



KILIFI COUNTY GOVERNANCE/ PUBLIC POLICY BRIEF 2023



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Building Alliances Better Lives

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ACKNOWLEDGEMENT

This Policy Brief is an important tool contributing to the governance and public participation of Kilifi County. The Kilifi County Civil Society Network will use the document to engage the government as a reference on the gaps as well as recommendations regarding Public participation within the County.

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We thank the PEN team and its partners, particularly Civic Freedoms Forum (CFF) for facilitating the conceptualization, reviewing, and overall coordination of this policy brief. This collective effort will go a long way in improving the engagement between civil society and county governments for improved delivery of services at the county level, meaningful citizen and civil society participation in governance, and a more enabling environment for civil society operations.

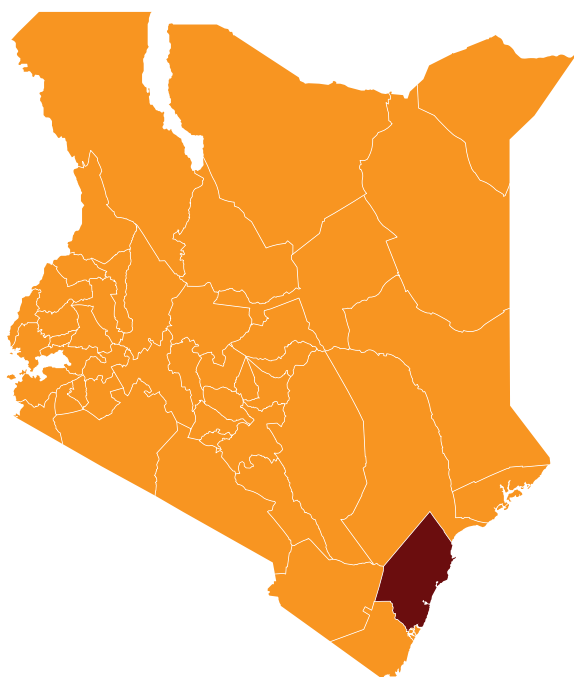
EXECUTIVE SUMMARY

The main aim of this policy brief is to inform Kilifi County CSO Network's engagement with the duty bearers, including the county government and other stakeholders, on public participation. Specifically, the Policy briefs mainly cover context and problem analysis; key priority laws and policies, including opportunities and gaps; and key recommendations for advocacy actions at the county level.

The process of developing the policy brief involved: the selection of county-based consultants by the CSO networks; consultation with members of the CSO networks; validation forum for county stakeholders (including county government officers); and consultation with the PEN and CFF team.

The policy brief identifies legal and policy gaps in several policies including the Public Participation and Civic Education Act of 2022, the Public Finance Management Act of 2012, County Government Act among others. While some gaps are administrative in nature, that is they require governance related actions to address, others are legislative and require actions by the County government and CSOs. Some of the gaps include Constrained resources; Inadequate accountability measures; Inadequate legislation; Inadequate citizen Awareness; and a Lack of framework for feedback mechanisms.

The brief also identifies selected recommendations and advocacy opportunities at the county level namely: Increase the provision of resources to county governments; Advocate for Kilifi County to adopt an Open Governance Partnership (OGP); Development of the Kilifi County public participation and civic education policy; Increase public participation by utilizing participatory budgeting tools; Increase the allocation of resources for public finance management; Increase awareness through targeted communication and outreach initiatives; Ensure that marginalized groups are included in decision-making; and Establish a robust feedback mechanism through amendment of the Act or development of regulations.



GENERAL COUNTY INFORMATION

Kenya has 47 counties and Kilifi is among the six counties in Kenya's coastal region. It covers an area measuring 12,370.8Km². The county comprises seven administrative sub-counties: Kilifi South, Kilifi North, Ganze, Malindi, Magarini, Kaloleni, and Rabai. It has thirty-five (35) devolved political units (Wards). Tana River borders it to the north, Taita Taveta to the west, and Mombasa, and Kwale to the South.

The total population is 1,453,787, of which 704,089 are males, 749,673 are females and 25 are intersex persons. There are 298,472 households, with 4.4 persons per household on average, and a population density of 116 people per square kilometer.

BACKGROUND & CONTEXT



In recent years, there has been a growing concern about the state of public participation, access to information, and state accountability in Kilifi County. Citizens and civil society organizations (CSOs) have been actively engaged in advocating for greater transparency, accountability, and citizen participation in decision-making processes. Public participation is recognized as a fundamental component of good governance and democracy. It is an essential process that enables citizens to participate in decision-making processes that affect their lives. The Constitution of Kenya (2010) provides for public participation in governance and development processes. In 2020 the County Government of Kilifi passed the Public Participation and Civic Education Act and draft policy in place awaiting finalization.

State accountability is the obligation of the state to account to citizens for its actions and decisions. Transparency and Accountability procedures are established in Kilifi County under the Kenyan Constitution (2010), the County Government Act (2012), and the Public Financial Management Act (2012). These statutes establish the County Assembly, the Office of the Auditor General, the Office of the Controller of Budget, Constitutional commissions, the Senate, and the Public Procurement Oversight Authority to oversee county governments. Access to information is also critical for fostering transparency, accountability and enabling the citizen to participate effectively in governance and decision-making processes. The right to information is guaranteed under the Kenyan Constitution (2010), and the Access to Information Act (2016) makes it a reality. The Act specifies processes for the disclosure of information held by public institutions and encourages proactive information disclosure.

The County Government of Kilifi has worked to encourage public participation by promoting access to information. To convey information to citizens, the County Government, for example, has built a website and social media channels. The website contains information on county government projects, documents, tenders, and job openings. Social media platforms are utilized to engage citizens and foster discourse on a variety of topics impacting the county. In terms of accountability, Kilifi County works closely with the Office of the Auditor-General, which is responsible for auditing and reporting on the financial management and performance of the county government. The county government has also established an office for the Ethics and Anti-Corruption Commission (EACC), which is in charge of investigating and prosecuting cases of corruption and other unethical conduct. Furthermore, the Kilifi County Assembly plays an important role in ensuring accountability by giving supervision over the county government's activities. The assembly holds regular hearings and investigations into the county government's operations, evaluates and approves the county's budget, and serves as a forum for public participation.

In Kilifi County, there are several mechanisms through which citizens and civil society organizations (CSOs) can engage with the County Government to promote access to information and accountability. The County Assembly is one of the key mechanisms for citizen engagement. The County Assembly serves as a forum for individuals and civil society organizations to interact with elected officials and hold them accountable. The County Assembly also supervises the County Executive and ensures that public enterprises follow legal and regulatory requirements, such as access to information.

Kilifi CSOs have been actively advocating for openness and accountability in County Government. For example, several organizations have lobbied for reforms to increase transparency and accountability by supporting community members to submit memorandums on a variety of issues. Public involvement forums are another method for engaging citizens. Additionally, CSOs have been instrumental in the formulation of Ward development committees (WDCs) to increase community participation and engagement in development projects. WDCs have been holding public participation sessions to consult with citizens on development projects in their wards. The County Government is also required to post notifications of public participation meetings in the county's official gazette and on its website. However, despite these efforts, inadequate capacity among individuals to engage effectively in decision-making processes remains a significant challenge. The timing of public involvement sessions during working hours further hinders citizen participation.

Therefore, the priority issue for advocacy in Kilifi County is to raise awareness and build capacity among citizens to engage effectively in decision-making processes. This can be achieved through targeted public education campaigns and ensuring public involvement sessions are held at convenient times for residents. By addressing these issues, Kilifi County can achieve greater transparency, accountability, and citizen participation in governance and decision-making processes. Additionally, advocate for a robust feedback mechanism through amendment of the Public participation Act as well as the development of regulations

LEGAL FRAMEWORK ON PUBLIC PARTICIPATION



The Constitution of Kenya 2010

Kenya's 2010 Constitution established a new governance structure to transform the country's political, social, and economic landscape. The Constitution altered the relationship between the state and its residents, putting citizens at the center of governance and supporting a more participatory and accountable governance system. It also establishes a two-tiered governance system with the national government and 47 county administrations. County governments are in charge of a variety of public services, such as healthcare, education, water, and sanitation, while the national government is in charge of national security, foreign affairs, and macroeconomic policy.

Additionally, The Constitution also guarantees the protection of essential human rights and liberties, such as the right to life, equality, and freedom from discrimination. The Judiciary is established in the Constitution as an independent branch of government tasked with preserving the rule of law and protecting citizens' rights and liberties.

Further Article 10(1), provides the National Values and Principles of Governance binding all state organs, state officers, public officers, and all persons whenever any of them: a. applies or interprets the Constitution; b. enacts, applies, or interprets any law; or c. makes or implements public policy decisions.

National Values and Principles of Governance:



a. Patriotism, National Unity, Sharing and Devolution of power, The rule of law, Democracy, Participation of the people



b. Human dignity, Equity, Social justice, Inclusiveness, Equality, Human rights, Non-discrimination, Protection of the marginalized



c. Good governance, Integrity, Transparency, Accountability



d. Sustainable development.

Source: constitution of Kenya Article 10 (2)



County Governments Act.

The County Governments Act is a Kenyan law passed in 2012 that establishes the legal basis for the formation and administration of county governments. The statute defines county governments' tasks and responsibilities, including their powers, operations, and organization. The County Governments Act establishes a two-tiered governance system in Kenya, with national and county administrations. The statute creates a separate county government with its own executive, legislative, and administrative systems. The county government oversees several services, including health, education, water and sanitation, agriculture, infrastructure, and social services.

This statute establishes the county government's organization, which includes the county executive, county assembly, and county public service. The county executive is made up of the governor, deputy governor, and county executive committee members (CECMs), who oversee implementation of County Policies and Initiatives. More specifically the act highlights the principles of citizen participation in county governments which includes "timely access to information, reasonable access to policy formulation and implementation, protection of minority rights, legal standing to appeal decisions, balanced roles of government and non-state actors, and recognition of reciprocal roles". These principles aim to promote shared responsibility and partnership, encourage direct dialogue, and promote sustainable development. Special emphasis is placed on the rights of traditionally marginalized communities such as women, youth, and disadvantaged groups. The county assembly is the county government's legislative arm, responsible for passing county laws and overseeing the county executive. The county public service oversees managing and delivering county services.



Some of the key gaps for public participation at the county level include:

- **Constrained resources:** Kilifi County has limited resources to adequately implement the act's provisions. Advocacy can help to increase the provision of resources to county governments, such as staffing, training, and infrastructure.
- **Inadequate accountability measures:** While the act offers a legal framework for county monitoring, there may be insufficient accountability procedures in place to ensure that county administrations are transparent and responsible. Development of public participation regulations will strengthen accountability measures such as audits, financial reporting and public monitoring.
- **Insufficient laws:** The County Governments Act is not comprehensive, and there are loopholes in the legislation, leading to discrepancies and conflicts in the law's interpretation and execution. Advocacy can encourage the creation of new legislation or revisions to existing laws to fill gaps or inconsistencies in the law.



Public Finance Management Act

The Kilifi County Public Finance Management Act, enacted in 2015, governs the management of the county's public finances. The act is consistent with the Public Financial Management Act (PFMA) of 2012, which establishes the legislative framework for the management of Kenya's public finances. The Kilifi County Public Finance Management Act defines the roles and responsibilities of the various actors involved in the county's public finance management, including the County Executive Committee Member (CECM) responsible for finance, the County Assembly, the Controller of Budget, and the Auditor General. Further, Section 137 of the Public Finance Management Act in Kenya mandates the establishment of a County Budget and Economic Forum (CBEF) to facilitate consultation and consensus-building among stakeholders in the county's budget process.

The CBEF has the power to review, recommend, and monitor the county's budget and economic policies, ensuring transparency and accountability in the process. The statute also specifies budget preparation, approval, and implementation procedures, as well as reporting and auditing obligations as highlighted under sections 35-45 of the national budget-making process and sections 136-146 of the county budget-making process. The emphasis on public participation in the budget process is one of the primary elements of the Kilifi County Public Financial Management Act. The County Executive is required by law to prepare a budget policy statement, which is made accessible to the public for review and comment. Before passing the budget, the County Assembly must have public hearings on it. This is consistent with Kenya's Constitution, which emphasizes the importance of citizen engagement in governance. The act also specifies the procedures for financial reporting and auditing, such as financial statement preparation and the appointment of external

auditors. The Auditor General is responsible for auditing the county government's financial statements and reporting any anomalies or misappropriation of public monies.



Some of the key gaps for public participation at the county level include:

- **Many residents and civil society organizations may be unaware of the terms of the Kilifi County Public Financial Management Act**, as well as their legal rights and obligations. Public participation can serve to increase awareness and understanding of the act, as well as the necessity of public engagement in the budget process.
- **While the legislation highlights the need for public participation in the budget process, citizens have limited opportunities to participate effectively in this process.** Public participation can increase public participation by utilizing participatory budgeting and other techniques for citizen engagement.
- **Inadequate accountability measures:** Despite the act's legislative framework, there are ineffective accountability procedures in place to guarantee that public monies are spent properly and efficiently. Advocacy can help to strengthen accountability measures such as audits, financial reporting, and public monitoring.
- **Inadequate resources:** Kilifi County, like many other counties in Kenya, has limited resources to adequately implement the provisions of the act. Advocacy can help to increase the allocation of resources for public finance management, such as staffing, training, and infrastructure.
- **Inadequate civic education:** Many voters have limited skills and information necessary to participate successfully in the budget process or to hold public authorities accountable for the use of public funds. Public participation can help to increase civic education and training, allowing citizens to take a more active role in the management of public finances.



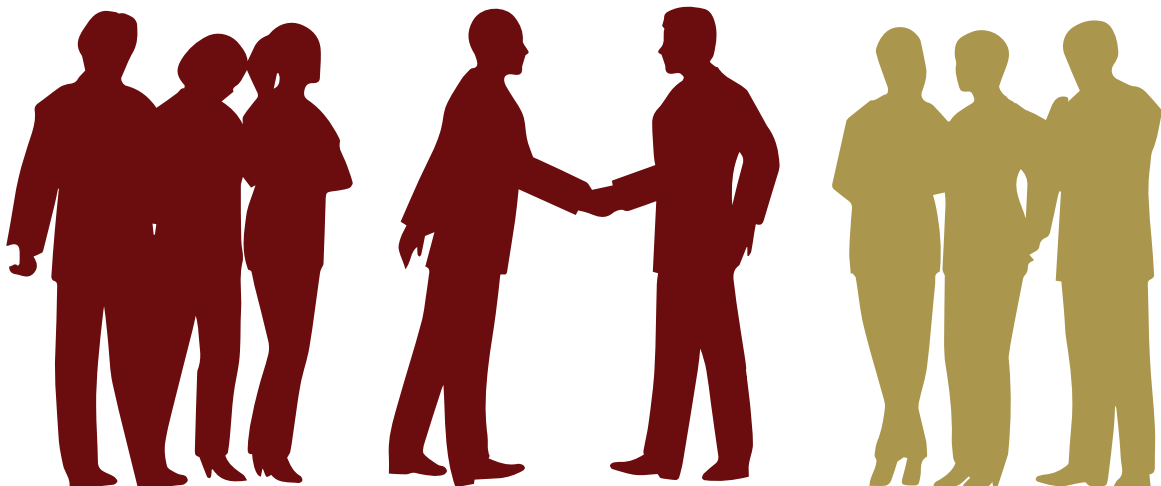
Kilifi County Public Participation and Civic Education Act 2022

The Public Participation and Civic Education Act 2022 is an Act of the Kilifi County Assembly to establish modalities and a platform for citizen participation in the governance of the County, to establish a framework to undertake civic education in the County, and for connected purposes. The Act is in the formative stage and a policy to implement the plan has not been finalized.



Some of the key gaps for public participation at the county level

- **Limited knowledge and capacity of citizens:** citizens' capacity and awareness can be enhanced by training them on the process of public participation
- **Citizen engagement:** One of the most important chances for lobbying would be to ensure that the new Act's public participation processes are inclusive and representative of all members of the community. Public participation will ensure that marginalized groups are included in decision-making processes and that their perspectives are heard.
- **Accountability:** A major flaw in many public involvement systems is a lack of follow-up or action on citizen comments. Public participation will seek to establish and implement systems to guarantee that feedback is included in decision-making processes and that acts are held accountable.
- **Monitoring and evaluation:** The new act must be monitored and assessed regularly to assess its efficacy and find areas for improvement. CSOs and other stakeholders need to collaborate with the County Government to create frameworks for monitoring and evaluating success and identifying areas for improvement.
- **Public participation requires adequate citizen awareness.** A comprehensive and adequately funded civic education based on a national curriculum should be launched and sustained over at least five years. The civic education program should be provided for in both the national and county budgets as a governance and development initiative and not as an incidental expense.



RECOMMENDATIONS

LAW/POLICY	GAPS	RECOMMENDATIONS & OPPORTUNITIES	KEY PLAYERS	TIMELINES
County Governments Act.	<p>Constrained resources: Kilifi County administration has limited resources to adequately implement the act's provisions.</p> <p>Inadequate accountability measures: While the act offers a legal framework for county monitoring, there may be insufficient accountability procedures in place to ensure that county administrations are transparent and responsible.</p>	<p>Increase the provision of resources to county governments, such as staffing, training, and infrastructure.</p> <p>Strengthen accountability measures such as audits, financial reporting, and public monitoring.</p> <p>Advocate for Kilifi County to adopt Open Governance Partnership (OGP).</p>	<p>County Executives, CSOs, MCAs, and development partners</p> <p>CSOs, the Senate, Office of the Auditor General (OAG),</p>	<p>Continuous</p> <p>Periodically</p> <p>Continuous</p>
Public Finance Management Act	<p>Inadequate legislation: The County Governments Act is not comprehensive, and there may be loopholes in the legislation, leading to discrepancies and conflicts in the law's execution.</p> <p>Many residents and civil society organizations may be unaware of the terms of the Kilifi County Public Financial Management Act, as well as their legal rights and obligations.</p> <p>While the legislation highlights the need for public participation in the budget process, citizens may have limited opportunity to participate effectively in this process.</p>	<p>Development of the Kilifi County public participation and civic education policy as a road map and strategy to enhance accountability in service delivery for the citizens and communities of Kilifi County</p> <p>Increase awareness and understanding of the act, as well as the necessity of public engagement in the budget process.</p> <p>Increase public participation by utilizing participatory budgeting tools and mechanisms and other techniques for citizen engagement.</p>	<p>County Assembly, County Executive, CSOs, development partners</p> <p>County Executive, CSOs, MCAs, development partners</p> <p>CBEF, County Assembly, County Executive, CSOS</p>	<p>2023 - 2024</p> <p>Continuous</p> <p>Continuous</p>

RECOMMENDATIONS

LAW/POLICY	GAPS	RECOMMENDATIONS & OPPORTUNITIES	KEY PLAYERS	TIMELINES
	Inadequate resources: Kilifi County, like many other counties in Kenya, may experience a lack of resources to adequately implement the provisions of the act.	Increase the allocation of resources for public finance management, such as staffing, training, and infrastructure.	County Executive, County Assembly, CSOs, Development partners	2023-2025
Public Participation and Civic Education Act 2022	Inadequate citizen Awareness of the act: A critical gap in many public involvement processes is citizens' lack of awareness and understanding of the process.	Increase awareness through targeted communication and outreach initiatives	County Executive, County Assembly, CSOs, Development partners	Continuous
	Citizen engagement: One of the most important chances for lobbying would be to ensure that the new act's public participation processes are inclusive and representative of all members of the community.	Ensure that marginalized groups are included in decision-making processes and that their perspectives are heard.	County Executive, County Assembly, CSOs, Development partners	Continuous
	Lack of framework on feedback mechanism: The Act does not elaborate on how citizens' opinions have been considered and those that have been rejected.	Establish a robust feedback mechanism through amendment of the Act or development of regulations	County Executive, County Assembly, CSOs, Development partners	2023 - 2025



“The County government cannot work in isolation, CSOs, the private sector and citizens must be involved because they all supplement the work of the government and enhance better service delivery” - Chris Mbiti



Seeking information from the government rightful offices should form the basis for advocacy which is evidence based, facts yield results and enhances better partnerships, engagement and public involvement’ anonymous



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