

**YOUTH PARTICIPATION IN GOVERNANCE IN KENYA:
A Critical Analysis of the Policy, Legal and Institutional Framework,**

**THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE
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DEDICATION

I dedicate this work to all the youth of this country.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and People’s Rights
AIDS	Acquired Immuno Deficiency Syndrome
ARH&D	Adolescent Reproductive Health and Development
AU	African Union
AYC	African Youth Charter
AYT	African Youth Trust
CDF	Constituency Development Fund
COMY	Conference of Ministers of Youth
CRC	Convention on the Rights of the Child
CYP	Commonwealth Youth Programme
EAC	East African Youth Charter
EACYO	EAC Youth Community Organization
EALA	East African Legislative Assembly
EC	European Commission
ECHR	European Convention on Human Rights
EU	European Union
EYF	European Youth Forum
HELB	Higher Education Loans Board
HIV	Human Immune Deficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMYO	International Coordination Meeting of Youth Organizations
ICT	Information Communication Technology
INGYOs	International Non-Governmental Youth Organizations

IYF	International Youth Foundation
KEYO	Kenya Association of Youth Organizations
KMUN	Kenya Model United Nations
KU	Kenyatta University
KYCA	Kenya Youth Association Council
MBTI	Myers-Briggs Type Indicator
MDGs	Millenium Development Goals
MFIs	Micro-Finance Institutions
MOYA	Ministry of State for Youth Affairs
NRHP	National Reproductive Health Policy
NYP	National Youth Policy
NYS	National Youth Service
PAYU	Pan African Youth Union
PRSP	Poverty Reduction Strategy Paper
PYU	Pan African Youth Union
RH	Reproductive Health
RYPs	Regional Youth Platforms
SACCOs	Savings and Credit Co-operative Organizations
UDHR	Universal Declaration of Human Rights
UN	United Nation
UNDP	United Nations Development Programme
UNGAS	United Nations General Assembly
UNICEF	United Nations Children Fund
UoN	University of Nairobi
USA	United States of America
USAID	United States Agency for International Development
WAY	World Assembly of Youth

WHO	World Health Organization
WISE	Washington Internship for Students of Engineering
YMCA	Young Men's Christian Association
YPWGs	Youth Parliamentary Working Groups
YWCA	Young Women's Christian Association

CHAPTER ONE: INTRODUCTION

1.1 Background

“No one is born a good citizen; no nation is born a democracy. Rather, both are processes that continue to evolve over a lifetime. Young people must be included from birth. A society that cuts itself off from its youth severs its lifeline; it is condemned to bleed to death.”¹

The above quote summarizes the growing global recognition of the need to engage youth to participate in governance at all levels of societal, political, economic and social development. According to United Nations Educational, Scientific and Educational Organization (UNESCO), there are over 1 billion young people (aged 15-24) in the world today, which amounts to some 18% of the world's total population.²

The situation of the youth in Kenya is a point of concern. A few examples suffice as illustration. First, in the education sector, less than 25 percent of the youth transit from primary level to secondary enrollment. This in turn poorly prepares them for the job market. Secondly, in the employment sector, 60 percent of the unemployed are youth under 30 years with 1.9 million working children (5-17).³ Thirdly, in the health sector, one in three AIDS cases are among ages 15 and 30 years with prevalence rate varying from 1 percent to 24 percent (the figures are higher for females). Fourthly, crime statistics show that more than 50 percent of convicted prisoners are aged 16 – 25 years. Lastly, many cases of physical and sexual abuse affect about 50 percent of women aged 20 and 29 years from a tender age of 15 years with about 20-30 percent being cases of female genital mutilation (FGM).⁴

Therefore, tackling youth issues should also consider such areas as unemployment, political unrest, insecurity, HIV/AIDS amongst other myriad of challenges bedeviling the Kenyan society. There is need to change the attitude of the people, and especially the adult population, from considering the youth as a problem to be managed or prevented and involve them in finding

¹ Annan.K, (undated), former Secretary -General of the United Nations, address to the World Conference of Ministers Responsible for Youth, Lisbon.

² UNESCO (undated), Empowering the Youth through Youth Policies.

³ Francis.P, Githagui.N, (2005), *Youth in Kenya: Force for Change, or lost generation*, For Presentation at WB. ESSD Week Session on ‘Youth: Assets for Social and Economic Transformation’ , March 31, 2005.

⁴ *Ibid.*

solutions. They can play positive roles by putting into use their immense energy and creativity. Government expenditure on youth should be accompanied by positive empowerment of the youth for meaningful participation in governance.

Indeed, the African Union (AU) has considered the above matter and observed that the youth are the “engine for Africa’s development” and an opportunity for sustainable development of the continent and, therefore, they should not be regarded as a burden.⁵ AU estimates that in 2025, the young people of today will be the main drivers of African economies because of several reasons including: numerically the youth form a large part of Africa’s population i.e. 34.3% of the population of Sub-Saharan Africa in 2007; the young people of today are the best educated in human history; and gender gaps are steadily closing.⁶

Youth exclusion from participation in governance is largely a function of power and not innate development capacity. In addition, the widely held notion that youth are ‘leaders of tomorrow’ also continues to justify the continued relegation of the youth to peripheral roles in socio-economic and political processes of the country.

1.1.1 Youth Participation

Youth participation generally refers to young people experiencing elements of citizenship and democracy in their everyday lives, in real and holistic situations with meaningful outcomes or actions.⁷ This type of participation is different from superficial or tokenism participation that is rampant in Kenya today.⁸ Ultimately, the goal of youth participation is to empower youth to be able to participate in governance and effectively contribute to ideas and get involved in governance processes.⁹

⁵ Africa Union (AU) Press Release No. 58/2010, *ministerial meeting on youth development closes with adoption of plan of action of youth decade, declaration and resolution on the way forward*, Victoria Falls, Zimbabwe 16 April 2010.

⁶ *Ibid.*

⁷ Thuraya. I, (2005), *Investing in Youth, towards a Sustainable Human Development*, citing Wilson (2000), *Youth Participation – Where? When? and Why?*, United Nations Development Programme (UNDP). Also available at www.undp.org.sa, accessed on June 9, 2010.

⁸ *Ibid.*

⁹ Kinuthia. (2007), *Youth Reverse Mentoring Africa*, Africa Youth Parliament (AYP). Also available at www.igloo.org, accessed on June 9, 2010.

There are many benefits for allowing youth to participate in governance. According to the World Youth Report,¹⁰ youth participation has the following benefits: it leads to better decisions and outcomes because young people have a body of experience unique to their situation and they have views and ideas that derive from their experience; promotes the well being and development of young people because it is by having their views taken seriously that young people develop skills, build competencies and acquire confidence and form aspirations; strengthens a commitment to and understanding of human rights and democracy so that the youth can experience the implications of democratic decision-making and respect for human rights; protects young people especially in regards to matters of irresponsible sexual relationships, Human Immuno Deficiency Virus and Acquired Immune Deficiency Syndrome (HIV/AIDS) and illegal drugs; is a fundamental human right – all young people including the youth have a right to express their views on decisions directly affecting their lives; and represents the means for young people to advocate for themselves and transform their situations.¹¹

1.2 Problem Statement

The youth are the single largest demographic group in Kenya and thus constitute the majority of the Kenyan population. There is no doubt that they have the potential to make decisions and choices to mitigate on the many problems they face in society such as: unemployment, health, limited access to information and technology, limited participation and lack of opportunities. Youth participation is also important in making decisions about how they can access, gain and keep knowledge. Involvement and participation of youth in governance is a democratic practice that can lead to increased productivity. The extent to which policies, laws and institutions provide for youth participation needs to be investigated. Therefore, this study investigates youth participation in governance in Kenya by discussing the policy, legal and institutional framework available for youth participation.

With regard to policy, the author will refer to the National Youth Policy (NYP) which provides comprehensive policy framework for dealing with youth issues in Kenya. With regard to legislative framework, the new Constitution of Kenya 2010 with specific reference to Article 55 on youth and the National Youth Council Act will be reviewed. Finally, with regard to the

¹⁰ World Youth Report (2003), *Chapter 10 on Youth Participation in Decision-Making*, p.271. Also available at www.un.org/esa.

¹¹ Ibid

institutional framework, the Ministry of Youth and the National Youth Council will be the point of reference. Additionally, the role of youth in devolution process including the prospects and challenges; and youth success stories and relevance for governance will be discussed in details for a complete analysis.

The main thesis of this study is that youth participation is not only a human right but also *essential in a democracy*.

1.3 Objectives

The main objective of this study was to investigate and determine whether the policy, legal and institutional frameworks available in Kenya are adequate to provide for meaningful youth participation in governance.

Specifically, the study objectives are as follows:

1. To analyze the adequacy of the policy framework for youth participation in governance in Kenya.
2. To analyze the adequacy of the legal framework for youth participation in governance in Kenya.
3. To analyze the adequacy of the institutional framework for youth participation in governance in Kenya.
4. To make proposals for policy, legal and institutional reform to address any identified inadequacies.

1.4 Research Questions

The study addressed the following questions:

1. To what extent is the current policy framework in Kenya adequate for youth participation in governance?
2. To what extent is the current legal framework in Kenya adequate for youth participation in governance?
3. To what extent is the current institutional framework in Kenya adequate for youth participation in governance?

1.5 Hypothesis

The study proceeded on the basis of the hypothesis that the policy, legal and institutional frameworks in place do not adequately provide for youth participation in governance.

1.6 Significance of the Study

The significance of the study is that it seeks to bring more insight on the need to involve the youth in governance structures in Kenya. It seeks to help the policy makers to come up with the best approaches to involve the youth and finally to assist the legislature to incorporate the youth in all the laws in order to give them a platform to voice their concerns especially in regard to participation in decision-making and governance processes.

1.7 Conceptual Framework

This study uses the terms “youth”, “participation” and “governance”. These terms are at the root of this thesis and, therefore, a conceptual understanding of their use in this study is discussed below.

1.7.1 Definition of Youth

Quite often, the terms ‘youth,’ ‘adolescent,’ ‘teenager’ and ‘young person’ are used interchangeably. ‘Youth’ generally refers to a time of life that is neither childhood nor adulthood but rather somewhere in between. The term youth is also related to being young.

Sociologically, youth is defined as a transitional phase from childhood to adulthood marked by events such as completing schooling and further education, entering the world of work, achieving financial and residential autonomy from family, engaging in close personal relationships and, in some cases, marriage.¹²

While there is a biological aspect to the transition through puberty, much of it remains social and cultural.¹³ These building blocks of adulthood, influenced by historical, cultural, social and

¹² Child, youth and family development, human sciences research council, Pan-African youth charter & the status of the youth in Africa, produced on commission to the African union, November 2005.

¹³ Arnett, J, J, Conceptions of the transition to adulthood among emerging adults in American ethnic groups. *New Directions for Child and Adolescent Development*, (2003) 100, 63-75.

economic factors and, to a large extent, by globalization, are taking on new time frames that do not necessarily coincide with traditional age delimiters of youth. For example, increasing opportunities for education translate into longer time periods spent in training, extended financial dependence on families and delayed entry into the labour market. For many youth, the tenuous relationship with the labour market itself implies that they remain financially dependent on families for longer periods of time and hence delayed transition into financial and residential independence. Lack of financial independence, in turn, delays entry into stable relationships in a context of earlier sexual debut. The socio-economic inequality across nations, the cultural diversity that governs and defines these life phases, as well as varying legal definitions in terms of minimum age for voting means that a global consensus on an age definition of youth is, and will remain, hard to reach.¹⁴

Consequently, definitions of the specific age range that constitutes youth vary. For instance, the Wikipedia encyclopedia¹⁵ defines youth as the period between childhood and adulthood which period is marked by physical and psychological development.

The United Nations General Assembly defines youth as persons between ages of 15 and 24 years.¹⁶ The World Health Organization (WHO)¹⁷ defines the youth as persons aged 10-24 years. *The African Youth Charter* defines youth as persons aged between 15 and 35 years.¹⁸ *The Draft East African Youth Charter for Human Rights and Good Governance* defines youth as young persons of either sex between the ages of 18 and 35 years.¹⁹

United Nations Educational, Scientific and Cultural Organization (UNESCO) explains that the term youth varies in its significance and age ranges from culture to culture; it may universally be defined as a transitional concept. That means the youth are viewed as a very specific stage between childhood and adulthood, when people have to negotiate a complex interplay of both personal and socio-economic changes in order to manoeuvre the 'transition' from dependence to independence, take effective control of their own lives and assume social commitments.²⁰

¹⁴ Supra note 12

¹⁵ See <http://en.wikipedia.org/wiki/youthwork>.

¹⁶ www.un.org/youth, accessed on June 9, 2010.

¹⁷ The Adolescent Reproductive Health and Development Policy, Division of reproductive health Ministry of Health, May 2003, p 5.

¹⁸ Africa Youth Charter (2006), Preamble.

¹⁹ Final Draft East African Youth Charter for Human Rights and Good Governance, 2009.

²⁰ Supra note 2

The National Youth Council Act (2009) ²¹ defines youth under section 2 as persons aged between 18 to 35 years.

This study adopts the definition as contained in the National Youth Policy of Kenya,²² which defines youth as the population group of 15 to 30 years taking into account the physical, psychological, cultural, social, biological and political dimensions of the term. This study considers this age group to be mature enough to comprehend issues of governance.

1.7.2 Definition of Participation

Participation acquires various meanings depending on who is defining it. However, as discussed in the introduction, participation in this study generally refers to young people experiencing elements of citizenship and democracy in their everyday lives, in real and holistic situations with meaningful outcomes or actions.²³

Participation may appear at different levels – direct or indirect. Direct participation entails direct contact with decision-making persons or bodies. Indirect participation refers to having one's opinion represented by someone else, for instance, a youth council or a youth worker. However, participation in governance generally depends on what one wants to achieve.²⁴ The European Charter on Participation contends that enabling young people to participate in their community is not only about helping young people to have a say now. It is also about supporting young people to experience the opportunities and challenges of participation and being involved in community life. If participation is to be real and meaningful for young people, it not only requires their commitment, it also requires the strong and lasting commitment by everyone else, in particular the Local and Regional Authorities as the authorities closest to young people. Anything done to promote youth participation should take into account the diverse needs, circumstances, dreams and hopes of young people. It should also include some fun.²⁵ According to Rajani,

²¹ The National Youth Council Act, 2009, printed and published by the Government printer, Nairobi, 6th January 2010.

²² See National Youth Policy for Youth Development, Office of the Vice President, Ministry of State for Youth Affairs July 2007.

²³ Thuraya. I, (2005), *Investing in Youth, towards a Sustainable Human Development*, citing Wilson (2000), *Youth Participation – Where? When? and Why?*, United Nations Development Programme (UNDP). Also available at www.undp.org.sa, accessed on June 9, 2010.

²⁴ www.goodpracticeparticipate.govt.nz, accessed on December 4, 2009.

²⁵ Preamble of the European Charter on the Participation of Young People in Local and Regional Life.

“Participation promotes the well-being and development of young people. It is by questioning, expressing their views and having their opinions taken seriously that young people develop skills, build competencies, acquire confidence and form aspirations. It is a virtuous circle. The more opportunities a young person has for meaningful participation, the more experienced and competent he or she becomes. This allows more effective participation, which in turn enhances development.”²⁶

The youth can be involved at different levels as outlined above but, in particular, they can be involved in politics by adopting universally accepted value systems and, consequently, influence party leaders to adopt them. They can broaden their knowledge by exposing themselves to what leaders from other age-groups and countries are engaged in, and then learn and adopt what works best for them. Finally, they can practice leadership that enables positive transformation in their countries by transcending boundaries to regional and international levels.²⁷

1.7.3 Definition of Governance

Governance is defined differently by different organisations. United Nations Development Programme (UNDP) defines good governance as the exercise of political, economic and administrative authority to manage a nation’s affair at all levels and it comprises a complex array of mechanisms, processes, relationships and institutions through which citizens and groups articulate their legal rights, meet their obligations and mediate their differences.²⁸

This study adopts the definition by United Nations Commission on Human Rights (UNCHR), which identifies the key attributes of good governance as transparency, responsibility, accountability, participation and responsiveness (to the needs of people).²⁹

According to Elizabeth and Anderlin,³⁰ the term “governance” refers to the process of decision-making and the ways in which decisions are implemented (or not). In any given system, the government is the major actor, but others can influence the process. Non-state actors, such as

²⁶ Rajani, R. (2000, UNICEF): Discussion Paper for Partners on promoting Strategic Adolescent Participation, quoted in Lansdown, G. (2001), *Global Priorities for Youth. Youth Participation in Decision-making*.

²⁷ See Syria.tigweb.org/express/panorama/article.html?content ID=7474 (Accessed on 10-12-2009).

²⁸ United Nations Development Programme Discussion Paper 2 (1997), *Reconceptualizing Governance*, UNDP.

²⁹ UNCHR resolution 2000/64.

³⁰ Powley, E., Naraghi, A. (undated), *Democracy and Governance*.

religious or tribal leaders, civil society, major landowners, trade unions, financial institutions, the military and community based groups can play important roles.

The two identify the following to characterise a good system of governance: participatory—encouraging wide citizen participation in decision-making; consensus-orientated—attempting to reach decisions based on widespread agreement; transparent—being open to scrutiny in decision-making processes; responsive—listening and responding to the needs of its citizens; effective and efficient—providing basic services; and equitable and inclusive—not excluding any sectors of the population, especially those that are more vulnerable or marginalised. Therefore, governance in general encompasses the mechanisms, processes and institutions through which citizens and groups articulate their various interests, mediate or resolve their differences or disputes and exercise their legal rights.

The new constitution³¹ recognises the importance of good governance so that article 10 stipulates the National values and principles of governance, who it binds and what constitutes good governance. These include; integrity, transparency and accountability in addition to principles of human dignity, equity, human rights, social justice, inclusiveness, equality, non-discrimination, and protection of the marginalised. Consequently, the youth who under article 100 are categorised as a marginalised group are recognised as a group that can participate in governance.

Youth governance therefore, refers to the practice of having young people work in partnership with adults to establish the policies, goals and activities for a program. This practice can take the shape of youth serving on boards or of youth taking on other decision-making roles.³²

1.8 Theoretical Framework

The concept of youth participation is theoretically grounded on the theories of democracy and human rights.

³¹ The Constitution of Kenya, Kenya Gazette supplement No. 55 (The Constitution of Kenya 2010) Nairobi 27th August 2010, printed and published by the Government printer NAIROBI.

³² Bowie. M, Tinkew. J, Youth Governance: How and why it can help out-of-school time programmes involve at-risk youth citing Mantooth L, youth in Governance: A Guide for adults involving youth as decision makers on boards and committees. The university of Tennessee, Available at <http://www.Utextension.utk.edu/4H/ythgov/SP/650.pdf> Accessed on 3-5-2009.

1.8.1 The Theory of Democracy

To start with, the term democracy is derived from the Greek terminology “demo kratia”, meaning “people” or “rule”. Therefore, democracy means government or rule by the people. The essence of the democratic spirit is the emphasis on the role and place of commoners, that is, the popular will constitutes the sacred essence of what is essentially democratic.³³

Robert Dahl³⁴ argues that the key characteristic of a democracy is the continuing responsiveness of the government to the preferences of its citizens as political equals. Catherine Newberry³⁵ sees it as emphasizing on institutionalized mechanisms, means and procedure for changing government personnel, respect for the rule of law, accountable governance and protection for human and civil rights.

Larry diamond et. al. ³⁶ defines democracy as a system of government that meets three conditions: meaningful and extensive competition for selection and removal of personnel excluding the use of force, a highly inclusive level of political participation for selection of leaders and policies, and a level of civil and political liberties sufficient to guarantee the integrity of political competition and participation.

The power and appeal of the democratic idea Dunn argues, comes from its promise to render the life of a community something willed and chosen. In a democracy, the people, its human members, decide what is to be done and, in so doing, take the destiny firmly into their own hands. Further, the power and appeal of democracy comes from the idea of autonomy of choosing freely for oneself.³⁷

³³ Idowu. W, (1998), *Rethinking legal –constitutional development in Africa: Beyond the limits of legal positivism, towards a cultural jurisprudence.*

³⁴ Ibid, citing Dahl, R. (1971), *Polyarchy: Participation and opposition*, New Haven & London: Yale University Press, p.1

³⁵ Newbury. C, (2003), *Introduction: “Paradoxes of Democratization in Africa, in African Studies Review”*, Vol.37, No.1, p. 1-3.

³⁶ Diamond. et al, (1998), *Democracy in Developing Countries*, Vol. 2:2: Africa. Boulder: Lynne Reinner, p.xvi.

³⁷ Dunn. J, (1992), *Democracy: The Unfinished Journey*, Oxford: Oxford University Press, p.1.

For democratic theory, what makes governmental decision morally binding is the process; the peoples freely choosing representatives, those representatives debating and enacting policy and later standing for reelection, and administrators enforcing that policy.

Democratic theory, therefore, tends to embrace both positivism and moral relativism. The claim [for representative democracy] is most persuasively put, Michael walzer says, ‘not in terms of what the people know, but in term of who they are, the subject of the law, and if the law is to bind them as free men and women, they must also be its makers’.

Although one can hear in a democratic theory a reprise of Aristotle’s claim that the people’s collective wisdom will exceed that of any single person or small groups, few democratic theorists assume citizens possess equal capacity to understand the options or, as a whole, will always understand the issues. Thus, public policy, democratic theorists concede, will sometimes be unwise. A coherent theory of representative democracy must, however, posit that most sane adults can usually cope with political problem to the extent of being able to recognize their own self-interest, join with others who share those interests, and choose among candidates. The faith at work here assumes that citizens can, if encouraged and given the opportunity, develop the arts, the skills and habits necessary for responsible deliberation and decision-making.³⁸ Equally so, the youth can develop the skill of decision-making to enable their effective participation in governance.

The concept of democracy denotes a set of practices and principles that institutionalize and thus ultimately protect freedom. Laza Kekik, director, country forecasting services,³⁹ recognizes that there is no consensus on the precise definition of democracy. However, he notes that at a minimum, observers would classify the fundamental features of a democracy to include, government based on majority rule and the consent of the governed, the existence of free and fair elections, the protection of minorities and respect for basic human rights. Further he argues, democracy presupposes equality before the law, due process and political pluralism. Most measures of democracy according to him however, contend that, it is a continuous concept, with

³⁸Tussman, J, (1977), *Government and the Mind*, NewYork: Oxford University Press, P.143.

³⁹ See The Economist Intelligence Unit: Democracy Index 2007.

the possibility of varying degrees of democracy.⁴⁰ Obviously those three contentions by the economist intelligence constitute quite a narrow conception of democracy.

The U.S Agency for International Development (USAID)⁴¹ uses four categories to describe its democracy and governance activities, namely: rule of law, elections and political processes, civil society and governance. This conceptual framework is not meant to reduce democracy and governance programming into isolated building blocks. This is because democratization process according to USAID is much more complex and organic. The agency deems the four components critical to democratic governance and simply uses them as a lens through which political environment of a country is analyzed and evaluated.

Rule of law is defined as a theory of governance relying upon a series of legal and social constraints designed to encourage order and to prevent arbitrary and unreasonable exercise of government power.⁴² Rule of law extends beyond mere regulations and is shaped by institutional constraints, such as the existence of an independent judiciary, in addition to developing ways of promoting transparent governance. Respect for the rule of law and a well-developed justice system are underpinnings of a democratic society and a modern economy. Effective rule of law enhances predictability, equitable treatment and a respect for basic human rights.

Free and fair elections are indispensable to democracy. A country cannot be truly democratic until its citizens have the opportunity to choose their representatives.⁴³ Elections offer political parties and civic groups an opportunity to mobilize and organize supporters and share alternative platforms with the public. They encourage political debate.

The hallmark of a democratic society is the freedom of individuals to associate with like-minded individuals, express their views publicly, openly debate public policy, and petition their government.⁴⁴ Civil society is the term that best describes the independent bodies that allow for broad type of citizen participation. It is through the advocacy efforts of civil society

⁴⁰ Ibid p 8.

⁴¹ USAID (1998), *Democracy and Governance: A Conceptual framework*.

⁴² Ademi. G, (1993), *Legal Intimations: Michael Oakshott and the Rule of Law*, WIS. L. REV. 839

⁴³ *Supra* note 34.

⁴⁴ Ibid

organizations and other groups that people are given a choice in the process of formulating public policy.

Substantive governance demands radicalizing democracy, through the deepening and widening of the process of democratization of the state and all institutions of governance. Social movements and civil society organizations, which act as counterbalances and counterweights to the dominant powers of state and non-state actors, have an important role in deepening democratic processes and expanding the spaces wherein the poor and the excluded people such as the youth can participate as well as challenge the process of governance.

The democratic and human rights –based approach is informed by actions, policies and programmes to make sure that the poor and the excluded can challenge and change unequal and unjust power relationships inherent in the process of governance at various levels. The process of governing is ultimately most legitimate when it is infused with democratic principles such as transparency, pluralism and citizen involvement in decision-making, representation and accountability.⁴⁵

1.8.2 The Theory of Human Rights

Human rights are the fundamental rights and freedoms of human beings. They are entitlements that all human beings have by virtue of the fact that they are human beings. They are assumed to be common to all human beings irrespective of race, colour, sex, religion, nationality or other local connection. They are necessary for human beings to live a life of dignity. They protect all people from exploitation and dominance by more powerful people. Human rights are codified and protected by International, Regional and National instruments. Such instruments include: *the Universal Declaration of Human Rights (UDHR) 1948*, *the European Convention on Human Rights (ECHR)*, *the African Charter on Human and People's Rights (ACHPR)* and national constitutions like the *Kenya Constitutional Bill of Rights*.

At the 1993 World conference on human Rights in Vienna, Austria⁴⁶, a Declaration was adopted that proclaimed, amongst other things that human rights are 'inalienable, universal, indivisible and interdependent'. Inalienable means that such rights cannot be taken away from one person

⁴⁵ Ibid

⁴⁶ *Handbook for Paralegals* (September, 2005), Paralegal Support Network (PASUNE), Nairobi Kenya, p.38.

by another person, so that even when a person is jailed, his rights remain. However, they may be violated or limited.

Human rights are universal because they apply to all people in the world and are enjoyed by all. They are indivisible because of the fact that no rights are more important than others and the enjoyment of all must be pursued equally. They cannot be separated into parts and they are equally important.

Finally, human rights are interdependent because the full enjoyment of one right is dependent on the enjoyment of one or several other rights. For instance, one cannot enjoy all the other rights if the right of life is taken away.

The new constitution has dedicated chapter four to the bill of rights and in particular article 55 to the youth. It thus states; the state shall take measures, including affirmative action programmes, to ensure that the youth have opportunities to associate, be represented and participate in political, social, economic and other spheres of life. The right to participate is thus grounded under the theory of human rights.

1.9 Literature Review

A number of books and articles exist on this broad subject. The topic has generated a lot of interest. Most of the books and articles on the subject emanate from developed countries, usually the U.S, Europe and partly from the Asian countries. A number of researches have also been conducted on the various ways youth are involved in governance and in decision-making processes, especially in the developed world.

However, there is scarcity of local content on the subject; it does not seem to have generated much interest locally especially in regard to legal framework to incorporate the youth in governance. Consequently, there is scarcely any comprehensive work that addresses the questions and the precise issues raised by this thesis.

For instance Ismail Thuraya⁴⁷, quotes the four most-known ladders of youth participation and involvement. These he identifies as Hart's ladder (1992), Westthorp's continuum (1987), Shier's pathways, and Rocha's ladder of empowerment.

Harts ladder is based on his belief that youth participation refers to programmes conscious efforts to engage young people in all aspects of its work as partners in the development process.

Roger Hart developed a ladder of participation with eight levels that distinguishes between different forms of participation reflecting "who drives the development initiative". He identifies the eight levels as follows; Youth initiated shared decision with adults; Youth-initiated and directed: Adult initiated shared decisions with youth; Consulted and informed: Assigned but informed: Tokenism; the youth appear to be given a voice, but in fact have little or no choice about what to do or participate, Manipulation; Adults use youth to support causes and pretend that the causes are inspired by youth. Roger Hart through the eight levels captures quite effectively the different ways the youth may be involved.

Westthorp's Continuum identifies a six-step continuum of youth involvement that ranges from ad hoc input to full control by young people. Westthorp sees control as the final level which ensures that young people make all the crucial decisions without adult involvement. Westthorp's six level youth involvement model is equally quite effective though it assumes a smooth progression from ad hoc to control which is not necessarily the case.

Shier's pathways consists of five levels of participation. The model starts at listening to the youth, ascends to supporting them in expressing their views, and taking their views into account, then involving them in decision-making, and sharing power and responsibilities for decision-making.

Rocha took a different approach by using the term "empowerment". The five rungs of the empowerment ladder start with the atomistic individual empowerment, accelerate to the embedded individual, the mediated, and the social-political, and finally reach the political. According to Rocha, the last two steps indicate that participation can lead to political action.

⁴⁷ Ibid.

Thuraya Ismail in his work was able to identify the most known models of youth participation and the different levels of participation. His models tend to focus largely on political participation.

Karen Pittman⁴⁸ traces the shifts in youth policy and practice in the U.S in the last four decades and provides context for the future and challenges that lie ahead. She argues that in the 60s, National Commission on Youth Community Service based in the U.S was established with an approach to youth development powered by the belief that young people and adults could work together to change their communities into places where young people could grow up healthy. Karen argues that currently, youth participation has emerged as a powerful strategy for engaging the older youth. The involvement of the youth should not be limited to just politics. It should go beyond the economic, social, cultural and religious involvement.

This contention is well captured in an article by Mokwena and Dunham (2005)⁴⁹ in which they contend that the political system in all its manifestations, does not provide permanent and accessible mechanism through which young people's voices can be heard and taken into consideration on an on-going basis as a normal part of the political process. As explained, this contention is captured by a 17 year old from New York by the name Jason Warwin whom they have quoted. He observes that:

“Today in the 1990, if you had a problem in the black community, and you brought together a group of white people to discuss how to solve it, almost nobody would take that panel seriously. Infact, there would probably be a public outcry. It would be the same thing for women issues. Can you imagine a bunch of men sitting on the mayors' advisory committee on women? But everyday, in local arenas all the way to the white house, adults sit around and decide what problems youth have and need without ever consulting us”.

Indeed, Jason captures quite perfectly the urgent need for provision of a legal mechanism to structure the youth agenda.

⁴⁸ Pittman. Karen, IYF, International youth foundation Available at www.cydjournal.org/2000_winter/pittman.html (Accessed on 10-12-2009).

⁴⁹ See Article introduced by Mokwena S & Dunham J on Youth as Nation Builders, youth participation in the political process available at www.Youthmovements.org/.../youth.

Youth participation has also received much attention from other jurisdictions as outlined by Mokwena and Dunham in their article.⁵⁰ They have quoted a number of young people from different parts of the world who have written essays about how they continue to struggle to find workable strategies. Among them is Thomas Tichelmann.

Thomas Tichelmann in his article, *'The European Dimension'* gives a picture of how the European countries have grappled with the issue of including young people in development and formulation of policies. The discussion centered on how young people can in practice achieve real influence and several participants underlined the importance of ensuring diversity both in terms of who participates and how participation takes place. Many participants discussed the possibilities of exercising influence through consumption and involvement in cultural activities. They noted that positive examples such as the European Youth Forum exist but there is a long way to go to ensure that every region of the world can benefit from such structures of youth representation. To this effect, the importance of getting young people organized was noted.

Further, he notes, that youth participation can also be used for promotion of good governance. Institutionalized mechanism of participation exists such as: consultations (networking groups), school and university Boards and representative, independent, local, national, regional and international Youth Councils.

Legal mechanisms include quotas to ensure youth participation in government agencies dealing with youth related issues; quotas to ensure youth representation in parliament; user friendly access to the election process and representation of youth in youth policy making bodies. Tichelmann envisages a wider representation of the youth through a wider section.

Steve Mokwena of South Africa addresses the challenges involved in creating effective structures to represent the youth interest in government while at the same time serving as a mechanism for the delivery of policies and programs to improve the young people.

⁵⁰ Ibid.

The essays were written in context of the countries the youth come from and reflect different policies applied in different countries.

Dr. Mulindi of University of Nairobi in Muhia (2008) in his article, *'The Impending Class War in Kenya'*⁵¹ acknowledges that the creation of the Ministry of Youth Affairs was a great leap in the right direction. He recognizes that substantive ground has been covered by its creation but he adds that it barely scratches the surface. He also acknowledges that so many policies regarding the youth and their welfare have been put in place but the problem has always been funding, implementing, monitoring and evaluation. He goes further to tabulate the documents that have addressed youth issues especially the unemployment problem such as Poverty Reduction Strategy Paper (PRSP) and Session paper No 4 of 2005. This article helps this study appreciate the underlying concerns regarding failure to implement existing youth policies and therefore provides insight into the implementation difficulties. However, the paper does not address the process of engaging the youth in participation.

Kinuthia (2007) of African Youth Parliament in his article, *'Youth Reverse Mentoring Africa'*⁵² recognizes the need of empowering the youth to be able to effectively contribute to ideas and get involved in decision-making and governance processes. He further suggests and identifies areas where youth could be involved. He cites the following examples: Socializing dimension of governance a process that is, getting familiar with public issues so that the youth can participate meaningfully; giving their input to budgetary processes and structuring the way the youth articulate their issues. He finds fault with the way the rules are constituted to channel participation in public affairs and he gives valuable suggestions as to how youth can be involved.

Dr. T. Winglo, of Hong Kong⁵³ traces the factors that shape the development of young people such as family, school, peers, and technological advancement and acknowledges that the media and technology have a great impact on modern life and on society generally.

⁵¹ <http://www.tigweb.org.express/panorama/article.html?contentID=20579> Accessed on 9-6-2009.

⁵² Available at www.igloo.org/community/igloo/ (Accessed on 14-4-2009).

⁵³ See Director of YSNet, (2000) on Theoretical Framework of YSNet, Hongkong.

The cultural background that informs child development in the Asian region of the world teaches children never to show their strength to their adversaries so that at the appropriate time, they can strike.⁵⁴ In contrast, there is no homogeneity in what the youth in Kenya get to learn because of the varied ethnic diversity that instructs the youth differently.

The Canadian Peace-building Network discussion⁵⁵ highlights emerging issues, challenges and opportunities for action on priority basis based on governance, democratization and the revisioning of gender youth and relations of power.

Zeldon .S., Mcdaniel, Dimitri and Calvert and university of Wisconsin-Madison in their work, '*Youth in Decision-Making*', a study on the impacts of youth on adults and organizations⁵⁶ examined whether and how youth involvement in decision-making and organizations had broader impacts on adults and organizations. It also focused on whether youth governance led to additional changes that improve conditions for youth directly involved in decision-making. The results of the research revealed that there are benefits for involving the youth in decision-making because it propels decision-making groups to greater innovation and productivity. However, this research was carried out in a totally different environment where possibly more youth are involved in organizational structures decision-making bodies.

S. Zeldin in his article, '*Youth as Agents of Community Development*',⁵⁷ mapping the processes and outcomes of youth engaged in organization governance traces the involvement of youth as agents of adult community development. The research was based on interview data from 16 Youth and 24 adult organizational leaders representing eight organizations, which mapped the developmental processes that occur when youth and adults share governance responsibilities.

The literature reviewed exposes glaring gaps that require filling because most of the literature focuses on youth in relation to other facets of youth but rarely on youth participation in

⁵⁴ See Pattison P, & Herron D, *The Mountains are high and the emperor is far away: sanctity of contract in china*. Available at <http://www.cisg.law.pace.edu/cisg/biblio/pattison-herron.html#13#13>.

⁵⁵ Peacebuild, The Canadian Peacebuilding Network, *Emerging issues: Governance, Democratization and the Revisioning of Gender, Youth and Relations of power* (2008).

⁵⁶ *Research Reports on Youth in decision-making: A study on the Impacts of youth on adults and organizations*. Washington, DC: National4-H Council 2002, Available at <http://www.atthetable.org> accessed on 16-6-2009.

⁵⁷ Zeldin.S, *Youth as agents of adult and community development: mapping the processes and outcomes of youth engaged in organizational Governance*, university of Wisconsin (2003).

governance. The local literature reviewed identifies the faults and the challenges faced by implementation of youth policies. It does not adequately deal with the process of engaging the youth in governance through a legal framework. While this study acknowledges the importance of other facets of youth in areas such as development, employment creation, recreation and leisure, it has established that the lack of adequate legislative framework is largely to blame for the non-existence of participation of youth in governance processes in Kenya.

1.10 Research Methodology

The study relied on desk top review of primary and secondary sources including various legal and policy instruments at the international, regional and national sphere. Electronic journals and articles were also extensively reviewed in this study as well as library materials including books.

1.11 Summary of Chapters

This study report has four chapters besides this introductory chapter.

Chapter two analyzes the policy framework that anchors youth participation in governance in Kenya. This Chapter identifies and discusses the salient features of the *National Youth Policy (NYP)* as the principal policy framework that anchors youth participation in Kenya. The Chapter elaborates the steps that need to be undertaken towards the full implementation of the NYP.

Chapter three analyzes the legislative framework for youth participation in governance in Kenya. This Chapter identifies and analyzes The *Constitution of Kenya* and the *National Youth Council Act* as the principal legal framework anchoring youth participation in governance in Kenya. The Chapter argues that the Constitutional provisions will only be implemented when parliament puts in place mechanisms for the implementation of the constitution. So far, the Committee on the Implementation of the Constitution (CIC) has been put in place to oversee the implementation of the Constitution.

Further, the Constitution Implementation Oversight Committee (CIOOC) which is established in Parliament to oversee the implementation of the new constitution is also in place. There are other institutions that are key in the implementation of the constitution besides the CIC and CIOOC, they include: Government ministries, departments and agencies, the state law office and the

Kenya law reform commission (KLRC), the cabinet, the parliament and participation of the people. Though all mechanisms envisaged are not yet in place, the process of implementation is ongoing. The chapter also argues that the provisions of the National Youth Council Act must be implemented for the youth to reap the benefits of legislation.

Chapter four analyzes the institutional framework for youth participation in governance in Kenya. This Chapter identifies the National Youth Council (NYC) and the Ministry of Youth Affairs as the principal institutions for youth participation in governance in Kenya. The chapter argues that, the NYC has a legislative framework which will necessitate its establishment but its benefits will be seen only when it is fully implemented.

Chapter five contains the conclusions and recommendations of the study. In this Chapter, the key recommendations are to put in place, mechanisms for the implementation of the National Youth council Act and the Constitution of Kenya to address youth issues.

2.0 CHAPTER TWO: POLICY FRAMEWORK FOR YOUTH PARTICIPATION IN GOVERNANCE IN KENYA

2.1 Introduction

Addressing youth issues relies heavily on availability of a responsive policy framework. Where such policies are available and properly implemented, the situation of the youth is expected to improve significantly, including youth participation in governance.

This Chapter discusses the policy framework that is available for youth participation in governance in Kenya. Its principle focus is on the National Youth Policy established in 2007 through Sessional Paper No. 3. It commences by discussing the world programme of action for youth to the year 2000 and Beyond and the Declaration of the Youth on the African Youth Charter both of which Kenya is a signatory.

2.2 Policy Framework

At the international level, the *World Programme of Action for Youth*⁵⁸ (hereinafter the Programme for Action) is the principal policy for youth participation. It provides a policy framework and practical guidelines for national action and international support to improve the situation of young people. The Programme of Action contains proposals for action to the year 2000 and beyond that are aimed at achieving the objectives of the International Youth Year and at fostering conditions and mechanisms to promote improved well-being and livelihood among young people.⁵⁹ The focus of the Programme of Action is to put in place measures to strengthen national capacities in the field of youth and to increase the quality and quantity of opportunities available to young people for full, effective and constructive participation in society. It is a plan aimed at effectively addressing the problems of young people. It is a policy framework that seeks

⁵⁸ The United Nations General Assembly at its 91st meeting of December 1995 in its resolution 50/81 recognised that young people in all countries are both a major human resource for development and key agents for social change, economic development and technological innovation. It therefore adopted the world programme for Action as an integral part of the present resolution including priority areas identified as education, employment, hunger, poverty, health, environment and effective participation of youth in the life of society and in decision-making; www.un.org/documents/ga/res/50/a50r081.htm. Accessed on 21-01-2010.

⁵⁹ United Nations General Assembly Resolution A/50/728, *World Programme of Action to the Year 2000 and Beyond*. Adopted in 13 March 1996.

to deliver opportunities that would enhance young people's participation in society and provide guidelines for youth development support by national and international institutions. The plan contains concrete proposals on how countries should improve the wellbeing and livelihoods of young people in their respective countries. Therefore, Governments that have not formulated and adopted an integrated national youth policy need to do so.⁶⁰

At the Regional level, the policy framework is the *Declaration of the Youth on the African Youth Charter* which draws its inspiration from the 2003 and 2005 World Youth Reports which underscores the numerous advances and challenges facing the Youth the world over. According to this declaration, the promotion and protection of the rights of the Youth demand that both the Youth themselves and all other actors in the society assume their responsibilities. In addition, the Youth are a partner and an indispensable asset to sustainable development, peace and prosperity in Africa, as they have a unique contribution to make to present and future development.⁶¹

In July 2007, the government, through Sessional Paper No. 3 established the Kenya National Youth Policy for youth development (hereinafter referred to as the National Youth Policy). The National Youth Policy puts the age limit for youth at between 15 and 30 years taking into account the physical, social, biological and political dimensions of the youth. The National Youth Policy also estimates that Kenyans in the age bracket of 1-30 years make up a total of 75% of the total population and those between 15-30 years represent 32% of the total population. Therefore, the youth in Kenya represent a dominant demographic group that cannot be ignored.

The National Youth Policy proposes a legal framework to deal with issues of youth participation in democratic processes as well as community and civic youth affairs. It also proposes to address issues of youth empowerment and participation in national life through involving the youth at all levels of governance and decision-making. Some of the youth challenges the National Youth Policy seeks to address include youth with disability, street youth, youth infected with HIV/AIDS, female youth, unemployed and out of school youth. Ultimately, it is of the utmost importance to ensure the availability, sustainability and functioning of social policy that

⁶⁰ Ibid. The priorities and issues that are being addressed for policy and development are as follows, priority 1 – education; priority 2 – employment; priority 3 – hunger and poverty; priority 4 – health; priority 5 – environment; priority 6 – drug abuse; priority 7 – juvenile delinquency; priority 9 – girls and women; priority 10 – the full and effective participation of youth in the life of the society and in decision-making. Others include, globalization, ICT, HIV/AIDS, youth and conflict, intergenerational relations and disability.

⁶¹ See the Preamble to the Declaration of the Youth on the African Youth Charter. Adopted at Addis Ababa, Ethiopia in 2006.

encourages and enables young people to achieve their full potential and to live autonomous lives.⁶²

Several other policies also exist in the health sector, employment sector and other various government policies. However, this Chapter focuses on the National Youth Policy of Kenya as opposed to the sectoral policies which may incorporate youth participation. It discusses its salient features and provides a framework within which its implementation can be realized in Kenya.

2.3 The National Youth Policy: Salient Features

2.3.1 Principles of National Youth Policy

There are certain key principles that guide the National Youth Policy. These include, respect of cultural belief systems and ethical values; equity and accessibility to socio-economic opportunities for the youth; gender inclusive approach and equity to the development of the youth; and good governance principles of tolerance, transparency and accountability; and mainstreaming youth issues in all sectors of national development both public and private sectors and civil society – in particular, affirmative action for the youth as a strategy of participation and empowerment.

With respect to youth participation in governance, the Policy proposes in its principles youth mainstreaming. It proposes affirmative action as a strategy of participation and empowerment.

2.3.2 National Youth Policy Objectives

The overall goal of the policy is to promote youth participation in democratic processes as well as in community and civic affairs. It also seeks to ensure that the youth programmes involve them and are youth centred. The following are some of the main objectives of the policy: to sensitize national policy makers on the need to identify and mainstream youth issues in national development; to identify ways to empower the youth; to explore and suggest ways of engaging

⁶² YFJ Policy Paper “Meeting Young People’s Needs – A European Youth Forum Approach to Youth Policy” 0590-06, adopted in November 2006.

2.3.5 Youth Empowerment and Participation

On youth empowerment and participation, the policy posits that it is about partnership and ownership and providing resources pertaining to realising, dreams, visions, and motivation that the youth already have. The process of involving the youth in planning, implementation, and evaluation, brings about a strong sense of belonging and ownership that essentially leads to sustainability and immense benefits of the programmes.

The policy acknowledges that the youth are empowered when they acknowledge that they have or can create and make free choices in life. The youth are empowered when they acknowledge that they have or can create and make free choices in life, take action based on that decision and accept responsibility of the action. For this to happen a conducive environment should be in place.

The policy discusses that the environment includes: an Economic & Social base; political will, adequate resource allocation and supportive legal and administrative framework; a stable environment of equality, peace and democracy; and access to knowledge information and skills and a positive value system. The policy further realizes that empowerment is also based on the belief that the youth are the best resource for promoting development and they are agents of change in meeting own challenges and solving own problems.

The policy further acknowledges certain important truths. That in the process of empowering the youth, managers, leaders, teachers and parents should identify new ways of educating the youth on the future. The youth should no longer be taught what to learn, but how to learn, not what they are committed to, but rather, the value of commitment. Secondly, societal systems need to adopt open and non-rigid societal norms. Thirdly, adults must change communication paradigm with the youth. They should engage in dialogue knowing the youth armed with knowledge of the future are empowered to act on their own initiatives. They should change from working for the youth to working with the youth.

To conclude this part, the policy proposes to address the issues of youth participation, and empowerment using the following strategies: Involving youth at all levels of governance in the decision-making processes. Ensure that affirmative action for youth participation is in place at every level; Encourage free dialogue on economic, political and social issues; Establishment of

Micro-finance programmes to cater for the financial needs of the youth; Encouraging the youth to take up leadership positions; Provide training in entrepreneurial, leadership and management skills for youth and youth organisations; and Encouraging the youth to stand against all forms of injustice and discrimination. These strategies as proposed in the NYP are extremely progressive and one can only hope that the same will be implemented.

2.3.6 Special Target Groups

It is worth noting that the Youth Policy has given special focus to groups such as the youth with disability, the street youth, youth infected and affected with HIV/AIDS, female youth, the unemployed youth, and out of school youth. This is because; these groups are most vulnerable and face surmountable challenges in their society due to their unique predisposition, which calls for special interventions.

2.3.7 Implementation Framework

The implementation machinery will involve all agencies dealing with the youth such as government ministries, non-governmental organizations, the private sector, and the various youth organizations. The ministry of youth affairs shall spearhead the overall policy implementation, monitoring, evaluation, and review in addition to mobilizing resources necessary for the implementation. The institutional framework shall include a National Youth Council which shall be established through an Act of parliament and whose mandate shall be to coordinate youth organizations while continuously reviewing the NYP and developing an integrated national youth development plan in collaboration with ministry of youth. It shall promote and popularize the NYP to ensure structures are established and developed for effective implementation of policy and design key performance indicators. The institutional framework will reduce duplicity and enhance efficiency and service delivery to the youth. The institutional framework has been discussed extensively under chapter four.

2.4 Implementing the National Youth Policy: Some useful Perspectives⁶³

‘Any long-term national policy should have a clear, consensus-based vision of the kind of men and women for tomorrow’s world needs. We

⁶³ This part is adapted from UNESCO, *Empowering Youth through National Policies*.

may differ on the type of society we want to build, but we should agree on the qualities of the individuals that will constitute it'.⁶⁴

According to UNESCO, a national youth policy will remain purely symbolic unless it: conveys clear goals and a vision statement, i.e. sets out what the policy is intended to achieve in the long run; has an overarching coordination role and provides direction to all policies that directly and indirectly affect young people and their development as members of society; is a policy of the State, and not merely of a government; reflects an integrated, cross-sectoral and coherent approach, is interdisciplinary, inter-ministerial and multi-departmental; is the product of multi-party, national consensus, based on consultation with all concerned, particularly young people; is conceived as a long-term strategic instrument and not out of short-term political expediency; provides for the creation of national youth NGO platforms and the institutionalisation of informal and formal consultation mechanisms between national youth policy stakeholders and these platforms; opens up spaces for participation by young people in all stages of development, i.e. formulation, implementation and evaluation of this policy, Sets out concrete priority areas of policy intervention as the basis for the development of specific projects.⁶⁵

After the formulation and adoption of a National Youth Policy, implementation on a nation-wide level and in order to ensure its relevance and make it the framework for community and national youth development, it is essential to: promote the policy; formulate a national youth action plan and develop specific projects; create appropriate mechanisms for implementation and coordination of the policy; ensure youth participation in the implementation of the projects; and create multiple spaces for youth participation.

2.4.1 Promoting the National Youth Policy

UNESCAP offers a few pointers on a newly drafted national youth policy, which must reach all the major stakeholders and a mass audience. Efforts should be made to make young people aware of it by publicising it in an innovative way. UNESCAP contends that in countries which do have a tradition of this form of public legislation, creative communication strategies that 'get the message across' appear key in mobilising support among young people. They give some

⁶⁴ *National Youth Policies: A Working Document from the Point of View of 'Non-Formal Education' Youth Organisations – Towards an Autonomous, Supportive, Responsible and Committed Youth*. Produced by the Chief Executive Officers of the World Alliance of Young Men's Christian Associations, World Young Women's Christian Association, World Organisation of the Scout Movement, World Association of Girl Guides and Girl Scouts, International Federation of Red Cross and Red Crescent Societies and the International Award Association (2000).

⁶⁵ *Supra* note 2

useful ideas on how to ensure that a youth policy has large-scale appeal and advices - use eye-catching graphics, illustrations and titles; use clear and simple language; select covers, formats and colours that will attract attention.⁶⁶

Alternatively, UNESCAP posits that launching of national campaigns aimed at raising general awareness of the existence and content of such a policy may be another option. However, such national campaigns should be run by a young promotion team and could: Offer regional workshops for representatives of youth agencies and local workers with young people; enter in direct contact with young people to popularise the policy (at the workplace, in schools, youth centres, at cultural events etc.); and Use a wide range of electronic and other media to disseminate information (websites, short advertisements, press releases).⁶⁷

2.4.2 Developing Action Plans and Specific Projects

For the implementation of a national youth policy, an action plan with concrete projects and specific targets to be achieved in each area must be put in place. The national action plans complements the national youth policy and provides the details of the policy and its implementation. An action plan should thus be a strategic and holistic document incorporating all the major stakeholders and should clearly define the specific actions to be undertaken, when they will be undertaken and by whom in order to meet the priorities of the policy. It equally indicates the resources needed in order to realise these objectives.⁶⁸

2.4.3 Creating Appropriate Mechanisms for Implementation and Coordination of the Policy

The implementation of a national youth policy involves both centralisation and de-centralisation of mechanisms and steps, as the policy must be conceived within a national development framework for the country as a whole and as a localised process with, by and for youth at the same time. Coordination thus needs to take place between the different national ministries and departments of government, between regional bodies, national youth NGOs and agents from the private sector and civil society engaged in service delivery related to young people.⁶⁹ In order to combine these coordination efforts on a partnership basis, it is advisable to appoint a national-

⁶⁶ UNESCAP (1999): *Youth Policy Formulation Manual*.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Supra* note 40.

level co-ordinating agency. The task of coordinating may be an overwhelming challenge for the national focal-point agency: it above all requires strong financial backing and adequate government authority. Many countries having recently introduced a national youth policy have created youth ministries, councils, departments and offices granted with a high level of government authority in order to promote and implement the policy.⁷⁰

2.4.4 Ensuring Youth Participation

Assuring the participation of young people in the implementation of specific projects and youth programmes at the international, regional and national level is crucial in order to ensure maximum opportunities for youth to contribute as active agents of change in all aspects of life and on all levels of decision-making. However, if their participation is to be meaningful, it is imperative that their engagement be directly linked to first-hand experience and identified by young people themselves as a key area of concern. Participation⁷¹ should be understood as a process of empowerment of young people as principal players, which produces tangible changes in their living environment.⁷¹ To sum up, extensive experience has shown that good practice in youth participation involves participation that is based on: choice; is enjoyable, challenging and fun, relates to issues perceived as relevant by young people, raises young people's awareness of social, political, economic, cultural and personal issues affecting them; involves training and skills development; ensures that young people are given ongoing support in their role; provides them with a sense of belonging and ownership in relation to decision-making; makes them feel that their participation is valued; involves adequate resourcing (including time, space, funding and information); acknowledges their contribution; and acknowledges that young people often experience financial and transport constraints (getting to meetings for example) and secures support at this level; is based on a careful recruitment and selection process; gives them a sense of ownership and belonging; and involves a review process ensuring that both the young people and adults obtain the outcomes they seek.⁷² The practice of creating meaningful opportunities for young people to participate must therefore seek multiple youth-participation strategies that will capture a wider and broader youth perspective.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Government of South Australia (2000) : Youth Participation Handbook : A Guide for Organisations seeking to involve Young People on Boards and Committees.

2.4.5 Creating Multiple Spaces for Youth Participation

1. Youth Organizations

Youth organisations are unique in that they are primarily focused on reflecting the views and serving the needs of young people. Whether these are structured organisations or informal groups, young people's organisations provide a space where young people can learn and experience participating in decisions and activities with others. Support to youth organisations and their structures on a national level (National Youth Councils or Youth Committees) in many countries is the basic strategy to involve young people. This also involves the right and the support to establish youth organisations.⁷³

2. Youth and School Councils, Youth Forums and Youth Parliaments

A current trend, especially in many European countries, has been the establishment of municipal youth councils and local, regional and national youth parliaments. These forums can be successful, especially in small communities where they may focus the attention on youth issues. Youth councils – whether they are private umbrella organisations of youth associations or state youth councils that include public youth institutions and state officials – are the traditional channels of cooperation and exchange of information between politicians, authorities and youth.⁷⁴

3. Youth Hearings and youth workshops

Local authorities can organise Youth Hearings to raise awareness on youth issues and provide a public forum for discussion on youth policy. They also reach to some extent people outside 'organized youth'. Another method aimed for collecting information on youth concerns is the organisation of workshops, where adolescents meet and work on various topics.

4. Informing young people

Information is the key to young people's participation in the life of their community and enables them to benefit from services and opportunities aimed at them. Local and national authorities should therefore support the creation of adequate youth - information services and especially meet the needs of young people who have difficulty in accessing information. As information for

⁷³ *Supra* note 40.

⁷⁴ *Ibid.*

young people must be both user- friendly and widely disseminated, young people themselves need to be involved in the development of such information.

5. Training in youth participation

Because of its dominant role in the life of young people, the school environment can play an important role for the provision of training in youth participation, human-rights education and non formal learning in schools. Local authorities should promote civic-education programmes in schools, the provision of necessary space for peer-group education and the exchange of good practice.

6. Promoting youth participation through information and communication technologies

Provided that training and access to new technologies is given to all young people, new information and communication technologies can have a great potential for informing and increasing the participation of young people in issues of concern to them. Local and regional authorities should therefore consider an increased involvement in information and participation strategies.⁷⁵

7. Encouraging young people to undertake voluntary work and community service

Voluntary work and community service is central to the development of young people's sense of responsibility and autonomy in becoming social actors. In partnership with young people, authorities should therefore develop systems which encourage and validate voluntary activity in the formal education system and in employment.⁷⁶

8. Fostering young people's participation in and use of the media

Young people are often excluded from active participation in the media or are negatively represented in it. In a number of countries, initiatives train young people as journalists, running their own radio programmes and developing journals and newsletters. Through their way of dealing with specific subjects, young people allow for different and more accessible information to be provided to their peers.⁷⁷

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

9. Promoting the presence of young people in international forums and conferences

Young people are increasingly present in local, national and international conferences as delegates, speakers or organisers. This participation often has a significant impact on the direction and outcome of these events and encourages wider youth participation in the decision-making process. Countries should attach great importance to the inclusion of youth representatives in their official delegations to global conferences and support young people's participation in national and international youth events.⁷⁸

2.5 Monitoring and Evaluation⁷⁹

A national youth policy is directed to a fraction of the population whose needs change rapidly with the evolution of society: consequently, the need for ongoing monitoring and evaluation of all projects and policies cannot be stressed highly enough. Lack of evaluation is a major obstacle to success: it prevents correction or reformulation of programmes with the result that mistakes are repeated ad infinitum. Thus, it is important that strong mechanisms are created and responsible bodies identified which guarantee a periodic review of national youth policies and programmes.

The major challenge of monitoring and evaluation processes is the development of tools to measure both the quantitative and qualitative aspect of the effectiveness of youth policy initiatives, i.e. the establishment of a set of key indicators for youth development in a given country. Indicators may help to understand the social quality of life of young people and may ultimately serve to determine 'policy gaps', i.e. to detect the discrepancies between targeted outcomes and actual results. The aim of working with indicators is to raise the level of understanding of a problem, to break it down into smaller levels where solutions can be identified and put into practice.

2.6 Conclusion

The formulation and adoption of the Kenyan Youth Policy was the beginning of a long journey towards securing youth participation in governance in Kenya. The real task, which is also most important, is its implementation. This chapter has discussed in details what youth empowerment

⁷⁸ *Ibid.*

⁷⁹ This part has been adapted from UNESCO, *Empowering youth through national policies*.

and participation means under the Youth Policy and how the policy can be implemented for the benefit of the youth. Some of the strategies discussed include the establishment of a coordination agency for the implementation of the policy, formulation of an action plan with specific activities and timelines for implementation of various facets of the policy, and also crucial is devotion of adequate resources, financial and technical, towards the implementation of the National Youth Policy. In the implementation of the Policy, it has to be emphasized that the youth should take centre-stage. Finally, the youth Policy is to be reviewed at least once in every five years and in line with other government policy documents.

3.0 CHAPTER THREE: LEGAL FRAMEWORK FOR YOUTH PARTICIPATION IN GOVERNANCE IN KENYA

3.1 Introduction

With a responsive policy framework in place, it follows that an effective legal framework has to be established to implement the policy. This chapter identifies and examines the legal framework on youth participation in governance in Kenya. Its principal focus is on the laws that touch on youth governance in Kenya but more particularly on the New Constitution and on the National Youth Council Act, 2009⁸⁰. The chapter commences by briefly discussing the United Nations Charter, the Universal Declaration of Human Rights, the Convention on the Rights of the Child and the African Youth Charter all of which Kenya is a signatory. The Draft East African Youth Charter for Human Rights and Good Governance is still a draft and yet to become law. It is discussed briefly also.

For purposes of this thesis, the focus is limited to the New Constitution and the National Youth Council Act, the children's Act, the Education Acts, and the Public Universities Acts. The other international, regional and sub-regional instruments are applied for comparative purposes only in assessing the level of compliance of our National Instruments with international instruments.

3.2 The International Legal Framework

The international legal framework on youth participation in governance is limited and has been so for a long time. However, the situation is currently changing and there are now deliberate efforts in place to incorporate the youth in governance through a legal framework. The following are some of the international legal instruments that provide for youth participation in governance though not expressly; they contain provisions that allow democratic participation by all and therefore grant rights for youth participation:

⁸⁰ Supra note 21

3.2.1 The United Nations Charter

Participation of both men and women was first recognized in 1945 in the United Nations Charter⁸¹ which reaffirmed its commitment to place no restrictions on the eligibility of men and women to participate in any capacity in its organs of governance. No age limit was placed and therefore the youth could rightly claim anchorage on this law.

The UN Charter was signed on 26th of June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organisation and came into force on 24th October 1945. The charter was established to save succeeding generations from the scourge of war, to reaffirm their faith in human rights, to promote social progress, to practice tolerance and live together in peace with one another as good neighbours and to maintain international peace and security.

The name “United Nations”, was coined by United States President Franklin D. Roosevelt. It was first used in the “Declaration by United Nations” of 1st January 1942, during the World War 2, when representatives of 26 nations pledged their Governments to continue fighting together against the Axis Powers.

The forerunner of the United Nations was the League of Nations, an organization conceived in similar circumstances during the World War 1, and established in 1919 under the Treaty of Versailles “to promote international cooperation and to achieve peace and security.” The League of Nations ceased its activities after failing to prevent the Second World War.

In 1945, representatives of 50 countries met in San Francisco at the United Nations Conference on International Organization to draw up the United Nations Charter. Those delegates deliberated on the basis of proposals worked out by the representatives of China, the Soviet Union, the United Kingdom, and the United States from August-October 1944.

United Nations Day is celebrated on October 24th each year to commemorate the anniversary of the United Nations.

Kenya was admitted to the United Nations membership on 16th December 1963.

⁸¹ Charter of the United Nations and statute of the International Court of justice, United Nations. New York, department of public information UN NY 10017.

3.2.2 The Universal Declaration of Human Rights⁸²

The Universal Declaration of Human Rights (UDHR) is a non-binding declaration adopted by the United Nations General Assembly in 1948, partly in response to the barbarism of World War II. The UDHR urges member nations to promote a number of human, civil, economic and social rights, asserting these rights are part of the "foundation of freedom, justice and peace in the world". The Declaration was the *first international legal effort to limit the behavior of states and press upon them duties to their citizens.*⁸³ On 10th December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights.

European philosophers of the Age of Enlightenment developed theories of natural law that influenced the adoption of documents such as the Bill of Rights of England, the Bill of Rights in the United States, and the Declaration of the Rights of Man and of the Citizen in France.⁸⁴

National and International pressure for an international bill of rights had been building throughout World War II. In his 1941 State of the Union address, US president Franklin Roosevelt called for the protection of what he termed the "essential" Four Freedoms: freedom of speech, freedom of conscience, freedom from fear and freedom from want, as its basic war aims. This has been seen as part of a movement of the 1940s that sought to make human rights part of the conditions for peace at the end of the war. The United Nations Charter "reaffirmed faith in fundamental human rights, and dignity and worth of the human person" and committed all member states to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

When the atrocities committed by Nazi Germany became public knowledge around the world after World War II, the consensus within the world community was that the United Nations Charter did not sufficiently define the rights it referenced. A universal declaration that specified

⁸² See G.A. res.217A (111), U.N.DOC, A/810 at 71 (1948). Article 21 (1)

⁸³ Available at [en.wikipedia.org/.../universal declaration of Human Rights](https://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights).

⁸⁴ Ibid

the rights of individuals was necessary to give effect to the Charter's provisions on human rights.⁸⁵

The Universal Declaration of Human Rights recognizes the right of everyone to take part in the government of his country directly or through freely chosen representatives.⁸⁶ The right is extended to everyone including the youth. Kenya is a signatory to the Declaration. Consequently, the Kenyan youth can claim anchorage on this law.

Since then, there have been efforts to improve the situation of youth participation in governance and decision-making processes. They include adoption of the following: Convention on the Rights of the child⁸⁷ and International Covenant on Civil and political Rights among others.⁸⁸

3.2.3 International Legal Instruments Providing for the Rights of the Child

Below is a brief summary of the International Legal Instruments Providing for the rights of the child.

1. The Geneva Declaration, 1924

This international instrument set down the fundamental principles for the protection and rights of children. *It is non-binding and reflects all the norms and values which all nations should aspire in relation to the rights of the child.* It states that mankind owes to the child the best it has to give.

2. The Declaration of the Rights of the Child, 1959

This declaration is the revised version of the 1924 Declaration. It included other principles such as; the child must be protected beyond and above all considerations of race, nationality or creed; the child must be cared for with due respect for the family as an entity among others.

⁸⁵ Supra note 83

⁸⁶ Article 21

⁸⁷ See General Assembly resolution 44/25, November (1989)

⁸⁸ See Msc.4 (1967) Cmnd.3220; 61A.J.I.L.870 (1967) Article 25.

This was the first major international instrument exclusively devoted to children's rights. It introduced the principle of "the best interests of the child" to guide all those who would be involved in making decisions that would ultimately affect children. It laid the foundation for the further development of a binding treaty on the rights of the child.

3. United Nations Convention on the Rights of the Child (UNCRC), 1989

At the International level, the need was felt to have a document dealing exclusively with the rights of the child. The process of developing a comprehensive document on the rights of the child commenced in 1979. It culminated in the adoption of the UNCRC by the General Assembly of the United Nations in 1989. Kenya ratified the UNCRC in 1990. It was later domesticated under the children Act No. 8 of 2001.

This convention only covers the youth who are below 18 years. Since this study adopts the definition of youth as those between 15 to 30 years, sections of the youth in this category are covered.

Article 12 of the Convention recognizes that participation is a substantive right of all children and young people.⁸⁹ The Convention introduced a new philosophy with regard to children and young people, recognizing their importance as individuals whose dignity must be respected. It promotes the principle that youth are entitled to express their views on all matters that affect them and to have those views taken seriously. Article 12 (1) thus states;

"State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

The convention in regard to the provisions of article 12 has not received much attention in Kenya save for the fact that it has been domesticated under the children's Act of 2001.

⁸⁹ See General Assembly resolution 44/25, November (1989)

3.2.4 International Covenant on Civil and Political Rights (ICCPR) 1966⁹⁰

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and came into force from March 23, 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of October 2009, the Covenant had 72 signatories and 166 parties.

It stipulates that every citizen shall have the right and opportunity to take part in the conduct of public affairs directly or through freely chosen representatives. Article 1(1) places value on the right of all people to self determination and by virtue of that right, to freely determine their political status and freely pursue their economic, social and cultural development.

All the above instruments and documents therefore lay a solid foundation for youth participation in governance. Kenya is a signatory to all the above international instruments.

3.2.5 The African Youth Charter

The African Youth Charter provides the governments, youth, civil society and international partners in African youth development with a continental framework that underlines the rights, duties and freedoms of the youth as well as a comprehensive guide to develop strategic national programmes and plans for youth empowerment. The process of coming up with the charter began with a research focusing on the status of the African youth which highlighted the myriad problems of African youth in various areas.

A key objective of the charter is to advocate for the constructive involvement of youth in the developmental agenda of Africa with effective participation in debates and decision-making processes in the development of Africa. Consequently, it provides a framework to enable youth

⁹⁰ See Msc.4 (1967) Cmnd.3220; 61A.J.I.L.870 (1967) Article 25.

main-streaming in issues of development policies and programmes; a legal basis to ensure the presence and participation of youth in government structures and forums at national, regional and continental levels.⁹¹

The African Youth Charter was adopted by the African Union in July, 2, 2006. The charter has now been ratified by 13 countries, signed by 32 and is being popularised across the African Union. The Ministers in charge of youth met in February 2008 to adopt a plan of action to accelerate the ratification, popularisation and implementation of the charter. Right now, the AU Commission is working with 11 member states to assist them in the process of getting the charter ratified.⁹²

Article 11 of the African Youth Charter⁹³ recognized the need for youth participation in all spheres of society and further binds the State Parties to the obligation to promote youth participation in society through: guaranteeing participation of youth in parliament and other decision-making bodies in accordance with prescribed laws; facilitating creation or strengthening of platforms for youth participation in decision-making at local, national, regional and continental levels of governance; and ensuring equal participation (by young men and women) in decision-making and in fulfilling civic duties.

The African youth charter is one regional instrument that has granted the youth of Africa a great legal platform from which to front their agenda. The actualisation of the instrument at national level however remains a challenge many youth have to contend with. Without operationalisation of the youth document, it will remain just a good paper. Many of the declarations only end up as reference documents for the development of project proposals and national budgets.

The Charter defines youth as individuals between 15-35 years. The Youth Council Act defines youth as those between 18-35 years, while the NYP defines youth as those between 15-30 years. The New constitution 2010 defines youth as those between 18-35 years. 15 to 35 years is a reflection of the challenges faced by African youth in effectively integrating into society,

⁹¹ Allafrica.com/stories/201002180552.html

⁹² [lwfyouth.org/.../the African youth- charter a-way-to improve –youth- participation/](http://lwfyouth.org/.../the-African-youth-charter-a-way-to-improve-youth-participation/)

⁹³ African Youth Charter Adopted by the Seventh Ordinary Session of the Assembly, held in Banjul, Gambia 2nd July 2006.

finishing school, getting married and gaining financial independence. The variance created by those definitions seems to create confusion and hence there is need to harmonise the definitions to align with the African charter.

On participation, the charter calls for state parties to guarantee the participation of youth in parliament and other national decision-making bodies as well as facilitate the establishment or strengthening of national, regional, and continental platforms for youth participation. Legal platforms have to be set up in national organs of various state parties to operationalise the African Youth Charter. It is yet to happen in most states.

3.2.6 Draft East African Youth Charter for Human Rights and Good Governance, August, 2009⁹⁴

The draft is a relatively new instrument in the region. It is yet to be ratified by the respective countries but it is a positive move in the right direction. The charter defines the youth as a young person of either sex between the ages 18 and 35 years. It goes further to define minors as persons between ages 15 and 17 years. It has two articles that allude to youth participation in governance and two others that allude to the right of the youth to express their own ideas and opinions freely.

Article 20(1) states;

“Every youth shall have the right to express his or her own ideas and opinions freely in all matters and to disseminate his or her own ideas and opinions subject to the restrictions prescribed by laws of the state parties”.

The right of expression envisaged in this article does not restrict the expression to political or economic spheres but to all matters. Article 8 (1) directly provides for the right of participation in the political process. It states;

The youth shall have the right to; (a) take part in public affairs, directly or through their elected representatives at the community and (b) vie for positions in regular, free and fair elections in accordance with the appropriate laws.

⁹⁴ Available at www.africa.youthtrust.org

(2) Right to participate in decision-making processes:

The youth shall have the right to fully participate in the decision-making process of their respective state parties and at the community level. State parties shall in their decision to appoint or nominate individuals for posts at the community ensure that a minimum of 30% are young persons.

The Article does expressly grant the youth the right to participate in the political process of their respective states as well as the right to affirmative action to ensure the youth are rightfully represented. Once operational, the draft will serve as a good foundation for grounding youth participation at the regional level.

3.2.7 The Previous Constitution of Kenya

The previous Constitution of Kenya does not have express provisions that provide for youth participation in governance processes. However, it makes provisions for qualifications for election as a member of the National Assembly⁹⁵. Members of National Assembly are leaders by their own right and participate in governance of the country in various select parliamentary committees and when appointed as ministers.

Section 5 (2) (b) of the Constitution provides for the age one must attain to vie for presidency in Kenya which is 35 years so that the youth as defined in this study are deliberately excluded from rising to the highest office. The section thus states:

“A person shall be qualified to be nominated for election as president if, and shall not be so qualified unless he- (b) has attained the age of 35 years”.

At section 34 (a), a person shall be qualified to be a member of parliament if he is a citizen of Kenya who has attained the age of 21 years. That age provision is within the age limit for youth

⁹⁵ The (Old) Constitution of Kenya , Revised Edition 2001(1998) printed and published by the Government printer Nairobi. section 34 (a)

adopted in this study. But beyond that, no specific mention of youth in governance processes is found in the old constitution.

3.2.8 The New Constitution of Kenya 2010

The New Constitution of Kenya⁹⁶ has made provisions for youth participation in governance in chapter four (4) on Bill of Rights, article 55(b). Generally, it entrenches specific rights and responsibilities that everyone must uphold. In the Bill of rights, specific rights are guaranteed and these rights and responsibilities guide the inherent rights and responsibilities of everyone including young people. The article also provides for the state to take measures including affirmative action programmes to ensure that the youth have opportunities to associate, be represented and participate in political, social, economic and other spheres of life. The Article deliberately avoids specific mention of legislative measures for creation of a platform that can set out the rules of engagement by the youth. However, it does grant affirmative action rights which are good enough.

Article 99 provides for qualifications and disqualifications as a member of parliament. The Article departs from the old Constitution which puts the age of qualification to be elected as a member of parliament at 21 while the New Constitution places that age at 18. That provision is good for the youth because it widens the scope of the youth that may be elected to governance positions.

Further, the chapter on the executive⁹⁷ allows the youth to be elected to the highest office if one is qualified to stand for election as a member of parliament. Article 137 (1) (b) provides for one to be a registered voter to qualify to be elected as a member of parliament. Article 83 (1) (a) provides for 18 years of age to qualify as a voter since an adult in Kenya is considered as one who is 18 years and above. That basically translates to 18 years as the age limit the New

⁹⁶ The Constitution of Kenya, Kenya Gazette supplement No. 55 (The Constitution of Kenya 2010) Nairobi 27th August 2010, printed and published by the Government printer NAIROBI.

⁹⁷ Chapter 9 of the New Constitution.

Constitution provides for one to vie for a parliamentary seat and consequently, for presidency. The New Constitution therefore recognizes the importance of youth as defined in this study to participate in governance although the practice may prove to be different.

The New Constitution at article 100 (c) provides for parliament to enact legislation to promote the representation of the youth in parliament. This Article provides for promotion of representation of marginalized groups including the women, people with disabilities and marginalized communities. The New Constitution envisages the youth as a marginalized group which indeed they are because there is a deliberate effort to exclude them from governance structures.

According to Article 177 (1) (c) and (2), the youth shall be represented in all counties and they shall be elected by political parties in proportion to the seats received in that election in that county by each political party. The role of the youth in devolution cannot be underrated. If programmes targeting the youth have to succeed, the youth have to be represented right from the grassroots. The constitution envisages such a scenario and that is why it has recognised their representation right from the county level. The constitution has thus put the structure in place and it remains to be seen whether that will be implemented as the county structures are put in place.

Despite the efforts made by the New Constitution, this study considers the issues of youth participation in governance still far from being addressed adequately. However, there is renewed faith in the ability of the youth to propel this nation to the next level as witnessed by the President's speech at Uhuru Park while addressing the nation after the promulgation of the new constitution. He thus stated;⁹⁸

“The new constitution gives us renewed optimism about our country and its future. I see in the youth of Kenya a lot of promise, energy and creativity.”⁵⁵

The president further expressed confidence in the new laws stating that they would transform the lives of the young majority and hence he challenged them to seize the opportunity presented to

⁹⁸ The standard, *will youth now stamp political authority?* Tuesday, August 31, 2010, Pg 20

them by the new laws. He further said that the new laws gave better structures of governance that would present the youth with many opportunities leading them to attain their goals and dreams.⁹⁹

Unfortunately, 49 Acts of parliament have to be passed before the new constitution can be fully operationalised. Only around 18 Acts have so far been passed. It is clear so far that the implementation of the constitution is not going to be an event but a process. It will take longer than envisaged and there might be more legislation than anticipated or even less. Schedule five (5) of the constitution indicates that chapter eight (8) of the constitution (on legislature) requires five (5) separate pieces of legislation in order to be operationalised. The first among them is the one requiring promotion of representation of marginalised groups. The youth fall squarely under this section. Until this law is enacted, Article 100 on marginalised groups cannot be operationalised. Consequently, the youth remain a marginalised group with limited voice to champion their rights.

There are various institutions that are key in the implementation of the constitution, these are: *government ministries, departments and agencies, the state law office and the Kenya law reform commission, the commission on the implementation of the constitution (CIC), the constitution implementation oversight committee (CIOOC), the cabinet, the parliament and participation of the people.*¹⁰⁰

Presidential circular No. 1 assigns various roles and functions to various government ministries. *The responsibility for originating initial policies and legislative proposals for the implementation of the constitution lies with the concerned ministries.*

Before a law is developed, relevant policies are developed in the specific area. It is quite a daunting task to try to draft a law in an area where there is no policy. Development of a policy is quite an elaborate process. It involves a lot of thinking and consultations. The spirit of the new constitution however is that spending of too much time on policy considerations is not necessary. *The law making process must be hastened if the constitution has to be operationalised.*

⁹⁹ Ibid

¹⁰⁰ *Beyond the politics: december 2010* ; Article by M’Inoti, chairman of the law reform commission.

Schedule six (6) paragraph seven (7)¹⁰¹ alludes to the fact that as new laws are enacted, ministries must initiate review of all the laws and policies that fall within their mandate. That would help to avoid situations where courts will declare some Acts of parliament or some sections of the Acts null and void should courts be called upon to interpret certain sections in dispute. Before legislative drafting can take place, ministries, departments and agencies together with participation of Kenyans must think through the policy choices and options that are available and consistent with the letter and spirit of the constitution.

The State Law Office and the Kenya Reform Commission(KLRC) also have a role to play in ensuring that laws that are required to implement the new constitution are prepared and tabled in Parliament. The mandate to coordinate the two government institutions to ensure that the preparation and tabling of the Bills takes place lies squarely on the CIC.¹⁰²

The state law office and the KLRC must work together in a coordinated fashion in translating the policies and proposals from ministries into draft legislation for consideration by the commission for the implementation of the new constitution before approval by the cabinet and publication. That is happening already though there is a lot of anxiety whether parliament can be able to meet the deadline for enacting the remaining laws which deadline lapses on 27th August 2011.¹⁰³ A total of 19 Bills have to be passed by parliament within a limited period of 20 days. Senior counsel Paul Muite in the same article is quoted as saying that unless parliament extends the period, appointments made outside the said deadline would be considered unconstitutional. At stake is the appointment of key constitutional offices for the Attorney-General and Auditor-General and controller of budget. Unless these offices are filled by 27th August 2011, the country might find itself in a constitutional crisis.

Further, there are Bills considered key. These include, the Bills to do with police reform, the Bill that creates institutions that would replace the Kenya Anti-corruption commission, the Bill to

¹⁰¹ The Constitution of Kenya 2010

¹⁰² Article 261 (4) and schedule 6 (5) of the Constitution of Kenya 2010

¹⁰³ Sunday Nation (Sunday Review) *Kibaki faces 20 day deadline on key Bills*; 7th August 2011, pg 20 column 1

formalise the creation of the commission on revenue allocation, the public financial management Bill which will provide for the manner in which funds would be devolved to counties and managed.¹⁰⁴

Of most importance, is the Bill that would set out the manner in which future elections are to be conducted. The passing of all these laws are crucial to the implementation of the constitution and the score card so far is wanting.

The Commission on the Implementation of the Constitution (CIC) has four broad functions; namely, to monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the constitution, to coordinate with the Attorney General and the KLRC in preparing for tabling in parliament, the legislation required to implement the constitution, to report regularly to the parliamentary constitution implementation oversight committee on the progress in the implementation and any impediments to implementation and to work with other constitutional commissions to ensure that the letter and spirit of the new constitution is respected.

The Commission is therefore required to play a facilitative and an oversight role and consequently can engage services of experts and other consultants or form thematic groups to consider proposed policies and legislation. So far, it has fulfilled its mandate quite well by putting pressure on the required institutions to quicken the drafting of the necessary Bills as well as on parliament to debate and pass the Bills before the deadline of 27th August 2011.

The Constitution Implementation Oversight Committee (CIOC) was established as a select committee of the National Assembly with the primary mandate to receive regular reports from the CIC on how the implementation of the constitution is proceeding and what challenges and impediments are being encountered. Besides, it is also required to coordinate with the Attorney General, the CIC and the relevant parliamentary committees to ensure timely introduction and passage of the required legislation. The CIC is also required to address and resolve any

¹⁰⁴ Supra note 100

impediments to implementation and especially those impediments of a political nature. The rationale of this body is to provide political oversight in the implementation of the constitution. They make a point to update parliament about any progress of implementation. They have been successful to some extent in cooling political temperatures and ensuring that no political manipulations impede the implementation.

The Cabinet plays a crucial role in the implementation of the constitution in that once legislation has been prepared and approved by the CIC, it finds its way to the cabinet for final approval and publication. This is an obviously crucial step in the implementation because if cabinet fails to approve a Bill, it cannot proceed to the next stage. The Bills end up in parliament for enactment into law which is important because the constitution cannot be implemented by Bills but by enacted laws.

Fortunately, most of these Bills have been passed and now they have become laws. Constitutional offices for the Attorney General and Auditor General have been filled. All agencies involved in implementation must now move into action.

3.2.9 The National Youth Council Act (NYCA)

The National Youth Council Act (NYCA) was enacted in the year 2009 and commenced on 16th January 2010 via gazette supplement No. 88 (Acts No.10)¹⁰⁵

The Act at section 3 establishes the National Youth Council (NYC) whose main functions shall be among other things to: *Regulate and coordinate activities and initiatives relating to the youth whether undertaken by the youth or other organisations; Promote and populize the National Youth Policy and other policies that affect the youth; Facilitate the periodic review of the NYP in line with other government policy statements; Mobilize resources to support and fund youth programmes; Lobby for resources to support and fund youth programmes; and Liaise with other organisations to ensure that youth gain access to resources and services appropriate to their needs among others.*

¹⁰⁵ Supra note 21

Of particular interest to this study however, is the Councils' function under section 4 (m) and (n) of the NYC Act relating to the promotion of the inclusion of youth agenda in the formulation of policy by public institutions and organisations and the promotion of the inclusion of youths in decision-making bodies, boards, agencies, and other public institutions and organisations.

The Act thus recognises the need to involve the youth in decision-making processes and that is the essence of this study.

The Act at section 5 stipulates the composition of the council. Of particular interest is the choice of the ministries to represent youth in the council namely: ministry of youth affairs, finance, education and internal security and the Attorney-General. That speaks of a heavy government presence. The chairman shall be a youth. The youth shall be elected by fellow youth, 8 other youth, 3 of female gender and one with disability to be nominated by National Youth Congress, all in a manner as may be prescribed and appointed by the Minister. The minister has a free hand to decide how the youth may be appointed.

Under section 6, the council shall have powers to enter into contracts, manage, control and administer its assets, receive gifts, enter into association with other bodies, open a banking account and create branches from sub-location to the national level.

The Board is established at section 16. It shall be called the Youth Advisory Board which shall be an incorporated body and whose chairperson shall be appointed by the president. It shall comprise of; the Permanent Secretary in the Ministry responsible for youth affairs, 8 youths nominated by the Council and appointed by the Minister. It shall have representatives from the Kenya private sector, the National Council of Non-governmental organisations, the Commission for Higher Education, the joint forum of Religious Organisations, the Kenya National Commission on Human Rights, the National Economic and Social Council, the National Council for persons with disabilities, the Law Society of Kenya, the Scouts Association, the Kenya Girl guides association and the National Agency for Campaign Against Drug Abuse Authority. One third of persons appointed from the above bodies shall be of either gender.

The principal function of the Board is to advise the Council generally on the exercise of its powers and the performance of its functions under this Act and it shall have such other function as may be conferred by it under this Act.

Under the second schedule of the Act, provisions have been made for tenure of office of Board members which shall be three years renewable upon meeting certain terms and conditions, mode of appointment and vacation of office which shall be either be by resignation, removal from office if a member has been absent from three consecutive meetings, is convicted of fraud or criminal offence or physical incapacitation. A quorum shall be two thirds of the members of the Board.

It remains to be seen whether the Council will fulfil its mandate under section 4 (m) and (n) of NYC Act relating to inclusion of youth agenda in formulation of policies by public institutions and inclusion of youth in decision-making bodies, agencies and boards. The implementation of this mandate is crucial in the success of the NYC Act.

3.3 The Children Act¹⁰⁶

The Children Act is a comprehensive legislation that comprehensively deals with children issues in Kenya. The Act domesticated the international Convention on the Rights of the Child and its spirit runs throughout each and every provision of the Children Act. The Act consists of 14 parts, 200 sections and 9 schedules. The Act defines a child as any human being under the age of eighteen.

The Act at section 4 (4) expressly stipulates the right of expression by every child. It states:

“that in matters of procedure affecting the child, the child shall be accorded an opportunity to express his opinion and that opinion shall be taken into account as may be appropriate taking into account the child’s age and degree of maturity”.

¹⁰⁶ The Children Act 2001

The Children Act at section 2 also defines a child as any human being under the age of eighteen years. This study adopts the youth as those between 15 to 30 years. The youth are rightfully covered by the Act and hence the right to expression and participation is enshrined in the document that domesticates the international instruments and conventions on the right of the child.

3.4 Constituencies Development Fund Act¹⁰⁷

This Act provides for the composition of constituency development committee to include the youth among others. The Act is the only one so far that expressly provides for the incorporation of youth in governance processes. Whether in practice this is followed is a different story.

3.5 Education Act¹⁰⁸

The Act states that the board of governors shall be constituted by not less than five persons and though no specific reference is made in regards to the youth, the minister may exercise his/her discretion to appoint the youth. This however is not sufficient to engage the youth. Deliberate efforts must be made to incorporate them considering that the youth who are the main consumers of education constitute a large section of the population and besides, the NYC Act advocates for the inclusion of the youth in decision-making bodies such as school Boards.

3.6 Universities Act¹⁰⁹

The Universities Act establishes the commission at section 4 (1) and no provision is made for the youth to be included in the commission despite the fact that they form a dominant portion of university education. However, the Act establishes the universities which in turn incorporate the youth in their governance structures. The bone of contention is whether their representation in

¹⁰⁷ Act Number 10, section 23 (1) (g) of 2003

¹⁰⁸ Chapter 211 Laws of Kenya. Section 11 (b)

¹⁰⁹ Chapter 210B Laws of Kenya section 4(1)

the highest office is deliberate or is by virtue of the fact that the students who are largely youth are the main consumers of university education.

3.7 University of Nairobi Act¹¹⁰

The Act at section 14 (i) provides for two members to be elected by the university student's organization to represent them at the university Council. That grants the youth an opportunity to participate at decision-making organs of the university and to make decisions that affect their welfare.

3.8 Kenyatta University Act¹¹¹

The university Council is established under section 12 (k) and two members elected by the student's organization sit in the council. The student's elections are often organized by the youthful student's population and consequently, they get to elect youthful members to represent them in the Council. The students get involved in decision-making processes.

3.9 Egerton University Act¹¹²

The student's association gets to elect two of its members to sit in the Council. The students represent the others in making decisions that affect them. Thus, they get involved in governance structures.

3.10 Moi University Act¹¹³

The student's organization elects two of their members to represent them in the Senate where crucial university decisions are made. At section 12 (1) (k), the student's body elects two members to represent them at the Souncil.

¹¹⁰ Chapter 210 Laws of Kenya section 14 (i)

¹¹¹ Chapter 210c Laws of Kenya, part 111 section 12

¹¹² Chapter 210 Laws of kenya section 12 (m)

¹¹³ Chapter 210A section 14 (1) (i)

3.11 Maseno University Act¹¹⁴

The Council is established at section 14 (1) (m) and two members of the student's body elected by the student's organization sit in the Council. At section 16 (1), two members of the student's body sit in the senate. They represent the students in decision-making organs.

3.12 Masinde Muliro University of Science and Technology Act¹¹⁵

The Council is established at section 14 of the Act to consist of one male and one female student representatives. The Act introduces a new dimension by deliberately incorporating both genders which is not the case in the councils of the other universities. Section 16 provides for two members elected by student's organizations to represent the student body at senate. In addition and in contrast to the other university councils, the Act forbids the students representatives from sitting in the senate meetings when they are deliberating on matters to do with the discipline of their fellow students.

3.13 Conclusion

This chapter has discussed in detail the legal framework in place to incorporate the youth into governance processes of public institutions. It has discussed the international instruments that anchor youth participation, the regional instruments and the national instruments. Of particular focus is the Constitution of Kenya 2010 which anchors youth participation at article 55(b) and the National Youth Council Act which anchors youth participation at section 4 (m) and (n) which advocates for inclusion of the youth in decision-making bodies. However, though the legal framework is in place, it does not adequately address all the issues of youth participation in governance and further, the full implementation of NYC Act and the Constitution of Kenya 2010 is crucial to the realisation of meaningful youth participation in governance processes. It is the finding of this chapter that an effective legal framework is crucial to youth participation in governance processes in Kenya.

¹¹⁴ Number 7 of 2000 section 14

¹¹⁵ Number 18 of 2006 section 14 (1)

of State and Government, the Executive Council and the standing conference of the AU such as health, youth, immigration, education and gender.¹¹⁸

4.2 Models for Youth Participation

There exists many formal and informal models for youth participation. Below is a discussion of the models available for youth participation in governance. They include youth advisory council, model parliament, project development youth council, national youth council, non-profit sponsored youth council, and grassroots activists youth group.

Youth Advisory Council: Normally consists of a small body of young people usually 15 to 25 members and is sponsored by the government. Their main role is to advise the government on a particular matter under discussion, which may not be effectively discussed by a big number of participants.

Model Parliament: A Model Parliament duplicates Parliament and other government bodies with youth participants instead of actual legislators. A good example in Kenya is the children's parliament duplicating the national Parliament, and the "Kenya" Model United Nations (KMUN) duplicating the UN General Assembly. The Model Parliament captures the voices of children and youth on matters discussed at national or international level; for example, the budget.

Project Development Youth Council: The approach of project development youth council can be used by government to obtain youth inputs by focusing on the development of youth project ideas. This involves the identification of a project, for instance '*kazi kwa vijana*' project or Youth Enterprise Development Fund¹¹⁹ and putting in place a youth group to input in its management and governance to improve ownership and the success of the project.

¹¹⁸ The Union's structure consist of a Congress, Executive Committee, Secretariat, Regional Bodies and Specialized Committees, which are elected (once every four years), out of the 53 African member countries on the continent.

¹¹⁹ This is a project under the Ministry of Youth to assist young entrepreneurs access capital for their businesses at subsidized interest rates (8%).

National Youth Councils: They are umbrella groups with representation from all of the country's organizations focused on youth and children. They run programmes and campaigns and work with/or advise the government on youth issues. Some have government support others do not. Frequently, they have various sub-committees that work on different issues affecting the youth. Youth councils can also be sponsored by non-profit groups. They are established and operate like the National Youth Council. The difference, however, is that they are sponsored by a non-profit group. They may have representation at the national, regional or international level depending on their focus.

Grassroots Activist Youth Groups: They play an important role in youth education and can have a significant influence on the government. These groups at the grassroots level are particularly important where there are no formal structures for youth engagement and participation.

In concluding this part, irrespective of the model chosen, it is important to listen, facilitate, consider and involve the youth in governance at all levels. As seen above, this can be done in more than one way. The challenge is to identify the right model based on the results expected.

4.3 The National Institutions for Youth Participation in Governance

At the national level, there are various institutions established for youth participation in governance in Kenya. This chapter analyzes the models available for youth participation in governance and the institutional framework for youth participation in governance in Kenya. Particularly, it discusses the Ministry of State for Youth Affairs (MOYA) and the yet to be formed National Youth Council. The chapter also looks at the principles for mainstreaming youth participation in governance.

4.3.1 Ministry of State for Youth Affairs (MOYA)

The Ministry of State for Youth Affairs (MOYA) was established on 7th December 2005 to address youth concerns in the country. This was grounded on the realization that the government may not achieve the United Nations Millennium Development Goals without adequately dealing with the many socio-economic challenges facing the Kenyan youth. In May 2008, the

department of sports in the ministry of Gender, Sports Culture and Social services was transferred to the Ministry of State for Youth Affairs forming ministry of youth affairs and sports (MOYA). The Ministry of State for Youth Affairs has five departments namely: youth and training, youth, development, National Youth Service (NYS) and sports. MOYA is charged with the responsibility of spearheading the overall policy implementation, monitoring, evaluating and reviewing of youth policies in addition to mobilizing resources necessary for the implementation.¹²⁰

Of specific interest is the department of youth development. Its vision is to create an innovative, creative and vibrant youth building for a better Kenya. Their mission is to facilitate the development of the Kenyan youth for the active participation in national development. The department was established in January 2007 with the aim of spearheading the general empowerment, coordinating and mainstreaming youth issues in all aspects of National Youth Policy. The department is focused on providing leadership, teamwork as well as mobilization of resources to enhance implementation of youth development programmes. The department is founded on National aspirations as contained in the vision 2030 millennium development Goals, the Kenyan Youth policy 2007 and the ministries strategic plan. Among the many objectives of the department, the one that closely relates to this study is the objective to facilitate effective youth participation in decision-making at all levels.¹²¹

4.3.2 National Youth Council

The National Youth Council (hereinafter referred to as the council) is a creation of the National Youth Policy. In the Youth Policy, the council is recognized as the principal agency to ensure effective implementation of the Youth Policy. However, it has to be established by an Act of Parliament. It has the mandate to co-ordinate youth serving organisations, design and continuously reviewing the NYP and develop an "integrated national youth development plan" in collaboration with the ministry responsible for youth affairs. The council will act as an advisory, research and policy institution on youth affairs in the country. Primarily, the National Youth Council will: Promote and popularise the NYP; Ensure that structures are established and

¹²⁰ Information available at www.moya.co.ke

¹²¹ *Ibid.*

developed for effective implementation of the policy; and Design key performance indicators and mechanisms to ensure adherence to policy.¹²²

The functions of the National Youth Council include: Mobilise, sensitise and organise the youth of Kenya under one umbrella for political, economic and socio-cultural activities; Gainfully engage the youth in activities that are beneficial to them and the Nation at large; Advocate for and mobilise resources to support and fund youth council programmes and activities; Liaise with development organisations to ensure that they gain access to resources, services and programmes; Promote relations between youth organisations, other bodies inside and outside Kenya with similar objectives or interests; Inspire and promote the spirit of unity, patriotism and volunteerism in the youth; and Act as a voice and bridge to ensure that Government and other decision policy makers are kept informed of the views and aspirations of the youth.¹²³

The Youth Policy also proposes the establishment of an inter-ministerial committee on youth comprising relevant ministries dealing with youth issues. The function of this committee is to monitor and review the implementation of the youth activities by various players in the Government as will be stipulated by the action plan.¹²⁴

4.3.3 The Youth Enterprise Development Fund

The Youth Enterprise Development Fund came legally into operation on 8th December 2006 through Legal Notice No. 167. It was transformed into a State Corporation on 11th May 2007 through Legal Notice No. 63.

The Fund's objectives are to: Provide loans to existing micro-finance institutions (MFIs), registered non-governmental organisations (NGOs) involved in micro financing, and savings and credit co-operative organisations (SACCOs) for on-lending to youth enterprises; Attract and facilitate investment in micro, small and medium enterprises oriented commercial infrastructure such as business or industrial parks, markets or business incubators that will be beneficial to

¹²² *Supra* note 21

¹²³ *Ibid.*

¹²⁴ *Ibid.*

youth enterprises; Support youth oriented micro, small and medium enterprises to develop linkages with large enterprises; Facilitate marketing of products and services of youth enterprises both in the domestic and the international markets; and Facilitate employment of youth in the international labour market.

The Fund focuses on enterprise development as a key strategy that will increase economic opportunities for, and participation by Kenyan youth in nation building. The mandate of the Fund is not only increasing access to capital by young entrepreneurs but also provides business development services, facilitates linkages in supply chains, creates market opportunities locally and abroad for products and services of youth enterprises, and facilitates creation of commercial infrastructure to support growth of youth businesses.

In realization of the fact that not all young people are interested in entrepreneurship, the Fund's mandate includes facilitating employment of semi-skilled/skilled young people in external labour markets. This mandate entails but not limited to job search abroad, facilitating travel documentation, and financing cost of relocation.

The government released Ksh. 1.75 billion to the fund with a further commitment of Ksh. 500 million which was to be released in the financial year 2008/09. The total funds disbursement to youth enterprises stood at Ksh. 1.9 billion as at 31st March, 2009.

4.5 Some Important Principles for Institutionalizing Youth Participation in Governance

There are various principles that must be adhered to when considering institutionalizing youth participation in governance. They include: Choice of involvement; Meaningful participation; Age-appropriate; Adequate resource; Fun; Active recruitment and training; Acknowledgement;

Mutual respect; and Review and reflection.¹²⁵ This study adapts the principles identified and expounded in the Local Government guide for involving youth participation in Tasmania.

Choice of Involvement: The principle of choice of involvement is aimed at securing youth participation by limiting restrictions on who can participate. Emphasis is given on maintaining the interest and passion of the youth to participate in a process. Therefore, youths should be given the necessary flexibility to do other things if for example, the discussion ceases to be about their interests. They should be free to choose when and how to get involved.¹²⁶

Meaningful Participation: The key to meaningful participation is to keenly listen to the views expressed by the youth, consult the youth in case of clarifications, and involve them at all levels of decision-making. In respect of projects, it is important to start early in project planning and involve young people in the design phase. However, the project must be of interest to the youth; it must result in something that makes a difference to them or their community.¹²⁷

Age Appropriateness: The youths are dynamic members of the society, with diverse needs and interests depending on their age. Thus, the design of events and activities must be tailored according to the age of the target participants. If participation activities incorporate young people between 15 and 30 years, this large span may make the dynamics quite challenging. It would be advisable to break the group into two or more groups, say 15 to 21 years, and 22 to 30 years depending on the level of participation being solicited. This will ensure that the issues tackled are age appropriate and, therefore, keep the youth interested.¹²⁸

Adequate Resources: Before engaging the youth, it would be prudent to ensure that there are adequate resources, which include staffing, training and development, administrative support and funds for things like meals or transport. The amount of resources required will depend on the

¹²⁵ Talking Participation Taking Action: *A Local Government Guide to Youth Participation* (Tasmania) (Undated), (Available at: www.lgat.tas.gov.au/webdata/.../FINAL_Guide_to_youth_participation.pdf), <accessed on 21st July 2010>.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

model chosen for youth participation. Certain models for youth participation depending on their nature may also support young people to fundraise or apply for funding and sponsorship from external sources.¹²⁹

Fun: Youth are alive and vibrant and are always in pursuit of fun. Therefore, incorporating fun into activities will ensure that they not only enjoy themselves but also participate meaningfully. Young people cannot be expected to behave like adults and therefore, long, dull events should be avoided and light moments should be introduced into the meetings. The more youths are involved at the design stages to take charge of their event or activities, the more it will respond to their appeal, needs and expectations.¹³⁰

Active recruitment: Active recruitment involves giving young people the necessary capacity to participate in their activities after recruitment. This may include leadership training to increase capacity. Leadership training is important to manage the growth of individuals and the performance of the group. It may be necessary to consider the training needs for both those who are dominant, and those who are not so dominant. Activities or events should be moderated to ensure everyone participates effectively.

Acknowledgement: Young people are still developing. Acknowledging their contribution and participation through media coverage, certificates, letters of recommendations and awards will increase the positive image of young people in the society. In addition, many young people are about to seek employment, so providing participation certificates may provide them with evidence of community involvement that may support a job application.

Mutual Respect: Respect comes from trust and courteous treatment. Therefore, creation of an environment where young people feel welcome and trusted is important. The contributions of the youth should also be taken seriously and incorporated in the long run.

¹²⁹ *ibid.*

¹³⁰ *Ibid.*

Review and Reflection: It involves periodic interventions to assess the impact and appropriateness of the participation activities. Whether it is a one-off activity like a round-table, or ongoing activity like a Youth Council, it is important to know what has worked well and what has not. The reason why this is important is because the youth are a dynamic and restless community; they get bored easily. Periodic reviews and reflections will result into more innovative ways of engaging youth participation.¹³¹

4.6 Conclusion

This chapter has discussed in details the models through which youth can be involved in governance. It has also explored the institutions available for youth participation in governance in Kenya by discussing the Ministry of Youth for State Affairs. In addition, the study has also discussed the National Youth Council which was proposed by the National Youth Policy and has been established by an Act of Parliament. The National Youth Council Act 2009 establishes the National youth council. The Youth enterprise development fund has also been discussed briefly. It is the finding of this chapter that institutions are very crucial in implementing the policy and legal framework.

131 *ibid.*

5.0 CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary of the Conclusions

This chapter summarizes the findings on policy, legal and institutional frameworks and highlights their weaknesses and strengths. The chapter also proposes a number of recommendations to address the inadequacies identified in the policy, legal and institutional frameworks for youth participation in governance in Kenya.

Youth participation in governance derives its legitimacy from the idea of democracy and good governance. *Larry Diamond et. al.* observes that for democracy to exist, there has to be a highly inclusive level of political participation for selection of leaders and policies. The youth must of right be part of that process. Democracy recognises the right of participation of everyone in the political, social and economic processes of his/her society either directly or through elected representatives as part of social contract.

This study revealed that a good system of governance is characterised by the following attributes: participatory—encouraging wide citizen participation in decision-making; consensus-orientated—attempting to reach decisions based on widespread agreement; transparent—being open to scrutiny in decision-making processes; responsive—listening and responding to the needs of its citizens; effective and efficient—providing basic services; equitable and inclusive—not excluding any sectors of the population especially the youth and those that are more vulnerable or marginalised. Therefore, governance in general encompasses the mechanisms, processes and institutions through which citizens and groups articulate their various interests, mediate or resolve their differences or disputes and exercise their legal rights.

The study revealed that at the international level, there are various legal instruments that provide for youth participation in governance. Regarding the policy framework, the *World Programme of Action for Youth* is the principal policy for youth participation. It provides a policy framework and practical guidelines for national action and international support to improve the situation of young people. The focus of the Programme of Action is to put in place measures to strengthen national capacities in the field of youth and to increase the quality and quantity of opportunities available to young people for full, effective and constructive participation in society. This has largely been done through establishment of National Youth Policies in various countries and states.

At the Regional level, the policy framework is the *Declaration of the Youth on the African Youth Charter* which draws its inspiration from the 2003 and 2005 World Youth Reports which underscores the numerous advances and challenges facing the Youth the world over. According to this declaration, the promotion and protection of the rights of the Youth demand that both the Youth themselves and all other actors in the society assume their responsibilities.

The legal instruments in place include the United Nations Charter, the Universal Declaration of Human Rights, the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. Kenya is a signatory to all these instruments which place value on the rights of everyone to self determination, the right of everyone to take part in the government of his country directly or through freely chosen representatives and the recognition that participation is a substantive right of all children and young people, recognizing their importance as individuals whose dignity must be respected and promotes the principle that youth are entitled to express their views on all matters that affect them and to have those views taken seriously. The United Nations Charter reaffirmed its commitment to place no restrictions on the eligibility of men and women to participate in any capacity in its organs of governance.

Institutions where youth can participate in decision-making, have been created including at the United Nations, which has a youth unit with a full-time staff and resources.

At the regional level, The African Youth Charter and the Draft East African Youth Charter for human rights and good governance provide the legal framework for youth participation in governance. A key objective of the charter is to advocate for the constructive involvement of youth in the developmental agenda of Africa with effective participation in debates and decision-making processes in the development of Africa

At institutional level, the African Union Commission and the East African Community offer the best opportunities for youth participation in Africa.

In Kenya, youths have been given a Ministry and a Policy therefore there is no excuse as to why they should not make use of these opportunities. The youth policy and ministry should be able to articulate strategies that will ensure youth find their way into decision-making positions. The National Council Act has established a National Council for youth that will be able to front all issues concerning the youth in Kenya. The problem has been that the youth are dependent on the older generation for full implementation of the policy.

According to the National Youth Policy of Kenya, the term youth is understood to mean persons resident in Kenya in the age bracket of 15 to 30 years. The National youth Council Act defines youth as those between the age of 18 and 35 years. The New Constitution defines youth as those between 18 and 35 years while other international instruments generally define youth as those between 10 and 29 years. There is an obvious disparity in definitions of age group that constitutes the youth. The socio-economic inequality across nations, the cultural diversity that governs and defines these life phases, as well as varying legal definitions in terms of minimum age for voting exextra means that a global consensus on an age definition of youth is, and will remain, hard to reach.

The NYP further estimates that the youth population forms 32% of the Kenyan population which is about 9.1 million Kenyans. The figures notwithstanding, youths have been marginalized in all spheres of governance and decision-making in Kenya. They have no access to decision-making forums thereby surrendering their fate to what is decided by the older generation who

have not failed to ensure that they are not empowered. Furthermore, certain adults are also masquerading as youth representatives despite being well above the 30 years age limitation.

The above sentiments have been articulated vividly by Dr. Muhindi who while acknowledging the creation of the ministry of youth and a progressive national youth policy as a great leap in the right direction, contends that the problem has always been funding, implementation, monitoring and evaluation. That cannot be far from the truth. If the youth are not adequately funded to run their programmes independently, then whatever laws are put in place cannot be implemented to meet the objective for which they were formed.

The policy framework in Kenya addresses issues of youth participation in governance through various plan papers and selected government policies. For instance, the National Poverty Eradication Plan (NPEP) of 1999-2015 addresses eradication of poverty, which is a problem that affects the youth. It seeks to provide solutions to issues related to poverty in respect of all Kenyans, the youth included. Through the policy, the government has been able to create avenues through which the youth are gainfully engaged/employed.

In the health sector, the policies discussed recognize the importance of mainstreaming youth health issues into health and development policies and planning of activities in order to improve the quality of life and well-being of all Kenyan youth. The policies emphasize the need for youth to participate in all decision-making, planning, implementation, monitoring and evaluation of programmes addressing their needs. They are, therefore, responsive to the needs of the youth. Consequently, they provide an adequate framework for youth participation.

The Kenya National Youth Policy addresses diverse issues affecting the youth, including youth participation. Concerning participation, the key principle of the Policy is to ‘mainstream’ youth issues in all sectors of national development: public, private and civil society sectors. It provides for affirmative action for the youth as a strategy for participation and empowerment.¹³²

¹³² See the key principles of the National Youth Policy, 2007

However, the implementation of the Policy is yet to be undertaken even though a legal framework has been put in place through the National Youth Council Act to front the youth agenda.

It is the finding of this study that though the policy framework is in place, it is not adequate to allow for effective participation of youth in governance processes in Kenya.

The legal framework in Kenya begins with the supreme law of the land, the Constitution. The (old) Constitution of Kenya did not provide for express provisions for youth participation in governance save the requirement that to be a member of parliament, one must attain the age of 21 years. This gave a section of the youth as defined the opportunity to participate in governance. But beyond that, no specific mention of youth in governance processes was made in the old Constitution.

The new Constitution 2010 however has made very progressive provisions for youth participation in governance. It provides for the state to take measures including affirmative action programmes to ensure that the youth have opportunities to associate, be represented and participate in political, social, economic and other spheres of life. However, there is no specific mention of legislative measures for creation of a platform that can set out the rules of engagement by the youth. It does, however, grant affirmative action rights which are good enough.

The old Constitution puts the age of qualification to be elected as a member of parliament at 21 while the New Constitution places that age at 18. That provision is good for the youth because it widens the scope of the youth that may be elected to governance positions.

The chapter on the executive¹³³ allows the youth to be elected to the highest office and places 18 years as the age limit for one to vie for a parliamentary seat and consequently, for presidency.

¹³³ Chapter 9 of the New Constitution.

The New Constitution 2010 therefore recognizes the importance of youth as defined in this study to participate in governance although the practice may prove to be different.

The New Constitution 2010 provides for parliament to enact legislation to promote the representation of the youth in parliament. It provides for promotion of representation of marginalized groups including the women, people with disabilities and marginalized communities. The New Constitution envisages the youth as a marginalized group which indeed they are because there is a deliberate effort to exclude them from governance structures. Despite the efforts made by the New Constitution, this study considers the issues of youth participation in governance still far from being addressed effectively. This is because though some mechanisms for the implementation of the new constitution have been addressed to some extent, and some implementation has taken place, the process is too slow and there is doubt about how fast these issues can be addressed because of obvious competing interests by the political class.

Other laws also provide opportunities for the youth. For example, the Children's Act, the Constituency Development Fund (CDF) Act and legislations establishing the public universities provide for youth participation in governance and decision-making organs. The only set-back is that, in practice, the children and youth are rarely given a voice in decision-making organs. The youth, for example, are rarely given a chance to participate in CDF Committees. Instead, they often elect older people outside the youth bracket as representatives.

The formation of the National Youth Council through the National Youth Council Act (2009) has however helped to improve the situation of the youth in the country by creating an institution that specifically fronts the youth Agenda. The implementation of this new law may prove a challenge in the light of lack of good will among the older generation and also because mechanisms to enforce implementation are lacking.

It is noted, therefore, that although a few laws provide for the participation of youth in governance, this is not an adequate framework. The implementation of the new constitution

however might provide the right fora for youth participation in governance in Kenya, albeit the process is too slow and engulfed with political bottlenecks.

A number of institutions constitute the framework for youth participation in governance. For example, the Ministry of State for Youth Affairs (MOYA) is charged with the responsibility of overall policy implementation in addition to spearheading the general empowerment, coordination and mainstreaming of youth issues in all aspects of National Youth Policy. The government has hired youth officers and posted them at national, provincial and district levels. However, there are no proper structures to harness broad participation of the youth in decision-making.

The Youth Enterprise Development Fund focuses on enterprise development to ensure increased economic opportunities for the Kenyan youth, besides providing them with business development services. However, very few youth have been able to harness the opportunities provided by this fund to alleviate poverty. Consequently, the majority of the youth are still wallowing in poverty.

The formation of the National Youth Council through the National Youth Council Act (2009) has however helped to improve the situation of the youth in the country by creating an institution that specifically fronts the youth Agenda. It remains to be seen whether its implementation will be granted the urgency it deserves because mechanisms to enforce implementation are lacking.

Currently, opportunities for youth participation are spread across the international, regional and national level. Participation at all the three levels is crucial since each level is unique in its own way. The international fora for youth participation set the agenda which is either accepted and implemented or rejected at the regional and national levels.

This study finds that there are different models that can be adopted to enable youth participation in governance. They include youth advisory councils, model parliament, project development

youth council, national youth council, non-profit sponsored youth council, and grassroots activists youth groups.

The study has explored the legislative, policy and institutional frameworks that the youth can make use of to champion their agenda at the international, regional and national level. The study appreciates that youth participation contributes to good governance and human rights. For a country to be properly governed, every individual must be allowed to participate in making decisions as his/her fundamental right. Therefore, Kenya's governance structures can be said to be wanting since the youth are not adequately involved in meaningful decision-making. As clarified by the United Nations Commission on Human Rights, attributes of good governance include transparency, responsibility, accountability, participation and responsiveness. Good governance therefore meant that greater participation and accountability is guaranteed.

The previous chapters contain the analysis of international, regional, and national legislative and institutional provisions for youth participation in decision-making. Through the contents of these chapters, we are able to propose some recommendations which will ensure youth participation in decision-making at the international, regional and national level.

5.2 Recommendations

Below are the recommendations of this study as derived from the analysis contained in the previous chapters.

The World Program of Action for Youth to the year 2000 and beyond identifies youth participation in decision-making as priority ten after employment, education and health among others. This gives youth participation in decision-making a very weak focus in terms of implementation on the basis of priority. We reiterate that the World Program should be amended to have youth participation in decision-making as the first priority since the success of the employment, health and education initiatives depends greatly to the extent that the youth have been involved in decision-making.

Apart from taking advantage of the opportunities available at the African Union Commission, Kenya should also ratify and implement the African Youth Charter which promotes youth participation in Parliament and other decision-making bodies. It also ensures equal participation for both men and women in decision-making and other civic duties.

The draft East African Youth Charter for Human Rights and Good Governance should also be ratified and implemented in Kenya. Particularly, Article 8 (1) and (2) which guarantees participation of youth in public affairs and decision-making. In addition, the draft secures 30% youth representation for positions at the East Africa Community. This is crucial since the East African Community is undergoing a process of integration and decisions made will affect the future of the youth tremendously. Therefore, the youth must be part of the process as of right.

Kenya has put in place the Children Act¹³⁴ which among other things recognizes participation of children in decision-making by giving effect to the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child. Since the youth ranging between ages 15 to 18 fall under this Act, they should be allowed to make decisions that affect them through being involved effectively in the National Council for Children Services and other decision-making organs including the ministry. Currently, representation of the National Council for Children Services is composed of government ministries, the non-governmental organizations and religious leaders and conspicuously missing is a children/youth representative.

This study strongly recommends the review of the Education Act, the Higher Education Loans Board Act and the Universities Act and other laws which affect youth to mainstream youth representation in the various decision-making bodies created by legislation and affects the youth. These bodies make decisions that predominantly affect the youth of this country and therefore, when youth representation is lacking, there is a serious flaw that needs correction.

¹³⁴ Cap 8 of 2001.

The creation of the National Youth Council through an act of parliament though already achieved as proposed by the National Youth Policy needs to be urgently implemented. The overall goal of the policy is to promote youth participation in democratic processes as well as in community and civic affairs and ensuring that the youth programmes involve them and are youth centred.

The study also proposes the establishment of a model Parliament for youth to allow youth to participate in legislative work in Parliament. The Parliament must be able to influence decisions at the national level. The chairperson of this parliament should be able to sit in Cabinet to represent the youth in government's top decision-making organ. The other option is to reserve a significant percentage of youth representation in Parliament to give them a voice. In addition, the children's Parliament should be strengthened to make their views relevant at the national level.

The study calls for a model of governance whereby young people are allowed to work and make decisions in partnership with the adults to establish policies, goals and activities of the country. According to Shier's pathway, the model of youth participation involves listening to the youth, allowing them to express their views, taking their views into account, involving them in decision-making and sharing power and responsibilities for decision-making.

The study also recommends that all the government departments undertaking programs that affect the youth should put in place a Youth Advisory Council which will ensure the perspectives of the youth are included in decision-making. For example, the Vision 2030 secretariat should consider putting in place a robust Youth Advisory Council which will also input into the process of transforming Kenya into a middle income economy.

Various organizations should rise up and support various youth initiatives that are aimed at promoting youth participation in governance and decision-making. This may take the form of a non-profit sponsored Youth Council or a grassroots Activists Youth Group. The organizations should also support local youth structures by increasing funding and technical cooperation.

Building the capacity of the youth institutions will translate into increased participation of the youth in decision-making at the international, regional, national and local levels.

Where youths are represented, it is advisable to ensure that the principles outlined in this study are adhered to strictly. The barriers for youth participation should also be addressed in order to allow for meaningful youth participation. The reason why this is important is because having youth in positions is not a guarantee to meaningful youth participation, however, creation of the right environment and structures allows youths to meaningfully participate in governance and decision-making.

Nationally, the policy framework is in place and the legal framework has just been enacted through the National Youth Council Act. The new Constitution has made provisions for youth involvement in governance.

For instance, Government ministries, departments and agencies, the state law office and the Kenya law reform commission, the commission on the implementation of the constitution (CIC), the constitution implementation oversight committee (CIOC), the cabinet and the parliament are all involved in the implementation of the constitution 2010.

The responsibility for originating initial policies and legislative proposals for the implementation of the constitution lies with the concerned ministries.

The State Law Office and the Kenya Reform Commission (KLRC) also have a role to play in ensuring that laws that are required to implement the new constitution are prepared and tabled in parliament. The mandate to coordinate the two government institutions to ensure that the preparation and tabling of the Bills takes place lies squarely on the CIC.¹³⁵

Of most importance, is the Bill that would sets out the manner in which future elections are to be conducted. The passing of all these laws are crucial to the implementation of the constitution and the score card so far is wanting.

¹³⁵ Article 261 (4) and schedule 6 (5) of the Constitution of Kenya 2010

The Commission is therefore required to play a facilitative and an oversight role and consequently can engage services of experts and other consultants or form thematic groups to consider proposed policies and legislation.

The Constitution Implementation Oversight Committee (CIOC) was established as a select committee of the National Assembly with a primary mandate to receive regular reports from the CIC on how the implementation of the constitution is proceeding and what challenges and impediments are being encountered.

However, the implementation of the legal framework is proving a challenge and therefore this study recommends that the legislation should among other things ; Implement the National Youth Policy; Establish organizations for youth participation; and provide for youth representation in governmental organs such as the Parliament and Cabinet.

All the relevant legislation in Kenya that has a bearing on the situation of the youth needs to undergo a review to ensure representation of the youth in crucial decision-making organs. Proper frameworks should be put in place to fully implement the Children's Act, particularly, on participation of children in decision-making. Appropriate frameworks should be put in place to ensure meaningful participation of these children and youth at the Ministry of Gender, Children and Social Development. Currently, representation of the National Council for Children Services is composed of government ministries, the non-governmental organizations and religious leaders. Conspicuously missing is a children/youth representative.

All legislations that define youth should be harmonized to ensure that the youth are given a definite definition to avoid confusion. Currently, the new constitution defines youth as those between 18 and 35 years while the National Youth Policy defines youth as those between 15 and 30 years.

Conclusion

The information gathered from this study reveals the important roles youth can play in governance processes in Kenya.

The findings highlighted the importance of incorporating the youth in governance processes through the policy, legal and institutional frameworks. The participation of youth in governance process is their democratic right.

Youth participation leads to better decisions and outcomes because young people have a body of experience unique to their situation and they have views and ideas that derive from their experience. Youth participation promotes the well being and development of young people because it is by having their views taken seriously that young people develop skills, build competencies, *acquire confidence and form aspirations.*

The participation of youth in governance has been enabled through the establishment of the national youth policies and the National youth council Act that fronts all issues concerning the youth in Kenya. Further, the new constitution 2010 has given special attention to youth under chapter four on Bill of rights (Article 55) and made very progressive provisions for youth participation in governance. *The youth are to be represented in every county, they are to be treated as a marginalised group therefore granting them special treatment.*

However, it is the finding of this study that although a few laws provide for the participation of youth in governance, *this is not an adequate framework and therefore this study recommends that legislation should among other things, implement the National youth policy, establish institutions/organisations for youth participation and provide for youth representation in government organs such as the parliament and cabinet.*

This study was based on desk top research. For an in-depth understanding of how youth can be incorporated in governance, field research is highly recommended to find out the extent to which youth policies have been or are being implemented in public bodies.

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