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DEPARTMENT OF JUSTICE

# KENYA POLICY ON PUBLIC PARTICIPATION

SESSIONAL PAPER NO. 3

DECEMBER, 2023

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CLERK-AT THE TABLE:	A. Shubuka

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## KENYA POLICY ON PUBLIC PARTICIPATION

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## ABBREVIATIONS & ACRONYMS

AG	Attorney-General
CUC	Court User Committees
CAF	County Assemblies Forum
CAJ	Commission on Administrative Justice
CBEF	County Budget and Economic Forums
CBOs	Community Based Organizations
CCEUs	County Civic Education Units
CDF	Constituency Development Fund
CGA	County Governments Act
CIC	Commission for the Implementation of the Constitution
CIDP	County Integrated Development Plan
CKRC	Constitution of Kenya Review Commission
CoE	Committee of Experts
COG	Council of Governors
CRECO	Constitution and Reform Education Consortium
CSO	Civic Society Organizations
DFRD	District Focus for Rural Development
FBOs	Faith Based Organizations
FIDA	Federation of Women Lawyers (Kenya)
IBEC	Intergovernmental Budget and Economic Council
IBP	International Budget Partnership
ICJ	International Commission of Jurists
ICT	Information, Communication Technology
IDLO	International Development Law Organization
IEBC	Independent Electoral & Boundaries Commission
IGRTC	Inter-governmental Relations Technical Committee
KCTA	Kenya Coast Tourism Association
KHRC	Kenya Human Rights Commission
KICD	Kenya Institute for Curriculum Development
KLGRP	Kenya Local Government Reform Programme
KLMC	Kenya Livestock Marketing Commission
KLRC	Kenya Law Reform Commission
KNCCI	Kenya National Chamber of Commerce & Industry

KNCHR	Kenya National Commission on Human Rights
KNFF	Kenya National Farmers Federation
K-NICE	Kenya National Integrated Civic Education Program
KSG	Kenya School of Government
LASDAP	Local Authority Service Delivery Action Plans
MEL	Monitoring, Evaluation and Learning
MCA	Member of County Assembly
MDA	Ministries, Departments and Agencies
MoDP	Ministry of Devolution and Planning
MoJNCCA	Ministry of Justice, National Cohesion and Constitutional Affairs
MR& E	Monitoring, Research & Evaluation
NCBF	National Capacity Building Framework
NCEF	National Civic Education Framework
NGCDF	National Government Constituency Development Fund
NGEC	National Gender & Equality Commission
NLC	National Land Commission
NSA	Non State Actors
PPP	Public Private Partnerships
PSC	Public Service Commission
PWDs	Persons with Disabilities
TA	Transition Authority
TI	Transparency International
TISA	The Institute for Social Accountability
UNDP	United Nations Development Programme
WRUA	Water Resource Users Associations

## FOREWORD

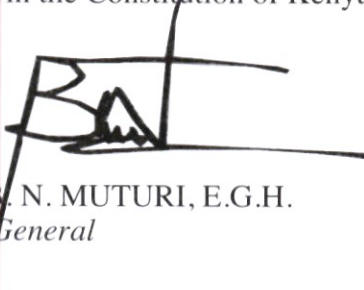
The Constitution of Kenya promulgated in 2010 restructured and transformed the state-society relations in several positive ways. The country's governance is based on a social contract, an arrangement in which the right holders only delegate their power to the government but retain the sovereign power. The Constitution places the right holders at the centre of development and related governance processes; it provides for public participation as one of the principles and values of governance.

The Government of Kenya, through the Office of the Attorney-General and Department of Justice has developed the Kenya Policy on Public Participation as the Country's overarching framework for public participation. In this Policy, public participation is conceptualized as the process by which citizens, as individuals, groups or communities (also known as stakeholders), take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest, either directly or indirectly through freely chosen representatives.

The objectives of the Policy are to set standards for effective public participation and to establish a framework for the management and co-ordination of public participation in Kenya. The process involved consultations with various stakeholders through Key Informant Interviews (KIIs), Focus Group Discussions (FGDs) and regional stakeholder consultations in various regions of Kenya during which views of the public were collected by the National Steering Committee on how best public participation can be provided for. The regional consultations were attended by members of the public, women and youth leaders, Non State Actors, including Community Based Organizations (CBOs), members of various County Assemblies and representatives from the County Commissioners' offices. In 2016, the Attorney-General appointed a National Steering Committee to spearhead the policy formulation process. The committee comprised officers from the Office of the Attorney-General and Department of Justice, Former Ministry of Devolution and Planning, Intergovernmental Relations Technical Committee, Commission on Administrative Justice (CAJ), National Gender and Equality Commission (NGEC), Kenya National Commission on Human Rights (KNCHR), Kenya Law Reform Commission (KLRC), The Institute for Social Accountability (TISA), UNDP/Amkeni, Office of the High Commissioner for Human Rights

(OHCHR), National Civil Society Congress, International Development Law Organization (IDLO), Council of Governors (CoG), Public Service Commission (PSC) and the County Assemblies Forum (CAF).

I call upon both levels of government to put in place the necessary mechanisms to facilitate the implementation of this Policy, and to ensure that all public bodies in the Country engage right holders effectively as provided in the Constitution of Kenya and related legislation.

A handwritten signature in black ink, appearing to be 'JBN Muturi', written over a horizontal line. The signature is stylized and somewhat abstract.

HON. J. B. N. MUTURI, E.G.H.  
*Attorney-General*

## DEFINITION OF TERMS

The following terms will have the meanings assigned herein:

**Public Participation:** refers to the process by which citizens, as individuals, groups or communities (also known as stakeholders), take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest, either directly or indirectly through freely chosen representatives.

**Facilitate Public Participation:** means to “make easy or easier” or to “promote”; “taking steps to ensure the public is involved or is consulted on a matter”

**Accountability:** means answerable to the people: an open transparent system which permits the free flow of forward and backward information and in which leaders are answerable to the people.

**Standards:** means the act or process of public participation as developed and accepted by the stakeholders relating to the desired content and quality. The standards are based on the consensus of different interested parties, users, and by the two levels of government.

**Coordination:** refers to the ability or process of organizing different stakeholders to ensure that they work together in harmony, effectively and efficiently.

**Right Holders:** means every individual given the universal nature of human rights. Every Individual within the state is entitled to the same rights without distinction based on any ground including race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth.

**Duty Bearers:** means state actors. This includes all organs of the state including but not limited to Parliament, the Judiciary, National Police Service, County Government and Government Ministries, Departments and Agencies.

**Summit:**

means the National & County Coordinating Summit established under section 7 and 8 of the Intergovernmental Relations Act, 2012. The Summit consists of the President, the Deputy President and the Governors of the forty-seven counties. The main objective of the Summit is to encourage harmonious and mutually beneficial relations between the National government and the Counties. The Summit also provides a forum, for among other things, the promotion of national cohesion, unity and national values and principles of governance.

## **EXECUTIVE SUMMARY**

Public participation is one of the fundamental principles of Kenya's constitutional democracy. Indeed, the constitution upholds the people as sovereign and requires all State organs, State officers, public officers and all persons to ensure the participation of the people in the review, formulation and implementation of all public policies, administrative decisions and procedures, enactment and application of the law. The Government of Kenya recognizes that public participation strengthens and legitimizes state decisions, actions and development interventions. The presence of clearly, well-developed strategies for public participation build trust and confidence in the systems, promote accountability, strengthen commitment of all stakeholders towards improved governance, and directly limit the potential for corruption and poor leadership.

It is on the basis of this recognition and the need to ensure effective public participation in constitutional implementation, that various efforts have been made to formulate suitable frameworks to ensure that the public engages meaningfully in decision-making.

The Participation Guidelines by the State Department for Public Service, the County Public Participation Guidelines by then Ministry of Devolution and Arid and Semi-Arid Lands (ASALs) in collaboration with the Council of Governors are some of the tools used to enhance citizen engagement in the country. The Ministry also developed a number of Civic Education Training Materials to facilitate effective public participation.

The National Capacity Building Framework (NCBF) adopted in 2013 provides a mechanism for facilitating and co-ordinating county capacity building initiatives based on government policies and priorities. One of its core objectives is to empower right holders in the counties to hold county governments accountable through sensitizing them on efficient policy instruments for functioning of county governments.

Nevertheless, the past and current public engagement programmes and processes have been fraught with diverse challenges. Some of the challenges include the lack of uniformity of the processes due to gaps in the countrywide frameworks and standards; the slow pace in completion and operationalization of public participation laws, regulations and guidelines; challenges of access to and provision of the relevant information to the public; limited capacity; and inadequate funding to public participation.

In particular, inadequate funding to public participation has affected the establishment of the relevant mechanisms for co-ordination and management of the processes and their effectiveness in developing appropriate capacity strengthening programmes; planning for public

participation and managing the processes and coordinating public participation and civic education programmes. In addition, there are gaps in complaints management and redress mechanisms, coordination, monitoring, evaluation, learning and feedback mechanisms of public participation in the country.

This Policy therefore seeks to address these gaps and challenges in order to improve and entrench public participation in development and governance processes in Kenya.

The Kenya Policy on Public Participation sets out overarching comprehensive and coherent standards for active and meaningful public participation for the national and county governments and provides a framework for the coordination of public participation in order to fulfil constitutional requirements on citizen engagement in development and governance processes in the country.

Part One of the Policy reaffirms the Government's commitment to exercising effective public participation, further strengthened by a national legal framework and the ratification/accession to regional and international treaties that enshrine the right to citizenry involvement. It describes the policy development process, which was highly consultative and participatory. The section outlines the rationale, objectives of the Policy, and the guiding principles which must guide all aspects of the public participation process.

Part Two sets out the situational analysis, briefly tracing the efforts made, over the years, to incorporate citizen engagement in the decision making processes. The section also identifies the major challenges facing public participation in Kenya.

Part Three outlines nine policy priority areas, policy concerns and policy standards to address the concerns. The policy priority areas were identified through public interviews, focus group discussions and regional hearings conducted countrywide.

Part Four tabulates the coordination framework for the implementation of the Policy. The Policy will be implemented through an integrated, coordinated and consultative process by various actors at the national and county levels of government. Within each arm of government and at both levels, public participation will be conducted in a collaborative manner in accord with the principles of separation of powers devolution and in collaboration with Non State Actors (NSAs).

# **PART ONE**

## **INTRODUCTION**

### **1.1. Kenya's Commitment to Public Participation**

Effective public participation has become an indispensable element of democracy and people centered development. It is the very foundation for democracy which strengthens the state by legitimizing governmental action, and promotes good and democratic governance. The right to participate in public affairs is important for promoting the rule of law, ensuring social inclusion, advancing gender equality, and for the realization of all human rights. Meaningful public involvement in political and public affairs can only be realized in conjunction with a range of other rights, including freedom of expression and information, assembly, association, equality, non-discrimination and socio-economic rights. Exercising this right is not a once-off affair but rather an ongoing cycle in which people make decisions, live with the consequences, and based on that experience make better future decisions.

The Government of Kenya acknowledges that the citizens' active and meaningful participation in public affairs is a fundamental hallmark of any truly democratic state. In formulating this Policy, the Government commits to enhancing openness and citizen engagement in all aspects of the governance agenda. The Policy sets the standards to ensure that the views of the public are heard and taken on board. It lays down the framework to encourage citizen participation, builds an understanding of how government works and its decisions, advances synergies between government, non-state actors and the private sector and ensures inclusion of different interest groups.

The commitment of the Government to ensure the attainment of effective public participation is affirmed not only in the Constitution but also in national laws, and regional and international treaties that have been ratified or acceded to by Kenya.

### **1.2. The Constitution, Regional, International and National Foundations of Public Participation**

#### **1.2.1. The Constitution of Kenya**

The Constitution, in Article 2, enshrines the sovereign power of the people at both levels of government. Public participation is one the key national values and principles of governance in Article 10. The importance of public participation is further captured in Article 69 which encourages

public participation in the management, protection and conservation of the environment; The role of government in representing the will of the people as provided in Article 94, Article 118 which mandates Parliament to facilitate public participation in legislative processes, Article 174 enhancing public participation in devolved government, Article 184 in governance of urban areas and cities, Article 196 ensuring public participation in county government matters, Article 201 on participation in principles of public finance and Article 232(1) which highlights the values and principles of public service.

### **1.2.2. International Instruments**

The right to participate in public affairs including political participation is rooted in Article 25 of the International Covenant on Civil and Political Rights (ICCPR). Article 21 of the Universal Declaration of Human Rights states that the will of the people shall be the basis of the authority of the government and further mentions the right of every individual to take part in the government of their country.

The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) in Article 7 and 14 affirms the right of women to participate in the formulation of government policy, non-governmental organizations and associations concerned with the public and political life of the country. Article 31 of the Convention on the Rights of the Child (CRC): promotes the right of the child to participate fully in cultural and artistic life and encourages the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity. Article 23 further ensures participation of a mentally or physically disabled child in the community. The UN Convention on the Rights of Persons with Disabilities (CRPD) promotes the full participation of persons with disability in civil, political, economic, social and cultural spheres with equal opportunities. This is echoed in Article 3, 9, 19, 29 and 30.

The Convention on Biological Diversity and the Cartagena Protocol on Bio safety emphasizes the importance of public awareness, education and participation as a fundamental element for effective implementation in Article 13 and 23 of the convention and protocol respectively. It further recognizes access to relevant information in order for individuals to make informed choices and actions. The Convention for the safeguarding of the Intangible Cultural Heritage (2003) in Article 11 and 15, obligates state bodies to ensure the widest possible participation of communities in safeguarding measures.

### 1.2.3. Regional Human Rights Instruments

Article 13 of the African Charter on Human and Peoples Rights provides among others that every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. Further, Article 9 and 17 of the Protocol to the African Charter on Human and Peoples Rights on the rights of women in Africa (Maputo Protocol) emphasizes the right of women to participate in the political and decision making process as well as formulation of cultural policies at all levels.

Articles 4 and 7 of the African Charter on the Rights and Welfare of the Child recognize the right of children to freely express their opinions on all matters. The Charter under Article 14 further provides the need for meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of basic service programmes for children.

### 1.2.4. The National Legal Framework

The following legislations promote the concept of public participation. **The Urban Area and Cities Act** gives effect to Article 184 of the Constitution; to among others provide for the principle of governance and participation of residents and as outlined in the second schedule. **The Public Finance Management Act** highlights the relevance of public or community participation in financial and budgetary matters in Sections 10(2), 35(2), 48(2), 125(2), 139 (2), 191B and 207. Section 26 of the **Independent Electoral and Boundaries Commission Act** states that the Commission shall observe the principle of public participation and requirement for consultation in the performance of its functions. The same is provided in the Fourth schedule of this Act. **The County Governments Act** in Sections 3(f), 6(6), 6A (3), 30(3)(g), 47, 50(3)(g) 51(3)(g), 52(3), 53(2), 87, 91, 92, 97(g), 100(4), 106(4) and 115 establishes modalities and principles of public participation in counties. Part IV of the **Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act**, provides for public awareness, sensitization, training and education by national government including ensuring involvement and participation of individuals and groups affected by internal displacement. Part X of the **Consumer Protection Act** establishes the Kenya Consumers Protection Advisory Committee which in Section 90 (d) is mandated with promotion/participation in consumer education programmes. **The Basic Education Act** in Section 4(l) and (q) outlines one of the guiding principle of basic education as participation and

inclusiveness of stakeholders. Section 4 of the **Land Act 2012**, denotes guiding values and principles for government officials and specifically mentions public participation in Section 4 (2) (h) and (I). The need for public participation is emphasized in the **Water Act 2016** Sections 10(1), 64(1) and 87(1). Further Section 8(3) of the **Treaty making and Ratification Act** provides that the relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures. Finally, Section 4(3) of the **HIV and AIDS Prevention and Control Act 2006** provides that in conducting educational and information campaigns, the Government shall collaborate with relevant stakeholders to ensure the involvement and participation of individuals and groups infected and affected by HIV and AIDS.

### **1.3. Policy Formulation Process**

This Policy is the outcome of an elaborate, inclusive and participatory process. A National Steering Committee was appointed under the auspices of the Office of the Attorney-General and Department of Justice to provide policy oversight and strategic leadership over the policy development process. The Committee drew its members from the then Ministry of Devolution and Planning, Intergovernmental Relations Technical Committee (IGRTC), Commission on Administrative Justice, National Gender and Equality Commission (NGEC), Kenya National Commission on Human Rights (KNCHR), Kenya Law Reform Commission (KLRC), The Institute for Social Accountability (TISA), UNDP/Amkeni, Office of the High Commissioner for Human Rights, National Civil Society Congress, International Development Law Organization (IDLO), Council of Governors (COG), Public Service Commission (PSC) and the County Assemblies Forum (CAF).

The Steering Committee rolled out the policy development process with support from development partners and consultants. The process involved consultations with various stakeholders through Key Informant Interviews (KIIs), Focus Group Discussions and regional stakeholder consultations in various regions of Kenya during which views of the public were collected by the National Steering Committee on how best public participation can be provided for. The regional consultations were attended by members of the public, women and youth leaders, Non State Actors, including Community Based Organizations (CBOs), members of various County Assemblies and representatives from the County Commissioners' offices. The process also included the analysis and documentation of best practices, input from experts and submission of written memoranda.

#### **1.4. Rationale for the Policy**

The Policy is the execution framework to guide both levels of government, the private sector and non-state actors and all persons in their engagements with the public on governance issues. The Policy is based on the need to achieve the constitutional imperatives on public participation and the realization that participation as contemplated in the constitution has been affected by numerous challenges. These challenges include absence of standards and ineffective coordination mechanisms, inadequate coordination among providers, ineffective inclusion of special interest groups, citizen apathy, and inadequate funding. The Policy sets the standards and provides the mechanisms for the coordination of public participation at both levels of government.

#### **1.5. Policy Objectives**

The main objective of this Policy is to set standards for effective public participation and to provide an overarching framework for the coordination of public participation in Kenya for the fulfillment of the constitutional requirement on right holders' engagement in development and governance processes in the country. The Policy has nine specific objectives which both levels of government will;

- 1) Ensure citizens continually access timely information on public issues in a language and format that is easy to understand;
- 2) Provide a framework for coordination and enabling environment for NSAs involved in civic education;
- 3) Undertake coordinated and integrated capacity building towards empowering responsible citizens and public institutions;
- 4) Promote effective public participation in planning, budgeting and implementation of approved plans and budgets;
- 5) Promote effective participation of children, minorities and marginalized groups at all levels of governance;
- 6) Guarantee adequate, secure and sustainable funding for public participation;
- 7) Promote well-resourced, updated and effectively implemented monitoring, evaluation and learning systems for public participation;

- 8) Promote responsive, functional and timely feedback and reporting mechanisms in order to build confidence in public participation process; and
- 9) Promote effective handling of complaints.

### **1.6. Guiding Principles**

Public participation in Kenya's governance processes shall be guided by adherence to the following principles and values:

- 1) Sovereignty of the people and equal opportunities for all;
- 2) Right of every individual, group, community and organization to be involved in the decision and policy making processes;
- 3) Provision of adequate and effective mechanisms and opportunities for participation for those interested in, or affected by decisions;
- 4) Consultation between the two levels of government in line with Article 6(2) of the Constitution and building relationships with Non State Actors;
- 5) Inclusion of minorities and the marginalized groups, including women, youth, elderly, PWDs and children;
- 6) Non-discrimination and accommodation, respecting diversity, people's values, culture, needs and customs;
- 7) Timely access to the necessary information in a language and form that is easy to comprehend, including accessible formats for Persons with Disabilities (PWDs) and through media that is accessible to the public;
- 8) Provision of civic education and the development of the necessary capacity for the public to effectively engage;
- 9) National Values under Article 10, the Bill of Rights and Fundamental Freedoms in Chapter Four of the Constitution;
- 10) Principles of leadership and integrity in Chapter 6 of the Constitution;
- 11) Provision of adequate funding for public participation;
- 12) Adequate monitoring, evaluation, learning and feedback mechanisms;

- 13) Adherence to the principles of devolution and separation of power;
- 14) Respect for the principles of child participation, including child friendly environment, appropriate information, and non-intimidation;
- 15) Access to remedial measures in cases of dispute;
- 16) Reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards; and
- 17) Promotion of public-private partnerships to encourage direct dialogue and concerted action on sustainable development.

## **PART TWO**

### **PUBLIC PARTICIPATION IN KENYA: SITUATIONAL ANALYSIS**

#### **2.1. Introduction**

Efforts have been made in the past to improve public participation in Kenya's governance affairs. The Local Authority Service Delivery Action Plans (LASDAPs), the District Focus for Rural Development (DFRD) and the Constituency Development Fund (CDF) had important mechanisms for engaging the public. However, prior to 2010, public participation was largely nominal and based on the goodwill of the government. The Constitution changed this situation by vesting all sovereign power in the people of Kenya (Article 1) and has made public participation a mandatory provision.

#### **2.2. Kenya's Experience with Public Participation**

The promulgation of the Constitution in 2010 ushered a new era for right holders' participation in Kenya by embedding public participation as a principle of governance which binds all state and public officials. Prior to this, development processes were largely centralized using top-down approach to planning with major decisions made from the capital city, Nairobi. The involvement of decentralized agencies including the provinces and districts was largely limited to transmitting to the public information and decisions already agreed upon in Nairobi. Such decisions were implemented in the field through the local authorities and provincial administration with minimal input and participation of the public.

In 1983 there were some attempts to involve right holders in development processes through the DFRD. The DFRD encouraged community participation in the identification, planning and implementation of the development projects at the district level with limited participation at the lower levels of sub districts and villages. The entire planning and management process was under the direction of the Provincial Administration, and the public did not have a strong voice. Those who participated were selected by the chiefs, District Officers (DOs) or the District Commissioners (DCs). This approach skewed the voice and participation of right holders.

The enactment of the Physical Planning Act in 1996 was a milestone development, which provided for community participation in the preparation and implementation of physical and development plans. In 2001, the Ministry of Local Government through its reform program, the Kenya Local Government Reform Program (KLGPR) introduced the

Local Authorities Service Delivery Action Plan (LASDAP), a tool developed to improve participatory planning, governance and service delivery in local authorities (LAs). Through LASDAP, the Local Authorities engaged right holders annually at ward level consultative processes to consider and identify priority capital projects. LASDAPs provided important opportunities for rights holder participation, such as in information gathering, consultation and consensus meetings, formation of monitoring groups, and participating in feedback meetings. Local Authorities Budget Day and Community Budget Committees were also established with a goal of improving public participation.

Kenya's judicial and constitutional review processes of the 1990s and 2000s helped popularize public participation in the country. The Constitution of Kenya Review Commission (CKRC) Act, 1998 had important public participation provisions. The CKRC Act required Commissioners to consult widely, to carry out intensive and extensive civic education and to ensure people's views were reflected in the Constitution. The Committee of Experts (CoE) drafting Kenya's 2010 Constitution regularized public participation. Partnering with NSAs, the CoE conducted civic education in all constituencies. The CoE had a thirty-day period for intensive public engagement before the people voted during the constitutional referendum that approved the Draft Constitution.

The National Government Constituencies Development Fund (NG-CDF) represents an important mechanism for the participation of the people in matters that affect them. The Fund, established under the NG-CDF Act, 2015 as amended in 2016, aims to address the socio-economic development of the people at the constituency level to reduce poverty and enhance regional equity. The Act provides for the participation of the people in project formulation and implementation of identified national government development projects at the constituency level in line with constitutional principles. All implementing agencies of the CDF are required to place the community at the forefront in the project cycle. The community on the other hand is required to participate in open meetings convened by the Chairperson of the NG-CDF community to deliberate on development.

The Judiciary has integrated public participation by establishing Court Users' Committees and the National Council on the Administration of Justice. This was enhanced by the adoption of the Judiciary Transformation Framework (2012-2016) and sustaining judiciary transformation framework (2017-2021), which provides better mechanisms for engaging the public in the administration of justice. The Framework proposed the development and implementation of a structured approach to ensuring interactions with the public through Open Days, Judicial Marches, and Public and Student Visitation Programs, all meant

to make the judiciary more accessible to the public. Other aspects have included the Chief Justice' Annual State of the Judiciary Address, court's emphasis on *open court* rather than chamber hearings and establishment of an elaborate media strategy.

County governments have adopted the County Public Participation Guidelines, 2016 elaborated by the then Ministry of Devolution. The Guidelines provide a framework for citizen engagement.

Overall, the Government has made significant efforts to initiate processes through which the public participate. However, the nature and extent of public participation contemplated by the Constitution has not been fully achieved by either level of government. The absence of an overarching national policy to provide clear objectives, principles and the framework for coordination of public participation in Kenya, which sets countrywide standards, is a deficit which this policy aims to address.

The Policy underscores Kenya's commitments to the inclusion of the right holders in public governance and binds both levels of Government, as well as the private bodies and the non-state actors (NSA) in as far as their actions affect the public. The Policy also defines the important public participation priority areas taking into consideration the Constitution, and other existing policies and laws

### **2.3. Challenges**

The development of this Policy is driven by the major challenges facing public participation in Kenya which were identified through a participatory process during the development of the Policy. They include;

#### **a) Absence of Standards**

Despite the long history of public participation and the proliferation of providers, Kenya has not had clear policy objectives and standards to guide public participation. The absence of standards has resulted in lack of clarity and disagreements on important aspects of participation, including: what constitutes adequate public participation; what is the nature of participation that meets the Constitutional threshold; what are the most effective mechanisms for public participation; what does public participation entail; and when can it be said that public participation has effectively taken place?

#### **b) Inadequate Co-ordination among Providers**

Inadequate coordination among government agencies as well as gaps in collaboration between government and the NSAs and development partners, has hindered effective public participation in Kenya. In some cases, these gaps have led to duplication and competition among the various agencies. The result has been incoherent methods of engaging

right holders and overlapping activities which lack synergy among actors. This overburdens right holders and nurtures cynicism and disinterest in public participation.

#### **c) Ineffective Inclusion of Special Interest Groups**

Important segments of society, especially the special interest groups, minorities and the marginalized have not been effectively included even on issues that affect them. Some of the factors that have contributed to this gap are generalized public participation without adequate stakeholder mapping and targeting, low awareness of public participation events and limited understanding by large sections of the populace on their rights and responsibilities due to inadequate civic education and the widespread assumption that the leaders understand concerns of the marginalized groups and therefore represent their needs.

#### **d) Incoherent Participation Logistics**

Communication relevant for effective participation and related logistics has been a challenge. In some cases, organizers shift dates or venues for consultative meetings on short notice without consulting right holders; flout procedures, fail to provide relevant information and documents, or hold meetings in inaccessible places. Public participation has also been conducted to legitimize decisions already made and has failed to fully include NSAs and others capable of contributing to outcomes of decisions.

#### **e) Poor Communication**

Challenges are being experienced in communication at national and county government's levels. This has resulted in slow, late, inaccurate or incomplete communication. On the side of right holders, newspaper adverts are used to announce public participation even in areas with low literacy levels and low newspaper distribution and access. The sharing of materials and documents on planning and budgeting is limited, while most documents remain too bulky and technical for right holders to understand.

#### **f) Citizen Apathy**

Inadequate implementation of the right holders' priorities and feedback to them on the decisions taken on their proposals, have discouraged many Kenyans from engaging in public participation processes. The result has been the development of the perception among the citizens that their involvement in such events is not helpful to their situations. This has led to negative perceptions about public participation and the emergence of demand for payment and reimbursement for attendance.

### **g) Limited Civic Education and Inadequate Capacity**

Majority of right holders lack adequate awareness of their rights and responsibilities and the few, who do, lack the requisite understanding, knowledge or skills for processing the issues at stake. These deficits require civic education that has largely been inadequate.

### **h) Inadequate Funding**

Inadequate funding for public participation and other financial and budgetary constraints has reduced the frequency and quality of participation. Funding levels also determine the availability of materials, documents and support for logistics for participation.

### **i) Ineffective M & E Systems, Poor Learning and Feedback Mechanism**

Monitoring, evaluation, learning and feedback mechanism for public participation are weak and inadequate. Supervision and documentation of programs, their content and achievements have also been weak, while right holders also complain that their inputs are not incorporated into decision making and governance processes.

### **j) Minimalism and “Compliance Only” Attitude**

Despite Constitutional and legal requirements for public participation, a number of duty bearers have a “compliance only” attitude and a “minimalist approach”, where efforts are only put to ensure compliance with the law without effectively advancing public participation. Furthermore, participation seems to take place either at the beginning or the tail end of development processes without continuity. The policy addresses these challenges by setting the objectives, principles and standards as well as coordinating mechanisms for public participation. It facilitates the empowerment of right holders through the construction of new relations between right holders and important institutions of governance, transforming participation from a technical-tokenistic device to a routine occurrence, while at the same time changing the behaviour of leaders from planning *for* right holders to planning *with* them.

## **PART THREE**

### **POLICY PRIORITY AREAS**

#### **3.1. Introduction**

The Policy fits well within, and is embedded in the broad post-2010 Government of Kenya Policy orientation. It is firmly anchored in the Constitution and Kenya's development blueprint, Vision 2030, both of which define how the governance sector is to be structured and run to facilitate the attainment of effective and sustainable public participation. The Policy's objectives will be pursued and achieved within this wider network of government policy and legislation orientation. This Policy provides a broad framework and minimum standards for effective public participation. Duty bearers will be expected to cascade and implement the general provisions of this policy by developing guidelines and clear strategies for effective public participation.

This section presents nine identified policy areas, highlighting policy concerns and the policy standards to address the concerns. Past experiences provide important lessons on the status of public participation that include low levels of rights holder participation in planning, budgeting and implementation of programmes which this Policy addresses. These gaps are largely the result of inadequate access to information by the public, weak capacity of the right holders and duty bearers in public participation, limited civic education and insufficient coordination of the processes, inadequate funding of public participation, inadequate opportunities for public engagement in planning and budgeting, lack of mechanisms for identification and inclusion of the marginalized groups.

The Policy areas include: access to information, civic education, capacity building, planning, budgeting and implementation, inclusion of minorities and marginalized groups, funding, monitoring, evaluation and learning, feedback and Reporting mechanisms, and complaints and redress mechanism as expressed in Figure 1.

**Figure 1: Kenya's KPPP: Key Policy Areas**



## **3.2. Key Policy Areas**

### **3.2.1. Access to Information**

The right to access information is crucial to public participation and to the well-functioning of a democracy. It is a right under the Constitution (Article 35 (1)), which is operationalized through the Access to Information Act, 2016. The Constitution guarantees right holders access to information held by the state and relevant private entities. Access to information is vital for the achievement of meaningful and effective public participation. Access to information empowers and enables right holders to hold the duty bearers to account. Governments have obligation to disclose information to the people through appropriate media and format, particularly in areas with high illiteracy levels. The Policy recognizes that

access to information can only be limited pursuant to Article 24 of the Constitution, section 6 of the Access to Information Act, 2016 and sections 43 and 49 of the Kenya Defence Forces Act, 2012.

### **Policy Concern**

The Constitution guarantees access to information held by the state, however, right holders often experience challenges accessing such information. In most cases information held by the state is not published or publicized. Furthermore, even when the law requires that information be made public, quite often that is not done in time using appropriate media. In cases where documents are available, they are sometimes bulky or in a technical language which right holders cannot understand or in places where they cannot be easily accessed when needed. Newspaper adverts have been the commonly used medium for announcing public participation events even in areas with low literacy levels and low newspaper circulation and access.

The constitutional mechanisms for public participation have not been fully open to the public. For example, the people have experienced challenges accessing information pertaining to discussions within the National and County Government Coordinating Summit and the Intergovernmental Budget and Economic Council (IBEC). This also applies to parastatals and public institutions responsible for ratifying treaties. Furthermore, although there are legitimate cases where access to information can be legally limited, the line between making the necessary information available to the public while avoiding revealing information that can hurt the state remains unclear.

### **Policy Objective**

**The state will ensure right holders continually access timely information on public issues, in a language and format that is easy to understand.**

### **Policy Standards**

The Government at the two levels will:

- i. Formulate and review the necessary policies, legislation and procedures necessary to make information available and accessible
- ii. Ensure timely publication and dissemination of all information needed by the right holders for effective participation in a language(s) and appropriate media, including online platforms using both official languages and in accessible formats for PWDs and the public
- iii. Establish a user-friendly system where information requested is provided in conformity with the Constitution and other applicable laws related to access to information
- iv. Ensure any limitation on access to information is in conformity with the Constitution and other laws related to access to information
- v. Ensure a collaborative approach to information sharing
- vi. Ensure that records are accurate, authentic, have integrity, are usable and recorded in a manner which facilitates the right of access to information in conformity with the Constitution and all other relevant laws.

### **3.2.2. Civic Education**

Civic education is an important prerequisite for effective public participation by the right holders. Civic education informs the public, creates awareness and empowers them to make informed decisions. It ensures that a critical mass of right holders, are endowed with knowledge and skills that embody the values, norms and behaviour that accord with the principles of democracy. Among others, Part X of the County Government Act (2012) mandates County governments to ensure civic education is in line with the principles of devolved governance provided in the Constitution. Section 101 provides for County legislation to provide the requisite institutional framework for purposes of facilitating and implementing civic education programmes.

The Government established the Kenya National Integrated Civic Education (K-NICE) Programme in November 2011 to educate Kenyans on the benefits and contents of the constitution with respect to its full

implementation. The Programme introduced an integrated national approach towards civic education which brought together state and non-state actors to ensure consistency and national coverage. The objectives of the programme included ensuring sustainable information and awareness on the constitution, its principles, structures and processes, enabling citizens to actively engage the government and governmental processes as a civic duty, inculcating a culture of adherence to the constitution amongst government agencies, and non-state actors and individuals, developing a culture of constitutionalism, respect for the rule of law and public engagement and fostering a system that ensures governmental responsiveness to its citizens and citizens responsibility for keeping the government in check. Talk shows and online portals were mounted to allow Kenyans to discuss issues on the Constitution of Kenya.

In 2016, the then Ministry of Devolution and Planning developed a Civic Education Training Manual for Learning Institutions. The manual was developed to enhance the capacity of trainers of civic education and enable them to effectively train the target groups on the provisions of the Constitution particularly devolution and public participation.

Currently, the Office of the Attorney-General & Department of Justice conducts civic education programs to raise awareness of the citizens on the Constitution and relevant policies, laws and administrative procedures. The program is important because it equips the citizens with the necessary tools for engagement in the implementation and governance processes.

### **Policy Concern**

While civic education is acknowledged as a powerful tool for engagement of right holders in development, multiplicity of actors and different coordination mechanisms have made it challenging to implement. The NSAs have been the major providers of civic education but their programmes have not been sustainable due to challenges of funding. Furthermore, civic education tends to concentrate on urban areas and cities leaving a major gap in rural areas. Coverage of the minorities and the marginalized groups is also limited and there are no special measures dedicated to these groups in the delivery of civic education. In addition,

while there are diverse civic education materials, there have been no standardization even though the then K-NICE and the former Ministry of Devolution and ASAL developed a civic education curriculum. Due to the lack of adequate finances, the Office of the Attorney-General has been unable to reach all Kenyans under its civic education program. Furthermore, while the counties must establish County Civic Education Units (CCEUs) in compliance with the County Government Act 2012, this has not been fully achieved.

### **Policy Objective**

**The state will provide the framework for coordination and enabling environment for NSAs involved in civic education**

### **Policy Standards**

The Government at two levels will:

- i. Formulate, enact and implement the necessary policies, legislation and procedures for civic education
- ii. Customize curriculum for civic education for specific needs in collaboration with all actors
- iii. Establish rights holder education mechanisms for the minorities and marginalized groups in line with the Constitution and other related laws
- iv. Develop and popularize Charters, specifying how, and when to participate, and the available opportunities for participation
- v. Allocate adequate funds for civic education
- vi. Provide an enabling environment that allows NSAs to support civic education programmes
- vii. Ensure civic education programs promotes a participatory culture driven by integrity, national values and principles of good governance
- viii. Ensure an encompassing and continual civic education within and at all levels of government, including Constitutional offices and independent offices.

### **3.2.3. Capacity Building**

Capacity building for public participation is important to all actors engaged in development, including government agencies and NSAs, who need the relevant skills and experience to manage and coordinate public participation effectively. The actors require skills on planning for public participation; management of the actual engagement processes which include stakeholders' identification and mobilization, facilitating and documenting public participation, analysis, communication, and monitoring and evaluation; and preparation of public participation reports. Capacity building at different levels equally endows NSAs and right holders with relevant skills for participating in development processes. For right holders, it further removes the fear of intimidation and encourages them to hold duty bearers to account. Capacity building is also important for ensuring uniformity in the management of right holders engagement processes since public participation is a legal function for all public bodies in Kenya. This can however be realized only if there is standardization in capacity development and the tools of engagement in public participation.

#### **Policy Concern**

The Government has the relevant capacity building institutions that include the Kenya School of Government and the Centre for Parliamentary Studies which have been administering capacity building to public bodies and officials on public participation. The training has however to a large extent emphasized on the legal provisions governing the process and is yet to adequately cover the relevant skills and tools. Despite receiving the training, public officials face some challenges on planning for, managing and documenting public participation processes. The approaches and tools used are yet to be standardized and the management of public participation processes is not uniform.

While some agencies have established departments or units responsible for managing and coordinating the processes, others lack such mechanisms and respective departments and undertake their own public engagement processes. Capacity building for public participation has also

been affected by inadequate funding which has hampered ability of the agencies to effectively plan for, manage and coordinate the function. The development partners and NSAs have filled this gap, however the coordination among them and public agencies has not been adequate. The public agencies and NSAs engaged in capacity building need comprehensive capacities, skills, knowledge and experience to meaningfully engage right holders on development issues.

**Policy Objective:**

**The state will undertake coordinated and integrated capacity building towards empowering responsible right holders, public institutions and NSAs.**

**Policy Standards**

The Government at the two levels will:

- i. Develop capacity of the institutions mandated to offer capacity building services to government agencies and NSAs on public participation;
- ii. Engage adequate human resources with appropriate skills and competencies to manage public participation functions;
- iii. Allocate adequate budget for capacity building of all actors involved in public participation;
- iv. Collaborate in capacity building on public participation;
- v. Establish and strengthen coordination mechanisms in capacity building on public participation;
- vi. Promote and safeguard NSAs operational environment for public participation.
- vii. Embed monitoring, evaluation and learning mechanisms in public participation processes as part of capacity building.

**3.2.4. Planning, Budgeting and Implementation**

The Constitution provides for participatory governance in all aspects of the Government's development agenda. Planning, budgeting and implementation of the approved plans are important stages in development. The realization of responsive and people driven development requires effective public participation in all the three stages.

Active involvement of right holders often results to identification with the development programmes and ownership of the implemented interventions.

The policy takes cognizance of the limitation espoused by section 90 (2) of the Public Procurement and Asset Disposal Act, 2015 that require national security organs and other procuring entities that deal with procurements of classified nature to manage their procurements and disposals on the basis of a dual list and requirement to maintain confidentiality on the said lists. Section 90(3) also requires other entities that procure classified items to seek approval from the Cabinet Secretary for approval of the classified list of items annually.

### **Policy Concern**

Planning, budgeting and implementation of projects in Kenya have largely been devoid of public participation. The available opportunities for participation are often the preserve of the elites and opinion leaders who tend to be invited to public participation events on the assumption that they understand the needs and priorities of their communities. Furthermore, public engagement processes are complex and technical and require skills and adequate planning. The Kenya Constitution (2010) addresses public participation related issues and provides for participatory governance. The Constitution fundamentally, altered the framework for development planning and execution in Kenya. The hitherto top-down planning processes were replaced with participatory planning, bestowing on all the right holders the right to participate in development and governance matters.

In spite of the Constitutional promise of rights holder engagement in public planning, budgeting and implementation a gap remains. This is due to diverse challenges that include gaps in planning for citizen engagements, inadequate notification, inadequate financing of the processes, and minimal coordination and collaboration among government agencies and with stakeholders. These challenges have affected the realization of participatory budgeting and planning processes as anticipated in the Kenyan constitution and relevant laws.

### **Policy Objective:**

**The state will promote effective public participation in planning, budgeting and implementation of approved plans and budgets**

### **Policy Standards**

The Government at the two levels will:

- i. Integrate public participation action plans in all development plans, budgets and implementation processes;
- ii. Provide adequate resources for public participation in planning, budgeting and implementation processes;
- iii. Adopt and implement effective stakeholder mapping and engagement plans with sufficient stakeholder consultations in planning, budgeting and implementation processes;
- iv. Prescribe for adequate notification of public participation, and provision of timely and accurate information in accessible formats for PWD's and other right holders to facilitate meaningful public engagement in planning, budgeting and implementation processes;
- v. Integrate national and international environmental and social protection standards in public participation during planning, budgeting and implementation processes and;
- vi. Establish or strengthen collaboration with development partners and NSAs for effective cooperation and coordination of public participation in planning, budgeting and implementation processes.
- vii. Establish online platforms for citizen engagement

### **3.2.5. Inclusion of Minorities and Marginalized Groups**

The Constitution recognizes the need to build an inclusive and equitable society. It provides for the participation of minorities and marginalized groups in Articles 53, 54, 55, 56, 57 and 100. These groups include women, children, PWDs, youth, the elderly, ethnic and other minorities and marginalized groups. The recognition is informed by the available statistics and everyday realities which show that sections of Kenyan society have been excluded in the development processes.

## **Policy Concern**

Lack of relevant and functional mechanisms for engagement of the minorities and marginalized groups in the development and democratic processes has led to inadequate representation of their views and needs. Although the Constitution requires inclusive participation and development, implementation of mechanisms for ensuring their participation and leveraging their contribution has been slow. Often they are incapacitated and not able on their own to effectively participate in development processes and demand for inclusion in participation and provision of services and infrastructure. Women's participation has been affected by gender based barriers originating from attitude, customs, and traditions. Children are often ignored as having no contribution to make due to their level of maturity status even in policies that affect them. PWDs and minority ethnic, religious and political groups have special needs and can make substantive contribution to development processes but they are rarely facilitated to participate in these processes.

### **Policy Objective:**

**The state will promote effective participation of minorities and marginalized groups at all levels.**

### **Policy Standards**

The Government at the two levels will:

- i. Provide guidelines for meaningful participation of minorities and Marginalized Groups;
- ii. Undertake stakeholder mapping to identify the minorities and marginalized groups for effective participation and engagement;
- iii. Ensure public participation processes have plans for engagement of the minorities and marginalized Groups, including provisions for appropriate hours, and venue for meetings;
- iv. Tailor communication to meet the needs of minorities and marginalized groups
- v. Provide disability friendly infrastructure for PWDs during public participation processes, and
- vi. Provide adequate budgetary resources for the engagement of minorities and marginalized groups.

### **3.2.6. Funding**

The Constitution provides that public participation is one of the values and principles of governance. The realization of public participation in governance processes needs adequate budgetary allocation to finance the necessary infrastructure processes and planning for public participation, actual engagements, monitoring and evaluation, feedback and coordination. These activities require resources which should be allocated and protected. It is therefore important that all government agencies plan for and adequately budget for public participation.

#### **Policy Concern**

Funding for public participation by the government has often been inadequate, unpredictable and unreliable. This shortfall has affected effective planning for and engagement of the right holders and stakeholders in the country's governance. While the development partners and NSAs have often filled the funding gaps, their contribution has been inadequate and unpredictable since they are largely project driven and short term. The funding gap has therefore affected public participation processes and activities which require regular and reliable funding for advertising, civic education, logistics, printing and duplicating materials and information dissemination.

#### **Policy Objective:**

**The state will guarantee adequate, secure and sustainable funding for public participation.**

#### **Policy Standards**

The Government at the two levels will:

- i. Provide guidelines on funding for public participation to ensure adequate budgetary allocation;
- ii. Provide adequate funding for public participation on a regular and continual basis;
- iii. Provide conditional grants for strengthening of public participation to both levels of government and related agencies;
- iv. Provide mechanisms for collaboration with development partners and NSAs to facilitate sourcing of adequate funding for public participation and;

- v. Provide adequate funding for K-NICE and other existing frameworks for public participation.

### **3.2.7. Monitoring, Evaluation and Learning (MEL)**

MEL is an important component of project cycle and continual implementation of any agreed project or programme. MEL objectively tracks implementation and outputs and measures the effectiveness of projects and programmes. Through monitoring and evaluation objective evidence based facts are generated for learning and effective implementation of development programmes. In respect to public participation, MEL information assist both duty bearers and right holders to assess outcomes and counter-check whether outcome is in line with the expected outputs, and to learn and recast processes in line with the needs of right holders.

#### **Policy Concern**

Public participation indicators have not been well defined and integrated into a MEL framework, and the few MEL outputs are not well published and disseminated for public consumption and improvement of development processes. These factors are further intensified by inadequate capacity, especially at county level to effectively carry out MEL functions. The gap undermines rights holder confidence in governance processes, since people are likely to have confidence in development processes and outcomes when they receive feedback on their inputs and experience change to their livelihoods in a transparent manner.

#### **Policy Objective:**

**The state will promote well-resourced updated and effectively implemented monitoring, evaluation and learning systems for public participation.**

#### **Policy Standards**

The Government at the two levels, in collaboration with other stakeholders will:

- i. Put in place MEL systems and mechanisms for public participation in development projects and programmes;
- ii. Integrate public participation within every MEL program in Government;

- iii. Publish and disseminate annual reports with indicators on the status of public participation;
- iv. Establish structured communication and feedback mechanisms to ensure that MEL initiatives are disseminated to the right holders and policy makers; and
- v. Strengthen communities to actively participate in MEL, including auditing of public projects and programs.

### **3.2.8. Feedback and Reporting Mechanisms**

An efficient feedback and reporting mechanism is a pre-requisite for transparent and accountable interaction and dialogue between duty bearers and right holders on development matters. Regular feedback and reporting enables the right holders to appreciate the value of their participation through enhanced access to information on how the views they give are considered and progress in implementation of development programmes. The existence of functional feedback and reporting mechanisms enhances the right holders' confidence in government and encourages public participation.

#### **Policy Concern**

Inadequate feedback and reporting mechanisms have discouraged public participation and in some instances contributed to apathy among right holders. This has been intensified by the low levels of right holders' awareness, and the negative attitude among the right holders that feedback and reporting mechanisms have not been very effective. Consequently, a large proportion of the right holders consider public participation as processes merely meant to satisfy the constitutional threshold for the benefit of the government with no value to their lives and therefore demand for payment for attending such events.

#### **Policy Objective:**

**The state will promote responsive, functional and timely feedback and reporting mechanisms in order to build confidence in public participation process.**

#### **Policy Standards**

The Government at the two levels will:

- i. Establish mechanisms for timely feedback and reporting on public participation at all levels;

- ii. Review, formulate and implement plans on feedback on public participation;
- iii. Ensure that responsible institutions develop guidelines on receiving and analyzing feedback from right holders, sharing and incorporation into development processes.
- iv. Ensure reports provide justification for decisions made.

### **3.2.9. Complaints and Redress Mechanisms**

A functional complaints and redress mechanism is important in ensuring effective public participation. The right holders in Kenya have a constitutional and legal right to complain about, or petition the Government on any matter under the law. The Constitution has created different institutions to address public complaints. Notably, the Commission on Administrative Justice (Office of the Ombudsman), Kenya National Commission on Human Rights (KNCHR), National Gender and Equality Commission (NGEC), Independent Police Oversight Authority (IPOA) and National Land Commission (NLC) are some of the mechanisms that have been established for addressing complaints against public institutions.

#### **Policy Concern**

Despite the above elaborate institutional framework, the same has not been well institutionalised at the county level. Furthermore, the attendant legal frameworks and resourcing have been insufficient thereby undermining the effectiveness of these bodies. In particular, complaints management has not been embraced adequately or institutionalised in some public offices. In some instances, where it exists, the primary focus is compliance rather than improvement of service delivery. These deficits have undermined the institutional and utilization of other available mechanisms besides the courts to redress of complaints.

Public bodies such as CAJ, KNCHR, and NGEC provide a complementary platform for handling public complaints but they have had challenges of budgetary constraints, insufficient statutory framework and limited accessibility hence hindering their ability to perform fully. Furthermore, whereas some of the shared institutions were supposed to decentralize their services, this has not happened.

**Policy Objective:**

**The state will promote effective handling of complaints**

**Policy Standards**

The Government at the two levels, in collaboration with other stakeholders will:

- (i) Establish and strengthen complaints and redress mechanisms and procedures that are simple, available, publicized and understandable by users;
- (ii) Promote alternative dispute resolution mechanisms;
- (iii) Ensure internal complaints and redress mechanisms are established at all levels of government;
- (iv) Strengthen oversight institutions on complaints handling at national and county levels of government, particularly Commission on Administrative Justice;
- (v) Ensure compliance with existing laws and complaints reporting mechanisms and;
- (vi) Sensitize right holders on complaints and redress mechanisms; and
- (vii) Provide for the development of a service delivery charter and ensure they are regularly reviewed and updated;
- (viii) Provide adequate funding for handling complaints.

## **PART FOUR**

### **CO-ORDINATION FRAMEWORK**

#### **4.1. Introduction**

The Policy will be implemented through an integrated, coordinated and consultative process by various actors both at the National and County levels of Government. The implementation of the policy, and the roles and responsibility assigned to each implementing agency will respect the principles of the separation of powers and devolution. Accordingly, public participation will be managed separately, but jointly, collaboratively and in a consultative, cooperative and coordinated manner both at the national and county levels to ensure both vertical and horizontal integration.

At each and within each level there shall be a responsible office which will coordinate public participation and provide oversight in keeping with the principle of devolution.

Appropriate strategies will be used to implement the Policy. The strategies will take a national orientation and outlook. Public participation will take place at all levels including the lowest possible level of governance and will be conducted in English and Kiswahili in addition to other relevant languages commonly used in each specific locality. National and county Civic Education Units will ensure that public participation takes place in the most effective way inclusive of the lowest devolved units - village level.

Public participation strategies and action plans will be reviewed regularly to address any emerging issues.

#### **4.2. Institutional Framework for Policy Implementation**

The existence of a cohesive and well-functioning institutional framework is essential for the attainment of the objectives of this policy. The aim is to ensure that the various institutions effectively play their respective but interdependent roles with a view to promoting effective public participation in Kenya

The Intergovernmental Relations Technical Committee (IGRTC), the Council of Governors, County Governments, national government, the Kenya School of Government (KSG), and the Kenya Institute for Curriculum Development (KICD) will play key roles in the implementation of public participation in Kenya. In addition, a wide range of NSAs including CSOs, NGOs, Faith Based Organizations (FBOs) and CBOs, together with development partners are envisaged to play crucial

roles. More important, the people, in exercise of their sovereignty, will have the overall role of holding every agent engaged in public participation accountable.

### **4.3. The Coordinating Government Agency**

The state under the leadership of the Office of the Attorney-General & Department of Justice and the Ministry responsible for Devolution and Intergovernmental Relations shall establish a multi-sectoral coordination framework for ensuring effective public participation. The coordinating agency will have other state bodies who hold the mandate of the various subject matters addressed in this policy, and NSAs who directly work on any of the nine key policy areas.

In addition to the Office of the Attorney-General & Department of Justice and the Ministry responsible for Devolution and Intergovernmental Relations, other mandatory government bodies will be the Intergovernmental Relations Technical Committee (IGRTC); Council of Governors (COG), The Commission on Administrative Justice (CAJ) Kenya School of Government (KSG), The National Treasury, Ministry of Public Service, Gender and Affirmative Action, Ministry of Information, Communication and Digital Economy, Ministry of Interior and National Administration, Kenya National Commission on Human Rights, and the National Gender & Equality Commission (NGEC). Non State Actors or their umbrella bodies with programmes relevant to the nine policy areas will also be members of the coordinating agency. The multi-agency will provide leadership and supervise the coordination of the implementation of the policy.

### **4.4. The Role of Agencies**

The following agencies will play the role assigned to them as stated below:

**MDAs and Constitutional Commissions and Independent Offices:** The role of Government Ministries, Departments and Agencies including Constitutional Commissions and Independent Offices will be to create an enabling environment for public participation to take place, including establishing the relevant department or office and appointing officers in charge of public participation.

**County Governments:** The role of County Governments will be to promote principles of public participation as provided in the Constitution, the County Governments Act and this policy. Within the public participation policy framework, Governments at the two levels will foster

linkages with various development partners to provide financial, material and technical assistance as well as build capacity for sustainable public participation.

**Development Partners:** Development partners will play a complementary role towards realization of development of the goals and objectives of this policy. In particular, they will assist in leveraging resources and facilitating capacity building for public participation.

**Non-State Actors:** The role of non-state actors will be to collaborate with Government to mobilize right holders and resources, disseminate the policy and participate in capacity building for both right holders and duty bearers. They will also collaborate with the government in public participation processes including civic education and mobilizing the citizens to participate in diverse aspects of public governance, and in monitoring and evaluation.

**Right holders:** Right holders, including citizens are the main pillars of the policy and have to actively be involved in the implementation of the policy including being actively engaged in monitoring, evaluation and learning. They have a duty to attend public participation meetings and to contribute effectively. Being the overall consumers of public participation, right holders are expected to exercise their sovereignty by holding duty bearers and all other agencies to account.

**Media:** The role of the media will be to disseminate the policy and raise public awareness about the policy in the broadest sense. They will also monitor the implementation of the policy through use of interpretive news stories, context-setting stories, editorial materials, columns, letters-to-the-editor and cartoons to convey policy message.

#### **4.5. Incorporation of Public Participation Principles**

Each Government at the two levels and related agencies must incorporate the principles of public participation and will establish a coordination unit and designate an officer in charge of coordination ensuring that public participation becomes part of each MDA, Constitutional Commissions and Independent Offices standard operating procedures.

#### **4.6. Development of People's Participation Charters**

The two levels and related agencies will develop a People's Participation Charter, which will set out the principles for participation, including specification of when and how the people of Kenya should participate as well as stipulating the opportunities available. The government will ensure

the full revival and renewal of the Kenya National Integrated Civic Education (KNICE).

#### **4.7. Development of Public Participation Guidelines**

Each arm of government shall prepare guidelines on public participation indicating how they will engage with the public. Further, both National and County governments will prepare an Annual Public Participation Report detailing the level of public participation in each level of government and the challenges experienced. Each level of Government will outline in the Annual Report how they will be addressed in the next year and submit the same to the Coordinating Agency established by the Office of the Attorney-General and Department of Justice. Both the national and county governments will pass legislation to establish the relevant mechanisms and institutions to address the following issues:

- (i) Provide a working definition of public participation;
- (ii) How public participation will be conducted and the responsibilities of key stakeholders;
- (iii) Who should participate and how;
- (iv) How each special interest group has been incorporated in the content of public participation;
- (v) Conditions for meaningful participation;
- (vi) Rights and duties of members of the public;
- (vii) Capacity building mechanisms for key stakeholders;
- (viii) Timelines for participation;
- (ix) How monitoring, evaluation and learning will be achieved; and
- (x) Resources for facilitating public participation.

#### **4.8. Monitoring, Evaluation and Learning**

The realization of the objectives of this policy will require consistent monitoring, evaluation and learning that will help policy makers to;

- (i) Quantify achievements gained in civic education and rights holder awareness leading to a more informed citizenry during public participation and development process;
- (ii) Identify critical success factors and both international and national best practices for public participation;

- (iii) Enhance and support access to information of the right holders to government procedures and operations; and,
- (iv) Embed learning into public participation processes for improved development.

A monitoring and results-based evaluation framework will be developed. This framework will specify, among other critical elements, performance targets, budgets and timelines against which the implementation of the Kenya Policy on Public Participation will be assessed. The Monitoring and Evaluation framework is directly linked with the budget framework to facilitate regular reviews and feedback on resource utilization.

The monitoring, evaluation and learning framework will address questions such as whether the participation exercise comprised a broadly representative sample of the population of the affected public; whether the issues of concern to the public, and relevant to the decision at hand, were taken into account in reaching a decision; whether timeliness, realistic milestones and deadlines were properly managed throughout the process; whether the involvement of the public was canvassed early enough; whether the public were able to participate in an effective forum; whether the public participation process provided the participants with the information, documents and data that they need to participate in an informed manner; whether the process for public participation sought out and facilitated the involvement of those potentially affected by or interested in a decision; whether the PWDs were effectively engaged; whether public participation process gave a feedback to participants how their input informed decisions made; and whether the outputs of monitoring and evaluation are used for learning and improving public participation.

#### **4.9. Review of the Policy**

The Kenya Policy on Public Participation will be reviewed every five years in line with the current and future needs of Kenya.

