



KITUI COUNTY POLICY BRIEF ON PUBLIC PARTICIPATION 2023

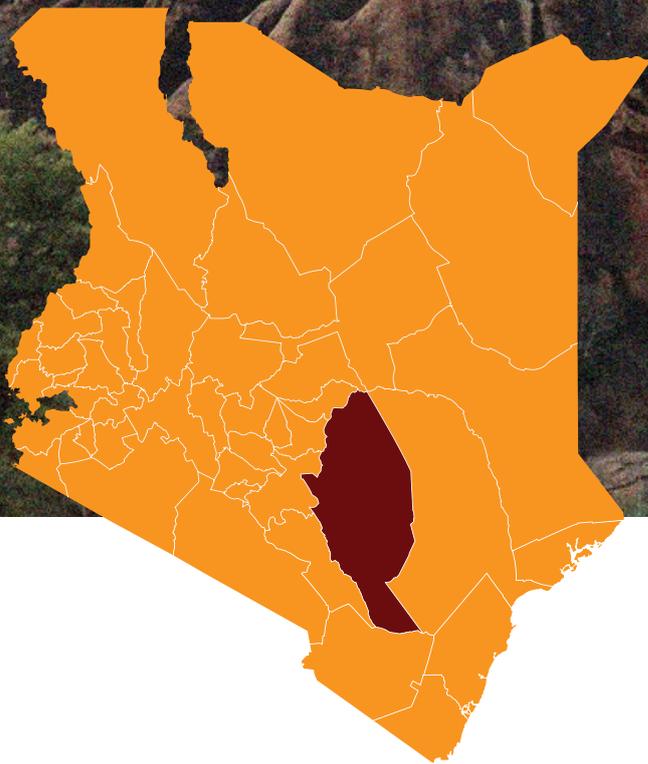


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Building Alliances Better Lives

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ACKNOWLEDGEMENT

This Policy Brief is an important tool contributing to the governance and public participation of Kitui County. The document will be used by the Kitui Civil Society Network to engage the government as a reference on the gaps as well as recommendations in regard to Public participation within the County.

PEN wishes to express sincere gratitude to the Embassy of the Kingdom of Netherlands in Kenya and the United Nations Development Program in Kenya for supporting the development and printing of this policy brief. We in particular acknowledge with much gratitude the UNDP Amkeni Wakenya Team for the role they have played in this process.

Special thanks go to Mr. Musya Noel (Consultant) who compiled this document, Kitui Civil Society Network members, and government representatives who inputted the document during the validation meetings. The information that they freely provided has been very useful for the production of this document.

We thank the PEN team and its partners, particularly the 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 for a more enabling environment for civil society operations.

EXECUTIVE SUMMARY

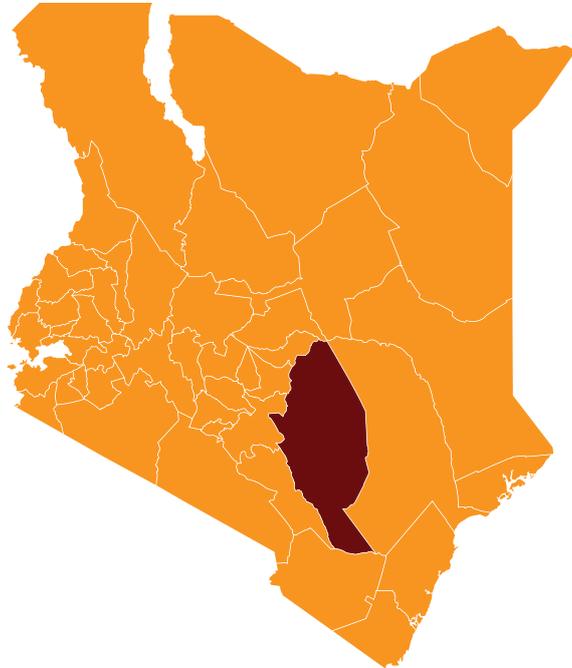
The main aim of this policy brief is to inform Kitui County CSO Network's engagement with the duty bearers, including the county government and other stakeholders, on public participation. Specifically, the Policy briefs mainly cover context and problem analysis; key priority laws and policies, including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

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

The policy brief identifies legal and policy gaps in several policies including Kitui County Public Forums Act of 2019, The Kitui County Public Participation Bill of 2023, Kitui County Villages Act of 2015, Kitui Public Participation Policy of 2017, Public Finance Management Act of 2012, Access to Information Act of 2016 among others. While some of the gaps are administrative in nature, that is they require governance related actions to address, others require legislative actions by both the County government and CSOs

Some of the key recommendations include: Increased funding allocation for public participation; provision of timely, accessible and popular version of documents/information; and adoption of Public Participation Bill of 2023; and creating awareness among citizens on

GENERAL COUNTY INFORMATION



Based on the 2019 census, the county has a population of 1,136,187 spread over 262,942 households with an average population of 4.3 persons per household and a population density of 37/per square Km. The county area is 30,430 Sq.Km. The county is divided into 8 constituencies, (40) wards, and (247) villages. This is in line with the County Government Act No 17 of 2012 sections 50,51 &52.

The executive is organized into 10 Ministries each under a County Executive Committee Member(CECM). A directorate of Public Participation and Civic Education has also been established as a stand-alone department/ office.



Current Context of Public Participation & Civic Education in Kitui County

Since the start of devolution, the county has made some steps to enhance effective public participation and civic education. Successive governments have engaged the people in public participation forums on different aspects of governance. The Department of Economic Planning has been holding public participation meetings for either Budget Formulation, County Fiscal Strategy Paper (CFSP), Annual Development Plan(ADP), County Integrated Development Plan(CIDP), or Community Level Infrastructure Development Program(CLIDP). Each successive government has also established County Budget and Economic Forum(CBEF) and Ward Development Citizen Committees.

The CBEF in the county has however not been carrying out its mandate as is required by law. One of the reasons for this failure is the ineptitude on the part of the government to hold regular forums as is required. The other problem lies with the CBEF membership as some of them lack the requisite capacity to interrogate the planning process. The CBEF members also lack forums to interact directly with the community to share and collect views. The CBEF and Ward Committees need capacity building to be able to carry out their mandates more effectively.

The county government is also collaborating with Civil Society Organizations in several ways. For example, the Centre for Human Rights And Civic Education (CHRCE), a local NGO based in Kitui County, received support from the Embassy of the Kingdom of The Netherlands and UNDP, to facilitate the drafting of a Public Participation Bill 2023 which is awaiting cabinet approval. The bill was however drafted before a proper policy on Public Participation was in place. It was envisaged that the bill would cure some of the many challenges faced during public participation exercises.

However, there is a need for a policy paper and possibly an action plan to fully actualize Public Participation in the County.

Despite the efforts to carry out public participation exercises in accordance with the legal frameworks available, the county has encountered many challenges. The challenges have made it difficult to attain meaningful and quality public participation in the county. Some of the challenges faced while carrying out public participation are: low awareness about the need for public participation by the citizens hence shifting the burden of participation to the government by demanding allowances for attendance.

The demand for payment to attend public participation forums can be a result of poverty and low civic education. This demand for payment and the low level of quality participation has led the county officials to complain that the exercise is too expensive and not useful in the generation of ideas, hence not cost-effective.

There is an equally low understanding of public participation tenets, values, and approaches, in the various county departments hence compromising the quality of participation inputs from the public. Some of the failures are related to information dissemination to the public prior to the exercise and after. At times the lead officers are not well grounded on the topic under discussion. This leads to inadequate information being passed to the citizens. Proper training of the administrators on the ground is essential to realize meaningful community engagement.

Another challenge lies in the perception of county officials regarding the CSOs, perceiving them as meddlesome and assuming an adversarial role rather than a complementary one. This frosty relationship has hindered fruitful citizen participation in the entire governance process. This has made it difficult to actualize the requirements of one part of the county government Act No 17 of 2012, in particular Section 100 Subsection 4.

Public officers at times find it difficult to reach all the stakeholders due to a lack of stakeholder mapping strategy and mechanism. This in most times compromises the quality

of public input due to the limited reach of the relevant stakeholders.

Access to information has been a big challenge in the realization of quality public participation. In most cases, the documents to be deliberated upon are shared on the morning of the meeting. Whenever they are shared early it is on the internet and in English only. This type of information sharing disenfranchises the majority of the citizens who have no access to the internet and others who do not understand English.

In most cases, the documents are bulky and availed on the day of the meeting hence no time to read and interrogate them. For those who have disabilities, there is no recourse. They have to rely on what others have read or what is read to them on the day of deliberations. There is a need for information to be made available in good time and in a version friendly to the citizen: an abridged/popular version in vernacular and or Kiswahili with copies in braille and Large Print would be helpful.

The civic education component, though crucial to public participation, has not been well developed in the County. The citizen ought to be sensitized enough to appreciate their inherent role as envisioned in the Constitution Article 1 and other legal and regulatory frameworks. Access to information and informed Public Participation are the key pillars of state accountability. These pillars depend on the level of awareness on the part of the citizen. This awareness is enhanced through Civic Education. For meaningful civic education programs to be rolled out in any county the civil society within the county must be fully involved in the awareness creation.

The same applies to accountability which is demand-driven, one must be aware of what is expected to be delivered to them by the state or duty bearers. From the reports of the Controller of Budget and the Auditor General available for Kitui Executive, it is evident that accountability is wanting and the citizen is not aware of the need to demand better services.

The citizen and CSOs' engagement with governance issues within the county is dismal. Most CSOs lack the logistical capacity to reach the citizens. The citizens on their part are not ready to go out there and seek information from the CSOs. The government on its part is a hindrance to civic education for the fear of enlightened citizens, this is evident through lack of prioritization of civic education by the county government. This situation makes it difficult for the CSOs to roll out programs to reach the majority of the citizens. There are many that need to be crossed before the full realization of Public Participation.

NATIONAL LEVEL POLICY LEGAL FRAMEWORK



Constitution of Kenya 2010

The Constitution of Kenya 2010 lays the basis for the development of a policy framework on public participation. The envisaged public participation policy will therefore have to focus relatively more on what the constitution refers to as the “direct” exercise of the people’s sovereignty. This is the kind of participation where people “who are, for whatever reason, excluded from the normal social and political, even economic, life of the nation are far less likely to be able to participate actively – certainly at the national” and county level (Gill 2012). Key provisions pertaining to this are Article 1 which vests sovereign power in the people of Kenya and is exercised at both the National and County levels. The importance of public participation is aptly captured in Article 10 2a of the constitution which states that the national values and principles of governance include patriotism, national unity, sharing and devolution of power, the rule of law, democracy, and participation of the people.

The Government in Article 69 is obligated to encourage public participation in the management, protection, and conservation of the environment.

The constitution has gone further to provide for instances where the voice and endorsement of the public is a compulsory requirement. In Articles 91, 94, 118 and 119 citizens have a right to participate in a political movement of their choice, while parliament is required to give the public an avenue to participate in legislation and presenting petitions to public authorities.

The objects and principles of devolved government under Article 174 give powers of self-governance to the people and enhance their participation in the exercise of the powers of the state in making decisions that affect them while recognizing the powers of the communities to manage their own affairs and to further their own development. County Assemblies are required to conduct their business in an open manner and hold their sittings and those of its committees in public and facilitate public participation in the legislative and other business of the assembly and its committees (Article 169).

The involvement of citizens in policy-making and implementation is important to strengthen and deepen democratic governance. It is through active public participation that evidence-based policy-making and responsive service delivery can take place.

The national legislation contemplated in Article 184 1 to provide for the governance and management of urban areas and cities and to in particular provide for participation by residents in the governance of urban areas and cities.

Article 201: provides for principles of public finance management that include public participation in finance matters Article 221 5: the Budget and Appropriations Committee to seek public input when reviewing budget estimates and the recommendations shall be taken into account when the committee presents its report to the House Article 232 1d & f;

Public Service values principles require the involvement of the people in the process of policymaking; transparency and provision to the public of timely and accurate information.

The Fourth Schedule under Part 2 (14) stipulates that functions and powers of the County are to ensure and coordinate the participation of communities and locations in governance at the local level. Counties are also to assist communities to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.



The County Government Act, 2012

The enactment of the County Government Act places an obligation on the County Governments to create an enabling environment for citizens' involvement in running the affairs of the Counties. Chapter VIII of the Act is devoted to citizen participation, therefore, giving a demonstrative emphasis on the importance of this right in the eyes of the law. Section 87 provides for citizen participation at the county level based on the following principles:

- Timely access to information, data, documents and information relevant to policy formulation and implementation
- Reasonable access to the process of formulating and implementing policies, laws and

regulations

- Protection and promotion of the interest and rights of minorities, marginalized groups and communities
- Avenues for legal redress to interested or affected persons or organizations
- Shared responsibilities and partnership between county governments and non-state actors in decision making

Promotion of public private partnerships Section 88 provides that citizens have a right to petition the county government on matters under the responsibility of the county government Article 89: county government authorities are under obligation to respond expeditiously to petitions and challenges from citizens Article 90: counties to conduct referendum on local issues Article 91 of the Act goes further to demand particular minimum Structures for Participation are set up by the county Governments. It provides the following structures to be established and used to reach out to the public as an invitation to engage:

- County Hall meetings
- Notice boards, vacancy announcements, job appointments
- Tenders and procurement awards
- Development project sites
- Establishment of citizen forums at county and decentralized units



The Urban Areas and Cities Act No. 13 of 2011

Section 36 of the Act provides for the development of Integrated Development Plans (IDPS). The Second Schedule to the Act provides the right of and participation by residents in the affairs of the city or urban areas through:

- Written or oral presentations
- City or urban area is obligated to develop a system of governance that encourages participation by residents in its affairs.
- The 2nd Schedule of the Act provides for the rights of and participation by residents in the affairs of their city or urban areas.



Public Finance Management Act 2012

Section 137 establishes the County Budget Economic Forum that shall have representatives nominated by organizations representing professionals, businesses, labor issues, women, Persons with disabilities, elderly, Faith Based groups at the county level.

Sec. 128 2 requires the County Executive member for Finance to issue a circular setting out guidelines to be followed in the budget process. The circular should provide details on how citizens can participate in the county budget-making process. Section 207 necessitates the Cabinet Secretary in charge of Finance to draft regulations to provide for structures, mechanisms, processes, and procedures for participation.



COUNTY- LEVEL POLICY LEGAL FRAMEWORK



Kitui like most other counties has made attempts to have full realization of public participation. The executive created villages in 2015 to pave the way for public engagement in governance matters. In addition to this end, the executive came up with an implementation policy on public participation in 2017. However, all these documents didn't help much because of the heavy financial burden attached to their implementation and more importantly the lack of a coherent way how to make them operational. In 2019 the county assembly, despite a bill on public participation being presented by public demand petition, enacted the Kitui County Ward Public Forums Act 2019 for the purposes of engaging the MCAs in Ward Public Participation. Despite the existence of this act, there hasn't been any meaningful engagement between the Assembly and the public at the ward level.



Kitui County Public Forums Act 2019

The Act aims to provide a framework that ensures the residents of Kitui County are directly involved in policy formulation, decision-making, and effectively participate in governance. The MCAs have the responsibility to hold quarterly forums on matters where the citizens with interest are expected to raise concerns and proposals on policy formulations, governance, and service delivery.



Kitui County Villages Act 2015

The main objective of the Act is to provide for the establishment of Villages, the effective coordination, management, and supervision of the general administrative functions in the villages; and for connected purposes. The Act establishes the office of the village administrator and village councils which are expected to, among others, support in co-ordinating, managing, and supervising the general administrative functions in the village; facilitating the community in the development of policies and plans; ensuring effective service delivery by the county government; and co-ordinating county government development activities to empower the community.



Kitui County Public Participation Bill of 2023

The objects of this Act are to provide an institutional framework for public participation and related activities in order to ensure the involvement of stakeholders in the County in the governance of the County; ensure that the development projects in the County reflect the priorities of the stakeholders; ensure compliance with the principles of public participation set out in section 87 of the County Government Act 2012; and establish standards for the carrying out of public participation in the County. Among the principles that are expected to inform the Act include timely access to information and dissemination, data and documents to information in a form that is understandable to a majority of the residents; suitable choice of Public Participation modality and the venue, taking into account the nature of the expected audience and issues to be addressed; adequate notice given through media that would have the widest reach of the relevant audience; and legal standing and direct involvement of persons who are likely to be directly affected by a decision of the County Government; a deliberate move to be Gender Equality and Social Inclusion(GESI) sensitive among others.



RECOMMENDATIONS

LAW/ POLICY 	GAPS	RECOMMEDATIONS	KEY PLAYERS	TIMELINE
Kitui County Public Forums Act 2019	<p>Does not provide oversight for Member of County Assembly(MCA)</p> <p>Public participation is limited to the ward level</p>	<p>Amend the Act to allow for participation at the village level; provide for oversight of the MCAs; and regulate review of reports by the county assembly.</p> <p>Develop regulations to enable public consultations and full actualization of the Act</p> <p>CSOs to advocate for amendment of the Act & development of regulations</p>	County Executive, MCAs & CSOs	2023 – 2025
The Kitui County Public Participation Bill 2023	Pending Cabinet Approval	<p>Enactment of the Bill</p> <p>CSOs to lobby the County Government for the action</p>	MCAs, County Executive, & CSOs	2023 - 2024
Kitui County Villages Act 2015	<p>The village administrators lack the capacity to execute their mandate</p> <p>There are no clear guidelines on how to carry out public participation</p> <p>The village councils under section 10 are made up of elders only.</p>	<p>Build capacity of village administrators on their responsibilities</p> <p>Allocate funds to ensure full implementation of the Act</p> <p>Develop regulations for public participation under the Act</p> <p>Amendment of the Act to ensure representation of special interest groups: youth and CSO representatives.</p>	County Executive, MCAs & CSOs	2023 - 2025
Kitui Public Participation Policy 2017	<p>Lacks an operation matrix</p> <p>Not very clear on the roles of the CSOs</p>	Conduct policy review to establish gaps and milestones	County Executive, MCAs & CSOs	2023 - 2025
Public Finance Management Act of 2012	<p>CBEF members have limited capacity to deliver on their mandate</p> <p>Limited funding to facilitate the functions of CBEF</p> <p>Delay in publishing budget and ADP/ CFSP-related documents</p>	<p>Capacity building of CBEF members</p> <p>Increase allocation of funds for CBEF activities</p>	County Executive	Continuous

LAW/ POLICY 	GAPS	RECOMMEDATIONS	KEY PLAYERS	TIMELINE
County Government Act	Limited funds and human resources for public participation and civic education Delay and/or refusal to share information	Increase resources toward public participation Publish accessible, timely information	County Executive	Continuous





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