



Effectiveness of Public Participation for Legislatures

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ABSTRACT

The development initiatives in Kenya have for a long time been hampered by notable historical challenges ranging from allocation of massive resources to unforeseen and unplanned projects, top down approach in development and a wanting inception and completion of projects.

The promulgation of the Kenya's 2010 Constitution came with a deliberate attempt to pave way for a participatory decision making which all government activities ought to conform to. Twelve years later the progress in public participation is not very visible especially in formulation of policies through national legislation. It is against this background that the researcher undertook a study on the best tools to use in public participation for evidence informed legislative processes in Kenya.

The main objective of the paper was on investigation of the best tools for promoting public participation in legislative oversight and investigation. The three specific objectives of the study were to examine the role of petitions, public hearings and memoranda, each as basic tools of use in enhancement of public participation. The author through external desk research reviewed and analyzed literature on public hearings, petitions and memoranda as tools of public participation using relevant laws, government reports, and journals.

The study found out that quality legislation is one of the most important aspects of any modern and civilized democracy since it plays a key role in overseeing and holding the executive to account as the people's representative. Public participation plays a key role in ensuring successful implementation of the devolved system of government by allowing the citizens to get involved in matters that concern them.

The study however found that in overall, there is limited direct public participation by Kenyans in legislative work which is attributable to citizens' low levels of awareness of government functions, legal mechanisms and need for their public participation. Adequate civic education is thus a key component of public participation as it would help the citizens understand what the government is doing.

The researcher recommends that further studies be done on the effectiveness of public participation tools using primary data from different stakeholders in Kenya.

Keywords: Public Participation, Legislative Processes, Petition, Public Fora, Memoranda

1.0 Background of the Study

Public participation is defined by World Health Organization (2002) as a process by which people are enabled to become actively and genuinely involved in defining the issues of concern to them, in making decisions about factors that affect their lives, in formulating and implementing policies, in planning, developing and delivering services and in taking action to achieve change.

Public participation in legislative oversight is a crucial component of democratic governance. The legislature plays the oversight role on the other arms of government with a view to sustaining constitutionalism, effective policy implementation, accountability and good governance.

Bossuyt (2000) found that involvement of both state and non-state actors in policy making has become widely accepted in both developed and developing countries. He sums up the benefits of this to include increased acceptance, ownership and compliance. Legislation may be construed as the highest level of policy making because it provides legal backing to provisions of various spheres of public life.

Stakeholder participation may take different forms such as attending Parliamentary committee hearings, setting up meetings with the Cabinet Secretary or departmental heads, organizing workshops, seminars or retreats, using the media to outline the issues and similar entities to lobby, publication of extracts in newspaper articles or other online platforms and making contributions during public fora and submitting written opinions and memoranda (Kenya Law Reform Commission, 2015).

Public participation in policy making has become entrenched in democratic principles of governance in Kenya with policy formulation being very critical in legislation because it is the point at which various causes of action are prescribed towards certain challenges. This has hitherto been a preserve of the governing elite with the role of non-state actors now gaining prominence.

Kenya enacted a Constitution in 2010 of which public participation stands out, with all government activities required to conform to this principle thus giving the public pre-eminence in decision making. In Kenya's Constitution, citizen or public participation is kick started in Article 1 (2) which states that all sovereign power is vested to the people of Kenya (Constitution of Kenya, 2010). Thirteen years later and it is still not yet clear if progress has been made to entrench this letter and indeed spirit of the law in our national culture, specifically in policy formulation through national legislation.

Article 94 grants Parliament exclusive jurisdiction in legislation, with a caveat under Article 118 that states that Parliament shall conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and facilitate public participation and involvement in the legislative and other business of Parliament and its committees. The Article further states that Parliament may not exclude the public, or any media, from any sitting unless in exceptional

circumstances that the relevant Speaker will determine and state justifiable reasons for the exclusion.

In Kenya, public participation and public accountability came into the public discourse through the Kenya's devolution initiatives including the 1980's District Focus for Rural Development (DFRD) to the proliferation of devolved funds in Kenya like the Constituency Development Fund (CDF) and the Local Authority Transfer Fund (LATF), a trend which started in the late 1990s and is still ongoing. The Constituency Development Fund (CDF) Act 2003 made provisions for participation of citizens through project identification at the constituency and locational levels. The CDF Act, 2003 has since been aligned to the 2010 Kenya Constitution through amendments (ICPAK, 2018).

There has been a general lack of information as to accrued developmental benefits after the promulgation of the constitution in 2010. This research seeks not to examine provisions of the law, but rather the spirit and practice of the law as regards public participation, and its eventual effect on the outcome of national legislation.

Despite the legislations and benefits of public participation, the county government has done very little to promote it. There have been court cases challenging decisions taken by the county government without public participation. Citizens have also complained of not being given the chance of publicly participating on issues affecting their government which as a result hinders the services delivered.

2.0 Legal underpinning of public participation in Kenya

In Kenya, the legal framework for public participation is primarily enshrined in the 2010 Constitution. The Constitution provides for the participation of the public in various aspects of governance, including the making of laws, policy formulation, and decision-making processes.

Specifically, Article 10 of the Constitution outlines the principles of governance, which include public participation, accountability, and transparency. Additionally, Article 196 establishes mechanisms for public participation in county governments' decision-making processes. The Constitution requires public participation in the budget-making process, planning, and implementation of development projects (Constitution of Kenya, 2010).

Other laws that provide for public participation in Kenya include The Public Finance Management Act, 2012 which provides for public participation in the budget-making process, the Environmental Management and Coordination Act, 1999 which requires public participation in environmental impact assessment and the management of natural resources, the County Governments Act, 2012 which establishes the County Assembly Public Participation to facilitate public participation in county governments and the Access to Information Act, 2016 that provides for access to information held by public bodies to help in decision making.

3.0 Literature Review

Theoretical review in the study was anchored on Rational Choice Model and Arnstein's model.

3.1 Rational Choice Model

This theory has played an important role in the analysis of political participation. The rational choice model is summarized succinctly in the following terms: "A rational man is one who behaves as follows: he can always make a decision when confronted with a range of alternatives; he ranks all the alternatives facing him in order of his preferences in such a way that each is either preferred to, indifferent to, or inferior to each other; his preference ranking is transitive; he always chooses from among the possible alternatives that which ranks highest in his preference ordering; and he always makes the same decision each time he is confronted with the same alternatives (Downs, 1957).

The rational choice model assumes that individuals make decisions based on a rational evaluation of the costs and benefits associated with different choices. In the context of public participation, this model can be applied to understand why individuals choose to engage or not engage in public decision-making processes.

The rational choice model suggests that individuals will engage in public participation when they perceive that the benefits of doing so outweigh the costs. Benefits might include the opportunity to have a say in the decision-making process, the chance to influence outcomes, or the ability to advance their own interests. Costs might include the time and effort required to participate, the potential for conflict or disagreement with others, or the risk of reprisals from those who disagree with their position.

In rational choice theory, individuals act as they do simply because they trust that by carrying out actions of their choice, it becomes beneficial to them than the cost of the item. In other words, according to these individuals, people are fond of making choices that are irrational based on the goals they want to achieve. Their behavior is, therefore, governed by these actions.

Understanding the applicability of the rational choice model in public participation can help public officials design more effective outreach and engagement strategies. For example, officials might try to reduce the costs of participation by providing resources and support to participants, such as transportation or childcare. They might also try to increase the perceived benefits of participation by emphasizing the importance of public input in the decision-making process, highlighting success stories of past public participation efforts, or providing clear information about the potential outcomes of the decision.

3.2 Arnsteins Model

Arnstein's model of public participation is a theoretical framework that describes the different levels of citizen participation in decision-making processes. The model was developed by Sherry Arnstein in 1969 and has since been widely used in public policy and community development contexts.

According to Arnstein's model, there are eight levels of citizen participation in decision-making as espoused below:

- i. Manipulation: Citizens are given the illusion of participation, but decisions are made by others without any real input from the public.
- ii. Therapy: Citizens are consulted and allowed to express their concerns, but decision-making power remains with the authorities.
- iii. Informing: Citizens are provided with information about the decision-making process and the issues involved, but they are not given any opportunity to provide input.
- iv. Consultation: Citizens are asked for their opinions, but the authorities make the final decisions.
- v. Placation: Citizens are given a voice in decision-making, but only on issues that are not critical or controversial.
- vi. Partnership: Citizens and authorities work together to identify problems and develop solutions, with decision-making power shared between the two groups.
- vii. Delegated power: Citizens are given the power to make decisions, but the authorities retain the right to veto or modify those decisions.
- viii. Citizen control: Citizens have complete control over decision-making, with the authorities acting only in an advisory role.

Arnstein argued that true citizen participation occurs only at the higher levels of the ladder, with the lower levels representing forms of tokenism or co-option rather than genuine participation. The applicability of Arnstein's theory in public participation lies in its ability to help practitioners and decision-makers identify the level of citizen participation in decision-making processes. By using the ladder as a tool for evaluation, practitioners can assess whether the level of citizen participation is appropriate for the given context, and whether citizens have a genuine opportunity to influence the outcome of the decision-making process.

4.0 Tools of Public Participation in Legislative Oversight and Representation

There are several tools used in public participation as enumerated below:

4.1 Public Hearings and Public Participation

Public hearings are forms of deliberative democracy that allow citizens to express their opinions and preferences on a proposed policy or project. They can have various impacts on public participation, such as generating public support or opposition to a policy, pressuring elected officials to take a position on an issue, increasing public interest and involvement in decision-making, providing additional facts, values, and perspectives to decision-makers and influencing reported expenditure decisions. ([American Political Science Review](#), 1984)

These impacts may however vary depending on the context, design, and implementation of the public hearing. Some factors that may affect the effectiveness of public hearings include: The timing, location and accessibility of the hearing, the representation and diversity of participants, the quality and quantity of information provided, the level of interaction and deliberation among participants and the feedback and follow-up mechanisms

Public hearings can generate public support or opposition to a policy by allowing the public to voice their opinions and preferences on a local issue or proposed government action (Kaseya & Kihonge, 2016). They can also influence public opinion by: Raising awareness and informing the public about the issue, providing a platform for dialogue and deliberation among participants, mobilizing supporters and opponents to take action and demonstrating public interest and concern to decision-makers. Public hearings may however not always reflect the views of the whole community, as some groups may

be more vocal, organized, or influential than others. Therefore, it is important to ensure that public hearings are inclusive, representative, and fair (Desa, 2009).

An example of public hearing is Participatory Budgeting which is a method for consultation that involves public hearings during the yearly budget cycles and can increase transparency, accountability and civic engagement in public spending decisions (Rowe, Gene and Frewer, 2000).

4.2 Public Petitions and Public Participation

The Kenya Constitution 2010 under Article 119 has provided for public petitions to parliament on any matter under its authority including approving appointments, enacting, amending or repealing legislation or removal of public officers from office under Article 251. A petition is one of the public participation tools in Kenya that are commonly used to engage citizens in decision-making processes. It is a formal written request or complaint addressed to a person or authority, often signed by a group of people, seeking action on a particular issue. In Kenya, petitions are governed by the Constitution of Kenya, 2010, and the Petitions to County Assemblies Act, 2014.

Public petitions therefore give the public an opportunity to hold the executive to account through participating in the oversight role of the parliament. Petitions constitutes a vehicle for political input, a way of attempting to influence policy making and legislation and also a means of bringing public concerns to the attention of parliament (Marleau and Montpetit, 2000).

Once a petition is received, the relevant authority is required to acknowledge receipt within seven days and take appropriate action within a reasonable time. The authority may also investigate the matter and report its findings to the petitioner and the public.

In practice, petitions are usually submitted to government agencies, including County Assemblies and the National Assembly, as well as to other public bodies, such as the Independent Electoral and Boundaries Commission (IEBC). Petitions can be submitted by individuals or groups, and they must adhere to certain formal requirements, including proper formatting, signatures, and supporting documentation.

Once a petition is submitted, the relevant public body or authority is required to acknowledge receipt and consider the petition within a reasonable period. The public body may then take appropriate action, including initiating an investigation or making recommendations for redress.

TISA (2015) posits that for public policy petitions to lead to public accountability, an enabling environment is required including access to information, a vibrant civil society, freedom of expression and association, free and independent media, as well as civic education.

4.3 Memoranda and Public Participation

The Constitution of Kenya (2010) recognizes public participation as a fundamental principle of governance, and it requires public participation in legislative and other decision-making processes that affect the public. One of the ways that the public can participate in these processes is by submitting memoranda. More specifically, Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, provides for submission of memoranda by members of the public and relevant stakeholders.

Memoranda are written submissions that provide feedback or comments on proposed legislation or policy. They are often submitted during public hearings, which are public meetings where stakeholders and members of the public can share their views on proposed legislation or policy.

A memorandum is a written document that expresses an individual or organization's opinion, views, suggestions, or recommendations on a particular issue or policy. The submission of memoranda provides an avenue for members of the public to contribute their input and perspectives on proposed laws or policies, enabling lawmakers to make informed decisions that align with the interests and needs of the citizens. (Kenya Law Reform Commission, 2015).

One of the key benefits of memoranda is that they allow for a diverse range of voices and opinions to be heard. In Kenya, memoranda provide a platform for citizens to engage with the government on matters of public interest, including legislative proposals, policy initiatives, and development projects. This allows for a more inclusive and democratic decision-making process, as it ensures that the views of various stakeholders are taken into account.

Furthermore, memoranda are often used to highlight key issues and concerns that may have been overlooked or ignored by the government or other decision-makers. They can also be used to propose alternative solutions or approaches to issues, which can help to improve the quality of public policy. The process of submitting memoranda is outlined in the Constitution of Kenya, which requires that the public is involved in legislative and policy-making processes. (Constitution of Kenya, 2010).

To submit a memorandum in Kenya, interested parties must follow specific guidelines set out by the relevant legislative body. These guidelines outline the format, content, and timelines for submitting memoranda. Typically, the memorandum should include a summary of the issue, proposed solutions, and the reason for the suggested course of action. Additionally, the memorandum should contain the name and contact information of the submitter, including their address, phone number, and email address. The memorandum must also be signed and dated by the submitter.

5.0 Conclusions and Recommendation

From the review done therefore, the following conclusions and recommendations can be drawn on each of the tools of public participation to assist government executives, policy makers, citizens and government experts in making decisions.

5.1 Conclusions and Recommendation on Memoranda

The submission of memoranda is a critical aspect of public participation in Kenya, and it enables the public to have a voice in the decision-making processes that affect them. Effective memoranda can influence decision-makers to take into account the concerns of the public and improve proposed legislation or policy.

The effectiveness of memoranda in public participation in Kenya is often hindered by various challenges. For instance, many citizens may not be aware of the opportunities to submit memoranda, and the submission process may be cumbersome and inaccessible to some. Additionally, the government may not adequately consider the views expressed in the memoranda, leading to a lack of trust in the public participation process.

To improve the effectiveness of memoranda in public participation, there is a need for greater awareness and education on the submission process and the role of memoranda in decision-making.

The government should also take steps to ensure that the views expressed in memoranda are given due consideration. To ensure that memoranda are effective, they should be clear, concise, and specific. They should provide specific recommendations or proposals on how the proposed legislation or policy can be improved or changed to address the concerns of the public.

5.2 Conclusions and Recommendations on Public Hearing

Public hearings are an essential part of public participation in Kenya, as they provide an opportunity for citizens to express their views on matters that affect them directly or indirectly. Public hearings are a critical part of public participation in Kenya, and efforts should be made to ensure that they are conducted in an effective and transparent manner. Public hearings in Kenya can become more inclusive, accessible, and meaningful for citizens and despite the legal framework for public hearings in Kenya being relatively robust, there lies challenges in its implementation. The study recommends that the following be done:

- i. There is a need for more awareness and education among citizens about their right to participate in public hearings
- ii. The government should allocate more resources towards creating awareness and educating citizens on their right to participate in public hearings.
- iii. There is a need for capacity building among public officials on the importance of public participation and how to effectively conduct public hearings.
- iv. Public hearing venues should be accessible, including scheduling them at convenient times and locations for citizens.
- v. There should be more transparency in the public hearing process, including providing citizens with feedback on how their views have been incorporated into decision-making.
- vi. Finally, the government should explore the use of technology to enhance public hearings, such as using online platforms to reach a broader audience and provide an opportunity for remote participation.

5.3 Conclusions and recommendations on Petition

Petitions can be effective in achieving their intended purpose, as decision-makers often take them seriously, especially if they receive significant public support. For successful use of petitions, the study recommends the following:

- i. Decision-makers should provide clear guidelines on how to submit petitions and ensure that the public is aware of these guidelines.
- ii. Decision-makers should respond to petitions in a timely manner, providing clear reasons for their decision even if they do not grant the request.
- iii. Public education campaigns should be used to increase awareness of the importance of petitions as a tool for public participation and encourage more people to participate.
- iv. Technology should be leveraged to make it easier for the public to submit and sign petitions electronically, which can increase participation and reduce barriers to entry

6.0 Directions for Future Research

This paper provides the framework for future research whereby future researchers may pursue further studies on the impact of petitions, public hearings and memoranda on public participation for development using primary data collected from different stakeholders.

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