

UNIVERSITY OF NAIROBI

SCHOOL OF LAW

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BACHELOR OF LAW (LL. B) COURSE (GPR 410)**

**PUBLIC PARTICIPATION IN COUNTY GOVERNANCE IN KENYA: A WITHERING
EUCALYPTUS IN A DESERT MIDDLE.**

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13 JUNE 2014

DECLARATION

I, **MALING'A SALLY ANYANGA** do hereby declare that this dissertation is my original work and has not been submitted for a degree in any other university.

Signed

Maling'a

MALING'A SALLY ANYANGA

This dissertation has been submitted for examination with my knowledge and approval as the university supervisor.

Signed

PROFESSOR MIGAI AKECH

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Without ye all these works would not have been. I thank you.

LIST OF CASES

County Council of Nairobi. In Nairobi Metropolitan PSV Saccos Union Ltd & 25 Others v the

County of Nairobi Government & 3 Others Petition No 486 of 2013

Minister of Health v New Clicks South Africa (PTY) Ltd

Robert Gakuru & Others v Governor Kiambu County & 3 Others (2014)

Buckinghamshire County Council & Others v Secretary of State for Transport (2013)

LEGISLATIONS, POLICIES AND STATUTORY INSTRUMENTS

The Department: Provincial and Local Government, Republic of South Africa, National Policy Framework for Public Participation (2007)

Constitution of Kenya, 2010

1992 Rio Declaration

County Government Act, 2012 (Government Printers)

Urban Areas and Cities Act, 2011 (Government Printers)

Transition to Devolved Government Act, 2011 (Government Printers)

Elections Act, 2011 (Government Printers)

Constituencies Development Act, 2013 (Government Printers)

Intergovernmental Relations Act, 2012 (Government Printers)

TABLE OF CONTENTS

1.0.0 CHAPTER ONE

PROPOSAL

1.1 INTRODUCTION.....	8
1.2 STATEMENT OF THE PROBLEM.....	9
1.3 STATEMENT OF OBJECTIVES.....	9
1.3.1 General Objective	
1.3.2 Specific Objectives	
1.4 RESEARCH QUESTIONS.....	9
1.5 JUSTIFICATION OF STUDY.....	10
1.6 CONCEPTUAL FRAMEWORK.....	10
1.7 RESEARCH METHODOLOGY.....	14
1.8 HYPOTHESIS.....	14
1.9 LIMITATIONS.....	14
1.10 CHAPTER BREAKDOWN.....	15

2.0.0 CHAPTER TWO

ESTABLISHING THE BENCHMARK FOR ASSESSING THE EFFECTIVENESS OF PUBLIC PARTICIPATION

2.1.0 INTRODUCTION.....	18
2.2.0 BASIC STANDARDS FOR EFFECTIVE PUBLIC PARTICIPATION.....	21
2.2.1 THE THREE-FOLD QUESTIONS TEST.....	23
A. Who Participates?	
B. How do they participate?	
C. What is the Impact of the input?	
2.2.2 THE LISTING APPROACH.....	30

2.3.0 CONCLUSION.....37

3.0.0 CHAPTER THREE

THE CASE OF THE WITHERING EUCALYPTUS

3.1.0 INTRODUCTION.....39

3.2.0 NAIROBI COUNTY PARTICIPATION FORUM.....40

 3.2.2.1 Publicisation of the Forum

 3.2.2.2 The Actual Participation Exercise

3.3.0 KAJIADO COUNTY54

3.4.0 CONCLUSION.....58

4.0.0 CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Summary of the Dissertation Paper.....60

4.2 Recommendations.....61

BIBLIOGRAPHY.....69

APPENDIX.....76

1.0.0 CHAPTER ONE

PROPOSAL

1.1 INTRODUCTION

'But, you know, I'm sorry, I think democracy requires participation. I mean, I don't want to proselytize but I do feel some sort of duty to participate in the process in some way other than just blindly getting behind a political party'

John Cusack¹.

Public participation in policymaking and decision making is undoubtedly one of the key pillars of democratic governance. The global village is currently enjoying an era of political maturity that recognizes the voice and input of the populace in matters of governance. The era of draconian and dictatorial leadership and systems of governance has long been overtaken by events.

Under the new Constitutional dispensation, Kenya's devolved government structure has led to the establishment of 47 counties. One of the key objects of devolution is to give powers of self-governance to the people². This can only be done through participation of the citizenry in governance at the county levels. This introduces a new approach, different from indirect participation through elected representatives. From a governance perspective, there can be said to be paradigm shift from the conventional traditional democratic governance to direct participation

¹ John Paul Cusack (Born June 28, 1966) is an American actor, producer and screenwriter. He is also a vocal critic of Former U.S President George W. Bush's administration.

² Article 174(c).

by the populace. Direct participation may take the form of either deliberative democracy or participatory democracy.

For participation to be productive, meaningful and effective, the legal framework in place should be tailored to facilitate it. Just like the rule of thumb in delegation, if you are going to lay down participation as a key principle in the Constitution, back it up with facilitative tools. The situation may be metaphorically likened to a barking dog that is toothless.

1.2 STATEMENT OF THE PROBLEM

Kenya's devolved government structure lacks a proper facilitative legal framework to ensure effective public participation at the county government level.

1.3 STATEMENT OF OBJECTIVES

1.3.1 General Objective

To examine the extent to which the legal framework within the devolved government structure ensures effective public participation with a view to contribute to enhancing the quality of public participation in county governance.

1.3.2 Specific Objectives

1. To determine what effective public participation entails.
2. To examine whether the legal framework on public participation in county governance as it is ensures effective public participation.
3. To generate appropriate recommendations for reforms on the legal framework.

1.4 RESEARCH QUESTIONS

This study will be geared towards answering the following questions:

1. What does effective public participation entail?
2. Can the legal framework as designed ensure effective public participation?
3. What changes need to be incorporated to make the framework more instrumental towards enhancing the quality of public participation?

1.5 JUSTIFICATION OF STUDY

Devolved governance introduces a new system that seeks to bring governance closer to the people by allowing them to manage their own affairs through localized units. The only way to make it possible for people to manage their affairs at the county levels is to give them the opportunity to participate. The Constitution of Kenya lays down the authority for public participation in county governance which has also been reflected in a number of statutes. It should be noted however that for participation to be effective and productive, the legal framework on the same should be appropriate and provide facilitative tools to make it possible. If this is lacking, efforts to incorporate public participation in county governance would be a waste and public participation would prove elusive.

1.6 CONCEPTUAL FRAMEWORK

This paper proceeds to assess public participation along three dimensions: what effective public participation entails; whether the Kenyan legal framework on participation in county governance meets the threshold for effective public participation; and if not, what changes can be incorporated to enhance the quality of participation.

Participation of the populace is an essential component of good governance. It helps to bolster credibility and legitimacy in a government; and instils a sense of ownership and control over affairs in those governed. The international attitude towards governance is seen to be more inclined towards a participatory governance model; as opposed to a model where the powers are highly concentrated on the central government, aloof from the populace. This has seen countries undertake measures to incorporate public participation in their governance structures by passing legislations on the same. This paper is founded on the argument that there are certain standards or requirements that must be met to ensure participation is effective and productive. The assumption projected in this study is that our legal framework is not up to task to ensure effective participation and a lot needs to be done to align it to the present participation needs.

The first issue to direct oneself to is identifying what effective public participation entails. This is relevant in that it will form the benchmark for comparison and assessment of our legal framework on participation in county governance. The International Association for Public Participation has laid down seven standards for effective public participation³. The standards can be summarized as follows: the public should have a say in decisions that affect their lives; their contribution should influence decisions; the process should meet the needs of all participants; the process should facilitate involvement; the process should define how the citizens will participate; the process should provide participants with information needed and lastly, the process should communicate how the participant's input affected the decisions.

³ Heidi Burgess & Cate Malek, 'Public Participation' (September 2005).

Gene Rowe & Lynn Frewer⁴ can be seen to back up the standards laid down by the International Association for Public Participation. They evaluate various public participation methods. They argue that determining the quality of the output of the participation exercise is difficult, for this reason, they adopt a different strategy of considering the participation process itself with a view of identifying desirable elements that would weigh in on determining the quality of the participation process. Though this paper is formulated to apply to the science and technology sector, ideas projected may be applied *mutatis mutandis* to participation in governance. Their paper projects an evaluation criterion for participation that contains the following elements: early involvement in the process, representativeness, transparency, accessibility to resources, influence of participation on the decisions made etc.

What is clear is that, there needs to be genuine participation of the public, the public should participate from an informed stand, this particular participation process should be facilitated appropriately to meet the needs of participants and their participation should not be in vain, instead it should have an impact on the ultimate decision made by the governing authority. It should be noted that with regards to genuine participation, Arnstein⁵ suggests there are varying levels of participation.

A different approach for analysing the effectiveness of participation has been adopted by other writers. It takes the form of three questions: who participates? How do they participate? How does their participation influence the decisions made? The legal framework should be designed

⁴ Gene Rowe & Lynn Frewer, 'Public Participation Methods: A Framework for Evaluation' (2000) 25 Science Technology and Human Values 3, Sage Publications Inc.

⁵ Sherry Arnstein, 'A ladder of Citizen Participation' (1969) 35 Journal of the American Planning Association 216.

to ensure these three questions are answered precisely and accurately without leaving any doubt and ambiguities. Archon Fung⁶ endorses this three questions model in his works. He develops a framework for understanding the range of institutional possibilities for public participation. He discusses the mechanisms of participation along three lines: who participates; how they participate and the link between their deliberations and policy actions.

Fung underscores that the three dimensions cited are important for understanding the potential and limits of participatory forms. Jurgen Habermas⁷ a propounder of deliberative democracy has carved himself a niche in an outcome oriented approach. He lays emphasis on the impact of the participation in the final outcome of the decision making process. He is seen to focus on Archon Fung's third dimension only, on the link between their deliberations and policy actions.

Khaled Mahmoud⁸ modifies the three dimensions projected by Fung to analyse participation in the context of four questions: participation in what? By whom? How? By which means? This article is contextualised within urbanisation in Cairo; nonetheless, it raises issues of relevance in participation in governance as well. It lays down the argument that it should be clear on what the participation is to take place. On who is to participate, it advocates participation by the affected parties or a civil society organisation that represents the entire community. It however doesn't

⁶ Archon Fung, 'Varieties of Participation in Complex Governance' (December 2000) *Public Administration Review*. Archon Fung is an associate Professor of Public Policy at the John F. Kennedy School of Government, Harvard University.

⁷ Maeve Cooke, 'Five Arguments for Deliberative Democracy' (2000) 48 *Political Studies* 947.

⁸ Khaled Mahmoud, 'PDPs Methodology for Participatory Urban Upgrading' (*Participation in Practice: Cairo's Informal Areas between Urban Challenges and Hidden Potentials*).

support representation as a participation method. On the how to participate, which is closely interlinked with the means by which to participate, five participation development tools are propounded to aid the participation process: knowing the local community, support of the local community, information sharing, participatory planning and budgeting and lastly, impact monitoring.

The Kenyan legal framework will be assessed against the benchmark of effective public participation set, as raised above. Focus will be on three legal instruments: The Constitution, The County Government Act and The Public Financial Management Act. A comparative case study of South Africa's structures and legislations will be undertaken with a view of deriving lessons for Kenya.

1.7 RESEARCH METHODOLOGY

The approach of collecting information and data that this research will follow, will be both primary and secondary research (desk based research). This combined approach has been preferred in the interest of avoiding being speculative in the course of analysis especially given the fairly novel nature of the research area and the limited secondary information in this area as contextualised in Kenya. Primary research will be undertaken through observation and administration of questionnaires. The secondary research would involve the following:

- I. Internet searches for relevant legal instruments.
- II. Library searches for relevant books, reports and articles.

1.8 HYPOTHESIS

This dissertation examines the hypothesis that the Kenyan legal framework in place on participation does not guarantee effective public participation.

1.9 LIMITATIONS

This research study is likely to experience the following limitations:

- I. The country is still at the transition phase of implementing the constitution, for this reason, some arguments may be speculative.
- II. On evolution, technical terms will be discussed as at 29th November, 2013.
- III. There is no universal evaluation criteria against which effectiveness of public participation can be assessed against. Material in the area is still being developed.

1.10 CHAPTER BREAKDOWN

Chapter One

Proposal

This will be the introductory chapter. It will contain the proposal.

Chapter Two

Establishing the Benchmark for Assessing the Effectiveness of Public Participation

This chapter will expound on the conceptual framework. In the process, it will answer the question on what effective public participation entails.

Chapter three

The Case of the Withering Eucalyptus

This chapter will seek to answer the second research question being whether the legal framework as designed can ensure effective public participation in county governance. It will contain research findings from the primary research that will have been undertaken. **Chapter Four**

Conclusion and Recommendations

This chapter will be the final chapter. It will conclude the research paper and make necessary recommendations that may be adopted to make the legal framework more conducive towards ensuring effective public participation.

WORKPLAN

PART ONE:

RESEARCH PROPOSAL-3 MONTHS

FIRST MONTH (October)

Step 1:

Writing the concept paper

Step 2:

Submitting it

SECOND AND THIRD MONTH

(November-December)

Step 4:

PART TWO:

CHAPTER WRITING-4 MONTHS

FIRST MONTH (January)

Step 1:

Writing chapter two

Step 2:

Submitting it

Step 3:

Meet with supervisor regularly to discuss chapter

Step 4:

<p>Meet with supervisor</p> <p>Step 5:</p> <p>Draft research proposal</p> <p>Step 6:</p> <p>Submit proposal to supervisor</p> <p>Step 7:</p> <p>Meet with supervisor regularly to discuss proposal</p> <p>Step 8:</p> <p>Make changes following discussion with supervisor.</p> <p>Step 9:</p> <p>Submit final proposal</p>	<p>Make changes following discussion with supervisor.</p> <p>SECOND MONTH (February)</p> <p>Repeat Steps 1 to 4 for Chapter three</p> <p>THIRD MONTH (March)</p> <p>Repeat Steps 1 to 4 for Chapter four</p> <p>FOURTH MONTH (April)</p> <p>Step 1:</p> <p>Repeat Steps 1 to 4 for Chapter four</p> <p>Step 2:</p> <p>Compile all chapters</p> <p>Step 2:</p> <p>Submit to supervisor by April 27th</p> <p>Step 3:</p> <p>Meet with supervisor to discuss completion</p> <p>Step 4:</p> <p>Print and bind three copies of final document</p>
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2.0.0 CHAPTER TWO

ESTABLISHING THE BENCHMARK FOR ASSESSING THE EFFECTIVENESS OF PUBLIC PARTICIPATION

2.1.0 INTRODUCTION

This chapter labours to lay down the utopia for effective public participation. As was established in the previous chapter, this dissertation attempts to examine the extent to which the legal framework within the devolved government structure in Kenya ensures effective public participation. Effectiveness of public participation thus has to be assessed against an established benchmark. In this light, this chapter endeavours to lay down that benchmark through a consolidation of material by practitioners and scholars in this area as well as information gathered from systematic observation of the practical aspect of participation. It is underscored at this point that this dissertation is premised on the argument that effective public participation can only be achieved when the basic standards for effective participation have been attained, hence the need to identify what these basic standards entail.

So, why should we concern ourselves with what effective public participation entails? There is a paradigm shift of the world towards more engagement of the populace in matters of policy formulation. Take for instance environmental matters which are of global concern, policy instruments in that discipline are observed to agitate for public participation and access to information as one of the principles of international environmental law.⁹ The global attitude on

⁹ Principle 22 of the 1992 Rio Declaration lays down the foundation for participation in environmental matters; the Aarhus Convention on Access to Information, Public Participation in Decision making and Access to Justice in Convention in Environmental Governance, is another instrument that is exclusively themed along the line of public participation in environmental governance.

participation is evident and Kenya as it interacts on the international plane with other actors needs to embrace participation and run with it.

There exists a plethora of theories and principles in support of participation. Fiorino (1990) lays down three rationales for effective public participation which appear to have summarized literature in the area. He frames them as: the 'instrumental', 'normative' and 'substantive' rationales.

The instrumental approach advances that participation instils legitimacy in a process. It helps to bolster public trust in the process and outcomes of activities performed by a governing authority. When the public participate in the decision making process, they develop a sense of ownership over the decision making process and its outcome. In this regard, resistance is less likely to be experienced when it comes to the implementation of the decisions and policy actions agreed upon.

The normative approach is associated with procedural justice. This is in the sense that it rationalizes participation in a decision making process by those affected or likely to be affected by an outcome. Failure to involve this particular group of persons in decision making puts the governing authority in a precarious position where it risks being criticized for engaging in arbitrary government actions, which is contrary to established principles of good governance. This approach advocates for maximum participation by the populace and is against the elitist participation model where only the elite in society get to participate.

Lastly, the substantive approach rationalizes participation along the lines of quality control. It is argued that participation improves the quality of decisions made.¹⁰ It is advanced that non state actors may in some instances have more to contribute to the decision making than state actors may have. The local community members are the ones who know best their needs and the challenges they face, for this reason, it would be better to involve them in the quest of finding a solution to their challenges than engaging only outsiders who are theoretically and academically experts in a discipline, but lack knowledge of actual happenings in reality. Participation of the local community members contributes to an increase in the depth and breadth of information which ultimately impacts positively in the quality of decision making. The adage, 'the wearer of the shoes knows where it pinches most' best describes this approach.

This chapter thus proceeds to analyse effectiveness of participation along two lines: the three questions and the listing approaches. Under the three questions approach, it is posited that one can determine whether there has been effective participation by assessing whether the participation framework and exercise, answers comprehensively the questions: who participates? How do they participate? What is the impact of their participation in the decision making process? The listing approach breaks down the three questions further to specifically assess what factors are to be considered when trying to answer the three questions. These two approaches thus supplement each other.

¹⁰ Daniel Fiorino, 'Citizen Participation and Environmental Risk: A Survey of Institutional Mechanisms' (1990) 15 *Science, Technology and Human Values* 226; Anna Wesselink et al, 'Rationales for Public Participation in Environmental Policy and Governance: Practitioners' Perspectives' (Accepted for Publication in *Environmental Planning*) at 4.

2.2.0 BASIC STANDARDS FOR EFFECTIVE PUBLIC PARTICIPATION

There exists a multiplicity of evaluation methodologies and techniques for evaluating effectiveness of public participation.¹¹ However, there seems to be no *modus operandi* of evaluating effectiveness of public participation.¹² As a matter of fact, Lowndes, Stoker and Pratchett in their works acknowledge the confusion surrounding the benchmarks for evaluating effectiveness of public participation.¹³ It is the case that the benchmark for evaluating the effectiveness of participation remains an unsettled and widely debated upon issue at the international scene. There have however been indications that a common ground on this may soon be attained.

It is arguable that the basic standards for effective public participation provide evaluation criteria against which participation is assessed. Focus is thus drawn on identifying what constitutes the basic standards for participation in order to come up with a benchmark. This paper adopts a hybrid kind of approach of analysing what effective public participation entails. Two perspectives which I have elected to label: the three-fold questions approach and the listing approach are to be analysed in a two-step manner. The former is associated with scholars such as

¹¹ Greg Brown & Sean Yeong Wei Chin, 'Assessing the Effectiveness of Public Participation in Neighbourhood Planning' (2003) 28 *Planning, Practice & Research* 563 at 564.

¹² Vivien Lowndes, Gerry Stoker, & Lawrence Pratchett, *Enhancing Public Participation in Local Government: A Research Report to the Department of the Environment, Transport and the Regions*, London, Department of the Environment, Transport and the Regions (1998). It has been argued that the lack of formal evaluation of public participation may be the result of confusion as to the appropriate benchmarks for evaluation.

¹³ *Ibid.*

Archon Fung¹⁴ and Khaled Mahmoud¹⁵ inter alia, who pose a series of questions in evaluating the effectiveness of public participation; while the latter is linked to other propounders who have adopted a sort of enumeration approach of outlining the specific basic standards to be met, the International Association for Public Participation, the Organisation for Economic Co-operation and Development and works by Gene Rowe & Lynn Frewer¹⁶ are a good illustration of this.

The two-step approach is operationalised as follows: the three fold questions test is employed first. Once the questions have been answered, the listing approach comes into play. The adoption of this two-step approach is geared towards ensuring there are no loopholes in the participation framework. If a particular element of participation fails to be addressed under the three questions test, there is a high possibility it will be captured under the listing approach.

The three questions approach opens a sort of Pandora's Box in that all that other scholars have suggested regarding effective public participation may be construed to fall under the three questions test. It is basically open-ended. The genesis behind the ineffectiveness surrounding the use of the listing approach on its own originates from the non-exhaustive nature of the list.

¹⁴ Archon Fung, 'Varieties of Participation in Complex Governance' (2006) Special Review, Public Administration Review 66.

¹⁵ Khaled Mahmoud, 'PDPs Methodology for Participatory Urban Upgrading' (Participation in Practice: Cairo's Informal Areas between Urban Challenges and Hidden Potentials).

¹⁶ Gene Rowe & Lynn Frewer, 'Public Participation Methods: A Framework for Evaluation' (2000) 25 Science Technology and Human Values 3, Sage Publications Inc.

2.2.1 THE THREE-FOLD QUESTIONS TEST

Archon Fung contributes to the debate on participation by arguing that mechanisms of participation vary along three important dimensions: who participates, how participants communicate with one another and make decisions together, and how discussions are linked with policy or public action. This paper twists Fung's three propositions in light of the predominant view adopted by other writers on the subject into three questions which form the basis of analysis. The test adopted proceeds on the postulation that for effective public participation to be established, the framework in place should provide a conducive environment for the answering of the following questions: who participates? How do they participate? (Similar to what Fung described as how participants communicate and make decisions) and how does their participation influence the decisions made? (What is the connection between their conclusion and opinions on one hand and public policy and action on the other?).¹⁷ It is arguable that effective public participation only arises when the three questions do not remain outstanding from an assessment of the feasibility of the framework and participation in practise.¹⁸

For participation to be effective, these three questions have to be capable of being answered with clarity just from assessing the structures in place and the manner in which participation is expected to be implemented. An analysis of the Kenyan legal framework will be undertaken in the ensuing chapter against this threefold question test and the listing approach. The extent to

¹⁷ Above n6 at 67

¹⁸ Khaled Mahmoud, 'PDPs Methodology for Participatory Urban Upgrading' (Participation in Practice: Cairo's Informal Areas between Urban Challenges and Hidden Potentials). Mahmoud comes up with a four question approach: participation in what? By whom? How? By which means? , it appears to be similar to what Fung proposes only more disaggregated. Similar three questions have also been asked by Ajit Krishnaswamy in his works, Ajit Krishnaswamy, 'Strategies and Tools for Effective Public Participation' (FORREX Forum for Research and Extension in Natural Resources, Burnaby Canada) 245.

which it satisfies the test with clarity will determine its level of efficacy as far as public participation is concerned.

A. Who Participates?

The framework in place must clearly demonstrate who the participants of the decision making process are going to be. Is it going to be just any and every member of the county?¹⁹ Or is it going to be a selected group of persons from the entire population? If it is going to be a selected group, what is the selection criterion to be used? Are there any qualifications needed? How is the selection process going to be undertaken? The framework should address all these issues articulately for it to encourage effective public participation. If these questions remain unanswered, it would present a problem in that it may mean that the framework is inept.

Apart from just identifying who the participants are, the framework should allow for the equipment of the participants in a manner that would allow them to participate effectively. The framework should allow for capacity building. It should allow for training and civic education of the participants.

It may be argued that selecting a smaller group to represent the entire population goes against the principle of inclusivity. However, there are certain issues which are so technical in nature, that they call for participation of a selected few with knowledge in that particular area under deliberation. At the same time, having a process where anybody and everybody can participate, still will not reinforce the principle of inclusivity as it is argued that there is a certain group of

¹⁹ Archon Fung describes this manner of selection as self selection. This entails scenarios where literally anybody can attend and participate in the decision making together with the governing authority.

the populace who are more likely to participate than others, that is, the educated and the middle class group of society.²⁰

Where it has been established that a selected group of the populace is to participate, it is only proper that certain formalities be set and met, which go towards bolstering legitimacy and transparency in the process. The criterion for selection should have been communicated prior to the selection exercise, to the populace. The other requirement is that the group selected should be fully representative of that particular county populace.²¹ The group selected should capture the diversity. For instance, in the Kenyan context, the two-thirds gender rule laid down in Article 81 of The Constitution should be observed; the youth and persons with disabilities should be represented, tribe/ ethnic representation must be fair.

It should however be noted that the requirement of full representation and the principle of inclusivity should not be interpreted to mean a compromise on quality and competence. If there are certain qualifications required for one to participate, one must satisfy them. One should not be selected solely in an attempt to meet the needs of affirmative action when he or she does not even have the qualifications to begin with.

Archon Fung advances five modes of selection processes: self selection, selective recruiting, random selection, involvement of lay stakeholders and involvement of professional stakeholders. Self selection has already been discussed prior.²² Selective recruiting aims at portions of society

²⁰ Above n6 at 67.

²¹ Societies are by norm heterogeneous. This is in various aspects: the group should reflect gender balance, ethnic representation, and representation of social classes, minority and special interest groups.

²² Above n11.

less likely to participate. This may be effected through formulating agendas which deal with issues affecting a particular group. For instance, an agenda dealing with unemployment is likely to attract a youthful audience as opposed to senior members of society; an agenda issue on social security is likely to attract senior persons either in employment or retired personnel. Random selection has no specific criterion. Involvement of lay stakeholders entails having an unpaid group of the ordinary citizens with interest in a particular issue.²³ Lastly, professional stakeholders entails having a group of paid individuals who are specialized in the areas under consideration.²⁴

B. How do they participate?

The legal framework on participation should be articulate on key issues as regards the manner of participation. These include issues dealing with the structure and avenues for participation; reporting/ feedback channels; chains of command; the resources to facilitate the participation process (such as information availability and access); date, time and place of the forum etc.

²³ Petrus Brynard, 'Realities of Citizen Participation' in K. Bekker(ed) *Citizen Participation in Local Government* at 39-50 (Pretoria, Van Schaik), adopts a thought-provoking definition public participation. He adopts an approach different from the conventional 'stream', which focuses plainly on input in decision making by those affected or likely to be affected by a decision, to expound on the participants. He defines public participation as 'a process wherein the common amateurs of a community exercise power over decisions related to the general affairs of a community'. He categorically lays emphasis on the 'common amateurs of a community'. This is the portion of the population I term common 'wananchi'. This focuses attention on the non-elite members of society. This is the portion with no special knowledge, low education levels and persons not in formal employment. It may be argued that what he advocates for is populist deliberative democracy as opposed to elitist deliberative democracy. In the former, decision making is undertaken by laymen while in the latter, decisions are made by elite bodies such as the legislature, executive, courts etc.

²⁴ Above n6 at 67-68.

Various practitioners and scholars have put forward different typologies assessing levels/types of participation. For instance, the IAPP (2007) advances the participation spectrum which has five components, that is: inform, consult, involve, collaborate and empower; each of which advances a different goal for public participation, dependent on the level of participation.

The key goal behind 'inform' as a component of the participation spectrum is to provide the public with balanced and objective information which is to assist them in understanding the problem, alternatives and solutions in question better. The populace gets notified of the status of the issue under consideration through provision of adequate and timely information. It is evident that in this case there is barely any opportunity for genuine participation.

'Consult' is geared towards obtaining feedback on analysis, alternatives and decisions. From a practical perspective, all the governing authority does is invite the populace to make a comment or some other little input based on the information previously provided.

'Involve' focuses on working directly with the public throughout the process to ensure public issues and concerns are consistently understood and considered. There is more opportunity to dialogue and interact with the decision makers under this component.

The main goal in 'collaborate' is to allow the governing authority a chance to partner with the public in each aspect of the decision. Lastly, under 'empower', final decision making is left in the hands of the public. This final component may be likened to deliberative democracy where the populace participates actively in decision making and there is a sense of ownership over the process.²⁵

²⁵< <http://www.iap2.org.au/documents/item/84>>

The manner of participation should allow an adequate opportunity for the participants to actually have a say in the making of the decision. However it should be acknowledged that certain issues call for passive participation of the populace, for instance, issues technical in nature may call for active participation of a few or looking at it from the other side of the coin, passive participation of the greater population. In the latter scenario, as opposed to seeking public input, the governing authority may just inform the greater public of the decision arrived at.

The date, time and place of the forum should be clear to the public. Adequate notification period should be observed in this regard. This boils down to proper coordination of the exercise. Such issues should be communicated through publication of the information in a conspicuous place and in an acceptable language. Such publication may be in a local daily newspaper circulating in the area, or through annexing a notice on a notice board in key administrative locations such as the county offices, churches, schools etc. It should however be noted that this may still not solve all the communication problems as in some areas a large number of the population is illiterate. If the option of broadcasting the information via a local radio station was to be exercised, still, not everyone can access a radio. This goes to show that no matter how much effort is put in trying to relay information; it would be wishful-thinking to imagine the structures can be foolproof. The time, date and place should also be convenient enough to allow for maximum attendance of participants.

C. What is the Impact of the input?

An effective legal framework on participation should underscore the need of input of participants to shape the final outcome of the decision making process. Where input of the public is not taken into account in arriving at the final outcome, reasons must be given by the governing authority as to why public input was not utilized. This appears to be the backdrop for effective public

participation. This is instrumental in encouraging future participation. No one would be interested in participating in a process that ignores their input. Archon Fung illustrates this using a continuum whereby, on one end, participants have little to no expectation of influencing the policy outcome. The other extreme end of the continuum denotes cases whereby whatever the participants deliberate on become policy. In the former case people are viewed to participate only to fulfil some civic obligation or for edification purposes.²⁶ In this kind of scenario, since citizens have no expectation that they will impact their systems of governance through decisions made, they tend to console themselves with the feeling of satisfaction and fulfilment that is derived from that sense of patriotism that one feels when exercising civic obligations even when their input will not count. It should be noted that there should also be a feedback channel in place to communicate to the public how their input shaped the overall decision made.

A different approach is taken by Jürgen Habermas, with regards to the final outcome of deliberation. His approach is substantive in nature, in that as opposed to focusing on procedure as Archon Fung did, he focuses on the content of the outcome. He lays down the argument that deliberation contributes constructively to practical rationality of democratic outcomes, in that it results in rational outcomes. What he appears to advance is the position that more sound decisions result from a decision making process that embraces public deliberation than a process which fails to do so. His position has however been faulted in that it fails to explain how public deliberation contributes constructively to the rationality of the outcomes.²⁷ It is arguable with regards to the position adopted by his critics on this point that their criticism may be misdirected as how public deliberation contributes to the rationality of outcomes is self explanatory from an

²⁶ Above n6 at 69.

²⁷ Maeve Cooke, 'Five Arguments for Deliberative Democracy' (2000) 48 *Political Studies* 947 at 952, 953.

assessment of his approach. In an attempt to fill this lacuna, it may be asserted that the public are the ones well conversant with the issues affecting them and as such, their involvement in the process of policy formulation is likely to result in 'on-point' policies than having outsiders with no direct information, formulate the policies.

2.2.2 THE LISTING APPROACH

This part codifies the various elements of the approaches propounded by scholars and practitioners in the field to result in what I have elected to label the 'listing approach'.²⁸ It is the

²⁸ There exists a plethora of approaches that may be taken in evaluating the effectiveness of public participation. Thomas Webler, ' "Right" Discourse in Citizen Participation: An Evaluative Yardstick' in Ortwin Renn, Thomas Webler & Peter Wiedemann (eds), *Fairness and Competence in Citizen Participation: Evaluating Models for Environmental Discourse* (1995, Kluwer Academic Publishers, Vol 10 Risk, Governance & Society); Thomas Webler, Seth Tuler, and Rob Krueger 'What is a good public participation process? Five perspectives from the public' (2001) 27(3) *Environmental Management*, 435. Webler propounds the *fairness* and *competence* criteria whereby fairness requires equal distribution of opportunities to act meaningfully in all aspects of the participation process, whereas competence deals with the content of the participation process. Thomas Beierle and Jerry Cayford, *Democracy in practice: Public participation in environmental Decisions* (Washington, D.C: Resources for the Future, 2002). Beierle and Cayford identify five broad social goals for public participation against which *successful participation* is to be assessed: 1) the incorporation of public values into decisions; 2) improvement of the substantive quality of decisions; 3) resolution of conflict among competing interests; 4) building trust in institutions; and 5) educating and informing the public. The approach taken by Beierle and Cayford is outcome oriented. This is the case as their approach focuses on whether participation has produced the intended results, in this context being whether the five social goals have been attained. The most recent criteria has been adopted by Rowe and Frewer. They propound an acceptability and process oriented evaluation, Gene Rowe & Lynn Frewer, 'Public Participation Methods: A Framework for Evaluation' (2000) 25 *Science Technology and Human Values* 3, Sage Publications Inc at 11. The acceptance criterion is related to the effective construction and implementation of a procedure, while the process criterion is related to the potential public acceptance of a procedure.

second phase of the two-step approach. Below is an analysis of the evaluation criteria under the 'listing approach':

1. Legitimacy of the participation process

The integrity of the process influences the successful undertaking of a participation exercise. The key objectives behind participation should be clear. It is crucial to avoid spurious participation exercises with an ambiguous scope for acting on the participants' responses. Apart from this, any procedural rules adopted should allow adequate time for questions, clarification, listening and an understanding of the issues.

2. Task Definition

The nature and scope of the deliberation task should be clearly defined. Clarity is essential to avoid chaos and confusion regarding the scope of the participation exercise.²⁹ The appropriate degree or level³⁰ as well as the platforms³¹ for participation in the issue at hand should be elaborately defined.

²⁹ Above n8 at 16.

³⁰ Different participation levels may be employed, depending on the objectives for participation and the circumstances at hand. These levels have been discussed in unique typologies unique to each propounder. Sherry Arnstein, 'A ladder of Citizen Participation' (1969) 35 Journal of the American Planning Association 216; propounds the 'ladder of participation'. The ladder has eight rungs organised as follows from the lowest levels of participation: manipulation, therapy, informing, consultation, placation, partnership, delegated power and citizen control. The first two rungs are regarded as 'non-participation'; the next three rungs are referred to as 'tokenism' and the last three are referred to 'citizen power'. The International Association for Public Participation (2007) <<http://www.iap2.org.au/documents/item/84>> has its own typology commonly referred to as the 'spectrum of participation'. The spectrum has five components: Inform, Consult, Involve, Collaborate and Empower. The levels and

3. Deliberation

The participation process should encourage deliberation. All participants should have a chance to initiate speech as part of the debate and be involved in dispute resolution as well.³²

4. Awareness

Citizens should be aware of opportunities available for participation. Those affected or likely to be affected by plans and decisions should have reasonable awareness of the processes of participation in place. Appropriate communication channels should be put in place in this light.

opportunity for participation increase from the left to the right. Lastly, also propounding a typology is Archon Fung in his works, 'Varieties of Participation in Complex Governance' (December 2006) Public Administration Review. He comes up with what is referred to as the 'democracy cube'. In his cube, the first axis displays the authority and power of the participants in the process, the second axis shows who participates, and the third axis shows how decisions are made [Carolyn Lukensmeyer, Joe Goldman & David Stern, *Assessing Public Participation in an Open Government Era: A Review of Federal Agency Plans* (IBM Center for The Business of Government; Fostering Transparency and Democracy Series) 2011].

³¹ Carolyn Lukensmeyer, Joe Goldman & David Stern, *Assessing Public Participation in an Open Government Era: A Review of Federal Agency Plans* (IBM Center for The Business of Government; Fostering Transparency and Democracy Series) 2011 at 6, categorise the platforms for participation into two groups: online methods versus face to face methods. *Toolkit: Evaluation of Public Participation in the Establishment of Water Management Institutions* (2009 Department of Water and Environmental Affairs) classifies the modalities for participation in terms of written communication methods versus interactive methods. In essence, the substance is similar. Some of the platforms of participation include: town hall meetings, focus groups, ICT Based platforms etc. An effective participation system will endeavour to employ the most suitable avenue for participation that will guarantee productive participation at the lowest cost and in light of the objectives for participation and circumstances of each case scenario. It is not just a matter of randomly selecting any avenue. It should be noted that in a practical scenario, several platforms are expected to operate concurrently.

³² Rebeca Macias, 'Public Participation in Energy and Natural Resources Development: A Theory and Criteria for Evaluation' (CIRL Occasional Paper 34, December 2010) at 28.

5. Representativeness and Inclusivity.

It has already been mentioned prior that there are certain cases where we can't have *self selection*. Where a small group is required to represent the larger public, it should genuinely mirror the characteristics of the greater group. The ultimate group selected should reflect the demographics of the area. Where divergent views are evident, there should be relative distribution of views.³³ All interested and affected persons should be represented. This includes special interest groups.³⁴

6. Capacity building

This is through civic education. Participants should be equipped with the necessary skills, knowledge, and values needed for them to participate.

7. Access to information and effective communication

The participants' resource needs should be met. Key in this respect is information availability and access to information. There should be system-wide information exchanges and knowledge transfers. Decision making should always be made from an informed point of view for it to be productive.³⁵ For this reason, information dissemination channels need to be put in place. There

³³ Above n8 at 13.

³⁴ Barriers to potential participation should be taken into account in order to deal with them. Where special facilities will be required to facilitate participation of special interest groups and minorities, this should be provided for.

³⁵ James Fishkin & Robert Luskin, 'Experimenting with a Democratic Ideal: Deliberative Polling & Public Opinion' (2005)40 Acta Politica 284. Fishkin in his deliberative polling technique makes a case for decision making from an informed stand.

should also be effective communication between the governing authority and participants regarding the information and the proposed action at large.³⁶

There are certain requirements to be satisfied regarding the kind of information to be disseminated: information should be easily understandable with minimal technical language; should be comprehensive; should be relevant and should be derived from credible sources.

8. Early involvement

The framework should allow for participation from the early stages of the proposed action. Basically the appropriate timing would be when it would be reasonably practical to allow for participation. This is dependent on the type or level of participation employed. Illustrating using the levels propounded by IAPP, under 'inform', participation may take place even after the decision has already been made and all the authority will be doing is notifying the public of the action taken. In 'empower', the public get to participate from the first phase of the proposed action as decision making is left in their hands. This goes to show that there is no definite description of exactly when early involvement is.

9. Cooperation

The participation exercise should encourage cooperation and good relations among the participants and between the participants and the governing authority. Confrontational engagements should be avoided. In case of conflict or disputes, resolution should be expeditious

³⁶ Maryam T. Aregbeshola, 'Public Participation in Environmental Impact Assessment: An Effective Tool for Sustainable Development, A South African Perspective (Gautrain)' (Master of Science in Environmental Management, University of South Africa, March 2009) at 18. Communication and information exchange between the governing authority and the population should be two-way. This is what results in a genuine participation exercise.

in the interest of getting back to constructive deliberation of key agenda items as opposed to politicizing issues at the expense of productive participation. This calls for a dispute/conflict resolution mechanism to be laid down in the framework.

10. Transparency and Independence

Transparency necessitates that the public be aware of how the decisions are being made and what is going on in general. An open event will be most suitable in this case. High profile meetings behind locked doors are to be discouraged as they tend to raise unnecessary suspicion amongst the public. Those who take part in the participation exercise should be able to see the outcome of their participation process. There should also be publication of final outcomes after the deliberation exercise. Access to information, adequate and timely dissemination of the same is to be encouraged.

11. On-going Process

The framework should encourage sustained participation characterized by feedback, monitoring and evaluation. Viewing this from a different angle, one time participation events like elections and referenda are emerging to be not as effective. Participation should begin from the identification stage of a project, all the way to the implementation and later evaluation of its successful implementation.

12. Accountability

The governing authority should provide feedback on how the participants' input was utilized in arriving at the final outcome. Where it was not utilized, reasons for failure to incorporate the

input should be given. However, the ‘reasons principle’ should be applied flexibly depending on the level of participation employed.

13. Neutrality

Participants should be subjected to equal treatment when exercising their rights of access to information and during the overall participation exercise.

14. Adaptive

Ways of addressing, handling and organizing the participation exercise should be adapted to the culture of a community. This will encourage participation. People will not feel the need to resist the process if they don’t perceive it as a threat to their cultures.³⁷

15. Cost effectiveness

Participation planning should be undertaken to ensure the exercise stays within the projected budget. From the Kenyan perspective, the counties should ensure their expenditures are not excessive. If their activities extend beyond their income, the public may be forced to bear the burden through increased taxation.³⁸

³⁷ The exercise may be organized such as to ensure active cooperation with local formal and informal leaders.

³⁸ Perhaps even this initiative would work if we were to introduce a strict austerity programme, but as it is, national and subsequently county budgeting remains wanting.

16. Convenience

The timing and place of meeting should be convenient for participants so as to encourage attendance. The venue of the forum ought to be easily accessible and large enough to accommodate the public.

17. Evaluation

The governing authority should have information, tools and capacity to evaluate their performance on participation. This is necessary to ensure continuing and enhanced quality of the process and public confidence in the outcome.³⁹ Monitoring and evaluation is an integral part of ensuring effective participation.

2.3.0 CONCLUSION

This chapter has laid down what effective public participation entails. This will form the benchmark against which the legal framework on public participation in county governance in Kenya will be assessed, in the next chapter. The succeeding chapter thus will attempt to establish

³⁹ Lynn Frewer & Gene Rowe, 'Evaluating Public Participation Exercises: Strategic and Practical Issues' in *Evaluating Public Participation in Policy Making* (OECD, 2005) ISBN-92-64-00894-2 at 85. Julia Abelson & Francois-Pierre Gauvin, *Assessing the Impacts of Public Participation: Concepts, Evidence and Policy Implications* (Research Report P|06, Public Involvement Network, March 2006) at 5, Rosener(1981) identifies four challenges of evaluating public participation : 1) the complexity and value-laden nature of public participation as a concept; 2) the absence of widely held criteria for judging its success and failure; 3) the lack of agreed-upon evaluation methods; and 4) the paucity of reliable measurement tools.

whether there exists a lacuna in the Kenyan legal framework on participation between ‘what is’ and ‘what ought to be’ as regards effective public participation.

3.0.0 CHAPTER THREE

THE CASE OF THE WITHERING EUCALYPTUS⁴⁰

3.1.0 INTRODUCTION

The previous chapter examined the utopia for effective public participation in governance. It laid down a benchmark against which public participation in practise is to be assessed against. This chapter, examines whether the existing legal framework ensures effective public participation. Focus will not be on the provisions of law on participation, rather on how the provisions of law have been given effect and whether there has been effective public participation since the coming into force of the laws on public participation.

For purposes of this assessment, primary research was conducted through observation and administration of questionnaires, the methods of which were employed in two separate counties, namely Nairobi County and Kajiado County respectively.

The Kenyan legal framework on public participation is scattered across a number of statutes. The principle of public participation derives its mandate from the Constitution of Kenya.⁴¹ The Constitution lays down the mandate for public participation. The principle of public participation

⁴⁰ The withering eucalyptus is a metaphorical picture of the implementation and enforcement issues which retard the efforts being made towards ensuring effective public participation in county governance in Kenya. The surrounding environment is described as a desert middle to denote the nothingness that is associated with absence of a policy framework on public participation.

⁴¹ Articles 1, 10, 35, 174, 175(a), 184(1)(c), 196, 197, 201, 232.

has also been laid down in a number of statutes, that is: the County Government Act,⁴² the Urban Areas and Cities Act, 2011,⁴³ the Public Financial Management Act,⁴⁴ the Transition to Devolved Government Act, 2012,⁴⁵ the Elections Act,2011,⁴⁶ the Constituencies Development Act,2013,⁴⁷ and the Intergovernmental Relations Act,2012⁴⁸.

3.2.0 NAIROBI COUNTY PARTICIPATION FORUM

The Medium Term Expenditure Framework Meeting

3.2.1 Background

The participation forum was convened on the 28th day of April to discuss the 2014/2015 proposed budget for Nairobi County. The venue for the forum was Charter Hall, within Nairobi Central Business District. The meeting commenced at about 11am and ended at 2pm. The agenda for the meeting was to discuss the 2014/2015 budget estimates. The meeting intended to obtain public input on the proposed budget estimates. The meeting was attended by the County Secretary and county officials from various departments such as departments of health, environment and finance. It is important to note at this point that prior consultations had been carried out the previous year at the ward level.

⁴² Public participation has been dealt with under Part VIII of the Act, however Part IX and X are also relevant provisions as they relate to access to information and civic education which are supportive elements of the public participation.

⁴³ Sections 3(c), 11(d), 22, 24, 35 and the second schedule.

⁴⁴ Sections 10, 35(2), 125(2),137, 175(9), 207.

⁴⁵ Sections 14 and 27.

⁴⁶ Section 45

⁴⁷ Section 24

⁴⁸ Section 29

Nairobi County contributes approximately 60% of the country's GDP; it has 17 sub-counties; 85 wards and population is estimated at 3.5 Million. The proposed 2014/2015 budget stands at 28.6 billion; an increase from the previous fiscal year's 25 billion.⁴⁹

3.2.2 Findings

The Participation Element

This analysis is developed along two perspectives; the publicisation of the forum and the actual participation exercise during the meeting. Publicisation is a vital consideration in that it influences the overall effectiveness of the participation exercise. The manner of publicisation may determine whether the participation exercise will succeed or fail.

It is proper practise that from the notice or announcement convening the meeting, one should be able to tell a number of items, such as who is invited to participate, what the agenda for participation is, the manner of participation and the time and venue for participation.

The actual conduct of the participation will delve into the procedural and content based elements needed to ensure the participation exercise is effective.

3.2.2.1 Publicisation of the Forum

Methods adopted for publicisation

The Nairobi County Medium Term Expenditure Framework Meeting was publicized as follows: two gazettes of national circulation, that is, *Sunday Standard* and *Sunday Nation* and two radio stations being *Radio Jambo* and *Radio Citizen* were employed to publicize the forum. It is arguable that the rationale behind the use of both print media and radio is to increase the

⁴⁹ The 2014/2015 proposed Nairobi County budget estimates.

audience of the message. It is assumed that those who wouldn't get a chance to listen in on the radio announcements would at least read the newspapers. Of course, the system cannot be perfect and it is not logical to expect the news to reach each and every citizen. It should be acknowledged that with the increased cost of living, buying newspapers is a luxury very few can afford.⁵⁰ On the other hand, the time the announcements are made via radio weighs in on whether the public actually got the information relayed. It is the case that only those who will be tuned in at the time of the announcement will receive the information. Of course again, not everyone has access to a radio.

⁵⁰ Patricia Kameri-Mbote, 'Strategic Planning and Implementation of Public Involvement in Environmental Decision-Making as they Relate to Environmental Impact Assessment in Kenya' (IELRC Working Paper 2000-3 at 14. The paper which addresses issues concerning environmental governance points out one of the obstacles to public participation in environmental decision making as being poor dissemination of material information. She acknowledges the fact that most people do not have access to newspapers, radio or television, and a percentage of the populace still cannot read and understand notices put up by governing authorities. This view was re emphasized in the Kenyan case of *Robert Gakuru & Others v Governor Kiambu County & 3 Others (2014)* whereby the enactment of the Kiambu Finance Act, 2013 was challenged on the basis that no consultations took place and no invitations were sent out to members of the public. On this particular case the court held that there had been no proper consultations. The presiding judge indicated that a one day newspaper advertisement in a country like Kenya where a majority of the populace survive on less than a dollar per day and to whom newspapers are a luxury aside from the high illiteracy levels, such a method of publicisation may not suffice for the purposes of seeking public views and public participation.

Notice Period

The advertisement convening the forum was put up in the dailies on the 27th day of April 2014, a day prior to the scheduled day of the forum which was the 28th of April.⁵¹ Objectively, this in no way can be regarded adequate notice to the public.⁵² Indeed it was faulted as one of the reasons

⁵¹ This appears to be a trend indulged in by the County Council of Nairobi. In *Nairobi Metropolitan PSV Saccos Union Ltd & 25 Others V the County of Nairobi Government & 3 Others Petition No 486 of 2013*, the presiding judge, Isaac Lenaola in determining the issue of whether there had been adequate and appropriate participation in enacting clause 6.1 of the schedule to the Nairobi County Finance Act, some instances of publicisation by the first respondents were referred to. It was indicated that advertisements had been published in the dailies on diverse dates including: 14th April 2013 for county meetings scheduled for 16th April 2013 and 23rd April 2013 for county meetings scheduled for 24th April 2013. Both these meetings related to the 2013/2014 budget estimates. It is interesting to note that in this case, neither the presiding judge nor the petitioners raised any issues pertaining to the notice period. It was determined that the respondents had duly involved the public. However, in *Robert Gakuru & Others v Governor Kiambu County & 3 Others (2014)* the position was different in that the Counsel for the petitioners raised the issue of inadequate notice period (paragraph 13). He directed the court's attention to the fact that the notice was published in the dailies on 17th August 2013 for a meeting to be held on 20th August 2013.

⁵² The National Taxpayers Association, Budget Transparency and Citizen Participation in Counties in Kenya (1st Edition, April 2013 Guide) at 23. Ten principles are proposed by a group of stakeholder associations (The Institute for Social Accountability(TISA), HAKIJAMII, Africa Centre for Open Governance (AFRICOG), National Taxpayers Association(NTA), Kenya Land Alliance, CLARION, Muslims for Human Rights(MUHURI), Institute for Economic Affairs(IEA) and Twaweza in Kenya) to guide citizen participation in public finance. One of the principles advanced is that the timeline and venues for public participation should be made known to the public at least two weeks in advance of this consultation. This is what is perceived as 'reasonable' notice period. The guide also advocates for a two weeks notice period for access to relevant information to be used at a consultative meeting. Jason Lakin, "Toward Public Participation in the County Budget Process in Kenya: Principles and Lessons from the former Local Authority Service Delivery Action Program, LASDAP' (International Budget Partnership, Budget Brief No. 20) at 2. LASDAP as a participatory process had essentially good guidelines. However, implementation issues undermined the successful enforcement of the process. One of the guidelines

behind the low turnout of members of the public at the forum. Most people have a busy schedule; as such preparation needs to be made in advance if one is to attend. For instance, the working class have to seek leave from their bosses, housewives have to find someone to look after their children while they are away, business people have to get someone to step in and run their businesses while they are away etc. This was a major oversight on the part of the county officials with regards to the convening of the meeting.

Language of the Notice/ Announcement

The newspaper advertisement was in the English language. It is a fact that not everyone can understand English.⁵³ For this reason, it is indeed wise that radio was employed as a means of disseminating information; and the radio stations selected to do the announcement are both English and Swahili stations. For this reason, the information had the potential of reaching a wider audience, as those who do not understand English and cannot read were able to listen to the radio announcement made in Swahili.

advanced under LASDAP (which has since been eliminated, with the adoption of the current Constitution which has introduced the institution of counties in replacement of local authorities) was advance notice about funds available, status of past projects and core decisions to be made. Under this guideline was the requirement that the public be notified two weeks prior to consultation. Such a notification was to be accompanied by information about the budget available for projects. The paper highlights the vague nature of the current framework on participation and encourages the sticking with guidelines we already know, as under LASDAP instead of embracing a vague framework.

⁵³ This point was highlighted by the Counsel for the petitioner's in *Robert Gakuru & Others v Governor Kiambu County & 3 Others (2014)* Paragraph 13. It was argued that the notice which was published in English language which of course is not the local dialect of the majority of the residents of Kiambu County could not be a basis of consultation.

Date and Timing of the Participation Forum

The notice convening the forum indicated the date and time when the forum was to commence.

The forum was set to commence at 9.00 am on Monday the 28th. With regards to convenience of the day and time, Monday morning is a rather busy time, being the beginning of the week. For the working class, most employers would not be too eager to release their employees on a Monday morning to go perform their civic duties; and those with their own businesses would also not be for the idea of being away from their places of business on a Monday morning. It is arguable that the day and timing is convenient only for those who are either unemployed or not in institutions of learning or those who are self employed and with critical concerns to raise at the forum or employees who have been sent to spearhead their organisations' concerns. This means a large number of the public who may be interested to participate will be left out.

The notice also failed to indicate when the forum was expected to end. This goes to denote poor allocation of time. It would be more encouraging to the public to have an idea of how long the forum is expected to last. This will be instrumental to the populace as they organise their schedules to attend. It will also encourage people to come on time as the forum will be expected to end at a particular time. Having an open-ended time frame encourages laxity on the part of both the public and the officials, as such people will be tempted to come at whatever time they please and still expect to be given a chance to speak.

However, this element should not be construed in the literal sense; rather, the time frame should be adopted and implemented flexibly. If the exercise necessitates that the meeting ends earlier or slightly past the intended time, this should be allowed within a reasonable extent.

Venue of the Forum

In the case of the Nairobi County Forum on the 2014/2015 budget estimates, the selected venue was Charter Hall. This is a centralised and known place within the Central Business District and as such it was a good choice of venue in terms of accessibility. It was also spacious enough to accommodate participants.

It is anticipated that Charter Hall is to be the fixed venue for all County this is given that it has been the venue for county meetings held in the past two years. Consistency in the venue is crucial as it avoids scenarios where some governing authorities who feel threatened by the accountability element that comes with public participation may attempt to make last minute changes to the intended venue and to inconvenient locations in a bid to derail the participation exercise.

Agenda of the participation Forum

As is the provision of law regarding public meetings, the public needs to be informed of the subject matter that is to form the basis of deliberation.⁵⁴ This allows for adequate preparation ahead of the forum whereby members of the public get a chance to inform themselves of the

⁵⁴ In *Robert Gakuru & Others v Governor Kiambu County & 3 Others (2014)* Paragraph 8, the petitioners raised an issue with the notice faulting it for failing to disclose that the contentiously enacted Finance Act was to be part of the agenda for the meeting which ended up deliberating on it.

material issues. Publication of the agenda also helps to avoid/minimise deviation from the agenda item during the actual participation exercise. The agenda was clearly made known in the notice convening the forum in the Nairobi County 2014/2015 budget discussion forum as being participation in the budget preparation process.

Target Group of notice

It should be clear from the notice who is entitled to participate, whether it is the entire public or specific groups of the public. The notice convening the meeting appeared to suggest that the forum was to be a stakeholder meeting based on the categories specified as having been invited to attend and participate in the forum. The notice specifically mentioned the following groups of persons: elected leaders, residents associations, leaders of various professional bodies, individuals, civil societies, entrepreneurs, corporate bodies and government departments. A prima facie assessment of the notice may put across the notion that the meeting is not meant for ordinary citizens, rather it focuses on the elite members of society. This presumption is however open for rebuttal. The notice would perhaps have appeared more receptive of the ordinary citizens had it mentioned the invitation was to 'all interested persons and the public in general'.

Contact Information

The notice provided contact information to be used by anyone who wished to send in written submissions. An email addresses, a website, twitter handle, the facebook page and telephone numbers were provided. It was later raised at the meeting by a member of the public that he had sent questions via email but had not received any response. This raised a lot of doubts as to the integrity of the exercise as the officials during the participation exercise had proposed that any

issues that would fail to be addressed due to time constraints should be communicated to them via the contact information that had been provided in the notice. Indeed, other than Nairobi County, there are several other counties whose contact information as provided on their official websites do not work. In some cases, the telephone numbers are reported to have been changed and no new contacts provided; while in others there is absolutely no response to emails sent by the public. Proper and working communication channels are pertinent in ensuring effective communication which is a basic element of effective public participation.

3.2.2.2 The Actual Participation Exercise

Low Turnout

There was low turnout by members of the public. This compromised the effectiveness of the participation exercise as it ended up not being genuinely representative of the County's population. For the exercise to be effective, all interested and affected parties are required to attend and participate in the forum. Low turnout is indicative of the fact that not all interested and affected groups were represented. It also retards efforts to capture divergent views.

It was evident that a majority of those who attended were the elite members of society, being representatives of business associations, manufacturing associations, NGOs, research institutes, learning institutions as well as elected leaders. Those who are regarded as ordinary citizens were represented in negligible numbers and in fact did not voice any concerns.

Low turnout by the public was a major blow to the participation exercise as was indicated with displeasure by various quarters, including a member of the executive assembly present. Only a

quarter of the hall was filled. The county officials in their defence indicated that they had advertised the forum in two national dailies, *The Standard* and *Nation* the previous day as well as two radio stations, being *Radio Citizen* and *Radio Jambo*.⁵⁵ However the effectiveness of notification a day prior to the meeting was questioned as being inadequate notice period and a key contributor to low turnout by the public.

It is interesting to note that one member of the public; a city businessman dismissed the complaints that were raised regarding low turnout by the public, stating that it is not the numbers of participants present that mattered but the quality of participation. This was a rather contentious argument as it is advanced as a principle of public participation that all those interested and affected by the subject matter of deliberation are expected to attend. Tyranny of numbers in this light remains a relevant consideration other than the quality of participation.

Availability of Adequate Opportunity to Speak

Domination of the participation exercise by a few individuals compromises the effectiveness of the exercise. It is interesting to note that the governing officials in the forum had little control over the participation exercise and appeared to be under the control of the public. The officials attempted to regulate the exercise by insisting that every person raising issues takes the shortest time possible. However, the exercise ended up being dominated by persons thought to have

⁵⁵Jason Lakin, 'Public Participation in Kenya: County Budgets and Economic Forums-Principles and Options' (International Budget Partnership, Budget Brief No. 21, November 2013) at 10. Mobilization of participants determines the success or failure of the participation exercise. It is argued that a simple advertisement in the paper or public notices are not enough to get people to attend or participate in public meetings, especially in contexts with a long history of exclusion. In such contexts, it has been proposed that resident associations be employed to sensitize the public within their areas of operation.

'valid' points. On one particular occasion a contributor was left to go on raising issues for a prolonged time period at the expense of other members of the public who wished to contribute to the discussion as well. When the County officials attempted to interrupt the person's contributions the public aggressively insisted the person be left to finish his points. It is interesting however to note that another member of the public was cut short even before he could finish raising his issues, on the ground that his issues were 'too many'. It appeared to have been a case of double standards as the points he was raising were not regarded to be as 'valid'.

Level of Participation

The level or extent of public participation varies depending on the circumstances of each case. However, this should not be interpreted to result in a complete blackout of the public from affairs. It is necessary that no matter the circumstance, a reasonable opportunity is to be availed to members of the public, and all interested parties to know about the issues and to have an adequate say in them.⁵⁶

⁵⁶ 'Reasonable opportunity' may be construed in light of the position taken in the Constitutional Court of South Africa Case of *Minister of Health v New Clicks South Africa (PTY) Ltd* where it was stated that it cannot be expected of the law maker to give a personal hearing to every individual who claims to be affected by the regulations being made. It was posited that what was necessary was the communication of the nature of concerns of the public to the law maker. *Robert Gakuru & Others v Governor Kiambu County & 3 Others (2014) e KLR at 13/26* goes ahead to impose a pre condition on the construction of reasonable opportunity such as to avoid exploitation of the vagueness in the statement. Whatever the construction adopted it is advanced that it shouldn't amount to a blackout on the public.

The level of participation employed was consultation. It required more of the public than merely receiving the communicated information from the municipality. It was less passive since the objective was to obtain the reactions and input of the public on the proposed budget estimates.

Accountability

Lowndes argues that the biggest deterrent to participation is the perception or experience that participation makes no difference (Lowndes et al 2001). People tend to participate if they believe that they will be listened to, and that their views will be taken into account. There is a need to make participation more responsive even if the feedback is negative. There must be evidence of impact/feedback.⁵⁷

It is the case that consultations on the proposed budget estimates had taken place at the ward levels prior to convening the county forum. There was no mention on how the consultations had impacted the formulation of the estimates that were being presented at the county forum.

Access to information

The proposed budgets were not made available to the public early enough to allow for preparation ahead of the forum. The estimates were only availed at the meeting. The National Taxpayers Association foresaw the problems likely to characterize delayed dissemination of

⁵⁷ The Department: Provincial and Local Government, Republic of South Africa, National Policy Framework for Public Participation (2007) at 20.

budget related information when they cautioned the governing authorities in their 2013 guide, to disclose all budget and material information in a timely manner.⁵⁸

It is pertinent that information be disseminated in advance to give the public a chance to scrutinise it and prepare for the participation session. Delayed dissemination of material information compromises the opportunity of individuals to participate effectively in deliberations.

Time Keeping and Duration of the Meeting

The meeting had been scheduled to commence at 9am, it however ended up starting at almost 11am. Members of the public had to sit and wait for quorum to be attained with regards to both the county officials and the citizens. This posed a problem later when the officials attempted to end the meeting prematurely locking out citizens from raising issues they had.⁵⁹ The public was disgruntled and demanded that the meeting continue as the late kick off was partly due to the officials' late arrival and as such were not justified in ending the meeting prematurely. Failure to observe punctuality also resulted in some members who had arrived at the venue early to leave

⁵⁸ The National Taxpayers Association, Budget Transparency and Citizen Participation in Counties in Kenya (1st Edition, April 2013 Guide) at 22. Article 35 of the Constitution goes ahead to reinforce this position by guaranteeing the people's right to access information held by the state and the concurrent responsibility to publish and publicize such information.

⁵⁹ *Robert Gakuru & Others v Governor Kiambu County & 3 Others (2014)* Paragraph 57. It is indicated that 'reasonable opportunity to be heard' should be interpreted in light of a number of factors such as time and expense. However attempts to save time and money should not be construed to justify inadequate opportunities for public involvement.

before commencement of the meeting, thus contributing to the low turnout of members of the public.

Neutrality

Participants were not treated equally in terms of the opportunity granted to speak. As mentioned prior, there were individuals who were allowed by the public to dominate the exercise while others were cut short from making their submissions which were not recognized to be as valid. All participants should be granted equal opportunity to speak.

Transparency

Transparency engenders trust amongst the public towards the governing authority. Transparency can be said to have been partly achieved given that the meeting was open to all. However, it is arguable that the credibility of the participation exercise was compromised by poor feedback mechanisms caused by outdated and obsolete contact information provided as well as the untimely dissemination of information.

Cost Effectiveness

It is not clear how financially prudent this is, however, the Nairobi County Governor, Hon Evans Kidero recently announced a plan to set aside fifty million shillings for a City Hall FM radio station to advance public participation in an effort of cutting down on advertisement costs.⁶⁰ The Finance Executive, Gregory Mwakanongo had stated that the project in fact required a hundred

⁶⁰ Betty Nzioka, 'Strengthening Public Participation in Environmental Decision-Making: Building Connections for Africa and Middle East' (Presented at Rabat Morocco, 7th -10th January, 2013). On participation in environmental governance, high publication costs to procure media space for publication was cited as one of the challenges to public participation.

million, but fifty was what was needed for the first phase of the project. The radio station is expected to serve as a platform for communicating the county's policies and agendas.⁶¹

It should be noted that the element of adaptability of the participation exercise was not tested in this forum given the cosmopolitan nature of Nairobi County. The public is largely heterogeneous hence impossible to answer whether the process was indeed adaptive. This element can only be tested in counties which to a good extent possess a common culture.

3.3.0 KAJIADO COUNTY

3.3.1 Background

The mode of primary research adopted was administration of questionnaires. This was undertaken over a four day time frame whereby the ordinary citizens as well as county government officials responded to questions concerning participation of the public in matters of governance. The analysis is based on information gathered that has been displayed in the table below. It should be noted that data utilized in the analysis has been obtained from only approximately 33% of the total questionnaires administered in the area.⁶²

The questionnaires raised questions on whether the public was aware of administrative agencies operating in their area (of which the county government was one of the administrative agencies

⁶¹ Monday May 5th 2014, Daily Nation Digital.

⁶² The justification behind usage of only a portion of the questionnaires administered is the need to abide by principles of research ethics. The questionnaires were primarily administered under a different research project commissioned by an independent party as such, only a portion of the data can be utilised for purposes of preserving the integrity of the prior research for which the questionnaires were primarily administered.

cited to the public as an illustration);whether the administrative agencies had held meetings with the public in the recent past; whether the respondents attended meetings if any had been convened and questions relating to conduct of the meeting regarding both publicisation and actual exercise of the participation exercise (as have been discussed in detail in the Nairobi County participation forum).

3.3.2 Findings

Size of Sample Group	20
People Not Aware of the Presence of a County Office	10
Number of People Aware of the Existence and operation of the County Office	10
People aware of presence of county offices but not heard any meeting calling for public participation	4
People aware of the presence of the county offices and who are aware of public meetings called	6
People Aware of an opportunity for public participation but failed to attend such meeting	4
People Aware of an opportunity inviting the public to participate at the county level and attended such a meeting	2

It was evident that there was very little awareness among members of the public regarding the systems of county governance in place and the roles they serve; as well as their roles as citizens

in county governance matters.⁶³ In some areas, for instance in Il Bisil⁶⁴ most of the members of the community were unaware of the presence of the county governance structure in place. From this it automatically followed that they had not heard of any public participation forum.

These findings correspond with those of the Society for International Development (SID), which conducted a baseline survey on the status of governance in Kenya in 2012. As per their findings, there exists an informational gap on the devolved structures and in general, what constitutes devolution in the Kenyan context. The statistics projected indicate that only 24.7% of the public understood how devolution will work; 29% stated they understood the county structures in the devolved governments and less than 1% of the public reported engaging in development of policies on devolution and representation.⁶⁵ Less than 1% is a negligible figure and it is an indicator that the participation structures in place are failing to fulfil their essence for existence.

For the few who were aware of the existence of the county government structure in place, majority had not heard of any public participation forum being convened. A portion of the public suggested that even if such fora were normally convened, it was probable that announcements were only made in towns and not in the rural areas where they lived. For those who had heard

⁶³Annette Amollo, Policy Proposals on Citizen Participation on Devolved Governance in Kenya (The Institute for Social Accountability) at 11. It is argued that for devolution to be successful, the populace has to be politically conscious. This entails a state of awareness of the governance systems in place, their roles and responsibilities as citizens and how they can exercise such roles and responsibilities through the systems and channels available. Lack of awareness forms the backdrop for the need for civic education which is discussed in the ensuing chapter on recommendations. Gabriel Lubale, 'An Introduction to the County Governments of Kenya' (2012). The writer advances that civic education is intended to promote the values and principles of devolution of which one of them is public participation.

⁶⁴ A small town in Kajiado County, whereby the ethnic characteristic is mainly the Maasai.

⁶⁵ Society for International Development, The Status of Governance in Kenya: A Baseline Survey Report 2012 (2012).

such announcements, they stated that they were made in the vernacular language of the area, being Maasai and a national language, Swahili.

For those who were aware of participation fora convened by the county government, some still did not attend. One of the reasons cited was that they felt the exercise was discriminatory and non inclusive. In Kajiado central, for instance, one of the respondents made it clear that on occasions whereby the issues to be discussed were raised by a county official affiliated with a particular political party, the other county officials not of the same political party affiliation would fail to turn up for the meeting. The public as such adopted a similar approach, in that when they were aware a certain county official was the one presiding over the agenda of the meeting, or was the one who had summoned such a meeting, they would not attend it if he did not profess loyalty to the political party of their choice.

Other reasons raised for non attendance include the complaint that the timing of the meeting was inconvenient. This is because the meetings are usually held on a weekdays and most people cannot afford to close their businesses in order to attend the forum. Some suggested that maybe if the duration was reduced to approximately an hour, they could find a way to schedule their affairs and attend the forum. A vast majority also felt that their views would not have any impact as in the past that had been the case.⁶⁶

⁶⁶ Chrispine Oduor & Abraham Rugo, 'Opportunities for Youth to Engage in Devolved Governance and Economic Development in Kenya' (Institute of Economic Affairs, Issue No 16, September 2013) at 2. Most youths fail to participate in such exercises because they believe the government does not take them seriously and even if they were to participate they would add no value to issues being deliberated upon as their contribution would not be taken into account.

For those who attended, some felt satisfied with the outcomes, others did not. The feeling varied depending on the agenda of discussion. For instance, the boda boda operators in the area were satisfied with the outcome of the participation exercise whereby they were able to lobby for the decrease of annual parking fees which had been arbitrarily raised from ksh 2000 to ksh 4000, back to the previous ksh 2000 rate.

An issue of concern observed relates to inclusion of minorities and marginalised communities in governance. One of the conventional ways in which the public can directly participate in governance is through voting. To acquire a voter's card, one needs to be in possession of a national identity card. In the course of the field research in Kajiado, a group of people of Somali origin lamented of not being granted a chance to make an application in the registry of persons office for national identity cards. This amounts to unjustifiably denying them a chance to exercise their civic rights as citizens. This particular group may be regarded as

3.4.0 CONCLUSION

The analysis of the findings replicate the scenario anticipated in *Buckinghamshire County Council & Others v Secretary of State for Transport (2013)*⁶⁷ where it was held that there indeed can be consultations which amount to no consultation at all. This is given the fact that in the Nairobi County Forum, as much as the meeting was called and held. It may have failed to satisfy the threshold for effective public participation. All the shortcomings advanced, associated with the publicisation of the meeting and the actual conduct of the meeting raise doubts on the effectiveness of the exercise.

⁶⁷ EWHC 481.

In the Kajiado County context, the problem was more on awareness as opposed to the actual conduct of the participation exercise. For as long as a majority of the population is unaware of the county governance structures in place or the participation channels, the exercise stands defeated. It becomes a case of no participation and not even ‘ineffective’ participation. Relying on the participation of a negligible percentage of the population to label the participation exercise effective would be a propounding a misconception.

Public participation in county governance has been embedded in the laws of Kenya. However the actual implementation of participation in county governance illustrates a well thought concept of law that is being ‘watered down’ due to poor enforcement, hence branded ‘the case of the withering eucalyptus’. The ensuing chapter concludes the dissertation paper and labours to come up with appropriate recommendations to remedy the deplorable state of participation in county governance.

4.0.0 CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Summary of the Dissertation Paper

The first chapter laid down the case for effective public participation by identifying a lacuna in the system in that the legal environment fails to operate as an impetus for ensuring effective public participation. Hence the need to identify the appropriate ways of filling this gap in the interest of improving the quality of public participation.

The second chapter laboured to come up with a benchmark against which public participation is to be assessed in the course of examining whether participation has been effective. This was achieved, the result of which was a hybrid approach consisting of a two-stage kind of process of assessing the effectiveness of public participation; whereby the three-fold questions criterion and the listing criterion are employed in the assessment of public participation.

The third chapter tables research findings from primary research undertaken, aimed at answering whether in practise the legal framework as it is ensures effective public participation. It is the chapter that makes the case for the ‘withering eucalyptus in a desert middle’ concept in that, the framework is almost obsolete and redundant as it has been established that implementation and enforcement is poor due to lack of a facilitative policy framework.

This chapter in conclusion seeks to make appropriate recommendations that may be adopted in an effort of dealing with the implementation and enforcement issues arising that undermine the attainment and exercise of effective public participation.

It is thus concluded that the legal framework as designed does not ensure effective public participation as there is no facilitative framework to lay the groundwork on how the provisions of law are to be given effect to.

4.2 Recommendations

The key challenge to effective public participation in governance lies in the fact that Kenya lacks a consolidated policy framework on participation. Instead, reliance is pegged on the provisions of a dearth of statutes which only provide the mandate and guidance with regards to the concept of public participation. The statutes do not delve into the specific details and requirements which need to be met to ensure effective public participation or how in practise the provisions of law are to be brought to life. For this reason, it would be prudent and pertinent for a policy framework on public participation to be adopted which will analyse in detail the practicalities, essential requirements and procedures to be followed during public participation.

It has emerged from the findings that the legal regime in place is not as such the problem, the buck stops with implementation. It is anticipated that the legal provisions cannot be expected to go into great detail regarding all the issues they address, otherwise we would have rather bulky statutes resulting from such an approach. Bulky statutes in no way encourage the public to want to know what the content is. For this reason, it is proposed that a policy framework be adopted on public participation to provide for details that the statutes cannot address. This will ultimately aid the implementation of the legal regime on public participation.

Below are some of the factors that may be taken into account when drafting the content of the policy framework on public participation.

1. Methods of publicisation

It is proposed that the county should consider employing the use of information dissemination agents at the sub-county and ward levels who will be responsible for putting up notices in strategic areas such as notice boards in county, sub-county, ward offices; public schools; public hospitals; local churches etc. They may also put to use a vehicle fitted with a public address system to move around the county announcing the intended county forum. This is bound to increase the audience who receive the notification of the participation forum.

2. Adequate Notice Period

The policy if adopted should address the issue of adequate notice period of participation fora. This will allow for uniformity and encourage a high turnout of participants. However it should be noted that what constitutes adequate notice period should be determined by the policy in a manner that allows room for flexibility in favour of longer (and not shorter) notice periods.

Flexibility in fixating and construing notice periods is important because of the asymmetries surrounding the various counties. What constitutes adequate notice period for Nairobi County may not per se constitute adequate notice period for counties in North Eastern which have poor infrastructure as such slowing down general communication of information.

In the alternative, to address the issues that arise from the diverse socio-economic conditions of counties which have a bearing on communication and information dissemination, counties can consider having events' timetables warranting participation which should be published periodically before the start of the events year or a quarterly period , it helps give adequate notice to citizens who can prepare to attend and at the same time maintaining uniformity in the

requirement of 'adequate notice'. There will be no need for different time frames for notices with regards to different counties as the timetable will be published before the commencement of a particular activity year or quarter period. The timetable should provide information which would help citizens participate effectively. Having timetables publicized way before the commencement of activities may address the issue of adequate notice.

3. Contents of the Notice Convening the Forum

The policy framework should emphasize certain key items which must be present in all notices convening the forum. These entail: agenda of the forum, date, timing and venue of the forum, the intended audience for the notice and contact information for enquiries and feedback purposes.

The agenda should be in clear and concise words devoid of technical terms.

The date and timing should be convenient. This may be during weekends and public holidays; or if on weekdays towards end of the week. Afternoons should be considered when setting the time.

The venues are expected to be easily accessible and centralised and preferably there should be consistency in the venues used for the meetings. Having fixed premises for participation fora avoids confusion that comes with change of venue and failure to communicate the same. For counties which do not have proper town, municipal or city halls, this should be considered as one of the development projects when discussing the county budgets. The venues should be large enough and reasonably comfortable. Otherwise people would in most cases not attend such participation exercises if the venues are too small, as such congested or lack necessary equipment, and as such participants have to stand during the exercise.

The audience to whom the notice is intended should be obvious from face value of the notice. Whether participation is expected from specific segments of the public or the entire public should be clear from reading the notice.

The contact information provided should be up to date and working. It helps to boost legitimacy in the participation process if it does. It is demoralising and suspicious to have the contact information that is not working being provided by the county officials. This is necessary for maintenance of an effective feedback mechanism.

4. Civic Education and training

There is need to educate and train both the public and the governing authority on importance of public participation. The essence behind educating the governing authorities on the value of public participation in governance is that it will help them notice that their positions are not being challenged and may reduce instances of sabotage to the participation exercises(problem of postponing meetings and venue changes without issuing adequate notice)-nurturing the will to encourage participation. It is also proposed that the officials undertake training on procedure of meetings and how to preside effectively during meetings.

High illiteracy levels among the populace retards efforts being made to attain effective public participation. Civic education amongst the public will help enhance the level of awareness regarding the opportunities available for participation as well as equip them with the necessary skills to participate effectively.

It is proposed that education and training should be undertaken on a continuous basis. For this reason, a fund needs to be set up and time set aside to facilitate civic education and training of governing officials through capacity building of the members of the community who are to participate. Community profiling and needs assessments may be undertaken to inform capacity building. With this in place, the governing authority or CSOs may before any participation activity technical in nature conduct a workshop to train the participants.

5. Maintenance of a Comprehensive Information Management System

This will aid in ensuring the public is equipped to participate productively. The system should ensure all material information is easily accessible by the public. Such information should be easy to comprehend and should be disseminated early to allow for preparation of the participation exercise.

6. Creation of an Ad Hoc Body in Charge of Monitoring and Evaluation of the Effectiveness of Public Participation

There is need to have in place an ad hoc committee or body responsible for monitoring and evaluating the effectiveness and quality of public participation in general. This will assist in highlighting the areas which need improvement. Currently, it may be asserted that the Executive Assembly and the public have taken up this role. The Assembly has other functions of which participation is not at the core of its agenda; while the public only has so much it can do to voice concerns in a system that cannot support effective public participation.

It is interesting however to note that during primary research there were indications by the governing authorities at the counties that they are interested in evaluating the quality of participation but only lacked the tools and capacity to conduct such an exercise.

7. Clarity on the Rights and Responsibilities of Public and the Governing Authority with regards to Participation.

This can be achieved through civic education on the legal provisions relating to public participation. As it is, a majority of the public is not aware that public participation is a right they possess as guaranteed by the constitution and not a privilege or a favour as it is often made to appear. The public also needs to be aware of its responsibilities in the course of participation as laid down in law.

8. Spearhead the Principle of Inclusivity of all Peoples

The participation framework should encourage participation of all persons including the minority groups, marginalised communities and special interest groups. In this regard measures should be put in place to provide a conducive environment for effective participation. For instance, in the case of marginalised communities, there should be plans to ensure translation services are available. There should not be any form of discrimination whether based on ethnicity, tribe, gender, disability or any other factor.

9. E Participation Platforms

The County Government Act proposes an ICT based platform for participation but fails to lay the groundwork for effecting this. Challenges relating to access to ICT tools, networks and literacy can be perceived at this point given the socio-economic conditions in Kenya. However, given the weaknesses being experienced especially in publicisation of participation forums, it is necessary to consider the benefits that come with ICT technologies. The policy should attempt to venture out into the internet world that is Facebook, Twitter inter alia and propose ways in which these modules can be put to use to ensure effective participation of the public. It is proposed that the policy aims at introducing up-to-date web portals that encourage e-consultation. The portals should be in both English and Swahili and should provide reasonable opportunities to the public to raise questions and get responses through an established feedback system. Funds should as such be set aside for this purpose.

10. Financial Planning for Participation Activities

Financial planning should be undertaken before each fiscal year to allocate funds that would be needed to ensure the participation exercises planned are successful. An alternative to yearly fiscal plans is having a permanent fund established whereby budget allocations can be made yearly to cover recurrent expenses such as publicisation of meetings, training of governing officials, information dissemination and civic education inter alia.

11. Choice of language

It is proposed that there should be flexibility on choice of language used during meetings and in announcements or notices calling for meetings depending on the audience. It is wrong to have meetings being conducted in English without a translator where the forum is open to all and not a selected group which would be presumed to be conversant with English. In meetings open for all, Swahili would be a preferred language choice for such a group of participants. However, where the forum is in an area that is largely homogenous in terms of ethnic origin, the local language may be used and it should be subject to translation for the benefit of the minority few who do not share in that particular ethnic affiliation.

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Democratic Voting by Prof. André Bächtiger (University of Lucerne), Prof. Marco R.
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Mannheim). Doctoral student: Seraina Pedrini.
- 3) Kenya Law Resource Website

NEWSPAPER ARTICLES

- 1) Sunday Nation April 27 2014
- 2) Daily Nation Digital, Monday May 5, 2014, 'Kidero Allocates Millions for City Hall FM Radio Station'.

CRISIS | Tension continues to rise in east of country

Ukraine accuses Russia of trying to start a war

Premier says Moscow's military aircraft violated his country's airspace seven times

VATICAN CITY, Saturday

Ukrainian Prime Minister Arseniy Yatsenyuk said Saturday Russian military aircraft had crossed the country's airspace seven times "to provoke Ukraine to start a war."

"Russian military aircraft today overnight crossed and violated Ukrainian airspace seven times. The only reason is to provoke Ukraine to start a war," he told journalists at a briefing in Rome, following a meeting with Pope Francis.

He said the seizure of 13 international Organisation for Security and Cooperation in Europe (OSCE) observers by pro-Kremlin rebels who accuse them of being "Nato spies" was "more proof and evidence that these so-called peaceful protesters with Russian ideas are terrorists."

Russia pledged Saturday to help free the observers, who were sent to Ukraine to monitor an April 17 accord signed in Geneva between Russia, Ukraine, the US and EU that was meant to de-escalate the dangerous crisis in the ex-Soviet republic.

The Ukrainian premier — who is cutting short his trip will miss the canonisation of John Paul II and John XXIII because of rising tensions in the

country — said "Russian aggression aims to undermine global stability."

"We urge Russia to pull back its security forces. We urge Russia to leave us alone," he said, amid fears that Russia could be about to invade.

Yatsenyuk met Pope Francis for a private audience on Saturday, and said he had "asked his Holiness to pray for my country and peace in Europe."

In Moscow, Russia's defence ministry denied the claims.

"Russia's airspace monitoring systems have not registered any violations of air borders of the states adjacent to Russia, including Ukraine," the defence ministry said in a statement.

The Group of Seven rich countries have agreed to slap new sanctions on Moscow as early as Monday. Russia has warned it has a "right" to invade to protect Ukraine's Russian-speaking population in the east and southeast. (AFP)

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We urge Russia to pull back its security forces. We urge Russia to leave us alone"

Prime Minister Arseniy Yatsenyuk

JINDO, South Korea, Saturday

All surviving crew members of a sunken South Korean ferry were put under arrest Saturday, prosecutors said, as bad weather prevented the recovery of any of the more than 100 bodies still missing.

The captain, Lee Joon-Seok, and 10 crew members face charges ranging from criminal negligence to abandoning passengers.

The remaining four were arrested Saturday after warrants were issued, prosecutors said.

The confirmed death toll from the tragedy stood at 187, with 115 unaccounted for — many bodies are believed trapped in the ferry that capsized on April 16 on a routine voyage to southern Jindo island with 476 people on board.

Evacuation order

The ship's captain has been sharply criticised for delaying the evacuation order until the ferry was listing so badly that escape was almost impossible.

Prosecutors have raided a host of businesses affiliated

with the ferry operator, the Chonghaejin Marine Company, as part of an overall probe into corrupt management.

A looming storm and high tides put a temporary halt to operations to recover the remains of those still missing over a week after the disaster.

Despite the difficult conditions, divers made several attempts to get into the ship but to no avail.

The bulk of passengers on the Sewol when it sank were 325 high school students (AFP)

NAIROBI CITY COUNTY



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OFFICE OF THE GOVERNOR
COUNTY SECRETARY

PUBLIC NOTICE

ALL RESIDENTS OF NAIROBI CITY COUNTY 2014-2015 BUDGET ESTIMATES -PUBLIC FORUM

The Nairobi City County Government last February 2014 convened the Medium Term Expenditure Framework meetings in line with the County Government Act sections 87, 92 and 125(2) of the Public Finance Management Act which provides for public participation in the budget preparation process.

Thereafter, this input from the residents was incorporated into the county draft budget for 2014 - 2015. At this juncture, the county government wishes to request for your esteemed presence and participation in this forum to be held at Charter Hall, City Hall, on Monday, April 28th 2014, at 9.00am so that you may be briefed on the highlights of the draft budget estimates and to seek your reactions and input into the same.

Participation in this forum is expected from the general public that include, elected leaders, residents associations, leaders of various professional bodies, individuals, civil society, entrepreneurs, corporates, government departments, to mention but a few. The purpose of this communication is to invite you to spare some time from your busy schedules to participate and input the 2014 2015 budget estimates.

Written presentations may be submitted to the addresses provided alongside this Notice.

LILIAN NDEGWA
COUNTY SECRETARY AND HEAD OF COUNTY PUBLIC SERVICE

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Facebook	:	NairobiCityCountyOfficial
Twitter	:	county_nairobi
Fire and disaster management contact	:	0202344599

Being served is your right! Fighting corruption is your responsibility!

VACANCIES GRAPHIC DESIGNERS Job Ref. HR-GD-04-2014

Nation Media Group, the largest independent media house in East and Central Africa with operations in print, electronics and digital media attracting and serving unparalleled audiences in Kenya, Uganda, Tanzania and Rwanda seeks to recruit graphic designers for our Advertising and Editorial departments.

Key result areas will include:

- Creating inspiring, innovative adverts and page layouts for the print media within set deadlines;
- Interpreting and translating situations and ideas into graphics; managing production of all print work from conception to completion;
- Down loading graphics and co-ordinates from agents servers and sites translating them into usable formats;
- Liaising closely with other graphic sections in the Group for synergies;
- Responsible for the execution and thinking through the creative process for final sign off;
- Keeping abreast with the latest developments in the graphics world and cutting edge knowledge in the print media.

Competencies:

- Good interpersonal skills;
- Strong conceptual skills;
- Customer service oriented.

Skills, knowledge and experience requirements:

- University degree in graphic design;
- Good working knowledge of Adobe Creative Suite (In design, Photoshop, Illustrator);
- 2 to 3 years working experience;
- Ability to work with minimum supervision and cope with pressure and tight deadlines.

If you meet the above criteria, please send your application and a detailed CV online to <http://careers.nationmedia.com> on or before 3rd May, 2014.

NB: Only shortlisted candidates will be contacted.



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