutionary aspects of the Constitution of Kenya 2010. The concept of vetting widens democracy when citizens get involved in the appointment of individuals who will serve them. Vetting procedure is constitutionally mandatory for all persons appointed to cabinet positions at the national level and CECs at the county level before they can be sworn into office. Public vetting is intended to ensure most suitable candidates become public servants

Citizens participate directly in vetting through oral submission, sworn affidavits or written memoranda about the integrity and suitability of individual presented for various appointments by the governor. The County Assembly indirectly participates on behalf of the people by voting on the nominees presented to the house for consideration. During the vetting process Chapter Six lays out the leadership and integrity requirements expected of public officers. Emphasis is on Article 73(2) (a) that provides for the criteria of selecting public officers. The Public Officers Ethics Act, 2003(POEA), which is part of the Leadership and Integrity Act vide Section 6, emphasize the participation of the public in vetting public office holders(Nyotah, 2012).

### **6.1.7 Legislative Process**

The Constitution of Kenya requires county assemblies to involve the public in their legislative processes. County legislation is critical in the implementation of devolved functions. The county assemblies exist to make, amend or repeal the law (Kenya Law Reform Commission 2015). In respecting and upholding the constitution, executives at the county level, civil society organizations, the private sector, professional groups and any other person or entity engaged in the legislative process must ensure that the instrument in question(whether a policy, bill, order, or a set of rules or regulations), conforms to the letter and spirit of the constitution, respects the functional demarcations in the Fourth Schedule, respects the legislative competencies of state organs mandated to make laws, respects and upholds the Bill of Rights and fundamental freedoms and lastly upholds the values and principles of the constitution provide in Articles 10, 129, 174, 175, 201 and 232 (Kenya Law Reform Commission 2015).

### **6.1.8 County Referendum**

The County Government Act 2012 provides for county referenda. Section 70 states that a county government may have a local referendum in situations where a petition has been made and duly signed by at least 25 percent of the registered voters in that county. No county government has held a referendum so far. However there have been two referendums in the history of the republic of Kenya. The first referenda was held 21<sup>st</sup> November 2005 on proposed change to the constitution in a bill that was commonly referred to Waki Bill that ended up being rejected by 57 percent of the votes cast . The second time was 4<sup>th</sup> August 2010 for the current Constitution which was resoundingly endorsed by 67 percent of Kenyans. Though expensive, referendum remains the best process of upholding democracy in decision making.

### **6.1.9 Petitions**

The Constitution of Kenya in Article 37 give right to every person to peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities. Petition to County Assemblies (Procedures) Act of 2020 provide right to petition a county assembly and provide the procedure for the exercise of that right. The County Government Act, 2012(Section 15) gives every person a right to petition a county

assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation. Further CGA in Section 88 together with relevant standing order of county assembly assigns the people the right to petition the county government on any matter under its responsibility. Section 89 makes it a duty to county government authorities, agencies and agents to respond expeditiously to petitions and challenges from citizens. Importantly, section 90 of CGA allows conduct of a referendum on local issues such as county laws and petitions; or planning and investment decisions affecting the county for which a petition has been raised and duly signed by at least 25% of the registered voters. Most county governments in Kenya have provisions on petitions included in their various legislations on public participation.

## **6.2 Challenges to Effective Public Participation**

The constitution and the law obligate county governments to ensure they set in place structures and mechanisms for public participation. This implies setting up institutional structures and processes and also committing to those processes religiously by providing resources and legal backing. While many county governments continuously strive to effectively and meaningfully engage residents in decisions making, there are challenges that plague the processes. Interviews and document analysis birthed the following broad categorization of challenges and factors that constrict meaningful citizen engagements.

### **6.2.1 Financial Factors**

It is the duty of counties to facilitate public participation. Organizing participation initiatives require financial and human resources. Monetary costs include: staff expenses, allowance to participants, participant's expenses, training expenses, venue for hire, and other event costs like refreshments, equipment, literature and monitoring and evaluation fees. Non-financial costs include time and energy to organize participation. Most devolved units have limited budget for organizing participation initiatives (Greenberg and Mathoho, 2010). Inadequate funding for public participation and other financial and budgetary constraints reduces the frequency and quality of participation. Financial implication has a bearing on the availability of materials, documents and support for logistics for public participation.

For instance, participation meetings are mostly held at the sub county level as opposed to the ward or even village level disenfranchising section of communities who may lack the resources and time to attend such meeting held far away from their homes. Some of these venues are difficult to access or locate. It is also common to find meetings scheduled during working days- denying those who must eke a living to make a choice between the meetings and attending to personal business.

### **6.2.2 Social Factors**

The social factors that affect people's participation in governance processes are broad. Majority of citizens are unaware of their rights and responsibilities in participatory processes. It is the mandate of counties to carry out civic education. However, most civic education initiatives have been largely inadequate. There is a correlation between public participation and literacy background of the public. People with higher level of education participate more readily and actively than those with low education levels. Kenyans categorized as illiterate, particularly, from hardship areas and urban poor are a disadvantaged lot when it comes to participation. Other segments like special interest groups, minorities and marginalized lack proper representation on decision making table.

Lack of cooperation and competing interests among individuals and communities is to blame for dismal public participation in county affairs. Exclusionist tendencies that discourage the public to the point of giving up are common in most counties. Hostility towards those considered 'outsiders' by dominant indigenous population, negatively impacts participation (Kanyingi, 2014).

Most participation initiatives are poorly coordinated, and at times subject to parallel processes that often lead to contested outcome (World Bank, 2022). Most county public participation takes place as a formality of meeting the minimum required constitutional dictates (Judicial Review Miscellaneous Application 61 of 2014). Nyabuga (2018) says that some public participation initiatives seek public opinions without intention of making them count. These processes are a smokescreen to the law's spirit, only fashioned to meet the letter of the law. Participation as contemplated in the constitution and the law has not been effectively implemented. The inconsistency in applying best participation practices is the reason why counties have been inconsistent in promoting active civic engagement.

Additionally, some participation initiatives are poorly structured, inconsistent, and subject to corruption. Often, leaders resort to bribery to control sections of the population, which rendered genuine participation irrelevant. Shockingly, some members of the public also demanded payment before participating in these initiatives. The expectation of compensation for attending public participation events undermines the objective of promoting transparent and meaningful discussion and decision-making processes (Ministry of Devolution, 2016).



### **6.2.3 Cultural Factors**

Culture has different meanings for different people. Generally, it refers to the character of people who share a common history and perception of appropriate normative behaviours, values and beliefs (Glazer and Karpati, 2014). Cultural practices are very important element of any nation. A nation's cultural values represent desired principles that guide individual's behaviours, feelings, and thinking. Ultimately, public participation is rooted in positive cultural practice. However, retrogressive culture denies individuals and communities opportunity to influence governance decisions. For instance, there are communities in Kenya that don't allow women to speak in men's gathering. Discrimination is also common against people living with disabilities, youth and sexual orientation. The exclusion tendencies against these individuals and groups overly affect their involvement in governance affairs. Additionally, bureaucratic procedures and process involved in organizing participation can slow the pace at which citizens pursue critical issues, thereby affecting participation.

### **6.2.4 Political Factors**

Scholars also point to inequality between influential individuals and ordinary when making decisions. Politics negatively impact public participation processes in most counties. Politicians and their cronies, acting in their interests, often dominate meetings and conferences, relegating voices of common citizens to the periphery, and ultimately negating the principle of fair representation. Public participation is often conducted to legitimize decisions already made by politicians. Ronoh et al (2018) argues that participation in most counties often fall into the hands of a small and self-perpetuating clique, rendering the process to largely what elected and appointed officials think, say and do. The elites have also captured participation processes in some counties and thereby influencing direction of local decision making for their own benefit at the expense of the common good of the majority.

The leadership and organizers discriminate against those who didn't vote for them or those with contrary ideologies. The majority of those who participate in these initiatives are often rented and ferried to public forums to shout down their perceived political opponents. At the same time, some attend with an expectation of compensation which undermines the objectives of transparency and meaningful engagements (MoDP, 2016). In other cases, the process is often rushed as an attempt to fulfill statutory demands rather promoting genuine engagement (Mokku, 2018).

### **6.2.5 Behavioral Factors**

The public have a civic duty and responsibility to voluntarily attend participation forums. Attitude influences how citizens respond to public participation invites. Public participation in counties is hampered by lack of interest from government actors in creating meaningful spaces for participation. Nyabuga (2018) argues that where participation is cosmetic, and with no projected dividends, citizens will not want to be involved. Failure to implement citizens' proposals discourages many Kenyans from engaging in public participation processes. The public lose trust and get discouraged from future participation if there is no insurance to ideas contributed. It also creates a perception that their involvement in such events is not helpful to their situations. There are many incidences where the relationship between the county and citizens is strained particularly when the people feel the government does not understand their issues and not providing room in addressing their concerns.

### **6.2.6 Communication Factors**

Communication relevant for effective public participation is still a challenge. The Report on the Third Annual Devolution Conference in 2016, flagged ineffective communication initiatives are the reason for lack of optimal participation in county governance. For instance, newspapers and websites are preferred channels of communication yet inaccessible by majority of citizens. The organizers shift dates or venues without notifying or consulting citizens. They often fail to share in advance relevant information and documents about participation. Language and sometimes nature of documents for participation remain bulky and too technical for citizens to understand. Absence of documents in local languages impedes participation for those with difficulty reading English or Kiswahili.

### **6.2.7 Absence of Standard Meaning of Participation**

There are different views of what constitutes effective participation (Mbithi, 2018). Despite the importance of public participation, there remains controversy surrounding its meaning and forms. Adede (2017) argues that there is a lack of clarity on what constitutes adequate participation across different counties, and each county has its own methods, processes, and frameworks for citizen engagement that can be susceptible to manipulation (Muhia and Nganyi, 2020). The level and nature of citizen participation in both county and national governments have been deemed unsatisfactory by the Interrelations Government Transition Committee (IGRTC,

2019). Moreover, the interpretation by Kenyan courts regarding citizen participation lacks consistency, as each county has its own standards and frameworks.

## **VII. Conclusion**

The main goals of public participation are inform, engage, consult and empower the citizenry. Effective public participation in devolved governance implies that citizens are at the centre of planning and implementation of policies. Numerous participatory mechanisms across the full spectrum of governance and service delivery provide opportunities for citizens to express their needs priorities, and preferences regarding government decisions and actions. However, there also factors that hinder effective public participation. County governments are encouraged to develop interventions that incorporate the public's concerns into government and corporate decision-making.

## **VIII. Recommendations.**

Public participation as provided in the Constitution of Kenya 2010 grants every citizen an opportunity to actively involve themselves in matters that affect their lives and circumstances. Based on literature reviews and findings of this study, it is recommended that county governments and their agencies adhere to constitutional and legal requirements mandating citizen involvement in all decisions, following established standards, norms and best practices. To address obstacles to public participation, county governments should implement proactive corrective measures. Firstly, they must allocate sufficient resources to overcome financial constraints that often hinder participation. Secondly, counties should enhance civic education to foster a sense of civic responsible among citizens while acknowledging and respecting social and cultural diversities. Thirdly, counties should encourage citizen-driven assemblies to identify the needs and priorities of the people. Finally, counties should stimulate greater interest in participation through strategic planning and coordination of county communication, and ensuring professionalism in communication efforts.

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