

EFFECTS OF PUBLIC PARTICIPATION ON LEGISLATION BY THE KENYA NATIONAL ASSEMBLY

Victor Weke Imbo

Master of Public Policy and Administration, Kenyatta University, Kenya

Dr. Felix Kiruthu

Department of Public Policy and Administration, Kenyatta University, Kenya

©2019

International Academic Journal of Law and Society (IAJLS) | ISSN 2519-772X

Received: 30th June 2019

Accepted: 5th July 2019

Full Length Research

Available Online at:

http://www.iajournals.org/articles/iajls_v1_i2_104_120.pdf

Citation: Imbo, V. W. & Kiruthu, F. (2019). Effects of public participation on legislation by the Kenya National Assembly. *International Academic Journal of Law and Society*, 1(2), 104-120

ABSTRACT

Public participation in policy making has become entrenched in democratic principles of governance in Kenya. Policy formulation is 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. Eight years later and it is still not yet clear if progress has been made to entrench this letter and spirit of the law in our national culture, specifically in policy formulation through national legislation. This problem is manifest in the fact that certain legislations have been declared unconstitutional by courts, on the basis of lack of or ineffectual public participation. The research while seeking to address this problem by examining effects of public participation on legislation passed by the Kenya National Assembly, sought to establish conditions precedent to effective participation. The first objective of this study was to ascertain the level of public awareness. Further, the study sought to interrogate the process institutionalized by the National Assembly to actualize constitutional requirements relevant to public participation, and went further to establish the extent to which outcomes of legislation and policy are influenced by the design of this participation. The study conducted in the cosmopolitan Nairobi City County used descriptive research design and a random sample of 204 members of the

public, a number settled upon using Slovin's formula (at 93% confidence level), from a target population of approximately 4 million residents as per the latest county statistical abstract by the Kenya National Bureau of Statistics, as well as the 349 Members of the National Assembly, on their awareness and participation levels. Interviews of key resource persons in the legislative process were also conducted, including the Members and staff of the National Assembly and civil society organizations that had participated before. These key personnel were identified purposively as they were adjudged to be in the heart of the legislative process in Kenya. Theories of participative and deliberative democracy that offers citizens real democratic power over the state and the neo-liberal market-oriented approach that entrenches participation are the theoretical basis of the research. Content analysis was used to analyze open ended questions and secondary data, while measures of central tendency were used to analyze responses from closed questions. The study found that public participation has had little effect on outcome of legislation by the National Assembly. This was because there was low awareness by the public, compounded by faulty process and design of the participation process by the National Assembly. The research recommends that the public should be intensely sensitized; the National Assembly should use media with wider coverage, strengthened constituency offices and provision of adequate time to Committees to process Bills.

Key Words: *public participation, legislation, Kenya National Assembly*

INTRODUCTION

Legislation can be construed as the highest level of policy making because it provides legal backing to provisions of various spheres of public life. The concept of public participation in public affairs has gained traction in contemporary democratic literature. Theodoulou and Cahn (1994) state that public policy is the result of interaction between state and non-state actors. Moreover, 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.

The stabilization of regimes across the world opened up new avenues for civic participation to broaden and reinforce the role of citizens in policy making. Avritzer (2012) identified the new participatory institutions that emerged in Brazil in the 1990s as involving three different institutional designs: bottom-up designs in which participatory budgeting has been most acknowledged, power sharing designs which accommodates civil society input and ratification designs in which members of the public approve or reject policies proposed by local governments.

Potter (2008) states that in the United Kingdom, despite there being no written constitution, the practise of public participation has been accepted as necessary towards development. Matters of local concern have been devolved to Scotland, Wales and Northern Ireland with the national government maintaining responsibility. Enquete-Kommission (2000) documents that in Germany, there has been a reported high level of civic engagement. The significance of participation however depends on the issue at hand. In urban planning, participatory structures have been in place for the last thirty years, with sectors like construction, energy, environmental and health being enshrined in the law.

In Kenya, some forms of public participation have been witnessed since independence in various development initiatives. These were however practised in the absence of a policy framework, a phenomenon reminiscent of sub-Saharan Africa, hampering effective engagement by non-state actors (Kalu 2014). Sigei (1987) posited that the decade after independence, Kenya, like most African states at the time, had centrally conceived and controlled development activities in an effort to maximise scarce resources to spur rapid growth. The assumption was that benefits would trickle down to the lowest levels. He observed that in the 70's however, benefits were not visible after massive resources were employed to develop grandiose plans. This brought a paradigm shift in which the need of involvement of intended beneficiaries became apparent. The provincial administration in Kenya was restructured, in line with the District Focus for Rural Development initiative in the 1980s. However, Chitere and Ireri (2004) observed that this approach faced structural and bureaucratic challenges, among them being that approval of plans were still undertaken at the ministry level. It was a false start. Successive attempts through Local Government Transfer Fund (LATF) and Local Authorities Service Delivery Action Plans (LASDAP) faced the same structural challenges. The next attempt at grassroots participation was

through the enactment of the Constituencies Development Fund Act (CDF Act 2003). This was a modest attempt to devolve resources at a rate of 2.5% of the national budget. The CDF has achieved notable successes as well as structural challenges that are before courts for interpretation.

With the enactment of the new constitution in the year 2010 the role of the public has been given great prominence in policy making. This is a radical shift from the hitherto assumption that the legislature will always represent interests of the public. Article 1 (2) of the Constitution empowers citizens to exercise their sovereign power directly. Article 10 (2) (a) includes national values, ‘...*Participation of the people.*’ Article 35 further grants citizens the right to access to any information that affects the nation. 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.

Further, Article 119 grants every person the right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation. Article 232 (1)(d) crowns it all by listing as a value and principle of public service, ‘...*involvement of the people in the process of policy making.*’ Literature on the effectiveness of public participation in influencing legislative policy outcomes in Kenya post 2010 Constitution has not been forthcoming due to the fact that the constitution is still relatively young, and operationalizing it has not been complete. Public participation evokes different expectations and understandings in different cultural contexts, hence the need to evaluate the Kenyan scenario. Further, there has been no evidence that the constitution’s provisional prescriptions towards public participation have remedied the structural challenges witnessed in early attempts discussed above. Finally, the desired outcome of public participation is enactment of policies that will spur development beneficial to the citizenry, and not as an end in itself. There has been a general lack of information as to accrued developmental benefits after the promulgation of the constitution in 2010.

STATEMENT OF THE PROBLEM

In several instances, Kenyan courts have struck out sections of some laws, or indeed entire laws, for various reasons including them having not been taken through public participation as provided for in the Constitution. Examples include Judicial Review Case 434 of 2015, Petition No. 16 of 2018 and No. 48 of 2018. Most notable, through Petition No. 3 of 2016, the Law Society of Kenya, Kenya’s premier body of the legal profession, in its bid to strike out amendments to the Judicial Service Act 2011 by the National Assembly through the Statute Law (Miscellaneous) Amendment Act 2015, submitted that public participation was conducted in a

manner that was neither meaningful nor qualitative as most Kenyans were not given adequate opportunity and notice to participate. The bench agreed with the petitioners and declared the law null and void. The Constitution has provided a strong legal framework (principle) for citizen participation. The distinction between principle and practice exposes the major challenge in policy making. Practice spans from basic knowledge by citizens of their rights and powers, their ability to apply these rights, the facilitation by public institutions to provide a conducive environment to exercise these rights, culminating to the respect of views collected and factoring them into the legislative process. A question arises on what constitutes legitimate and useful public participation, and the design of this process to attain its objectives. This means the process should not only be geared towards fulfilling legal requirements but embodying the ideals of democratic participation and inclusion. This research sought to examine how the letter, spirit and practice of the law as regards public participation are applied, and its eventual effect on the outcome of national legislation.

RESEARCH OBJECTIVES

1. To examine how the level of awareness of residents of Nairobi City County affects their participation in legislation passed by the National Assembly.
2. To examine how the process of call for public participation affects the eventual participation by members of the public in legislation by the National Assembly.
3. To examine how the design of the public participation exercise employed by the National Assembly impacts participation by the public on national legislation.

LITERATURE REVIEW

Overview of the Policy Formulation Process

Ripley and Franklin (1987) in their work on the United States Congress in developing public policy defined public policy as solutions by government to various public challenges. Their emphasis on government confirms the central role it plays by virtue of being the custodian and trustee of public interest. In an ever increasing democratic society, non-state actors have come to claim a prominent role in policy making. The diversity of the actors has thus meant that a process of interaction and bargain is at play in the various stages of policy making. Their study amplifies the role of the public in solutions to various challenges facing them.

In its better practice guide of 2015, the Victorian Auditor General's office says public participation is defined by the International Association for Public Participation as the involvement of those affected by a decision in the decision-making process. Public participation encompasses a range of public involvement, from simply informing people about what government is doing to delegating decisions to the public.

Bardach (2012) states that policy making is a social and political activity; it goes beyond personal decision making because it affects the whole population. He adds that the process

usually involves a vast array of professionals and other interested parties, and this has morphed the contemporary analyst into one who engages in wide activities including public relations. Citizen participation increases the scope of citizens' involvement in matters that affect them, beyond periodic voting in elections. Moreover, it opens up the democratic space by encouraging openness and accountability by public institutions. It further contributes to the quality of policy options and for smooth implementation through wide acceptance and compliance. Public participation is therefore a model of democracy.

The notion of public participation can be traced to the Greek city-state times where every citizen was believed to be important in decision making. Democratic self-government means that citizens are actively involved in their own governance; they do not just passively accept the dictums of others or acquiesce to the demands of others. As Aristotle put it in his *Politics* (c 340 BC), "If liberty and equality, as is thought by some, is chiefly to be found in democracy, they will be attained when all persons alike share in the government to the utmost." Presently, public participation is a major concept practiced in the developed world, with more than 35 European countries subscribing to the 1998 Aarhus Convention (Creighton, 2005). This convention, formerly known as the United Nations Economic Commission for Europe Convention for Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters, commit signatory states to ensure public participation and access to information in all environmental decision making.

To demonstrate at what level much of an impact public views would make during policy making phases, Sutton (1999) described the linear model of policy making that was championed by Harold Laswell as an analytical and rational process that goes through various stages. These are agenda setting, policy formulation, decision making, implementation and finally monitoring and evaluation. The constant interaction between state and non-state actors is manifest in all these stages, but most importantly during formulation. Kingdon (1995) described the three streams framework towards agenda setting. These include problem, policy and political streams of which non-state actors seize windows of opportunity to lobby government to adopt their ideas. The formulation phase succeeds agenda setting and is the focus of this proposal because it is at this point that legislation is made and adopted by Parliament.

Anangwe (1997) describes policy using David Easton's model of environment, input and conversion, to acknowledge the multi-faceted nature of the exercise. He however identifies a disconnect between those in positions of bureaucracy and the people, caused by a 'social distance' between the two groupings. It would therefore be beneficial to the public good for policy making process be consultative and employ the use of a feedback mechanism.

Role of Awareness in Public Participation

This study examined what exactly constituted awareness, in order to understand its place in the process of policy making, as well as how awareness is created.

Awareness as a condition precedent to effective participation can be achieved through communication, education and advocacy. Advocacy can be otherwise compared to civic education. It is therefore safe to assume that at the very least, literacy levels in a country would have a bearing on eventual participation by the people in policy making. The United Nations Educational, Scientific and Cultural Organization, UNESCO's latest data of literacy levels in Kenya place adult literacy at 78.73% as at 2015. This would represent a high degree of literacy in the country and it would be safe to assume that public participation would therefore be boosted by this levels.

The importance of an informed public is discussed by Quigley (1995) who stated that civic education in a democracy is preparation for sustaining and enhancing self-government. Democratic self-government therefore would mean citizen participation based on informed, critical reflection. The opposite being an ignorant populace would therefore be construed to mean the public are ineffectual and unable and are handicapped in taking charge of their own affairs. Awareness provides the public with choices, and eventual ownership of outcomes.

Participation in itself is a means and not an end. Rowe et al (2004) posit that some policy makers may be more concerned with increasing public confidence than in a genuine attempt to widen consultation and gain better insights. The intention of participation is definitely the latter. This will be enriched through citizen awareness or what Arnstein (1969) says involves a high level of empowerment of the public and a direct input into the decision process. This can only be achieved through among others, civic education.

In an analysis of frameworks of devolution in Kenya, Omolo (2010) states that civic education informs citizens of major social, economic and political issues that affect their lives, as well as their rights and responsibilities. It also educates citizens on their specific civic roles and responsibilities, which will help them to be active participants in democratic processes such as legislation. For devolution especially, citizens must be politically conscious and have access to information. This is attainable through capacity building. Political knowledge affects participation, not only quantitatively but also qualitatively. Moreover, civic education enhances awareness on key development processes such as planning and budget-making. This calls for an effective mobilization of the public, timely disbursement to citizens of the agenda items for the public fora, packaging and presentation of agenda items in simplified forms that citizens can understand and effectively respond to, and the development of alternative budgets that capture and express citizens' interests, among other measures that enhance public participation.

Bossuyt et al (2002) identified three professional organizations as having had some input in public policy. These include the Federation of Kenya Employers, Kenya Association of Manufacturers and the Institute of Certified Public Accountants of Kenya. However, these are members' only lobby groups whose interest as captured in their constitution is the welfare of their membership. Any benefits accrued to the public would be construed as incidental or collateral but not deliberate. The concept of 'democratic deficit' which various scholars state as the fact that elitist groups may not always speak for the masses is evident.

Process and Design of Public Participation

In a study on mechanisms of public participation in four counties in Kenya, Odhiambo and Opiyo (2017), they found that other than express provisions in various statutes including budget preparation and validation meetings, town hall meetings and citizen forums, these counties had put in place information, communication and technology based platforms for mobilization and passing on information. Other than use of social media, they employed use of word of mouth, radio and television channels and newspapers. The choice of which medium to employ varied and was based on terrain, urbaneness and other considerations.

Creighton (2005) submits that there is no one-size fits all design of public participation, but should be innovative, and matches the circumstances of the issue at hand and the audience. The practice of participation should be an integrated part of decision making, by allowing participants ample time and conducting it in a manner that gives the greatest opportunity to influence outcomes. Emphasis should be given to pragmatic and interactive approaches as opposed to formalized procedures.

The South African parliamentary website provides for several avenues for citizen participation including the People's Assembly, the Taking Parliament to the People programme, the Women's and Youth Parliament's public hearings, outreach programmes, broadcasts, publications and the social media. Parliament has also established Parliamentary Democracy offices in the nine provinces of the country improve access to information on draft laws, policies and other national matters. Finally, bills must be published together with an invitation for public submissions before they are introduced in the various legislative bodies.

The German parliamentary website on the other hand indicates that public participation relies heavily on expert opinion, before policies are crystallized by the government. Specialist divisions in ministries receive and even monitor potential issues for legislation, and invite various interest groups for discussions.

Abelson and Gauvin (2006) described how public participation in Canada from the 1960s and 1970s has evolved, with decisions by government without public participation being rare. The Canadian Centre for Foreign Policy Development was established in 1966 to help the public contribute to all matters foreign policy. In the 1996 Geneva conference, the government heavily involved the civil society in securing a global ban on landmines. In the Ottawa conference in 1997, the programme to eradicate poverty was employed as a basic tool in transforming relations between the state and civil society. It is imperative to note that Canadian laws are not as rigid in demanding for public participation. This has rather come as an appreciation that the public may sometimes be more informed on specific issues than the government itself. Once bills have been introduced in the House, public participation is facilitated at the committee stage through online consultation under a portal, '*Consulting with Canadians*', and through public hearings.

In its second report of the 2013/14 session, the House of Commons' select committee on Public Administration observed that in June 2012, the government introduced an 'open policy-making' approach to policy. This invariably meant moving participation beyond Parliament to the people, but retaining responsibility. The report encouraged 'digital' engagement with the public, which includes the social media. This allows citizens who are digitally enabled to interact with government in new ways, plus allow the government to expand its reach in a cost effective way. This medium is sure to tap into the increasingly savvy but often aloof middle class.

The multifaceted nature of public participation as sampled above shows that there is no homogenous solution to ensure effective public participation in processes of governance. To identify relevant solutions, a society should examine its own unique circumstance and involve citizens in democratic decision-making.

Finally, Abelson & Gauvin (2006) in expressing the difficulty of determining effectiveness of participation in affecting final outcome of policies identified a range of citizen participant attributes that the bulk of outcome oriented research have focused on; these include increased levels of interest in and knowledge of public issues, improved capacity for future public involvement, increased propensity for social bond formation and improved trust of fellow citizens. Process approach on the other hand focuses on agencies that are responsive, participants are motivated, high quality of deliberation and participants have at least a moderate degree of control over the process. The two authors describe the difficulty in evaluating effectiveness due to the abstract nature of the 'end-point' of a participation exercise. It must be noted that government agencies will always retain decision-making authority.

THEORETICAL FRAMEWORK

Theory of Participatory Democracy

The theory that anchored this study is that of participatory democracy. Public participation can be traced to advancement in democracy since the end of the Cold War. The quality has however been questioned with the mere participation in elections by the citizenry adjudged inadequate. This crisis of democracy since the 1990's has seen the need to engage the public in decision making. Cooper et al (1995) argued that traditional representative democracy has become dysfunctional and unable to adequately respond to declining public participation in political processes. Indeed, democracy without public participation makes it meaningless.

Solutions to the above crisis have emerged and developed into several theoretical perspectives. Jean Jacques Rousseau's social contract theory in 1762 laid the ground for subsequent theories of participatory governance. His main thesis was that laws are binding only when the people willingly subordinate themselves to them. This argument also espoused by eminent scholars John Locke and Thomas Hobbes is the basis for bottom-up approach and participatory governance in policy formulation.

Pateman (1970) described the theory of participatory democracy first as the capacities and skills of the public being interrelated with bureaucratic structures through participation. Bureaucracies then are not just abstract institutions but must prioritize the needs of the citizenry in their functions. With the opaque form that bureaucracies usually tend to take, participation is a constant check on these processes through democratization.

The theory of participatory democracy is central to this study because even though Members of Parliament as representatives of the people are thought to act in their interest, the ultimate power rests with the people themselves and can be exercised directly. This is articulated in Article 1(2) of the Constitution of Kenya.

Gaventa (2007) espoused deliberative democracy as going beyond the simple set of rules, procedures and institutional designs like elections, to deeper control over decisions in a variety of fora. Legitimation is obtained through a representative Parliament as well as the public sphere. Participants seek acceptability of decisions, not just acceptability for the sake of it.

Theory of Communicative Action

The study also relied on theories of communicative action which is concerned with the quality of dialogue by creating a rational basis for constructing ends and means in a democratic society. Habermas (1984) defines communicative rationality as a communication that is ‘oriented to achieving, sustaining and renewing consensus.’

RESEARCH METHODOLOGY

Research Design

This study employed a descriptive research design to determine the current situation on public participation in regard to legislation in Kenya. This is because the research sought to describe and get answers to what the current situation on legislation is as regards the awareness levels of the public, and the process and design employed by the legislature.

Site of the Study

The study took place in Nairobi City County. The National Assembly was the site for interviewing the resource persons identified, as well as the Attorney General’s chambers. Data from the public were collected from randomly sampled residents of the city, in order to get a representative sample. The random sampling technique was chosen due to the gaps identified in literature review that could not determine the interest and intent of those who regularly participated, being majorly civil society groups. The study’s theoretical foundation of participatory democracy was also best suited by getting views of individual members of the public directly. However, to tap into the experience of previous participants, a civil society organization that had participated previously was interviewed.

Study Population

The research population comprised the residents of Nairobi City County whose sample frame is four (4) million as per the latest county statistical abstract by the Kenya National Bureau of Statistics, and the three hundred and forty nine Members of the National Assembly who participate in legislation, as well as participating civil societies.

Sampling Techniques and Sample Size

The sample was randomly selected to identify public respondents to establish the level of citizen awareness of constitutional provisions and their involvement in public participation. The random sample was obtained using Slovin's Formula, $n=N/(1+Ne^2)$ with a 93% confidence level, i.e 0.07 error level. This formula was chosen as existing information on characteristics of the population on matters of public participation in national legislation was not readily available. The total number of respondents sampled here were two hundred and four (204) as calculated below;

$$n = 4,000,000/(1+4,000,000*0.07^2) = 204.071$$

Purposive sampling was used to interview seven (7) resource persons that are directly involved in the legislation process. The research interviewed the Leaders of Majority and Minority parties/coalitions in the House, The Clerk of the National Assembly or his appointee, a two-term Member of Parliament, the Attorney General or his appointee and sought heads of two civil society organizations.

Data Collection Procedures

Clearance for research was obtained from Graduate School, Kenyatta University and the National Commission for Science, Technology and Innovation (NACOSTI). Permission to access Parliament and the Attorney General's offices was sourced from the respective heads of the institutions. Primary data was collected by administration of interview questionnaires and review Hansard reports in Parliament. The questionnaires were administered face to face to allow for follow-up questions and elaborations for clarity. This also allowed the researcher in-depth understanding of responses. The questionnaires had both closed and open ended questions to achieve maximum responses. Secondary data was obtained from the Parliamentary Library, with patterns of practice of public participation in legislation pre- and post-2010 Constitution examined.

Data Analysis

Questionnaires administered to the respondents were tabulated and measures of central tendency including means and percentages of responses to questionnaires were used. Data gathered from face to face interviews of the identified resource persons were analyzed through

content analysis for similarities and differences. Secondary data collected from journals and Hansard records were analyzed through content analysis.

RESEARCH RESULTS

Awareness of residents of Nairobi City County of their rights and constitutional provisions

The first objective sought to examine how the level of awareness of residents of Nairobi City County impacted their participation in legislation passed by the Kenya National Assembly. The awareness that the study examined as a variable leans heavily on civic education. This is because people do not just become aware of new phenomenon unless enlightened. Effective public participation requires more than a good constitutional foundation. This participation is only possible when the public is educated on issues affecting their lives and how to influence the relevant decision-makers on such issues. In this regard, civic education is a critical tool for enhancing public participation. Research findings indicated that residents of Nairobi County are inadequately aware of their civic responsibilities and constitutional rights. This therefore hampered effective participation by members of the public. A majority view the legislative process as a closed exercise that is out of their reach, notwithstanding constitutional provisions for their engagement. It was clear from the findings that even those who are aware, were passive and did not take advantage of the opportunities. Communication as a means to awareness is manifest through deliberate efforts to make the public be in the know of various issues affecting them. Communication is done through various media, including radio, television, newspaper advertisements, and even through face to face engagements. The National Assembly has not gone out of its way to improve on civic awareness, other than the bare minimum that they do to call for public participation. The civil society has also not contributed to the awareness of the populace, with them engaged majorly in matters that directly affect them. The low level of awareness has hampered effective participation of the people in national legislation as it has acted as a handicap.

Process used by the National Assembly to call for public participation

The predominant process used by the National Assembly is that of newspaper advertisements calling for memoranda from the public. These advertisements were placed in the two major dailies, The Standard and Daily Nation. Most of the advertisements gave interested participants seven days to submit mostly written views via email, post office or through physical delivery to the Clerk's office. This means of media was found by the research to be ineffective in reaching the wider population, who preferred radio, television, constituency offices and barazas. The procedure used by the National Assembly therefore negatively affected participation by the public. The outcome of the pieces of legislation can therefore not be said to reflect the will of the public.

The design of the actual public participation exercise and its impact on effective participation

The actual public participation exercise was found to impact negatively on effective participation as its structure did not encourage dialogue. Submission of written memoranda was the main design of the exercise, with an underwhelming preference for what would be most effective, oral submissions. Once these memoranda are received, the Clerk's office reported that the Committee secretariats analyzed the submissions and briefed Members of the Committee who would accept or reject the proposals. There were no experts engaged in any of the various fields, with Members of the Committee deemed to be competent enough to handle the various issues. During the few oral sittings, time allocated is barely enough as respondents are given an average of fifteen minutes to contribute on Bills that may contain hundreds of clauses. With respondent No. 207 having reported that the Budget and Appropriations Committee usually has countrywide town hall meetings, it can be deduced that legislation has not been taken with the same enthusiasm. Members of the public away from the capital who may wish to take part in the legislative process would need to go out of their way, and at their cost, to travel to Parliament, or simply send written submissions. Finally, there was no express provision for acknowledgement of submissions received, or whether the Committees would indeed factor in the proposals. The failure to have an accommodative design of public participation has negatively affected national legislation.

CONCLUSIONS

The basic assumption of the theory of participative democracy is that government is of the people, by the people and for the people. While democracy should be about the citizens being fully heard and represented, results found by this research drives the conclusion that as far as representative democracy is concerned, Kenya is still lacking. From the findings of the study, public participation has had little effect on outcome of legislation by the National Assembly. This is due to many factors;

First, the public are unaware of various constitutional guarantees at their disposal to enable them actively participate in legislation. When the public is unaware and incapacitated, we can deduce that their participation will be hampered.

It is clear that the National Assembly has made effort towards compliance with the Constitution. It is however also clear that Parliament has conducted the bare minimum, through call for memoranda in nationwide newspapers, and occasionally conducting meetings for oral submission within the precincts of Parliament, and has not gone out of its way to facilitate the citizens to participate in legislation. Once it has called for public memoranda, Committees deem that they have met the threshold, returns notwithstanding. This design has obviously hampered public participation.

Participation by individual members of the public is inadequate due to ignorance, disinterest, incapacity and general apathy. Associations and the civil society have however shown some aspects of participation in the legislative process. These non-state actors are however not as strong as has been evidenced in other jurisdictions.

While public involvement ensures that the public have input in decisions that matter to them, it is not lost that participatory democracy is the basis for a people centered development approach, and is therefore part of a wider concern of destiny of citizens.

RECOMMENDATIONS

Public Sensitization to raise Public Awareness

The National Assembly should conduct vigorous and continuous sensitization of the public through use of media, open days, advertisements, mass text messaging, newsletters and publications. This will encourage interest and eventual participation of the public in legislation. It may also be beneficial for Parliament to engage civil society organizations, sector groups and other organizations and associations in their day to day operations. This can be done through joint collaborative trainings and capacity building, and in public outreach. The National Assembly should actively use radio and television stations to call for submissions from the public. The Kenya National Bureau of Statistics' Economic Survey (2018) has shown that there are 176 radio stations countrywide with 109 in English and Swahili languages, and 67 broadcasting in vernacular. On the other hand, a total of 296,906 households have cable TV subscriptions, with a total of 4,890,347 digital subscriptions across the country. In comparison 89,631 persons access the daily newspapers published in English. Committees of Parliament should also conduct mandatory visits to various towns across the country and conduct town hall meetings, for every piece of legislation they process. Under this strategy of sensitization and use of wider coverage, Bills and other parliamentary publications should be translated to Kiswahili language, with local dialects considered thereafter. Lastly, with the increased literacy and access levels to ICT, the National Assembly should make use of social media to reach the large demography of youth.

Strengthening of the Process of Participation

To further see through enhanced response from the public, the National Assembly should consider use of easier forms of feedback, including toll free USSD text message service through which interested persons can submit their views. Parliament can also liaise with public offices including offices of county and sub-county administration, chiefs offices, public hospitals, postal services among others to have collection points across the country for free of charge (to the sender) submission of written submission for onward transmission. Due to the fact that each constituency has an office funded by Parliament, this nationwide footprint should be taken advantage of by strengthening it through logistical facilitation. Staff stationed at the offices must be competent and informed enough to avail information to the public orally and through notice

boards in these offices. These staff can also be co-opted in public for including barazas, town hall meetings, funerals, weddings and other public gatherings.

Redesign of the Participatory Process

With Committees of the House given twenty one (21) days to process Bills, including conduct public participation, it seems that the process is constraining and may inadvertently conspire to frustrate public participation. While this period may be adequate for small non-controversial pieces of legislation, for most it is inadequate and produces an unsatisfactory outcome. The National Assembly should revise its standing orders and allow for adequate time for Bill scrutiny and public participation.

REFERENCES

- Abelson, J. & Gauvin, F. (2006): *Assessing the impacts of public participation: Concepts, evidence and policy implications*. Ottawa: CPRN.
- Anangwe, A. (1997): *The public policy process in Africa*. United Nations Public Administration Network. Nairobi.
- Arnstein, S. R. (1969): *A ladder of citizen participation*. *Journal American Institute of planners*. 35: 215-24. Vancouver.
- Avritzer, L. (2012): *The Different Designs of Public Participation in Brazil*, *Critical Policy Studies*. Vol. 6, No. 2, July 2012, 113-127. Belo Horizonte: Routledge.
- Bardach, E. (2012): *A Practical Guide for Policy Analysis: The Eight-fold Path to More Effective Problem Solving* (4th Ed.). Berkeley: University of California.
- Bossuyt, J (2000): *Involving NSAs and Local Governemnts in ACP-EU dialogue*. *Policy Management Brief* 13. Maastricht. Available on [http://www.ecdpm.org/Web_ECDPM/Web/Content/Download.nsf/0/79E61E791533EC03C125799500442EFB/\\$FILE/PMB13-e.pdf](http://www.ecdpm.org/Web_ECDPM/Web/Content/Download.nsf/0/79E61E791533EC03C125799500442EFB/$FILE/PMB13-e.pdf). Accessed on 12/10/2017
- Bossuyt, J et al (2002): *Institutional Analysis of Non State Actors in Kenya*. *European Centre for Development Policy Management*. Available on <http://www.gsdr.org/docs/open/P035.pdf>. Accessed on 12/10/2017
- Chitere, P.O & Ileri, O.N (2004): *District Focus for Rural Development in Kenya: Its Limitations as a Decentralization and Participatory Planning Strategy and Prospects for the Future*. Institute of Policy Analysis and Research Discussion Paper, Nairobi, Kenya.
- Cooper, L. et al. (2006): *Citizen Centred Collaborative Public Management*, *Public Administration Review*, 66 (S1), 76-88.

- Creighton, J.L. (2005): *The Public Participation Handbook*. San Francisco: John Wiley & Sons.
- Gaventa, J. (2007): *Levels, Spaces and Forms of Power: Analysing Opportunities for Change*. In Berenskoetter, F. & Williams, J. (Eds.), *Power in World Politics*, pp. 2014-224). London: Routledge.
- German Bundestag Parliamentary Website. Available on <https://www.bundestag.de/en/parliament/function/legislation>. Accessed on 8/6/2018
- Habermas, J. (1984): *The Theory of Communicative Action, Vol. 1: Reason and the Rationalization of Society*. Boston: Beacon Press.
- Institute for Social Accountability v. National Assembly & 4 Others* (2015): <http://kenyalaw.org/caselaw/cases/view/105977/>
- Innes J. E. & Booher D. E. (2004): *Reframing public participation: strategies for the 21st century, Planning Theory & Practice*, 5:4, 419-436.
- Kalu, K (2004): *Agenda Setting: Domestic and Foreign Policy in Africa. Agenda Setting and Public Policy in Africa. Contemporary Perspectives on Developing Countries*. Kalu K. Ed. Ashgate Publishing, USA.
- Kenya Law Reform Commission (2015): *A Guide to the Legislative Process in Kenya* (1st ed.) Nairobi.
- Kingdon, J.W (1995): *Agendas, Alternatives, and Public Policy*. HarperCollins College Publishers, New York.
- National Government Constituencies Development Fund Act (2015). Available on <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NationalGovernmentConstituenciesDevelopmentFundAct30of2015.pdf>. Accessed on 6/12/2017.
- Odhiambo, M. & Opiyo, R.(2017): *Effective Public Participation Mechanisms*. CISP, Nairobi.
- Omolo, A. (2010). *Devolution in Kenya: A Critical Review of Past and Present Frameworks In Devolution In Kenya, Prospects, Challenges And The Future*. Mwenda (ed). IEA Research Paper No. 24.
- Pateman, C. (1970): *Participation and Democratic Theory*. OUP, Cambridge.
- Potter, D. (2008). *Public Participation in the UK: Lessons from the UK Experience*. SIGMA Workshop Background Paper. London
- Public Administration Select Committee 2nd Report. Available on www.parliament.uk/business/committees/committees-a-z/commons-

[select/public-administration-select-review/news/public-engagement-report/](#).

Accessed on 28/10/2017

Quigley, C. (1995): *The Role Of Civic Education. Task Force On Civic Education Paper*. Communication Network. Washington D.C.

Ripley, R.B. & Franklin, G.A. (1987): *Congress, the Bureaucracy and Public Policy*. Dorsey Press, Carlifonia.

Rowe, G., Marsh, R. & Frewer, J. (2004): *Evaluation of a Deliberative Conference Using Validated Criteria*. Science, Technology, & Human Values 29 (1): 88-121. Sage.

Sigei, F (1987): *The District Focus for Development Strategy in Kenya: A Case of Decentralization and the Changing Role of the Generalist Field Administration*. Nairobi, Kenya

South African Parliamentary Practice. Available on www.parliament.gov.za/live/content.php?Item_ID=311. Accessed on 28/10/2017

Sutton, R. (1999): *The Policy Process: An Overview*. Overseas Development Institute, Working Paper no 118. Available on <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2535.pdf>. Accessed on 7/09/2017

The Kenya National Bureau of Statistics. *Nairobi County Statistical Abstract* (2015)

The Kenya National Bureau of Statistics. *Economic Survey* (2018)

The National Assembly (2017). *Fact Sheet No. 27: Public Participation in the Legislative Process*.

Theodoulou, S & Cahn, M (1994): *Public Policy: The Essentials Reading*. Prentice Hall Humanities. NJ, USA

Victorian Auditor General's office. (2015): *Public Participation In Government Decision Making: Better Practice Guide*. Melbourne.