

A Preliminary Comparative Study of Public Participation Acts in Kenya: A Case Study of Meru, Elgeyo/Marakwet & Machakos Counties

Jane Marine ¹

Abstract

The new Constitution of Kenya was promulgated on 27 August 2010.² This followed a twenty year struggle. At the centre of this struggle were questions about how Kenyans could participate in fully governing themselves at a more local level, thus moving away from a highly centralised system of governance to one that allows for greater participation at all levels.³

The new Constitution of Kenya upholds public participation as a national value and to ensure this. The First Schedule (Article 6(1) created 47 new counties.⁴ My research considers how the Constitution has been implemented in Kenya at the county level within the transition period of August 2010 to August 2015. One of my key research questions concerns the emerging public participation infrastructure.⁵ Given the development of various public participation models in Kenya⁶ my research reported here, compares the three public participation Acts of Meru, Elgeyo/ Marakwet and Machakos counties in order to determine which public participation models are emerging at the county level and how effective they are.

The fifth schedule of the Constitution called for laws concerning public participation to be enacted within three years .⁷ However as the 27 August 2015 deadline passed a significant number of public participation bills were to be enacted into law.⁸ In addition, a national public participation policy framework is yet to be developed. The need for a national policy is key as it defines and delimits the areas that the public participation law should be concerned with. The Kenya Law Reform Commission has developed a draft model public participation law that is meant to act as a guide for counties as they develop Public Participation Acts. Meanwhile, three key laws have been passed at the national level that

¹ **The author is a PhD candidate in Political Science at the University of Canterbury supervised by Assc. Prof Bronwyn Hayward and Prof Philip Joseph.**

² Constitution of Kenya, 2010

³ Ghai, Y. Analysis of Kenya's 2010 Proposed Constitution

⁴ Constitution of Kenya, 2010

⁵ Nabatchi, T., & Leighninger, M. (2015). Public participation for 21st century democracy.

⁶ Lukensmeyer, C. (2013). Bringing citizen voices to the table: A guide for public managers. San Francisco: Jossey-Bass

⁷ Constitution of Kenya, 2010

⁸ Constitutional crisis over timelines looms. (2015, August 15). Daily Nation.

provide for public participation. These are the Public Finance and Management Act, 2014, the County Government Act, 2012 and the Urban Areas and Cities Act, 2011.

The research reported here is drawn from my wider thesis which reviewed Public Participation Acts of the 47 counties in Kenya. The sample size is N=3 counties that have been purposively sampled as they are currently the only counties with public participation acts available on the Kenya law website.⁹

In conclusion this paper argues that at this five year anniversary of the implementation of the Constitution (also known as the end of the Transitional period) there is an urgent need to have a national policy on public participation that creates a national framework for public participation. The emerging public participation models identified in this paper are reflective of the diversity of Kenyan counties. However as other counties continue to draft and debate their public participation laws, a minimum standard of participation should be adhered to particularly on matters of financing public participation, so that upcoming public participation acts can advance public engagement, even with the knowledge that some county variation will inevitably occur.

Introduction

In this section I will examine the Public Participation Articles in the Constitution of Kenya. I will further review the three key laws that have been passed by the National Assembly that enable public participation namely the County Government Act, 2012 , the Urban Areas and Cities Act, 2011 and the Public Finance Management Act, 2014.

The Constitution of Kenya, 2010

The sovereignty and the supremacy of the Kenyan Constitution of 2010 (The Constitution) are outlined in Chapter One of the Constitution. ‘All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.’¹⁰ This reference to the people of Kenya upholds the principle of sovereignty of the people which is now constitutionally protected. The importance of participation by the people in governance is also signalled in the statement of national values and principles of governance in the Constitution which includes “patriotism, national unity, and the rule of law, democracy and participation of the people.” This statement in Article 10 reinforces participation of people in their governance as a key national value¹¹. The Constitution further states, in Article 197, that at the level of every County assembly, counties shall also “facilitate public participation and involvement in the legislative and other business of the assembly and its public participation and county assembly powers and privileges.”¹² Article 201(a) of the Constitution further elaborates that public participation will be key, guiding all aspects of public finance. The resolve of the Kenyan citizen to identify public participation as one of the key values in the new constitution from the national to county level and in wide ranging

⁹ <http://kenyalaw.org> retrieved 25th September 2015.

¹⁰ Constitution of Kenya ,2010 Article1 (1)

¹¹ Ibid

¹² Ibid

areas of public life, including finance arrangements was informed by a history of a highly centralised governance system that led to serious grievances about the way its citizenry had been excluded from the process of governance especially in matters of public finance at all levels.

The Fourth Schedule to the Constitution assigns counties the responsibility of ensuring that public participation is operationalised.¹³ The local communities as a result should have the necessary devolved framework for local participation in public decision making. The Constitution also imparts a great number of rights to Kenyans and requires significant responsibility to be undertaken by the citizen in ensuring that these rights are realised. Article 3 (1) for example, states that every person has an obligation to respect, uphold and defend this Constitution.¹⁴ The spirit of this Constitution requires the citizen to play an active role in ensuring the tenets of the Constitution are upheld. With regards to public participation the citizen has an expected role whether it is the submission of memorandum, oral submission on matters that concern the development of the county and country then it is a responsibility that has to be met.

The County Government Act, 2012

The County Government Act, 2012 provides that 'citizen participation' in county governments shall be based upon the following principles: timely access to information, data, documents, and other information relevant or related to policy formulation and implementation. 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, the protection and promotion of the interest and rights of minorities, marginalized groups and their access to relevant information.¹⁵

It further enables legal standing for interested or affected persons, organizations and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities, including women, the youth, and disadvantaged communities. The promotion of public-private partnerships, such as joint committees, technical teams and citizen commissions, to encourage direct dialogue and development are also possible under the Country Government Act . The law seeks the recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight.¹⁶

Section 115 of the same Act further provides that public participation in the county planning processes shall be mandatory and be facilitated. Mechanisms provided for in Part VIII of this Act; call for the provision to the public of clear and unambiguous information on any matter under consideration in the planning process, including— clear strategic environmental assessments, clear environmental impact assessment reports, expected development outcomes; and development options and their cost implications. Each county assembly shall also develop laws and regulations giving effect to the requirement for effective citizen

¹³ Ibid

¹⁴ Constitution of Kenya, 2010 Article 3 (1)

¹⁵ The County Government Act, 2012, Section 87

¹⁶ Ibid

participation in development planning and performance management within the county and such laws and guidelines shall adhere to minimum national requirements.¹⁷

County Governors are responsible for promoting and facilitating citizen participation in the development of policies and plans, delivering services, and for submitting an annual report to the county assembly on citizen participation in the affairs of the county government.¹⁸ The World Bank in partnership with the Kenya School of Government for example has developed a number of policy briefs that address public participation in Kenya these briefs include a breakdown of the legal framework for public participation and aim to inform the stakeholders.¹⁹

The Urban Areas and Cities Act, 2011

The Urban Areas and Cities Act 2011 is another important law which in part provides for the, principle of governance and participation of residents in urban areas and cities. Subsection 2 of the Act provides for citizen fora.²⁰ Further on in subsection 3 (c), it elaborates on the participation of the residents in urban areas.²¹ In subsection 11 (d) it provides a participation framework for the residents in particular local areas.²²

Schedule two also provides that the ‘A city or urban area shall develop a system of governance that encourages participation by residents in its affairs’²³ They are to also make sure that proper conditions for participation exist by ensuring a budget is prepared, a strategy is developed, an integrated plan is developed, performance management is reviewed and decisions regarding the delivery of service of participation in the urban areas and cities.²⁴

In the Urban Areas Act, like the County government Act, there is an acknowledgement that certain conditions are necessary for the implementation of public participation. Support for citizen’s engagement is crucial as public participation cannot take place in a vacuum and the necessary conditions need to exist to ensure that participation is supported. This particular act recognises that cities and urban areas will have unique circumstances and therefore differentiated from a county. These include challenges of communication, of rapid population change, and infrastructure needs, as well as local urban planning challenges.

The Public Finance Management Act, 2014.

The objective of this act as indicated in sub section 3(a) is to ensure that “public finances are managed at both the national and the county levels of government in accordance with the principles that are set out in the constitution.”²⁵ Subsection 3(b) identifies a second objective of “Public officers who are given responsibilities for managing the finances are

¹⁷ The County Government Act ,2012, section 115

¹⁸ The County Government Act ,2012, Section 30 &92

¹⁹ Basic Requirements for Public Participation in Kenya’s Legal Framework. Kenya School of Government& World Bank

²⁰ The Urban Areas and Cities Act, 2011: Section 2

²¹ The Urban Areas and Cities Act, 2011 Sub Section 3(c)

²² The Urban Areas and Cities Act, 2011 Sub Section 11(d)

²³ The Urban Areas and Cities Act, 2011 Schedule Two

²⁴ Ibid

²⁵ Public finance Management Amendment Act 2014:Sub Section 3(a)

accountable to the public for the management of those finances through parliament and County Assemblies. “²⁶The act indicates that the responsibility of the national assembly budget committee in public finance matters. It further spells out the responsibility of the national government with respect to the management and control of public finance. The county government has responsibilities with respect to the management and control of public finance. The act elaborates on the relationship between the respective roles of the national and county government on budget and economic matters.

For the purpose of this study discussion focusses on section 137 PFMA, 2014 Act that spells out the establishment of the County Budget and Economic Forums (CBEFs) for county budget consultation process.²⁷Section 137 2 elaborates on the membership of this forum, states the Governor shall be the chairperson, other members of the county executive committee, other number of representatives, not being county public officers equal to the number of executive committee members appointed by the Governor from persons representing professionals, business, labour issues, women, persons with disabilities, the elderly and faith based groups at the county level.²⁸

Sub Section 137 3 (a) further states that the purpose of the forum is to provide a means for consultation by the county government on the preparation of county plans, the county fiscal strategy paper, budget review and outlook paper for the county.²⁹ Sub Section 137 3 (b) includes matters relating to budget setting, the economy and financial management at the county level. All these consultations shall be in accordance to the consultation process provided in the law relating to the county governments.³⁰

In summary the Public Finance Management Act 2014 provides the framework for the county government’s responsibilities with respect to the management and control of public finance. The act elaborates on the relationship between the national and county government on budget and economic matters.

Role of the citizens, county and national level governments in public participation

The role of the county and the national government is more concrete. They are to facilitate public participation by creating legislation that leads to actual participation. As Justice G. V Odunga stated in the judgment delivered on Petition 532 of 2013 in the High Court of Nairobi, Kenya

“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 constitution dictates. It is in my view that it behoves the county assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively.”³¹

²⁶ Public finance Management Amendment Act 2014:Sub Section 3(b)

²⁷ Ibid Section 137

²⁸ Ibid Sub Section 137(2)

²⁹ Ibid Sub Section 137 3 (a)

³⁰ Ibid Sub Section 137 3 (b)

³¹ Petition 532 of 2013 in the High Court of Nairobi, Kenya

Citizen engagement in the governance process is achieved by having a diverse public participate in development at the county and the national level in a genuine and tangible manner. However as this review indicates, the legal opportunity to participate is only one part of the story as effective public participation also rests in ensuring funds are available at ground level to support citizens who want to engage in local decision making to ensure this participation is meaningful and can be sustained.

Despite legislative changes, which are significant, many of the challenges of the past seem to continue in terms of accountability of public officials for the usage of funds. With reports from the Auditor General of Kenya indicating that a significant number of counties in Kenya are not audit compliant.³² Inconsequential corresponding action is being taken by the county assemblies apart from demanding that the funds are accounted for. Public participation no matter how diverse remains a blunt instrument, if there is no accountability and transparency there can be no meaningful citizen participation. Therefore, with the lack of accountability and transparency it is clear that public participation is negated. Subsequently, public participation effectiveness hinges on accountability and transparency of leadership and funding as expounded in chapter six of the Constitution in all matters if the citizen is to play their constitutional envisioned role.³³

Methodology

The research sample was drawn from the 47 counties in Kenya who were expected to have developed public participation Acts in the 2010-2015 period. However only three counties had developed the laws in the transition period. The sample therefore was 3 out of a potential 47. All three counties are pioneers in enacting the public participation acts in the country. These public participation acts for Meru, Elgeyo/Marakwet and Machakos counties were purposively sampled as the counties that have first developed of public participation law at the local level. A content analysis was undertaken to generate the data that I have used for the preliminary comparative analysis. I will then examine the extent to which these case studies are similar.

County Public Participation Acts

³² Winsor, M. (2015, July 29). Kenya Government Corruption: State Budget Missing \$16B, 1 Percent Of Spending Is Lawful, Auditor General's Report Finds. International Business Times. <http://www.ibtimes.com/kenya-government-corruption-state-budget-missing-16b-1-percent-spending-lawful-2030056> Retrieved October 19, 2015

³³ Constitution of Kenya ,2010, Chapter 6 Article 73 2(d)

In the following section I will examine the public participation Acts of Elgeyo Marakwet, Meru and Machakos counties to identify the public participation models which are emerging in these three pioneering counties.

Elgeyo/ Marakwet Public Participation Act, 2014

Elgeyo Marakwet is located in the Rift Valley area of Kenya its capital is Iten the seat of the county government and the county has a population of 369,998.³⁴ The Elgeyo/Marakwet Public Participation Act, 2014 date of commencement was 30 June 2014.³⁵ This act gives effect to paragraph 14 of part 2 of the fourth schedule of the Constitution by establishing modalities and creating a platform for public participation in the governance of the county.³⁶ It creates a public participation office whose funding and expenses shall be provided by the county assembly.³⁷ The office of public participation has the following functions: establishing public participation structures, ensuring the inclusivity of public participation activities, informing the public on public participation processes including financial resources, timelines, establishing a feedback mechanism and any other public participation related function.³⁸

County Citizens' Participation Fora are to be set up under this Act and the public participation office is tasked to publicise and organize a citizen's participation forum every three months.³⁹ At the sub-county and city-urban areas, the office is required to convene a citizen's participations forum. At the ward and village level a ward or village administrator or member of the county assembly will initiate the citizen forums.

Citizen responsibility via public petition is key to the Act which states that petitions should be submitted to the county secretary.⁴⁰ These petitions, initiated by citizens are then forwarded to the county executive committee or the relevant body for consideration.⁴¹ The procedure of investigation is invested in a relevant body related to the petition, this might include the county executive or a committee appointed for a particular matter.⁴² The law requires the county secretary to communicate the decision to the petitioner within 14 days⁴³. The petitions are registered by the county secretary who has the task of maintaining a county register of petitions.

The Act makes clear financial provisions for public participation in Elgeyo Marakwet County sections 34 through to section 38 of the Act provide clear direction on the sourcing of funds,

³⁴ Elgeyo Marakwet. (n.d.). Retrieved August 2, 2015, from <http://www.transauthority.go.ke/index.php/counties/riftvalley/247-elgeyo-marakwet>

³⁵ Elgeyo/ Marakwet Public Participation Act, 2014

³⁶ Constitution of Kenya ,2010

³⁷ Elgeyo/ Marakwet Public Participation Act, 2014, Section 5

³⁸ Elgeyo/ Marakwet Public Participation Act, 2014, Section 8

³⁹ Elgeyo/ Marakwet Public Participation Act, 2014, Section 23

⁴⁰ Elgeyo/ Marakwet Public Participation Act, 2014 Section 27

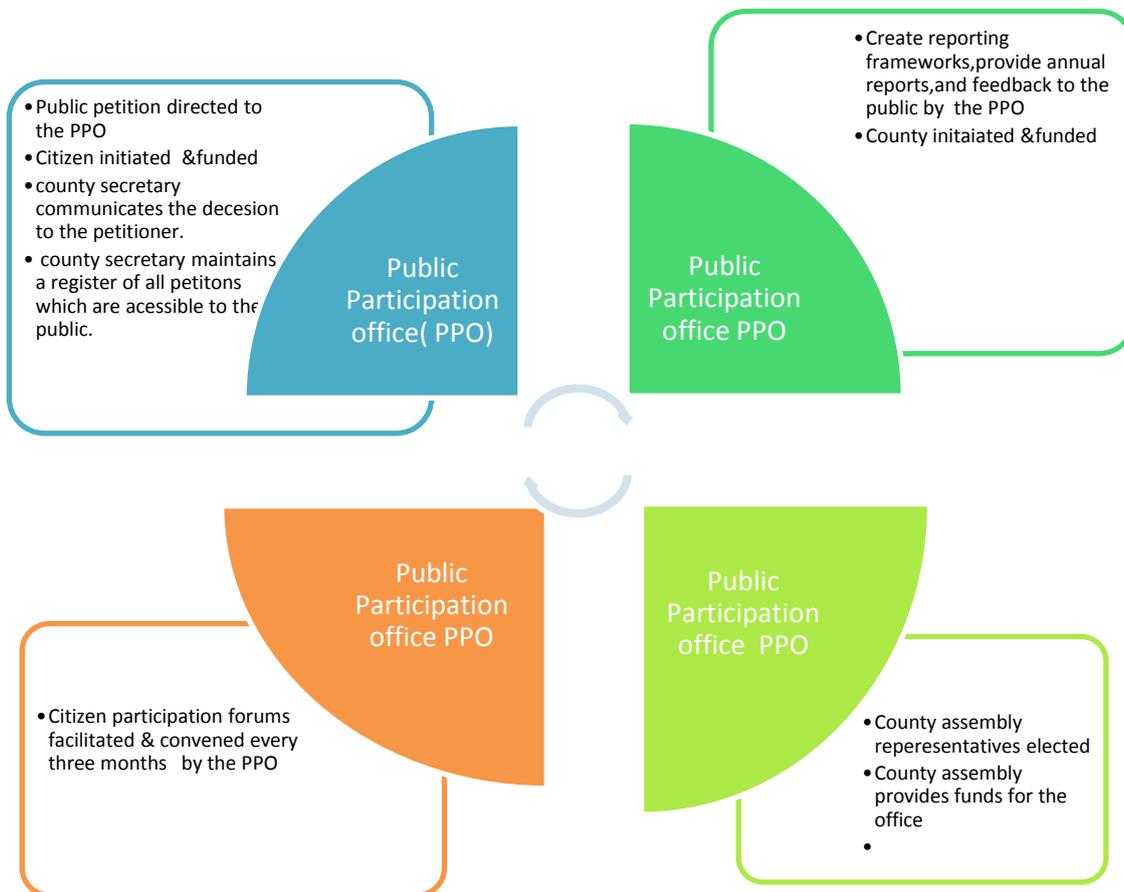
⁴¹ Elgeyo/ Marakwet Public Participation Act, 2014 Section 28

⁴² Elgeyo/ Marakwet Public Participation Act, 2014 Section 29

⁴³ Elgeyo/ Marakwet Public Participation Act, 2014 Section 30

budget making, borrowing capabilities for the office, the accounting required of the office and Auditing. At the end of the year an annual report shall be undertaken of the financial and a description of the activities of the public participation office.

Elgeyo Marakwet Public participation Model.



Meru County Public Participation Act, 2014

Meru County is located on the eastern side of Mt Kenya covering 6,936 square kilometres. Meru County Public Participation Act 2014 and its date of commencement was 19 September, 2014.⁴⁴The purpose of the act is to facilitate public participation as set out in the Constitution and give effect of the public participation framework under the County Governments Act, 2012, the Public Financial Management Act 2014 and the Urban Areas and Cities Act 2011.⁴⁵

A clear definition of public participation is provided for in the Meru County Act in Section two which states that public participation, “includes the process and the methods designed to consult, involve and inform the public so that they may have some form of input in the process of decision making and governance.”⁴⁶

The provisions of public petition in Meru are also outlined in the Meru County Act, which include the procedure, the consideration of the petition, and the process of publication of decisions and how the petitions shall be registered. The act provides for the establishment of a public participation office and outlines its functions (which includes the support of the county assembly and reporting on public participation⁴⁷).

⁴⁴ . Meru County Public Participation Act 2014

⁴⁵ . Meru County Public Participation Act 2014: Section 3

⁴⁶ . Meru County Public Participation Act 2014

⁴⁷ . Meru County Public Participation Act 2014

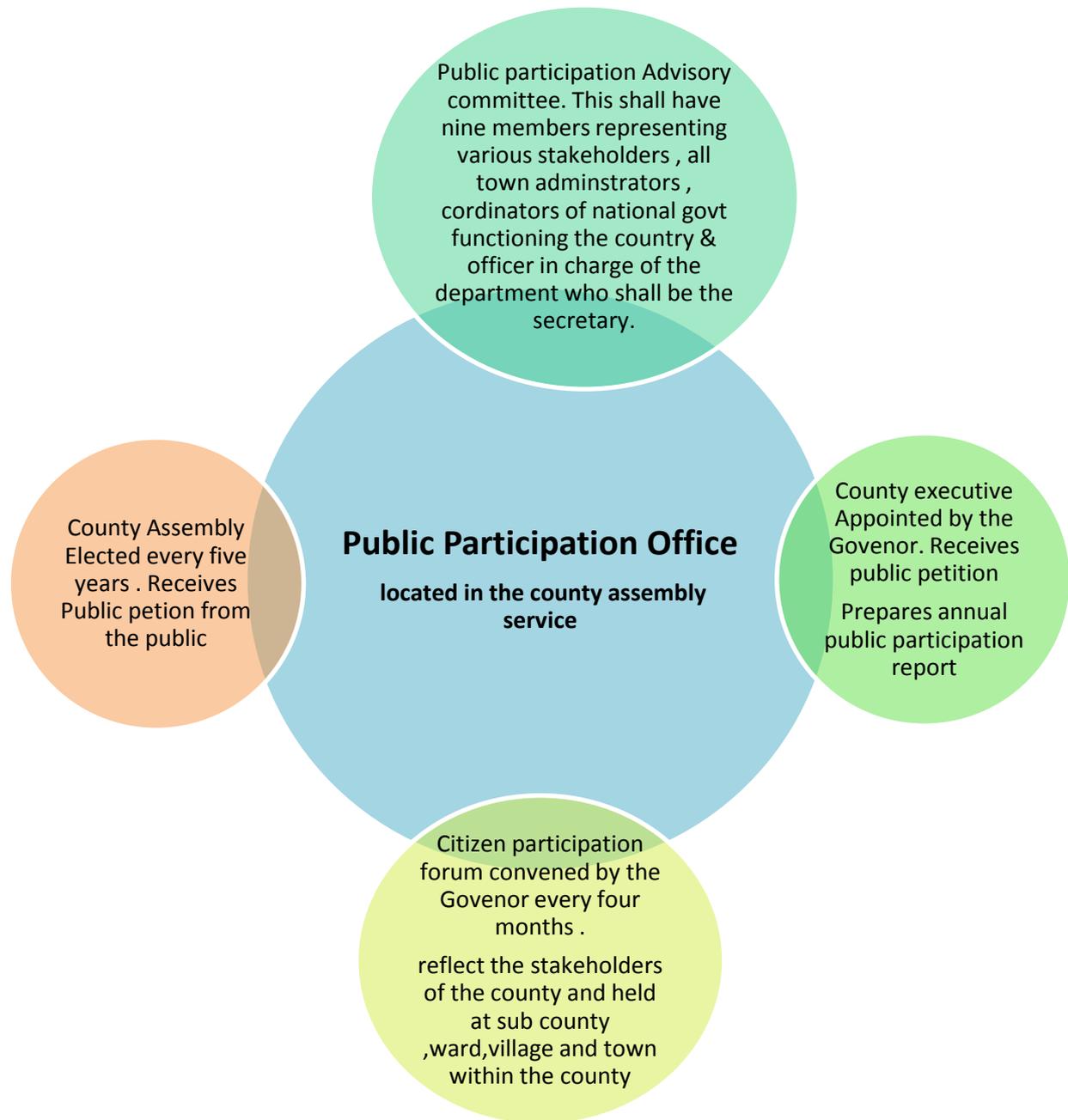


Figure 2

Public Participation model of Meru County .

Machakos County Public Participation Act, 2014.

The Machakos County Public Participation Act, 2014 was enacted on 29 December 2014. This Act provides a definition of terms including “public”, when used in relation to public participation. In this act it means, the residents of the County, rate payers, and resident civic organisation or non- governmental private sector or labour organisation with an interest in the governance of the county and a non-resident person who because of their temporary .⁴⁸ Furthermore, public participation is defined as “an open democratic and accountable process of engaging a representative sector of the public in formulating policies and developing laws that affect them.”⁴⁹

Section 3 of the Act states that its purpose is “to establish a legislative framework to give effect to Articles 1, 10(2) 118,119,174 and 232 (1) (d) and paragraph 14 of Part 2 of the fourth schedule of the Constitution.”⁵⁰ The Act will be guided by the following principles: public petition, consultation of communities, organisations and citizens affected by any policy decision and access to information so as to ensure meaningful participation.⁵¹

Petitions to the Machakos County governments are submitted to the county secretary, then to the county executive committee. Financial provision Section 5 (1) d provides guidelines for measures that ensure adequate financial resources are matched to public participation.⁵² A reporting framework and feedback to the citizens is set up with the proposed model- public participation to be carried out through public consultative meetings, annual citizen fora. Public participation is to be carried out within the laid down county governments structures and offices.

Despite these significant legal provisions, there are many significant practical barriers to achieving full participation under this legislation. In particular the Governor of Machakos has noted that “unemployment and public participation are two of the challenges that Machakos County faces”.⁵³ This is an important observation by this particular Governor who has acknowledged that public participation is a challenge and perhaps has a direct relationship with unemployment. This observation and raises the following question, to what extent can citizens participate in governance effectively if their basic needs are not yet met? Despite legal provisions, how can meaningful participation be achieved in practice under conditions of income insecurity or inequality?

⁴⁸ Machakos County Public Participation Act, 2014, Section 2.

⁴⁹ Ibid

⁵⁰ Machakos County Public Participation Act, 2014 Section 3.

⁵¹ Machakos County Public Participation Act, 2014 Section 4.

⁵² Machakos County Public Participation Act, 2014 Section 5.

⁵³ Citizen Kenya (2015, June 24) “Dr.Mutua: Lack of public participation and unemployment are currently our main challenges in Machakos “ #Cheche [Tweet] retrieved from <https://twitter.com/search?q=public%20participation%20machakos%20&src=typd> on July 1st 2015

In summary I describe this model below of public participation in Machakos County figure 3.

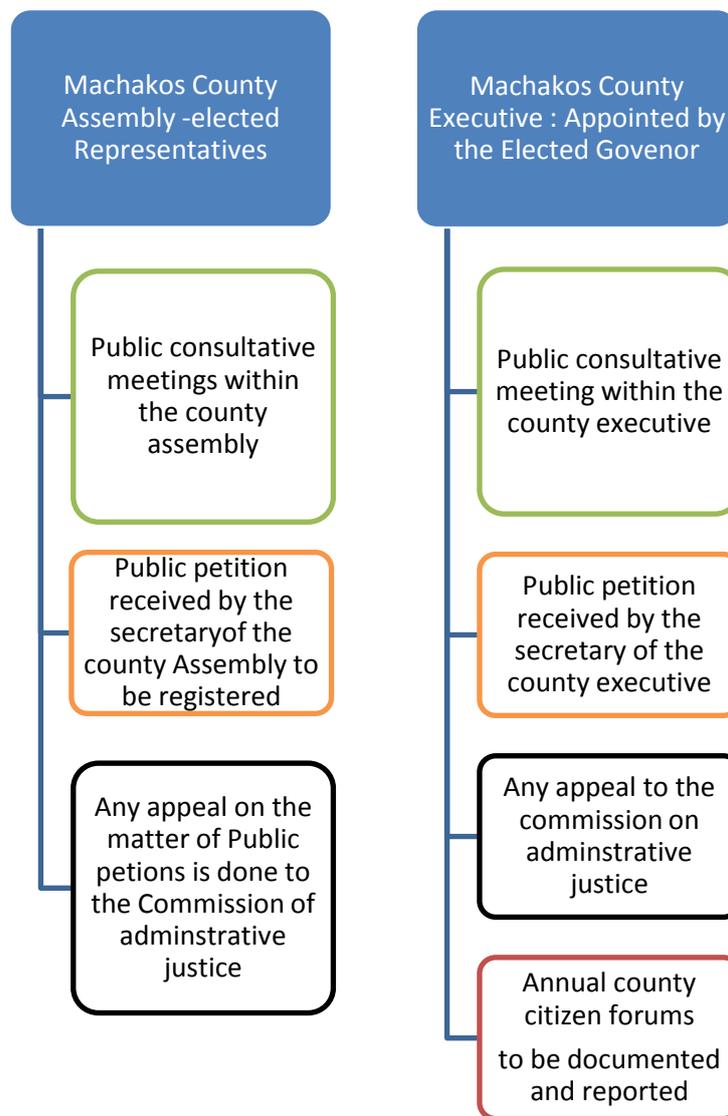


Figure 3

Discussion

All these three Acts have been passed within the five year transitional period and are designed to achieve public participation at county level. These counties have decided to develop public participation laws without the guide of a national policy framework on public participation. This is in spite of an ongoing process of facilitating the development of a National Public Participation Framework which was been led by a joint steering committee of the Transitional Authority together with the Office of the Attorney-General and Department of Justice, the Constitution Implementation Commission, the Kenya Law Reform Commission, the Ministry of Devolution and Planning, Uraia trust, and Amekeni wa Kenya. The Transitional authority, the Ministry of devolution and planning and stake

holders are developing public participation guidelines.⁵⁴ This move although positive in some aspects creates future potential problems as a policy framework would create clear standards of expected practise. The development of only three Acts also reflects the rate of work of the county assemblies which is considerably slow and possibly reflects a lack of capacity in law making at the county level.⁵⁵

Definition of public participation

Each of the three public participation acts provide for a definition of public participation, however the point of departure is that of confining the definition of “public” to sector representatives (which act?) while others refer to the general citizenry (name other two in brackets here). This difference speaks directly to Article 1 (2) of the Constitution of Kenya that states that the people may exercise their sovereign power either directly or through their democratically elected representatives.⁵⁶ This is where the National Public participation framework will be useful if it provides a clear definition that is utilised in the development of future

Creation of public participation “Space”

The three acts also differ in the institutional support that is offered to ensure meaningful participation can occur. An office/ department of public participation is created in Meru and Elgeyo Marakwet counties. The Elgeyo Marakwet model has the public participation office as the centre of the public participation activities. In Meru County the public participation office is located within the county assembly service. Furthermore, a county Public Participation Advisory Committee is created. However in Machakos, public participation is to be carried out within the existing county government structures and offices in the county assembly and county executive.

While Public petition is provided for in all the public participation acts and Citizen fora are also provided for under all the acts, the way forums are used to listen to public petitions, varies. The challenge for example is that is that forums are conceived as annual activity in Machakos County and a quarterly activity in Meru and Elgeyo counties. The more regular forum timing makes it possible for larger numbers of people to engage.

Reporting

Reporting and evaluation of public participation is provided for in all the Acts. This is key as it allows for documentation of the public participation process, learning and informing future decision-making.

Budgetary implications of public participation

⁵⁴ This is ongoing although the term of the Transition Authority and the Constitution Implementation Commission have expired before the finalisation of the National Framework on Public Participation.

⁵⁵ ODUNGA, D. (2015, June 4). Laws passed by most counties are unconstitutional, say senators. Daily Nation. <http://www.nation.co.ke/counties/Counties-slow-law-making/-/1107872/2739220/-/40e9evz/-/index.html> Retrieved October 20, 2015.

⁵⁶ Constitution of Kenya, 2010 Article 1 (2)

Elgeyo Marakwet has clear financial provisions for public participation. However Meru and Machakos place the budgetary implications of public participation under normal budget operations. This is unlike the model public participation law proposes. This proposed model law by the Kenya law reform commission envisions a role for all levels of county government in the implementation of public participation. In terms of budget it proposes that up to 1% of the county budget should be for the exclusive use of public participation nevertheless none of the three counties have taken up this proposal.

Principles of Public Participation

The three Acts provide for some form of guidelines on how public participation will be implemented. Machakos County in the First Schedule presents a 'conduct of Public consultative meetings' of sixteen points. Elgeyo Marakwet presents in the First schedule what is referred to as public participation guidelines' with fourteen points and the Meru County Act list in Section 4 "principles that shall guide public participation 'which consists of eleven points. According to (Nabatchi & Leighninger 2015) various organisations and alliances have proposed principles for public participation.⁵⁷ These include the International association of public participation, the Working Group of Legal Frameworks for Participation in the international and American Contexts. The three sets of principles in the three county share significantly similarities and are all in agreement with the following aspirations , the need for a timeframe for public participation, meaningful dialogue and consultation, inclusiveness and access and the need to provide for information prior to the public participation activity.

Sustainability

The sustainability of public participation will be highly dependent on a number of factors. Key is the budgetary allocation to public participation and the model that is adopted. Is the model sustainable? The multiple of functions as seen in the Meru Public Participation role in the process suggests that this particular model might face challenges in sustainability it is paradoxically the model that most closely reflects the aspiration of public participation in the Constitution.

Access to information

The three Acts emphasize the need for access to information as provided for in the Constitution.⁵⁸ This timely access to information is intended to lead to greater and more meaningful participation.

With only three county public participations laws out of a possible forty seven in place three months before the end of the transitional period in August 2015 .The implementation of schedule five concerning public participation is not on schedule thus creating an atmosphere where citizen voice cannot be fully expressed in the governance process.

⁵⁷ Nabatchi, T., & Leighninger, M. (2015). Public participation for 21st century democracy.

⁵⁸ Constitution of Kenya ,2010 Article 35

Machakos county is a sector representative model of public participation however the Act also seems to be aware of the possible tensions between representative and participatory democracy and chooses this model as a more efficient model of doing the business of participation perhaps reflecting on the County motto of “Maendeleo Chap Chap” which can be translated as “faster Development”. Conversely Meru County presents a dual system of sector representation in public participation and the individual member of the public petitioning directly to the county executive and assembly. Elgeyo /Marakwet model is focused on a more participatory model at the different levels.

With no common definition in the various Acts and in the Constitution the standard of what is imagined as public participation then what we have is a situation of local variation of definition. Matters like who is responsible for the finances and definition for terms like “publicize” are not made and this also concerns matters around sufficient notice to the citizens in the public participation process.

Emerging models of public participation are varied according to (Johnson and Gastil, 2015) “it is easier to find examples of certain models of empowered public deliberation than others, suggesting the emergence of clustering around certain models”.⁵⁹ This will require a larger sample of the forty seven counties to see the emerging overall trends. However, this preliminary comparative case study examination of the three counties indicates that the model that creates a centralised office to deal with public participation is a preferred model of public participation in Kenya.

Conclusion

This discussion on county public participation acts is at the onset and this particular paper attempts to begin this discussion. As the other counties draft and adopt public participation law, the public participation infrastructure that will be created will open further avenues for discussion. The need for a national public participation policy remains. This review of the three counties with the most advanced participation law across all 47 counties reveals significant variation in the extent to which participation is meaningful. A national Framework and guidelines for participation are needed to further the means of comparison and the possibility of identifying nationwide best practice models of public participation. As more is known about models of participation in practice, then a better understanding will develop as to why one model of participation might be preferred over another.

⁵⁹ Johnson, Carolina and Gastil, John (2015) "Variations of Institutional Design for Empowered Deliberation," Journal of Public Deliberation: Vol. 11: Iss. 1, Article 2.

References

Legislation

Constitution of Kenya, 2010, Government Printers, retrieved from <http://kenyalaw.org> on 28th January 2014

Elgeyo/ Marakwet Public Participation Act, 2014, Government Printers, retrieved from <http://kenyalaw.org> on 25 September 2015

Machakos County Public Participation Act, 2014, Government Printers, retrieved from <http://kenyalaw.org> on 25 September 2015

Meru County Public Participation Act, 2014, Government Printers, retrieved from <http://kenyalaw.org> on 25 September 2015

The County Government Act, 2012, Government Printers, retrieved from <http://kenyalaw.org> on 25 September 2015

Public Finance Management Amendment Act 2014, Government Printers, retrieved from <http://kenyalaw.org> on 25 September 2015

The Urban Areas and Cities Act, 2011, Government printers, retrieved from <http://kenyalaw.org> on 25 September 2015

Cases

Robert Gakuru & Others Vs Governor Kiambu county & 3 others. Petition 532 of 2013 in the High Court of Nairobi, Kenya retrieved from <http://kenyalaw.org/case-law/cases/view/92660/>

Books and Articles

Odunga, D. (2015, June 4). Laws passed by most counties are unconstitutional, say senators. Daily Nation. <http://www.nation.co.ke/counties/Counties-slow-law-making/-/1107872/2739220/-/40e9evz/-/index.html> Retrieved October 20, 2015.

Eisenhardt, K.M. (1989): Building theories from case study research. In: The Academy of Management Review, no. 4, pp. 532-550

Edwards, A. (2012). Tensions and New Connections between Participatory and Representative Democracy in Local Governance. In L. Schaap & H. Daemen (Eds.), *Renewal*

Proceedings of the 38th AFSAAP Conference: 21st Century Tensions and Transformation in Africa, Deakin University, 28th-30th October, 2015 (Published February 2016)

in *European Local Democracies: Puzzles, Dilemmas and Options* (Vol. 13, pp. 55 -78). Springer VS.

Fung, A. (2006). Varieties of Participation in Complex Governance. *Public Administration Review*, 66, 66-75.

Fung, A. (2013). Chapter 11. The Principle of Affected Interests: An Interpretation and Defense. *Representation Elections and Beyond*.

Ghai, Y. Analysis of Kenya's 2010 Proposed Constitution, Katiba Institute Archives

Johnson, Carolina and Gastil, John (2015) "Variations of Institutional Design for Empowered Deliberation," *Journal of Public Deliberation*: Vol. 11: Iss. 1, Article 2.

Mwenda, A., 2010. Introduction in *Devolution in Kenya: Prospects, Challenges and Future*. Nairobi: Institute of Economic Affairs. IEA Research Paper Series No. 24, Pp. 8-13 [Online] Available at http://www.ieakenya.or.ke/publications/cat_view/1-publications/4-research-papers?start=5

Nabatchi, T., & Leighninger, M. (2015). *Public participation for 21st century democracy*. Hoboken, New Jersey: John Wiley & Sons, Inc.

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