

**DEVOLUTION OF GOVERNMENT IN KENYA AS A MEANS OF ENGENDERING  
PUBLIC PARTICIPATION IN GOVERNANCE**

**A dissertation submitted in partial fulfilment of the requirements of the degree LLM  
(Human Rights and Democratisation in Africa)**

**By**

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**29 October 2012**

## Plagiarism declaration

I, OCHIENG WALTER KHOBE, declare that the work presented in this dissertation is original. It has not been presented to any other university or institution. Where the work of other people has been used, it has been duly acknowledged.

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## **Dedication**

To my parents, Mr. Henry Ochieng Kobe and Mrs. Rose Adhiambo Ngare, whose many sacrifices and encouragement inspired me to fulfil my dreams.

## Acknowledgement

First and foremost I would like to thank the almighty God who heard my prayers and who gave me the strength to complete this dissertation and my studies in general.

My deepest thanks to my supervisor, Professor Atangcho Nji Akonombo for his excellent advice, guidance and the time he set aside to accommodate this study in an already busy schedule.

A word of appreciation is befitting to the Centre for Human Rights, University of Pretoria for giving me the opportunity to be part of this amazing experience. To the Class of 2012, thanks for being the family away from home. To Joyce Freda Apio, *merci beaucoup!* for making me realise that Yaoundé could be fun!

Finally let me thank my friends and colleagues, whose moral support from the beginning to the end enabled me to overcome the challenges that threatened to derail this project.

## Abbreviations

African Charter	African Charter on Human and Peoples' Rights
ICCPR	The International Covenant on Civil and Political Rights
ACDEG	The African Charter on Democracy, Elections and Governance
ECOWAS	The Economic Community of West African States
Systems Act	Municipal Systems Act
Structures Act	Municipal Structures Act
MFMA	The Municipal Finance Management Act

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## Chapter one

### Introduction

#### 1.1 Background to the study

Participative democratic theory finds its origin in the thought that full inclusion of the polity is a positive attribute of democratic governance. According to *Tocqueville*, citizen participation in the practices of governing is the political essence of citizenship.<sup>1</sup> Citizenship, for him, means to govern oneself with others without being dominated by the decisions, laws, procedures and policies that others have made. This implies that open dialogue with the public is the only means for the elected leadership to truly understand the needs of the citizenry; thereby opening up the decision-making process to include the voices of the public to fully incorporate their ideas.<sup>2</sup>

Participation is not just being involved in the process of selecting representatives, but engaging citizens during decision making.<sup>3</sup> It is arguable that it is at the local level where participation has the potential for its greatest effect.<sup>4</sup> Devolution facilitates governance at this optimal level by ensuring that decision making is brought closer to citizens.<sup>5</sup> As a system of governance, it ensures that the citizenry have a say in their affairs.<sup>6</sup> Devolution is therefore a system of governance that promotes a more democratic and participatory society.

Kenya's post-independence governance framework has been characterised by a highly centralised governance system traceable to the colonial era.<sup>7</sup> With the centralisation of both political and economic power, the government abandoned its role as an instrument in the service of the welfare of the people and became the property of a few.<sup>8</sup> Allocation of resources

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<sup>1</sup> A Tocqueville *Democracy in America* trans J Epstein (2000).

<sup>2</sup> D John 'From the public and its problems' in P Green (ed) *Key concepts in critical theory: Democracy* (1993) 120.

<sup>3</sup> JS Mill 'From considerations on representative government' in P Green (ed) *Key concepts in critical theory: Democracy* (1993) 32.

<sup>4</sup> C Pateman *Participation and democratic theory* (1970) 23.

<sup>5</sup> J Fox & A Josefina *Decentralization and rural development in Mexico: Community participation in Oaxaca's municipal funds program* (1996) 1.

<sup>6</sup> The relationship between devolution and democracy is discussed by C Souza 'Redemocratisation and decentralization in Brazil: The strength of member states' (1996) 27 *Development and Change* 529-55.

<sup>7</sup> Government of Kenya *Report of the Taskforce on Devolved Government* (2012) 10.

<sup>8</sup> M Kangu 'The strengthening of the unitary state' (2003) 5(1) *Report of the Constitution of Kenya Review Commission* 303.

and decision on development projects was done based on political patronage excluding citizens from having an input into governance processes leading to a feeling of marginalisation.<sup>9</sup>

In excluding local people from the making of decisions that affected their lives, centralisation failed to facilitate local solutions to local problems. The need to overhaul the governance framework to place the public at the centre of the management of the affairs, particularly, in matters of local development thus became a major objective of the struggle for constitutional reforms in Kenya.<sup>10</sup> The adoption of a devolved system of government in the Constitution of Kenya 2010 is a culmination of efforts to correct the ills associated with the centralised system of governance obtaining under the former legal order.

The Constitution gives prominence to citizen participation in all governance processes. It provides to the people of Kenya sovereign power which can be exercised either directly or through representatives who must be democratically elected.<sup>11</sup> Citizen participation is recognised in Article 10 of the Constitution as a national value and a key principle of governance. The state is enjoined to ‘encourage public participation in the management, protection and conservation of the environment.’<sup>12</sup> Moreover, parliament is required to ‘facilitate public participation in the legislative and other business of parliament and its committees.’<sup>13</sup> Crucially, the Constitution adopts a devolved system of government whose objective is to ‘enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them.’<sup>14</sup> This is buttressed by the requirement that residents must be involved in governance of urban areas.<sup>15</sup> Lastly, the Constitution requires the participation of citizens in law making and other functions of the county assembly and its committees.<sup>16</sup>

The central role the devolved system of government is envisaged to play in ensuring participatory governance is founded on the thought that devolution provides an institutional framework within which sub-national units of government as well as the population therein can meaningfully engage in decision making on matters affecting them directly.<sup>17</sup> This argument is

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<sup>9</sup> The World Bank ‘Navigating the storm, delivering the promise: With a special focus on Kenya’s momentous devolution’ (2011) 5 *Kenya Economic Update* vii.

<sup>10</sup> W Salad ‘Devolution promises to reduce marginalisation in Kenya’ in Kenya National Commission on Human Rights (2012) 11 *Nguzo za Haki: The devolution issue* 27.

<sup>11</sup> Article 1(1) & (4) of the Constitution.

<sup>12</sup> Article 69(d) of the Constitution.

<sup>13</sup> Article 118(1)(b) of the Constitution.

<sup>14</sup> Article 174 of the Constitution.

<sup>15</sup> Article 184 of the Constitution.

<sup>16</sup> Article 196 of the Constitution.

<sup>17</sup> JM Kauzya ‘Local governance capacity building for full range participation: Concepts, frameworks and experiences in African Countries’ Background Papers, 4<sup>th</sup> Global Forum on Re-Inventing Government, United Nations, (2002)363.

driven by the logic that the process of discerning and responding to local needs and aspirations is likely to be performed optimally by local institutions given their proximity to the requisite information. In addition, such local institutions can be held accountable by the local populations easily than remote institutions in centralised governance systems.

It should be noted that despite the emphasis on participatory governance, institutionalization of participatory practice is not automatic. Its success depends upon its administrative framework. Where the design and implementation is properly conceived, then this enhances the potential of a devolved system of government delivering on the promise of enhancing democracy and participatory governance.<sup>18</sup> However, devolution without adequate mechanisms to guarantee citizen participation is not sufficient to ensure adherence to the spirit of public participation in government. Thus citizen participation can be facilitated or hindered by a number of factors that is the concern of this study.

## 1.2 Problem statement and research questions

The devolved governance structure has been entrenched with the aim of promoting democratic and accountable exercise of power. Legal and policy frameworks have been put in place specifically to create spaces for ordinary people to participate in processes of governance. The framework is meant to ensure that powers of self-governance are devolved and that participation of the people in the exercise of public power of the state is guaranteed.

Implementation of similar initiatives in South Africa and Uganda has proved to be a serious challenge.<sup>19</sup> Studies have pointed out that where the design and implementation was not properly conceived, central government bureaucracies have been transferred to the local levels and the accompanying lack of accountability has stifled the aspired to public participation in governance.<sup>20</sup> *Nantondo*, for example, has identified the cost implication of public participation and lack of commitment by government officials as some of the causes of the failure to realise effective and meaningful public participation in local government processes.<sup>21</sup>

Against this backdrop, taking into account the ability of devolution to work for or against the enhancement of public participation in government, the structuring of state apparatus is

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<sup>18</sup> RC Crook 'Decentralisation and good governance in federalism' in *Federalism in a changing world-learning from each other*, Conference Reader for International Conference on Federalism, St. Gallen, Switzerland.

<sup>19</sup> G Houston (ed.) *Public participation in democratic governance in South Africa* (2001) 21.

<sup>20</sup> M Barret *et al* *Decentralisation and the social economics of development: Lessons from Kenya* (2007) 7.

<sup>21</sup> N Guwa 'Public participation in local government budgeting processes still wanting' (2008) 14(2) *The Local Government Transformer* 10.

pertinent in achieving the envisaged goal of deepening citizen participation and influencing of policies that directly affect their lives. This justifies the need to interrogate context specific features of Kenya's legal and institutional landscape that threaten the design and implementation of participatory governance initiatives. It also implicates the need to find means to enable adequate engagement and empowerment in governance at the sub-national level. Moreover, this initiative is crucial given that Kenyans expect better governance to flow from the twin initiatives of entrenching principles of participatory governance and the localising of decision making.

In order to investigate this problem, this study will be premised on the following research questions:

- I. What is the framework for devolution of government in Kenya?
- II. What are the opportunities for public participation in governance of the county governments in Kenya?
- III. What are the strengths and weaknesses of the architecture and design of the framework for public participation in governance of the county governments in Kenya? and
- IV. What are the reform options that Kenya should pursue to entrench an adequate public participation framework in governance within the county governments?

### **1.3 Assumptions underlying the study**

The following assumptions underpin this study:

- I. That devolution of government enhances public participation in governance;
- II. That the Kenyan devolved system of government has inadequate opportunities for public participation in governance;
- III. That Kenya's legal and institutional framework for facilitating public participation in governance within the counties is insufficient to guarantee the attainment of its objective; and
- IV. That Kenya needs to adopt both legal and institutional reform measures to guarantee public participation in governance of the county governments.

## 1.4 Objectives of the study

The aim of this study is to assess the potential and ability of the legal and institutional design of devolved governments in Kenya to facilitate citizen participation in governance. This general objective can be broken down to the following sub-objectives which this study aims to achieve:

- I. To identify the framework for the devolved system of government in Kenya;
- II. To identify the opportunities for public participation in governance within the devolved governments;
- III. To assess the strengths and weaknesses of the legal and institutional framework of public participation within the devolved governments; and
- IV. To identify reform options that can be undertaken to enhance public participation within the devolved governments.

## 1.5 Literature review

Decentralisation of government has been the subject of scholarly critique as an alternative to governance deficiencies of centralised government. Decentralisation has been studied regarding its claim in improving effectiveness of poverty reduction strategies, delivery of basic services and in relation to self-determination and minority rights.

In this regard, *Leonard* has focused on the claim that decentralised participatory democracy is a human right as it encapsulates the right to self determination.<sup>22</sup> She points out that decentralisation can enable the realisation of human rights albeit with the caveat that this does not follow automatically. However, she fails to address the issue of the interface between decentralisation and democratisation.

*Ahikire* interrogates the place of decentralisation in public sector reform.<sup>23</sup> She focuses on the decentralised system of government as conceptualised and practised in Uganda. Her study explores the place of decentralisation in furthering the implementation of human rights. She argues that 'the policy was designed to devolve powers and responsibilities for administration, planning and finance to the local levels where people can also participate in

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<sup>22</sup> J Leonard 'Decentralization and local governance enhancement: A human rights checklist' (2003) UNDP at <http://www.undp.org/governance/docs/DLGUD%20-%20Guides%20-%20Checklist%20for%20Decentralization%20andHuman%20Ri.pdf> (accessed 25 August 2012).

<sup>23</sup> J Ahikire 'Decentralisation in Uganda today: In the context of human rights' (2002) International Council on Human Rights Policy at <http://www.ichrp.org> (accessed 25 August 2012).

decision making of their respective areas.<sup>24</sup> She therefore fails to address the context specific issues that arise with respect to Kenya since her study focuses exclusively on Uganda.

*Ghai and Cottrell*<sup>25</sup> make general observations on the principles of self government and local responsibility as embodied in the Kenyan constitution.<sup>26</sup> They note that the objectives of devolution are in fact elaborations of the national values and principles. They further point out that the essential purpose of devolution is to spread the power of the state throughout the country and reduce the centralisation of authority which has been blamed for bad governance in Kenya.<sup>27</sup> Apart from a cursory remark that self governance will only be meaningful if there are political or semi-administrative units below the county government,<sup>28</sup> the authors have not delved into a critique as to the adequacy of the structures and mechanism for public participation.

*Warner et al* have focused on the role and preparedness of local authorities to take up service delivery as envisaged in the constitution.<sup>29</sup> They have not discussed the devolved government structure and its implication for public participation in governance. *Nyanjom*<sup>30</sup> looks at the administrative consequences of Kenya's shift to a devolved system of government. He examines the administrative and development imperatives of devolving power. On his part, *Kirira*<sup>31</sup> examines the fiscal consequences of Kenya's adoption of a devolved system of government. He examines the revenue and expenditure concerns consequent to the shift in system of government. *Nyanjom* and *Kirira* therefore fail to interrogate public participation within the county governments.

The literature reviewed either examines or take stock of the process and outcomes of devolution within countries where this system of government has been adopted. Although there have been studies of devolution in relation to governance and the role it can play in democratic reform, little effort has been made to examine devolution with regard to its claim of delivering participatory governance. In fact, regarding Kenya, there is no literature that has sought to

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<sup>24</sup> As above 1.

<sup>25</sup> YP Ghai & JG Cottrell *Kenya's constitution: An instrument for change* (2011).

<sup>26</sup> As above 119.

<sup>27</sup> As above 119.

<sup>28</sup> As above 135.

<sup>29</sup> M Warner *et al* *Kenya's urban development in the 21<sup>st</sup> century: The call for innovative initiatives from local authorities* (2011).

<sup>30</sup> O Nyanjom 'Devolution in Kenya's new constitution' (2011) Society for International Development, Constitution Working Paper No. 4.

<sup>31</sup> N Kirira 'Public finance under Kenya's new constitution' (2011) Society for International Development, Constitution Working Paper No. 5.

examine whether the structure of the devolved government in Kenya adequately guarantees participatory governance. For this reason, this study is unique and should be the first of its kind.

## **1.6 Significance of the study**

Failure to consider the consequences of devolving power to sub national units of government with the objective of providing opportunities for public participation in governance leads to the inability to determine whether the institutional framework adopted is effective to the realization of the desired aims. This study therefore seeks to remedy the gap occasioned by the absence of research on mechanisms for public participation in governance within the county governments in Kenya.

The present study will assist in highlighting the policy, legal and institutional gaps existing in the framework for citizen participation in governance within the counties. It should be handy both for operational work as a tool for quick information and for further analytical work as a guide to understand public participation within the counties. It is principally addressed to advocates for good governance and policy makers like politicians operating within a devolved system of government. The study is also beneficial to the public as it identifies avenues through which they can participate in administrative decision making, policy formulation and service delivery within their counties.

## **1.7 Research methodology**

This research is essentially qualitative in nature. It follows the exploratory research design. It involves desk-based study and critical literature review of the Constitution, relevant legislations, policy directives and literature on devolved system of government in Kenya. Data obtained from these sources are analysed in order to determine the opportunities for public participation in governance within the counties. In conducting the analysis, the study benefits from a comparative study of the best practices and challenges in deepening citizen participation within sub-national units in South Africa, Uganda and Tanzania.

## **1.8 Scope and limitations of the study**

There are two broad dimensions of citizen participation namely, indirect involvement and direct involvement. Indirect involvement acknowledges that elected officials and administrative bureaucrats govern on behalf of the citizenry as conceived in a representative democracy. Direct involvement envisages citizen involvement in governance and particularly in the decisions

of the state.<sup>32</sup> This study focuses on direct participation. This ultimately means that the study focuses on the role of the public in administrative decision making and formulation of policy and legislations at the county level. The study is also restricted to citizen participation in governance within devolved governments in Kenya. However, in order to interrogate options available to Kenya, references to other countries are made to inform the critique.

Given that Kenya's devolved governments will only be operational after the general elections scheduled for March 2013, the study is limited to an analysis of the legal and institutional framework established to undergird the system. This is informed by the reality that no practice has been generated at the time of the study.

## **1.9 Synopsis of chapters**

This study consists of five chapters. Chapter one principally sets out the theoretical framework of the study and the research problem. Chapter two interrogates the theoretical grounding of the concept of devolution. Chapter three examines the legal framework for the devolved system of government in Kenya. Chapter four analyses the legal and institutional framework for public participation in governance within the devolved governments. In so doing, the opportunities for public participation and the strengths and weaknesses of the institutional design is interrogated. Chapter five comprises of conclusions and recommendations drawn from the study.

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<sup>32</sup> K Yang & K Callahan 'Assessing citizen involvement: Efforts by local governments, public performance and management review' (2005) 29(2) *Public Performance and Management Review* 191.

## Chapter two

### Theoretical exposition of devolution

#### 2.1 Introduction

The central aim of this study is to assess the potential and ability of a devolve system of government to inculcate participatory governance in Kenya. It therefore behoves the study to create a degree of clarity on the concept of devolution. In this chapter therefore, the concept of devolution is located as a form of decentralisation and distinguished from other forms of decentralisation. In addition, the theoretical rationale for adoption of devolution to foster participatory governance is explored.

#### 2.2 Conceptual premise

The quality of governance is dependent on structures of rules, procedures and organisations.<sup>33</sup> These structures can take different forms ranging from the Constitution, to subsidiary legislations. It is these structures that collectively determine the governance framework in a country. Different governance frameworks will yield varying political, economic and social outcomes.<sup>34</sup> These differences emanate from the differences in the rules, organizing capabilities, social and political principles captured in the governance concept. Devolution the focus of this study is one such governance concept.

Devolution can be properly conceptualised when the role of a Constitution in organisation and management of governance is appreciated. In so organising state power, the Constitution can adopt either of two main approaches: first is the single dimensional approach and second is the multiple dimensional approach.<sup>35</sup> The single dimensional approach creates one level of government and systems to check the separation of powers between the horizontal organs of government. This approach results into a centralised government.

The multiple dimensional approach creates two or more levels of government as well as systems to check power vertically between the various levels and horizontally between the various organs at all levels. It is the latter approach that leads to decentralisation with two or more levels of coordinate governments. It combines self-governance at the local level and

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<sup>33</sup> SM Kimenyi & P Meagher 'General introduction' in SM Kimenyi & P Meagher (ed.) *Devolution and development: Governance prospects in decentralised states* (2004) 1.

<sup>34</sup> As above.

<sup>35</sup> Government of Kenya *Final report of the taskforce on devolved government* (2011) 15.

shared government at the national level. It is the multi dimensional approach that is the concern of this study.

## 2.3 Overview of decentralisation

The central theme that characterises scholarly definition of decentralisation is that it entails bringing decision making closer to the governed. It is regarded as a process through which power, functions, responsibilities and resources are transferred from central to sub national governments.<sup>36</sup> It is conceived as mechanism for bringing government closer to the governed by enhancing the capacity of the government to achieve local participation.<sup>37</sup>

According to *Mawhood*, decentralisation ‘occurs when national government shares some of its power with other groups, particularly those that are either geographically dispersed, or are responsible for specific functions, or are given jurisdiction over specified physical locations.’<sup>38</sup> The key elements to note in decentralisation are power, authority and responsibilities which are diffused intentionally to peripheral units from the centre to achieve predetermined objectives. *Litvack et al* defines decentralisation as ‘the assignment of fiscal, political and administrative responsibilities to lower levels of government.’<sup>39</sup> Fiscal, political and administrative instruments are used to achieve the transfer of responsibility to other levels of government. These instruments give rise to fiscal, political and administrative decentralisation.<sup>40</sup>

### 2.3.1 Forms of decentralisation

It is important to distinguish between different variants of decentralisation given that each form has its unique characteristics, policy implications and conditions for success. The frameworks for decentralisation comprise of a continuum – ranging from a centralised framework to the federal system. Devolution is one form of decentralisation framework that lies within the continuum. It is important to calibrate the contours of the different forms of decentralisation to avoid the oft folly of conflation.

#### 2.3.1.1 Deconcentration

Deconcentration is the ‘assignment of authority to public servants based in lower spheres or the field to make and implement executive decisions on behalf of the central

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<sup>36</sup> JM Kauzya *Decentralization: Prospects for peace, democracy and development* (2005) 23.

<sup>37</sup> V Azeem *et al Financing decentralised government: How well does the DACF work* (2003) 8.

<sup>38</sup> P Mawhood *Local government in the third world: The experience of tropical Africa* (1993) 4.

<sup>39</sup> Litvack J *et al Rethinking decentralization in developing countries* (1998) 4.

<sup>40</sup> As above 6.

government in their localities.<sup>41</sup> It is a form of administrative decentralisation without devolution or a form of local administration within centralisation since the authority to make decisions or exercise discretion remains within the centre.<sup>42</sup> Functionally, the object of deconcentration is to transplant the operations or workload of the central government to the periphery of the state whilst ensuring that the central state retains overall control of discharge of the dispersed functions.<sup>43</sup>

*Manor* views deconcentration as a form of decentralisation which ‘disperses agents of higher levels of government into lower level arenas. The agents remain accountable only to persons higher up in the system. The central government is not giving up any authority but simply relocating its officers at different levels or points in the national territory.’<sup>44</sup> In other words, it is a power relationship within the same organisation.<sup>45</sup> He further states that in practice deconcentration ‘tends to constitute centralisation, since it enhances the leverage of those at the apex of the system.’<sup>46</sup> It guarantees central control and direct accountability to the centre.

Deconcentration is thus considered to be the weakest form of decentralisation. This is founded on the fact it merely a shift of responsibilities from central government officials in the capital city to those working in regions, provinces or districts. It ensures that the wishes and interests of the central government are not compromised.<sup>47</sup> Although it may lead to greater access and more interface with central government services, it does not allow any participation by the public in decision making.

### 2.3.1.2 Delegation

Delegation is the ‘transfer of selected public decision-making and administrative functions to autonomous or semi-autonomous organisations as agents of the central government.’<sup>48</sup> According to *Rondinelli et al*, delegation ‘transfers managerial responsibility for specifically defined functions to organisations that are outside the regular bureaucratic structure

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<sup>41</sup> R Crook & J Manor *Democracy and decentralisation in South-East Asia and West Africa: Participation, accountability and performance* (1998) 18-20.

<sup>42</sup> As above.

<sup>43</sup> GS Cheema & DA Rondinelli (eds.) *Decentralisation and development: Polity implementation in developing countries* (1983) 18-19.

<sup>44</sup> J Manor *The political economy of democratic decentralisation* (1999) 5.

<sup>45</sup> G Hyden *No shortcuts to progress: African development management in perspective* (1983) 85 Deconcentration is regarded as the weakest form of decentralization. It is mostly prevalent in unitary states where central government passes some of the responsibilities to the regions, provinces and districts.

<sup>46</sup> Manor (n 44 above) 5.

<sup>47</sup> C Opon *Towards an integrated decenralisation policy in Kenya* (2007) 36.

<sup>48</sup> As above 20-22.

and that are only indirectly controlled by the central government.<sup>49</sup> The organisations are ultimately accountable to the central government.<sup>50</sup> *Haque* describes delegation as ‘the transfer of functions to the local level but with the ultimate responsibility lying with the central government.’<sup>51</sup>

In sum, delegation is when the central government allocates some of its functions to the sub-national levels to carry out, but not to take full responsibility for and without abrogating its own public accountability for those functions and without prejudice to its right to retract the functions.<sup>52</sup> This usually happens through executive fiat rather than a comprehensive legal framework. It is therefore susceptible to abrupt policy shifts. Lastly, it does not adequately facilitate public participation at the grassroots due to the fact that ultimate responsibility for decision making is retained by the central government.

### 2.3.1.3 Devolution

Devolution is generally defined as ‘a process of transfer of political, administrative and fiscal management powers between the central government and lower levels of government, primarily operating at city and regional levels.’<sup>53</sup> It is not just a linear process of power transfer from national to sub-national level but also involves some degree of cooperation between the different levels of government. According to *Rondinelli et al* it ‘is the creation or strengthening-financially or legally of sub-national units of government, the activities of which are substantially outside the direct control of the central government.’<sup>54</sup> This form of decentralisation results in the permanent or semi-permanent placement of power to local units usually through legislative and constitutional recognition. It is an ‘inter-organisational transfer of power from the centre to institutions that are outside the general command structure of the centre.’<sup>55</sup> The recipients of such powers, usually sub-national governments, exercise these powers with a significant degree of autonomy although the centre still maintains supervisory powers. The sub national units are accountable to their constituencies instead of the central government as is the case with deconcentration and delegation.

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<sup>49</sup> DA Rondinelli *et al Decentralization in developing countries: A review of recent experience* (1984) 15.

<sup>50</sup> MJ Balogun ‘The scope for popular participation in decentralization, community governance and development’ in *Regional Development Dialogue* (2000) 21.

<sup>51</sup> MS Haque ‘Local governance in developing nations: Reexamining the question of accountability’ *Regional Development Dialogue* (1997) 18.

<sup>52</sup> Cheema & Rondinelli (n 43 above) 18-19.

<sup>53</sup> Potter JG *Devolution and globalization: Implications for local decision-making* (2001) 46.

<sup>54</sup> Rondinelli (n 49 above) 19.

<sup>55</sup> Hyden (n 45 above) 85.

In this regard, devolution is broader than deconcentration as it encompasses more than just the transfer of administrative powers. In addition, the authority to make policy decisions in the political, administrative and fiscal spheres is conferred on the sub-national entities by law.<sup>56</sup> Thus, while de-concentration manifests low autonomy and central accountability, devolution on the other hand is characterised by high autonomy and downward accountability.<sup>57</sup> This implies that in devolution, the sub national entities are not directly accountable to central government although they have to work within the Constitution and rules set by it.<sup>58</sup> It must be noted that in contrast to federations, devolved levels of government do not share in sovereignty as it happens with federal units. The powers and responsibilities of the devolved levels of government are derived from and conferred by the central government.

### 2.3.1.4 Federalism

Federalism involves two or more states having a common government by dint of political association but the arrangement guarantees that member states retain a measure of internal autonomy. The constitutional entrenchment of two or more levels of government is therefore a distinctive feature of federal arrangements. The concept of federalism is founded on the idea that a political organisation should balance between 'political integration and political freedom by combining shared rule on some matters and self-rule in various forms on others.'<sup>59</sup>

The linkage between decentralisation and federalism stems from determining to what extent and the type of services for which central authorities should transfer responsibility and resources to local levels in order to most effectively serve the nation. Both the notion of federalism and decentralisation are based on the principle of subsidiarity which holds that 'a central authority should play a subsidiary role performing only tasks that cannot be effectively performed at a more local level.'<sup>60</sup> The distinction between devolution and federalism is that in devolution the local unit remains linked to the central government and other units in the political system through arrangements of mutual support and reciprocity.<sup>61</sup>

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<sup>56</sup> A Omollo 'Devolution in Kenya: A critical review of past and present frameworks' in Mwenda AK (ed.) *Devolution in Kenya: prospects, challenges and the future* (2010) 14-35, 17.

<sup>57</sup> A Oloo *Devolution and democratic governance: Options for Kenya* (2006) 5.

<sup>58</sup> DM Muia 'Devolution of governance to districts in Kenya: A case study' In Kibua TN & Mwabu G (eds.) *Decentralization and devolution in Kenya: New approaches* (2008) 77-133.

<sup>59</sup> J Madison *et al The federalist* (1987) 515.

<sup>60</sup> CB Barret *et al Decentralization and the social economics of development: Lessons from Kenya* (2007).

<sup>61</sup> Oloo (n 57 above) 4.

## 2.4 Basic features of devolved governments

Scholars have identified characteristics that devolved governments should embody are firstly, that the sub national units should have autonomy and independence from the centre. Secondly, the units ought to have clear and legally recognised geographical boundaries over which to exercise authority and perform public functions. Thirdly, they should be accorded corporate status and the power to raise sufficient resources to carry out functions.<sup>62</sup> Lastly, the sub national governments should be perceived by the people as belonging to them. This means that in their provision of services, they satisfy the needs and remain subject to the control, direction and influence of the locals.<sup>63</sup>

## 2.5 Devolution and public participation

Scholars have advanced theoretical rationales for devolution as a means of enhancing democratic governance.<sup>64</sup> These are premised on the understanding that devolution gives decision-making power to the local level thus carries with it the potential to create a responsive administration at that level. Devolution is also credited with opening up opportunities for public participation in state affairs. People in rural and urban areas are conferred upon opportunities to influence decisions on numerous matters of local concern. Governments and officials are brought at closer proximity to the people and thus become more responsive and compelled to be more accountable.<sup>65</sup> In the end this inculcates the practices of participation.

Devolution has also been credited with improvement of democracy at grassroots level or to 'give power to the people by giving power and opportunities to the local people to elect local leaders.'<sup>66</sup> It is also argued to further participation by increasing opportunities for citizens to participate and hold their leaders accountable for their actions and omissions. *Smith* sums up this argument as follows '...devolution is said to strengthen accountability, political skills and national integration....it promotes liberty, equality and welfare'.<sup>67</sup>

If properly designed, devolution is therefore likely to reap more benefits than other forms of decentralisation because it has a great potential to promote local accountability, participatory development, representative democracy and good governance.

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<sup>62</sup> Cheema & Rondinelli (n 43 above) 22-24.

<sup>63</sup> Oloo (n 57 above) 5.

<sup>64</sup> Cheema & Rondinelli (n 43 above) 14-17.

<sup>65</sup> J de Visser *Developmental local government: A case study of South Africa* (2004) 24.

<sup>66</sup> Crook & Manor (n 41 above) 24.

<sup>67</sup> Smith BC *Decentralization: The territorial dimension of the state* (1985) 4-5.

### 2.5.1 The linkage between the right to participate in government and devolution

The right to participate in government is a facet of good governance as it ensures effective, transparent and accountable discharge of public responsibility.<sup>68</sup> This betokens creation of institutions that are efficient and accountable – whether political, judicial, administrative or economic- in order to promote among other things, human rights, the rule of law and democracy. Ultimately, the right ensures that people are free to participate in, and be heard on, decision that affect their lives.<sup>69</sup>

The right to participate in government is guaranteed in article 13 of the African Charter on Human and Peoples' Rights (African Charter).<sup>70</sup> The provision guarantees the right to every citizen to freely participate in government, either directly or through freely chosen representatives.<sup>71</sup> It also confers on every citizen the right of equal access to the public service and public property of his country.<sup>72</sup> The right is also expressly guaranteed under article 21 of the Universal Declaration of Human Rights,<sup>73</sup> and article 25 of the International Covenant on Civil and Political Rights (the ICCPR).<sup>74</sup> The ICCPR guarantees not only the right but also the opportunity to take part in the conduct of public affairs. This has been viewed as imposing an obligation on states to take positive steps to ensure that their citizens have an opportunity to exercise their right to participate in public affairs.<sup>75</sup>

The nature and typical functions of sub national governments at the local level makes this level of government the most appropriate for the enjoyment and the exercise of the right to participate in government.<sup>76</sup> Devolution of government as a means for the realisation of the right to participate in governance gets legal basis through entrenchment in the African Charter on Democracy, Elections and Governance (ACDEG). The overarching objective of ACDEG is the promotion of good governance –principles that include a representative system ensured through

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<sup>68</sup> K Hope 'The UNECA and good governance in Africa' Paper presented at the Harvard International Development Conference 4-5 April 2003, Boston, Massachusetts, 2.

<sup>69</sup> As above.

<sup>70</sup> African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc CAB/LEG/67/3 Rev 5, 21 (1982) 58 *International Legal Materials*.

<sup>71</sup> Article 13(1) of the African Charter.

<sup>72</sup> Article 13 (2) & (3) of the African Charter.

<sup>73</sup> Universal Declaration on Human Rights, GA Res 217 (III), 1948.

<sup>74</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200(XXI) A, U.N. Doc. A/RES/2200(XXI).

<sup>75</sup> Office of the United Nations High Commissioner for Human Rights, International Covenant on Civil and Political Rights, General Comment No. 25, (1996) para. 1, [www.unhcr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?Opendocument).

<sup>76</sup> CM Bosire 'Local government and human rights: Building institutional links for the effective protection and realization of human rights in Africa' (2011) 11 *African Human Rights Law Journal* 147, 151.

regular, free and fair elections and citizen participation in governance and development.<sup>77</sup> Article 34 of ACDEG requires member states to ‘decentralize power to democratically elected local authorities as provided in national laws.’ Furthermore, article 36 calls on state parties to ‘integrate traditional leadership systems into formal democratic processes at the local level.’ These two clauses anchor sub national democracy within the African human rights system.<sup>78</sup>

At the sub regional level, the Economic Community of West African States (ECOWAS) Protocol on Good Governance and Democracy provides, among other things, that ECOWAS states party to the protocol shall ensure ‘[p]opular participation in decision making, strict adherence to democratic principles and decentralisation of power at all levels of governance’.<sup>79</sup> In other regional human rights systems, recognition of this link is evident in the Preamble to the European Charter of Local Self-Government<sup>80</sup> which recognises ‘that the right of citizens to participate in the conduct of public affairs can be exercised most directly at the local level.’<sup>81</sup>

Starting from the premise that devolution empowers the citizenry to participate in a country’s social, economic and political processes. It follows that a devolved system of government provides equal opportunities to all citizens by creating conditions that would encourage their input in the country’s governance. Moreover, it is also arguable that it empowers citizens to hold public officials accountable for their conduct, omissions and decisions. In sum, the system broadens a country’s democratic space and enhances citizen’s political participation.<sup>82</sup>

## 2.6 The case against devolution

Devolution, like other forms of decentralisation, have been criticised for not being efficacious in guaranteeing better governance and for failing to incentivise improved economic performance. Examples of such instances include the fact that, decentralisation may reduce the ability of the national government to redistribute resources and therefore the ability to assist the less developed sub national units. In addition, decentralisation may ‘lead to the capture of local

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<sup>77</sup> Article 2 of the African Charter on Democracy, Elections and Governance (2007) in Heyns & Killander *Compendium of key human rights documents of the African union* (2010) 4 131.

<sup>78</sup> K Mutakha & C Bosire ‘AU Charter on Democracy, Elections and Governance: through a local government lens’ 14 (4) *Local Government Bulletin* 5.

<sup>79</sup> Article 1(d) of the Economic Community of West African States Protocol on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (2008) S Ebobrah & A Tanoh *Compendium of african sub-regional human rights documents* (2008) 220.

<sup>80</sup> Council of Europe ‘European Charter of Self-Local Government’ European Treaty Series 122.

<sup>81</sup> Paras 4 & 5 of the Preamble to the Charter.

<sup>82</sup> MK Mbondenyi ‘Enhancing the right to political participation through a devolved system of government: The case of Kenya’s new constitutional dispensation’ R Kimotho (ed.) *Nguzo za Haki* (2012) 15.

governments by the political elites, especially if decentralisation rules and systems are not well designed, and hence allow the local politicians to use the local resources to consolidate their hold on to political power through patronage.<sup>83</sup> Contrary to such claims, it can be safely argued that, the above mentioned disadvantages of decentralisation are not permanently attached or associated with decentralisation, but are a result of improperly designed decentralisation policies.<sup>84</sup>

## 2.7 Conclusion

The study therefore adopts the term devolution as encompassing the political, administrative and fiscal dimensions of decentralisation. It also identifies bringing the government closer to the people and fostering public participation in governance as central to the role of devolved structures of government.

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<sup>83</sup> Guwa (n 21 above) 10.

<sup>84</sup> de Visser (n 65 above)33.

## Chapter three

### Legal framework for devolved government in Kenya

#### 3.1 Introduction

Kenya's struggle for constitutional reforms has its roots in the desire to correct deficiencies in its post-independence governance framework which was premised upon the highly centralized system started in the colonial days.<sup>85</sup> In excluding local people from the making of decisions that affected their lives, centralization failed to facilitate local solutions to local problems. This occasioned wastage of resources and misguided priorities. Frustrations arising from the centralized system laid the ground for the struggle for the democratization reforms of the 1990s and for the Constitution of Kenya, 2010.<sup>86</sup> The adoption of the Constitution of Kenya 2010 aims at fundamentally altering the governance through far reaching reforms. Of these, devolution of political power, responsibilities and resources have the most profound and transformative impact on governance and management of resources.

The Constitution establishes a republic founded upon the idea of all sovereign power belonging to the people of Kenya and the establishment of two levels of Government namely: the national government and the county government.<sup>87</sup> The Constitution provides for the devolution of legislative and executive powers whereas the judicial powers are not devolved. The Constitution further creates 47 counties with delineated functions and responsibilities.<sup>88</sup>

#### 3.2 Kenya's cooperative system of devolved government

Devolution comes in various forms depending on the context of each country.<sup>89</sup> Indeed Kenya has adopted a form that is unique to itself. It is based on Article 6(2) of the Constitution which describes the governments at the two levels as being distinct and inter-dependent and which conduct their mutual relations on the basis of consultation and cooperation. It is not based

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<sup>85</sup> Government of Kenya (n 35 above) 10.

<sup>86</sup> Salad (n 10 above) 27.

<sup>87</sup> Article 1(4) of the Constitution.

<sup>88</sup> Article 6(1) and Schedule 1 of the Constitution.

<sup>89</sup> The nature of intergovernmental relations depends on whether the core of the normative framework is based on competitive devolution or cooperative devolution. Competitive devolution assumes 'the inherent competition for power between the federal and state governments and one can gain power only at the expense of the other' DC Nice *Federalism and the politics of intergovernmental relations* (1995) 5-6; Cooperative devolution on the other hand, emphasizes cooperation and coordination in contrast to inter-jurisdictional competition. See J Kincaid & GA Tarr (eds.) *Constitutional origins, structures and change in federal countries: A global dialogue on federalism* (2005) 433.

on the principle of absolute autonomy but instead, on that of inter-dependence and cooperation. The system combines a measure of autonomy and inter-dependence leading to a cooperative system of devolved government. Cooperative devolved government is founded upon three relational principles: the principles of distinctness, interdependence and the principle of consultation and cooperation.<sup>90</sup>

The national and county levels of government are distinct in their constitutional functions, institutions, resources and legal frameworks. They are coordinate and not subordinate to each other. None is mere agent of the other and neither can be abolished by the other. Distinctness in this sense rules out the concept of hierarchy as a relational principle. In effect, the levels of government must have the freedom to make decisions in the functional areas assigned to them by the Constitution without undue interference from the other. This implies that the national and the county governments have to work in cooperation because they must be distinct from each other. The county government is not a mere agent of the national government but is in fact distinct and draws its authority direct from the Constitution. Its functions are clearly allocated and defined by the Constitution. This means that the devolved units are not under any obligation to refer to or seek authority from the central government in order to make or implement decisions that fall within their exclusive jurisdiction. Where a level of government has been vested with exclusive functions the other levels of government must respect this and thus avoid undue interference with performance of such functions.

Entrenchment of the principle of interdependence requires a certain measure of mutual respect between the national and county levels of government. The Constitution in this regard requires the national and the county government to perform their functions and exercise their powers in a manner that respects the functional and institutional integrity of each other. This also implies national and county governments respecting the constitutional status and institutions of government within each level of government.<sup>91</sup> The devolved unit is to recognise that it is part of the larger state. This is why mechanisms for the relationship between the central government and the devolved units have been put in place in form of a National and County Government Co-ordinating Summit and the Intergovernmental Relations Technical Committee.<sup>92</sup> Because some issues of public concern cut across different levels of government the efficient and effective performance of such functions require the cooperation of the different levels of

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<sup>90</sup> R Simeon & DP Conway 'Federalism and the management of conflict in multinational societies' in J Tully & A Gagnon (eds.) *Multinational democracies* (2001) 338, 345.

<sup>91</sup> Article 189(1)(a) of the Constitution.

<sup>92</sup> Sections 7 & 11 of the Intergovernmental Relations Act, 2012.

government. The Constitution has expressly underscored the need for mutual respect and complementarity among these levels of government.

The Constitution requires that the national and county levels of government should cooperate with, assist, support and consult each other and, as appropriate, implement the legislation of the other level of government. The national and county governments are also obligated to liaise with each other for the purposes of exchanging information, coordinating policies and administration and enhancing policy.<sup>93</sup> This envisages an intergovernmental dialogue on the basis of consultation and cooperation.

Cooperative government requires a system of co-operation and constructive intergovernmental relations within each separate level and also across all spheres of government. Consequently, the principles and requirements of co-operative government have been described as means of ensuring that all levels of governments have a say and influence on matters that implicate their interests.<sup>94</sup> Ultimately, it is arguable that cooperative government recognises the complex nature of a government functioning within a modern society and takes this into account by ensuring that the various components of government function together as a cohesive unit.

As pointed out in the preceding discussions in this part, the overall leitmotif of the philosophical basis of the devolved government structure in the Constitution is one of autonomously functioning county governments. However, due to policy formulation and standard setting functions vested in the national government, a limited measure of oversight over county governments has been assigned to the national government. The Constitution has prescribed restricted circumstances for intervention in the affairs of the county government and suspension of a county government by the President of the Republic.<sup>95</sup>

The national government may intervene in the affairs of a county government if that particular county government is unable to perform satisfactorily the functions assigned under the Constitution.<sup>96</sup> A county government is deemed to be unable to perform its functions if either the county assembly fails to perform its legislative functions or the county executive committee fails to implement legislation or manage service delivery.

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<sup>93</sup> Articles 6(2) and 189(1)(b) and (c) of the Constitution.

<sup>94</sup> GE Devenish *A commentary on the South African constitution* (1998) 201.

<sup>95</sup> Articles 190, 192 and 225 of the Constitution.

<sup>96</sup> Article 190(3)(a) of the Constitution.

Although the Constitution protects the county governments from dissolution by the national government, it confers on the President of the Republic authority to suspend county governments on the grounds of ‘emergency arising out of internal conflict or war or in any other exceptional circumstances.’<sup>97</sup> It is arguable that these grounds are justifiable given that the system of government is conceptualised as a unitary state and the president is conferred with a general supervisory role over the entire nation. Moreover this power is checked by the prescription of an elaborate procedure to be followed in exercising powers of suspension. The president can only suspend a county government in exceptional circumstances upon the recommendation of an Independent Commission of Inquiry. To complete the checks, the senate must approve the suspension and is also vested with powers to terminate the suspension.<sup>98</sup>

### **3.3 Structures and institutions of devolved governance**

The structures and institutions of devolved governance provide for the arrangement, composition and configuration of the county governments. This entails the framework and the working of the supporting institutions that enable the county governments to deliver on their mandate. County governance is vested in the county assembly and the county executive.<sup>99</sup> The former playing the legislative role while the latter carries out the executive functions of the county.

#### **3.3.1 County assemblies**

The county assembly is established under article 176(1) of the Constitution. Membership of the county assembly comprises of: elected representatives to represent each ward within the county, special seat representatives of such a number to ensure that no more than two-thirds of membership of the assembly is of the same gender, representatives of marginalised groups which group comprises of representatives of persons living with disabilities and the youth and a speaker, who is an *ex officio* member.<sup>100</sup>

The county assembly serves a representative function in the governance process. This function involves being the channel through which public input is infused into law making and oversight over the county executive. It achieves this by reviewing the county executive committee’s development-planning proposals and supervising the committee’s implementation

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<sup>97</sup> Article 192 of the Constitution.

<sup>98</sup> Article 192 of the Constitution.

<sup>99</sup> Article 176(1) of the Constitution.

<sup>100</sup> Article 177(1) of the Constitution.

of priorities.<sup>101</sup> To discharge this representative role, the capacity of county assemblies to obtain quality public input and effectively incorporate this input into its legislative and oversight processes is crucial.

In discharging its legislative function, the county assembly enacts laws, direct and limits the power of the Governor and the county executive as it discharges its oversight obligations.<sup>102</sup> County legislation deals with matters that are within the jurisdiction of the county. These include: receiving and approving plans and policies for exploitation and management of the county's resources and the development of county's infrastructure and institutions, approval and oversight of budgets and development projects; supervision of other units within the county; monitoring the execution of projects and assessing and evaluating their impact; approval of investment decisions and loans.<sup>103</sup> In effect it is to control and direct the economic activities within the county and ensure equitable and acceptable development and use of resources.

Both the national and the county governments can legislate in a matter that falls within the final area of concurrent national and county legislative competence.<sup>104</sup> The doctrine of preemption does not apply as legislation enacted by both spheres of government can bear on the same matter so long as they are not inconsistent. The predominance of national legislation becomes clear, however, as soon as a conflict ensues between national and county legislation. The Constitution regulates circumstances in which there is a conflict between national and county legislation. It outlines the conditions which national legislation must meet in order to prevail over county legislation thus creating the impression that counties are granted more autonomy.<sup>105</sup> The diluted nature of this county autonomy becomes apparent, however, when one looks at the broad circumstances under which national legislation can prevail over county legislation in areas of concurrent competencies. National legislation, according to article 191(2) and (3) of the Constitution, can prevail over county legislation 'if the national legislation applies uniformly throughout Kenya and is aimed at preventing unreasonable action by a county that is prejudicial to the economic, health or security interest of Kenya or another county; or impedes the implementation of national economic policy.' Moreover, in extreme circumstances, the national government can exercise powers of intervention as permitted by article 192 of the

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<sup>101</sup> Article 185 of the Constitution.

<sup>102</sup> Article 185 of the Constitution.

<sup>103</sup> Article 186 & Fourth Schedule of the Constitution.

<sup>104</sup> Article 186(2) of the Constitution.

<sup>105</sup> Article 191 of the Constitution.

Constitution. The intervention is envisaged where a county fails to discharge either its executive or legislative obligation under the Constitution or any other legislation.

This leads to an assessment that the counties enjoy limited legislative autonomy. First, they are provided with a limited area of exclusive legislative competence. The minimal emphasis on county autonomy is also apparent from the fact that the national government enjoys overriding power over almost all legislative areas of county government. Considering the scheme of distribution of power as currently adopted, however, it would only be fair to conclude that counties enjoy a circumscribed legislative autonomy.

It is therefore crucial that in discharging their legislative function, the county assemblies should take into account public participation. The South African Constitutional Court has opined that public participation in the legislative process is at the heart of participatory democracy. In the *New Clicks* case, the court opined that '[t]he Constitution calls for open and transparent government and requires public participation in the making of laws by parliament and deliberative legislative assemblies.'<sup>106</sup> The Court reiterated this argument in the *Doctors for Life* case and pointed that bodies charged with legislative functions have the twin obligations providing for meaningful opportunities for participation in law making process and taking of measures to enable the public to take advantage of the opportunities provided.<sup>107</sup> This duty to facilitate public participation imposes an obligation on the county assemblies to adopt any mechanism to provide access to the county assemblies, provide an opportunity to the public to submit representations and submissions, providing a forum for public hearings for oral submissions and summoning people to testify before the county assembly and its committees.<sup>108</sup>

The potential relevance of county assemblies in facilitating public participation in governance is gleaned from the powers and competences that the Constitution accords to these bodies. It has been submitted that the counties enjoy a very limited legislative autonomy. Despite this reality, the county assemblies play a crucial role in governance at the sub national level thus a need to ensure that its representative capacity is optimal. The capacity of the county assembly in form of legal and political framework should be strong to guarantee effective representation and provide the human and financial resources necessary to support the

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<sup>106</sup> *Minister of Health & Another v New Clicks South Africa (Pty) Ltd & Others* (2006) 1 BCLR 1 (CC) at 344 -47.

<sup>107</sup> *Doctors for Life International v the Speaker of the National Assembly and Others* (2006) 12 BCLR 1399 (CC) at 24.

<sup>108</sup> *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2006 (5) BCLR 622 (CC).

representative function. This is the motivation for the Constitutional requirement that in the performance of their duties, county assemblies conduct their business transparently, including facilitating public and media participation in their proceedings and publishing legal materials in the Kenya Gazette.<sup>109</sup> However, the absence of procedural mechanisms through which public input and comment on legislation can be undertaken is a glaring inadequacy of the system. Moreover there is no mechanism for the dissemination of information about legislative initiatives to citizens. It is imperative that members of the public are provided with sufficient information on how their views can be channelled to the assembly, how to lobby for their interests and monitor the work of the county assemblies. The current framework therefore fails to ensure that members of the public are adequately assisted to participate in the functioning of the county assemblies.

### **3.3.2 County executive committees**

The Constitution has created an autonomous county executive, controlled by locally elected representatives. Executive authority is vertically divided between the central government and the county governments, ensuring political autonomy and governance for county governments in defined geographical areas. The executive authority of the county is vested in the county executive committee which is composed of the county governor, the deputy county governor, and members appointed by the county governor with the approval of the county assembly, but who shall not be members of the county assembly.<sup>110</sup> The members of the executive committee are accountable to the county governor for the performance of their functions and exercise of their powers.

The county executive committee shall act as advisor to its legislative assembly, implement county and national legislation, originate legislation and manage the affairs of the county.<sup>111</sup> The roles of the county executive committee include: implementation of both national and county legislation, management and coordination of the functions vested upon it by the Constitution or national legislation.<sup>112</sup> In discharging these functions, the county executive committee proposes legislation for consideration by the county assembly and provide the county assembly with full and regular reports on matters relating to the county.

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<sup>109</sup> Articles 196 & 199 of the Constitution.

<sup>110</sup> Article 179 of the Constitution.

<sup>111</sup> Article 183 of the Constitution.

<sup>112</sup> Sections 36 and 37 of the County Government Act, 2012.

The structure is geared towards the creation of an autonomous county executive, controlled by locally elected representatives. It achieves the aim of effectuating of dividing executive authority between the national and the county governments thus ensuring political autonomy in the governance of county governments. The county executive committee is vested with the function of policy making and political representation, these twin roles implicate the need for democratic decision making. The wishes of the people should be determined and incorporated in the preparation and implementation of policies and plans for the county.

### **3.4 Functions and resources of county governments**

Division of powers between the national government and the devolved government is an important area where the state provides practical expressions to self rule. The centrality of distribution of powers is patently unquestionable. As noted by *Watts*, however:<sup>113</sup>

where particular distribution of powers has failed to reflect accurately the aspirations for unity and regional autonomy in a given society, there have been pressures for a shift in the balance of powers, or, in more extreme cases, even for abandoning the federal system.

Based on this understanding, the Constitution has assigned the county and national governments powers and functions in order to delineate the remit of competence of each level of government. The county government's functions and powers are targeted at those sectors that implicate participation of the public in service delivery. These areas require the input of the public to identify the needs and priorities of those targeted to benefit from the services.

The functions of the county governments are designated as either exclusive or concurrent functions.<sup>114</sup> Key sectors where the county governments are envisioned to play a crucial role include: Agriculture, health, planning and development, pollution control, public works, roads, transport, public entertainment, soil and water conservation, forestry, trade development and regulation, tourism, animal welfare and cultural activities.<sup>115</sup>

In theory, sub national levels of government should have constitutionally guaranteed fiscal autonomy to possess the financial capacity to discharge their expenditure responsibilities.

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<sup>113</sup> RL Watts *Comparing federal systems in the 1990s* (1996) 103.

<sup>114</sup> Exclusive functions are those fully assigned to the county government, shared or concurrent functions are those that are performed by both levels of governments while residual functions are those carried out by either government because it is not clear who should carry them. However, it is noteworthy that most residual functions are taken up by the national government.

<sup>115</sup> Fourth Schedule of the Constitution.

A disparity between the responsibilities of sub national governments and their revenue-raising authority, it is argued, limits the powers of constituent governments. The common feature of financial arrangements of many devolved governments is the dominance of the national government.<sup>116</sup> The national government takes the lion share of revenue collected while most sub national governments have limited revenue generating responsibilities. Even when sub national governments are entrusted with taxing powers, they do not have powers over most of the taxes that generate high revenue. Those revenue sources are left to the national government. The sub national units in the circumstances rely on intergovernmental transfers.

The counties enjoy a very limited taxation power. Local taxes are stipulated as sources of finance for devolved governments. According to article 209(3) of the Constitution, a county government 'may impose property rates, entertainment taxes and any other tax that it is authorised to impose by an Act of Parliament.' This provision denies access to broad-based taxes like income tax and sales taxes that are strong sources of revenue. The Public Finance Management Act, 2012 'provides for the effective management of public finances by the national government and the county government.'<sup>117</sup> The legislation fails to grant the county government any other taxation power beyond that contemplated in the Constitution.

This leaves the national government with extensive powers of taxation, making it the fiscally dominant sphere of government. The tax regime accords the national government extensive taxation powers while the county governments have little own source of revenue. However, given the disparity in resource endowment between counties, provisions for the equity in the disbursement of national revenue to counties have been made. Application of principles of equity implies that the various county governments will not receive equal amounts of allocations under the inter governmental fiscal transfer system but that factors including levels of development of each county, poverty indices, population size and geographic size is to be taken into account when determining allocations. The Commission on Revenue Allocation has been charged with the responsibility of equitable and fair allocation of resources between the national and county levels of government and sharing resources among the counties.<sup>118</sup> The total dependence of the counties on intergovernmental transfers is further reinforced by the fact that the counties have little control over the use of the transfers.

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<sup>116</sup> L Rocher *et al* 'Recognition claims, partisan politics and institutional constraints: Belgium, Spain and Canada in a comparative perspective' in Tully J & Alain GA (eds.) *Multinational democracies* (2001) 81.

<sup>117</sup> Short Title, Public Finance Management Act, No. 18 of 2012.

<sup>118</sup> Articles 202, 204 & 215 of the Constitution.

The degree of autonomy by the sub national units is affected not only by the extent to which they rely on transfers but also by the level of expenditure autonomy they enjoy which is determined by whether the transfers are conditional or unconditional in character. The Constitution envisages that the Cabinet Secretary responsible for finance may stop the transfer of at most fifty percent funds to a county government on account of serious breach or persistent material breaches of any measure imposed by legislation to ensure expenditure control and transparency in the government.<sup>119</sup>

The intergovernmental competence between the national and county government shows that most of the functions fall within the jurisdiction of the national government. Failure to devolve key functions like education, social welfare, children's and gender programmes and security means that even if public participation is facilitated at the county level, there will be no public input in decision making in the sectors falling within the competence of the national government. This is bound to frustrate the public as the top down approach to decision making associated with the national decision making will be perpetuated.<sup>120</sup> In fact this is arguably one of the glaring inadequacies of Kenya's devolved system. The same problem has arisen in South Africa where it has been noted that the limited competence of the local governments has led to disillusion as the public often direct complaints on service delivery to the municipalities whilst the issues fall within the powers and functions of either the provincial or the national government.<sup>121</sup>

The inter governmental competence, roles, functions and fiscal frameworks must be understood by the public in order for them to appreciate whether it is the national or the county government that has been mandated to deal with a particular sector. It is only where members of the public appreciate which level of government is charged with a responsibility that they can hold the authorities accountable and participate in the appropriate forum that implicates their concerns. These concerns gain traction considering that the issue has arisen with respect to South Africa where it has been observed that uncertainty over functional competence between the national, provincial and local governments has caused confusion to the public as to which level of government they should address their concerns to.<sup>122</sup>

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<sup>119</sup> Articles 225 of the Constitution.

<sup>120</sup> See generally R Dahl & E Tuft *Size and democracy* (1973) arguing that meaningful participation cannot take place within national polity.

<sup>121</sup> T Sokupa 'Let us have better co-ordination of inter-governmental relations' (2009) 15 (3) *Transformer* 7.

<sup>122</sup> B Masiwa 'Provisional comments emerging from the local governance review process' (2008) 14(1) *The Local Government Transformer* 9.

### 3.5 Legislated decentralisation of the county government to lower levels

In order to bring governance closer to the people,<sup>123</sup> and therefore enhance public participation in the governance process, the Constitution mandates parliament to decentralise the county government to lower levels.<sup>124</sup> In addition, parliament has been explicitly mandated to enact legislation to provide for governance of urban areas and cities.<sup>125</sup> Pursuant to this authority, parliament has enacted the County Government Act, 2012 and Urban Areas and Cities Act, 2011 to create levels of government below the county level. The legislated decentralisation of the county governments is arguably in the nature of deconcentration due to attempts to merely shift operations from the county level to sub units closer the people.<sup>126</sup> The legislations conceptualise two categories of lower levels of government: Urban/Cities areas and Rural areas.<sup>127</sup>

#### 3.5.1 Urban areas and cities

The county government is charged with the responsibility of managing of cities and municipalities within its jurisdiction. The administration of such cities and municipalities is vested on either a board of the city or the municipality, a manager and other staff or officers appointed by the county service board.<sup>128</sup> The board of the city is comprised of 'not more than eleven members, six of whom shall be appointed through a competitive process by the county executive committee, with the approval of the county assembly.'<sup>129</sup> The county executive committee with the approval of the county assembly appoints at least five other members of the board from persons who represent various stakeholders in that particular urban area or city.<sup>130</sup> The same criteria shall apply to appointments in the boards of municipalities except that the board comprises of nine members of whom four shall be appointed and five elected in the prescribed manner.<sup>131</sup>

The city or municipal managers are charged with the role of implementation of the decisions and functions of the board.<sup>132</sup> The role of a municipal manager in relation to the

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<sup>123</sup> Republic of Kenya (n 35 above) 34.

<sup>124</sup> Article 176 (2) of the Constitution.

<sup>125</sup> Article 184 of the Constitution.

<sup>126</sup> B Sihanya 'The presidency and public authority in Kenya's new constitutional order' (2011) Society for International Development Constitutional Working Paper No. 2, 13.

<sup>127</sup> Section 48(1) of the County Government Act, 2012.

<sup>128</sup> Section 12(1) of the Urban Areas and Cities Act, 2011.

<sup>129</sup> Section 13(1) of the Urban Areas and Cities Act, 2011.

<sup>130</sup> Section 13(2) of the Urban Areas and Cities Act, 2011.

<sup>131</sup> Section 14 of the Urban Areas and Cities Act, 2011.

<sup>132</sup> Section 28 of the Urban Areas and Cities Act, 2011.

executive committee is somewhat ambiguous. However, as noted earlier, the manager shall be a public officer and chief executive officer of a city or municipality and shall be the head of administration of the board subject to the policy directions of a board.

The municipal managers and administrators shall be competitively recruited and appointed. A board may establish departments and specialized service delivery agencies as it may consider necessary within a city or municipality. The agencies could provide services such as water, public transport, environmental management and emergency services. The boards should provide administrative, management and oversight to service provision.<sup>133</sup> Towns will be unincorporated entities and 'shall operate under the direct supervision of the county executive committee.'<sup>134</sup>

The vesting of administration of cities and urban areas in city or municipal boards made up of appointed officials rather than elected representatives is antithetical to entrenching a participatory and accountable governance.<sup>135</sup> Direct elections enable self governance given that the citizenry are granted voice on who is to exercise power and administrative functions on their behalf. By divesting the public the role of direct democratic participation the structure impinges on public participation.<sup>136</sup>

### **3.5.2 Rural areas**

Further decentralisation has been provided at three levels below the county in rural areas. The first level is the sub county, while the second and third levels are wards and villages respectively.<sup>137</sup> It is envisaged that sub counties will play a vital role in the integration of big counties and that they will be best positioned to ensure that services and resources are distributed equitably between all villages.

Governance at the sub county level consists of a sub-county administration that is managed by the office of sub-county administrator.<sup>138</sup> The sub-county administrator is responsible for the coordination, management and supervision of the general administrative

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<sup>133</sup> Section 21 of the Urban Areas and Cities Act, 2011.

<sup>134</sup> Section 31 of the Urban Areas and Cities Act, 2011.

<sup>135</sup> See Section 12 of the Urban Areas and Cities Act, 2011.

<sup>136</sup> A Anangwe 'Bill on devolution has many flaws' *The Star* 01 March 2012 12.

<sup>137</sup> Section 48(1)(b),(c) & (d) of the County Government Act.

<sup>138</sup> Section 50(1) of the County Government Act.

functions in the sub-county unit. This grants the sub-county administrator jurisdiction over planning, service delivery and citizen participation in development.<sup>139</sup>

The sub-county is sub divided into ward units. At the ward level, the administration authority is vested in a ward administrator appointed by the county executive committee. The ward administrator has jurisdiction over the 'coordination, management and supervision of the administrative functions of the ward unit.'<sup>140</sup>

The ward units are sub divided into villages. At the village level, there is provided for county appointed village administrator to 'coordinate, manage and supervise the general administrative functions in the village unit.'<sup>141</sup> A village council is also established comprising the village administrator and not more than five elders, taking into account gender balance.<sup>142</sup> The village council is tasked with ensuring and coordinating the participation of the village unit in governance, assisting the village unit in developing administrative capacity for the effective exercise of the functions and participation in the governance at the local level among other functions.<sup>143</sup>

A glaring failure of the decentralised regime is its failure to provide for public participation spaces at the sub-county, ward and village levels. The legislative framework only decentralises the executive arm of the county administration by creating the offices of administrators at the sub county and ward levels. The creation of administrative structures without concomitant provision for representative structures like sub county councils and ward councils deprives the public of deliberative avenues to enable their participation in the governance process and exercise oversight to ensure accountability at this levels of government. The end result is the absence of local participation and accountability at this twin levels.<sup>144</sup> The unchecked authority grants the sub-county and ward administrators immense sway in decision making and implementation.

It is also noteworthy that the sub county, ward and village administrators are appointed by the county executive committee and are not directly elected. Appointment of these administrators deprives the public of the benefit of democratic accountability that is associated

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<sup>139</sup> Section 50(3) of the County Government Act, 2012.

<sup>140</sup> Section 51 of the County Government Act, 2012.

<sup>141</sup> Section 52 of the County Government Act, 2012.

<sup>142</sup> Section 53(1) of the County Government Act, 2012.

<sup>143</sup> Section 53(2) of the County Government Act, 2012.

<sup>144</sup> Anangwe (n 136 above) 12.

with direct elections.<sup>145</sup> Direct election of local government officials has been credited for greater accountability and arousing of public interest in local governments. Failure to have directly accountable administrators is likely to lead to public participation apathy.<sup>146</sup> The model of appointed administrators deprives the governance framework public consent and therefore legitimacy.<sup>147</sup> Predictably, this has emerged as one of the major criticisms of the structure of the county governments.<sup>148</sup>

### 3.6 Conclusion

In providing for multiple layers of elected county representation -county assemblies, county executive committees – the provisions for devolution enhance the scope for democracy, self-governance and self-management.<sup>149</sup> Furthermore these multiple sites of representation also potentially provide alternative checks and balances against bad governance. In so doing, the role citizen participation in policy formulation, the legislative process and decision making within the county governments is of paramount importance if the interest of the public is to be factored in these governance process. However, the county government structure fails to adequately entrench direct public representation at the decentralised unit levels being the cities, urban areas, sub-county, ward and village levels. The failure to make use of these structures to entrench representation and participation militates against the objective of enhancing participatory governance.

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<sup>145</sup> A Quinlivan 'Reconsidering directly elected mayors in Ireland: Experiences from the United Kingdom and America' *Local Government Studies* (2008) 34(5) 609-623, 612.

<sup>146</sup> As above.

<sup>147</sup> C Copus *Leading the localities – executive mayors in English local governance* (2006) 11.

<sup>148</sup> Anangwe (n 136 above) 12.

<sup>149</sup> Nyanjom (n 30 above) 31.

## Chapter four

# Process and modalities for public participation in Kenya's county governance

### 4.1 Introduction

It is trite that a whole battery of methods, not merely of formal consultation, of giving the public opportunities to participate in decision-making must be put in place to guarantee participation.<sup>150</sup> This underscores the need for sites, modalities, policy framework and statutory requirements for public involvement in decision making. The devised scheme must entrench innovative public engagement mechanisms to ensure public engagement. A clear and legally entrenched mechanism of public participation is borne by the reality that the county governments and institutions may deploy participatory mechanisms for manipulative and cynical purposes.<sup>151</sup> The devolved government system therefore requires a healthy system of participatory channels for public engagement.

This recognition of the need for the public to get involved in governance instead of formal representative government is one of the underpinnings of the move to devolved government in Kenya.<sup>152</sup> The county governments have to engage the public in policy making and implementation diminishing the possibility of unilateral governance. To realise this scheme, the governance setting has been structured to share power with the public through availing of structured mechanisms for their engagement.<sup>153</sup> The mechanisms are designed in a manner that avails opportunities for direct democratic engagement thus giving the public a voice in decision making.

### 4.2 Public participation spaces, processes and structures

A participatory environment can only be realised by creating an enabling environment for an autonomous and vibrant public to emerge and meaningfully engage with the county

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<sup>150</sup> N McIntosh *Report of the commission on local government and the Scottish parliament* (1999)12.

<sup>151</sup> S Scarrow 'Direct democracy and institutional change: a comparative investigation (2001) 34(6) *Comparative Political Studies* 651-665, 652.

<sup>152</sup> W Mutunga *Chief Justice's remarks on the swearing in of the county transition authority* (2012) Available at [www.judiciary.go.ke/portal/speeches.html](http://www.judiciary.go.ke/portal/speeches.html) (Accessed 10 October 2012).

<sup>153</sup> C Geurtz & T van de Wiljdeven 'Making citizen participation work: The challenging search for new forms of local democracy in the Netherlands' (2010) 36(4) *Local Government Studies* 531-549, 532.

governments.<sup>154</sup> The legislative framework has provided regulated and institutionalised spaces for public participation within the county governments.

#### 4.2.1 Citizen awareness

A knowledgeable citizenry with access to a range of information enables participation in public life. For participation to be successful, the public must be aware of their role in governance and have access to information. This implicates the need for public awareness of rights and responsibilities and knowledge of the means or avenues through which they can exercise them.<sup>155</sup> It extends to the need for knowledge amongst the public of the spaces or opportunities for engagement with the government. It is also important that the framework for provision of information serves an educative purpose by enabling the public to learn about democratic processes.<sup>156</sup> As *Heyden et al* have pointed out, ‘information can be transferred in large amounts without any understanding or knowledge being generated.’<sup>157</sup> This arouses the need for the information to be in a form and be provided in a manner that the public can understand and use effectively.

It is based on this understanding that that county assemblies are obliged to conduct their ‘business in an open manner, hold sittings of their committees in public and to facilitate public participation and involvement of citizens.’<sup>158</sup> This regime is undergirded by the recognition of the right to access information held by governmental authorities.<sup>159</sup> Furthermore, the State has an obligation to publish and publicize any important information affecting the nation.<sup>160</sup> The County Government Act provides legislative basis for access to information held by county governments.<sup>161</sup> Lastly, the county governments are obligated to ‘establish mechanisms to facilitate public communication and access to information in the form of the media with the widest form of outreach in the county.’<sup>162</sup>

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<sup>154</sup> Good Governance Learning Network ‘Review of the white paper on local government: A civil society perspective’ (2007) 9(5) *Local Government Bulletin* 13.

<sup>155</sup> Omolo (n 56 above) 24.

<sup>156</sup> R Andrews et al ‘Supporting effective citizenship in local government: Engaging, educating and empowering local citizens’ (2008) 34 (4) *Local Government Studies* 499.

<sup>157</sup> C Heyden *et al* ‘Information poverty in the knowledge society: Better government for older people’ Research Paper 6 (2001, 2).

<sup>158</sup> Article 196(1)(a)(b) of the Constitution.

<sup>159</sup> Article 35(1) of the Constitution.

<sup>160</sup> Article 35(3) of the Constitution.

<sup>161</sup> Section 96 of the County Government Act.

<sup>162</sup> Section 95 of the County Government Act.

## I South African experience on citizen awareness

In contrast to the Kenyan regime, South Africa's Municipal Systems Act (Systems Act) has adopted a creative use of the office of the municipal manager as a conduit for information regarding public participation to the local community.<sup>163</sup> One of the critical responsibilities imposed on the municipal manager is the publication of various notices to inform the public of proposed policy formulation or decision making and inviting their participation in such processes. The municipal manager must issue notices informing the public of pending council meetings<sup>164</sup> and invite public participation in the discussion of the municipality's annual report.<sup>165</sup> In order to enable informed participation, the municipal manager must also supply copies of the annual report to the public, interested organisation and the media.<sup>166</sup>

Regarding legislation, the municipal manager must publish proposed by-laws for public comment.<sup>167</sup> Upon adoption, the by-laws must be published in the Provincial Gazette and in a local newspaper to enable public access.<sup>168</sup> The municipality must keep and maintain a compilation of its by-laws.<sup>169</sup> In addition, all notices that are published in the Provincial Gazette must be displayed at the municipal offices.<sup>170</sup> The municipal manager is also envisaged to notify the public of the adoption of integrated development plan, avail copies of the plan and summaries.<sup>171</sup> The municipal manager must also report to the public on the performance management system<sup>172</sup> which includes provision of information on key performance indicators and performance targets.<sup>173</sup> Lastly, the municipal manager is obligated to communicate to the public any parts of the code of conduct for staff members that affect the local community.<sup>174</sup>

The South African government has also recognised the role public funded information centres can play in providing the public with information by setting up Thusong Service Centres and Youth Advisory Centres.<sup>175</sup> The Thusong Service Centres link the public to the government by availing information on government programmes and activities. Similarly, the Youth Advisory

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<sup>163</sup> Section 18 of the Municipal Systems Act.

<sup>164</sup> Section 19 of the Municipal Systems Act.

<sup>165</sup> Section 46(3)(a) of the Municipal Systems Act.

<sup>166</sup> Section 46(4)(a) of the Municipal Systems Act.

<sup>167</sup> Section 12 of the Municipal Systems Act.

<sup>168</sup> Section 13 of the Municipal Systems Act.

<sup>169</sup> Section 15 of the Municipal Systems Act.

<sup>170</sup> Section 21(3) of the Municipal Systems Act.

<sup>171</sup> Section 25(4) of the Municipal Systems Act.

<sup>172</sup> Section 41(e)(ii) of the Municipal Systems Act.

<sup>173</sup> Section 44 of the Municipal Systems Act.

<sup>174</sup> Section 70(2)(b) of the Municipal Systems Act.

<sup>175</sup> N Magadla 'Making information centres work for the poor' (2008) 14 (3) *Transformer* 9.

Centres provide information targeting the youth.<sup>176</sup> These innovative initiatives are vehicles through which the South African government has been able to provide information on government activities to the public especially those in the rural areas.

The Kenyan regulatory framework fails to ensure that the public has notice of meetings as detailed in South Africa's regime. There is need to ensure that where notice are prescribed, it must accord the public sufficient period to analyse the policy proposals of the county government to ensure effective participation in deliberations. Moreover, access to information and its costs are not regulated in order not to hinder obtaining of requisite information. There is also the need to ensure commitment of duty bearers to make the access to information system work by inculcating a culture of proactive release of information. This will lead to the entrenchment of a culture amongst public officials of sharing information to ensure the release of adequate information to the public.

Without the right to access information, State authorities or agents can selectively release information to further vested interests. To guard against this, there is need for legislative framework that compels the devolved governments to adopt a policy of maximum openness. This is borne by the reality that poor information management and failure to disclose information regarding local development alienates the public from local development and provides opportunities for corruption.<sup>177</sup>

#### 4.2.2 Capacity building

Supporting public participation initiatives with capacity building initiatives leads to better local decision making.<sup>178</sup> This is in recognition of the fact that the public need knowledge and skills on execution of their responsibilities. The implication of this is the need to develop the knowledge, skills and operational capacity of individuals and groups on how to achieve their purposes.<sup>179</sup>

The motivation for capacity building is to create a public that is willing, able and equipped to get involvement in public life.<sup>180</sup> It is therefore incumbent upon the government to

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<sup>176</sup> As above.

<sup>177</sup> TISA *Policy and legislative proposals aimed at sound planning, accountability and citizen participation in county governments* (2010) 27.

<sup>178</sup> D Clapham *et al* 'User participation in planning for housing: Is small really beautiful? In Stoker G (ed.) *The new politics of British local governance* (2000) 215-233.

<sup>179</sup> M Okello *et al* *Participatory urban planning toolkit based on the Kitale experience: A guide to community based action planning for effective infrastructure and services delivery* (2008) 23.

<sup>180</sup> A Oldfield *Citizenship and community: Civic republicanism and the modern world* (1990) 62.

go beyond simply providing people with opportunity to participate which cannot lead to realisation of this ideal. Instead the government must disseminate the necessary information to citizens and help them acquire the skills and confidence that they need in order to become more active in the governance process. It is essential therefore for civic education to enable citizens to become more active in public affairs.<sup>181</sup>

The County Government Act imposes an obligation on each county to establish a civic education unit and implement an appropriate civic education programme.<sup>182</sup> However this fails to impose an obligation on the county governments to explore other avenues for capacity building to acquire skills for better engagement with the government. In fact, it is stark that the whole regime of regulatory framework does not make mention of the need to engage in capacity building. This is unlike South Africa which has recognised the need to build not only the capacity of the public but also the administrators to optimize the potential of public input into the governance process.

## **I South African experience on capacity building**

South Africa's Municipal Systems Act, for example, recognises and accords the public a prominent role in the governance of local authorities. The statute obligates the municipality to develop 'a culture of municipal governance that complements formal representative government with a system of participatory governance.'<sup>183</sup> In pursuit of the objective of entrenching participatory governance, the statute imposes a duty on the municipality to create conditions for it. This obligates the municipality to build the capacity of the public to enable members of the community to participate in municipal affairs. In order to realise this, the municipality is enjoined to use its resources and budget for public participation annually. It is also the duty of the municipality to build the capacity of its councillors and staff to foster public participation.<sup>184</sup>

The municipality has an obligation to put in place mechanism and processes to enable public participation.<sup>185</sup> The role of the municipal manager in facilitating the realisation of this goal is crucial. This is because it is this office that has been vested with the responsibility of implementing processes and overseeing mechanisms for public participation. The municipal manager is further obligated to structure the municipal administration in a manner that enables

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<sup>181</sup> A Gutmann *Democratic education* (1999) 8.

<sup>182</sup> Sections 99, 100 & 101 of the County Government Act.

<sup>183</sup> Section 16 of the Municipal Systems Act.

<sup>184</sup> Section 16(6)(ii) of the Municipal Systems Act.

<sup>185</sup> Section 17(2) of the Municipal Systems Act.

the public to participate in the affairs of the municipality. An example of how the municipal administration has been structured to facilitate public participation is providing that persons who cannot write and put their comments in writing are assisted to do so.<sup>186</sup>

In 2003, the South African government created a programme of community development workers in an effort to deepen democracy at the local level by giving citizens direct access to government.<sup>187</sup> The community development workers are deployed to municipalities to enable them function to bridge the gap between the government and the public.<sup>188</sup> The programme aims at bringing public services closer to the people and to ensure that information on services and development opportunities are accessible so that they may be more effectively used. The programme underscores South Africa's recognition of the importance of experiential learning, rather than formal class-based training, in acquisition of skills and knowledge of the services offered by municipalities and political processes.<sup>189</sup>

South Africa's initiatives to support public participation with civic education have been credited for the increase in participation at the local level.<sup>190</sup> Kenya should impose an obligation on the county governments to adopt a range of training courses to target the public and enhance their ability to participate in the availed forums. The county administration and other staff should also be trained in order to ensure that they not only facilitate but also respond to public input.

#### 4.2.3 Integrated development planning

Integrated development planning is 'a process through which devolved governments can establish a development plan for short, medium and long-term.'<sup>191</sup> Planning enables the realisation of such goals as social inclusion, economic regeneration, environmental conservation and efficient delivery of services given that it avails the requisite holistic framework

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<sup>186</sup> Section 21(4) of the Municipal Systems Act.

<sup>187</sup> R Baatjies & Z Hintsia 'Community development workers: At the heart of participatory democracy and developmental local government' (2007) 9(2) *Local Government Bulletin* 10.

<sup>188</sup> As above.

<sup>189</sup> J Annette 'Education for citizenship, civic participation and experiential learning and service learning in the community' in D Lawton *et al* (eds.) *Education for citizenship* (2000) 77-92.

<sup>190</sup> SE Finkel Civic education and the mobilization of political participation in developing democracies (2002) 64(4) *The Journal of Politics* 994-1020.

<sup>191</sup> P R Reddy 'Democratic decentralization and local democracy in South Africa re-examined: quo vadis?' (2010) 29 (3) *Politeia* 66-67, 71.

that involves all stakeholders. This is achieved due to the fact that integrated planning infuses stakeholder commitment, ownership, pooling of resources and coordination in undertakings.<sup>192</sup>

A key principle underpinning the planning process is public involvement.<sup>193</sup> This is motivated by the reality that planning is no longer to be regarded as a purely technical or scientific exercise but as a process that rests to an extent on value judgments about desirable futures, including the judgments of the communities that are affected by such decisions.<sup>194</sup> It is therefore imperative that the devolved governments encourage public engagement in matters that affect their community and influence the decisions that implicate the needs and interests of their locality.<sup>195</sup>

The county governments have an obligation to work towards the attainment of developmental objectives arising from the welfare demands of citizens as envisaged in the Constitution. These include the socio economic rights demands entrenched into the Constitution including provision of housing, health and education services, water and sanitation which service provision are within the competence of this level of government.<sup>196</sup> Effective realisation of these constitutional aspirations implicates the need for planning. This argument is buttressed by the fact that to meet these challenges, the counties have the onerous task to develop visions for their areas. To do this, public participation in integrated development planning frameworks are of necessity.

The County Government Act provides for public participation in the planning processes.<sup>197</sup> The legislation also provides that the development of county integrated development plans and their amendment should also involve public participation.<sup>198</sup> Despite the elaborate planning framework, poor resourcing and enforcement of the rules is likely to pose a huge challenge. A detailed framework for information gathering should be given legislative grounding. Legislation should provide for prioritisation of resources on the basis of evidence-based facts. Evidence based plans should use community based monitoring systems. This must also recognise the critical role of civil society engagement in information sharing and monitoring and evaluation.

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<sup>192</sup> S Owen *et al* 'Bridging the gap: An attempt to reconcile strategic planning and very local community-based planning in rural England' (2007) 33(1) *Local Government Studies* 51.

<sup>193</sup> J Morphet *RTPI: Scoping paper on integrated planning* (2004) 8.

<sup>194</sup> N Taylor *Urban planning theory since 1945* (1998) 32.

<sup>195</sup> K Hogg 'Making a difference: Effective implementation of cross-cutting policy' (2000), Scottish Executive Policy Unit, Available at <http://www.scotland.gov.uk/library3/governemnt/effect.pdf> (accessed 3 September 2012).

<sup>196</sup> Article 35 of the Constitution.

<sup>197</sup> Section 115 of the County Government Act.

<sup>198</sup> Section 108 & 112 of the County Government Act.

## I South African experience on integrated development planning

South Africa's Municipal Structures Act identifies the two primary actors in the integrated development planning management as the executive mayor and the executive committee and imposes a legal duty to 'manage the integrated development planning processes'.<sup>199</sup> The preparation of the integrated development plan incorporates public participation.<sup>200</sup> This is done by the establishment of a mechanism for public participation which incorporates public comments. Facilitation of public participation is an aspect of integrated development planning for which the municipal manager is responsible.<sup>201</sup>

With respect to South Africa, a number of shortcomings have been identified in the integrated development planning process and Kenya can learn lessons from these criticisms. The process has been criticised for inadequate public understanding of the core economic and social strategies that underpin such plans. In addition, it has been argued that the process frequently fails to capture the strategic choices that must be made in allocating state resources given that the public are often unaware of the practical implications of such plans for maintaining and expanding existing infrastructure, services and development undertakings.<sup>202</sup> The same challenges have not been addressed in the Kenyan framework thus will hinder public participation in planning.

There is need for the adoption of a simplified integrated development process that is understandable and available to the public. Lastly, sectoral and geographical desegregation of the planning process should be entrenched to ensure that input is tied to actual progress within the different sectors as well as delivery on the ground.

### 4.2.4 County government budgeting

There is need to link planning and budgeting. The legislative framework should make the integrated planning the basis for identifying programmes, projects and initiatives aimed at improving the welfare of citizens. All appropriations and expenditures should be founded on plans. The Kenyan legislative framework for county budgeting is inadequate for public participation. The Public Finance Management Act provides for the creation of a County Budget and Economic Forum composed of members of the county executive committee and a number

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<sup>199</sup> Section 30 of the Structures Act.

<sup>200</sup> Section 28 of the Structures Act.

<sup>201</sup> Section 55(1)(n) of the Structures Act.

<sup>202</sup> Good Governance Learning Network (n 154 above)13.

of representatives of various interest groups for consultations on the county budget, economy and financial management.<sup>203</sup> However this is not adequate to enable public participation.

## I Tanzanian and South African experience on budgeting

Tanzania and South Africa have a regulatory framework for public participation in the budgeting process. Participatory budget-making is envisaged in Tanzania by provision for a bottom-up budgeting approach through the ward development committees.<sup>204</sup> In South Africa, the management of municipal finances and budgeting in South Africa is regulated by the Municipal Finance Management Act (MFMA). The MFMA provides that the process should be open and transparent.<sup>205</sup> It has been noted that the practice has rarely adhered to these standards. Moreover there has been noted a need to educate councillors and the public around budget literacy to enable them engage more critically with budgeting processes. This has led to calls for strengthening of municipality's relationship with the public.<sup>206</sup>

The need for public participation in the municipal budget process in South Africa informs the MFMA provision that a draft budget is tabled by the end of March of each year, so that there is enough time for public input until the budget is finally adopted towards the end of June of a year.<sup>207</sup> This seeks to protect the integrity of democratic and participatory municipal budgeting.<sup>208</sup> Kenya lacks such a requirement that would give the public adequate time to interrogate the county government budget.

Moreover, there is need for budget literacy capacity building as a key ingredient of effective citizen participation. There is need for a requirement for disaggregation of budgetary information to enable the citizenry to appreciate how it will affect them. Access to budget information and citizen involvement in all stages of budget preparation process is only useful where budget information is appropriately disaggregated to ensure maximum transparency with regard to cost per sector, sub county, ward and village. Only then can citizens appreciate their direct involvement in a process that makes meaning for them.

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<sup>203</sup> Section 137 of the Public Finance Management Act, No. 18 of 2012.

<sup>204</sup> Section 32(f)-(h) District Authorities Act.

<sup>205</sup> Section 42 of the Municipal Finance Management Act.

<sup>206</sup> Good Governance Learning Network (n 154 above) 13.

<sup>207</sup> Section 42(5) of MFMA.

<sup>208</sup> J Mettler & K Smith 'Bulk electricity prices, exemptions & the demise of local democracy?' (2008) 10(3) *Local Government Bulletin* 5.

## 4.2.5 Monitoring and evaluation of service delivery

Public participation implicates the need for accountability mechanisms to counter the risk of corruption and the risk of local patronage. There is need for an effective legislative framework that would compel duty bearers to account to the public. This implicates the need to put in place external monitoring mechanisms within the counties as part of public participation.

The monitoring and evaluation of system should include indicators for measuring development outcomes, service delivery performance and accountability. The monitoring and evaluation system should provide a forum for dissemination of information, where the public deliberate the way forward. This allows the public to investigate poor areas of performance based on its strategic plans. However, the Kenyan regulatory regime fails to provide for public participation in monitoring and evaluation of county service delivery.<sup>209</sup>

### I South African and Ugandan experience on performance management

In contrast, the South African regime vests the municipal executive mayor and executive committee with the duty of developing a performance management system.<sup>210</sup> This includes developing a criteria for evaluation, including devising key performance indicators.<sup>211</sup> A statutory requirement for involving the public in establishment, implementation and review of municipal performance management system has been entrenched.<sup>212</sup> Further, regular reporting of performance to the municipal council, provincial government and importantly the public is provided for.<sup>213</sup> The executive mayor and the executive committee must also ensure that public views are taken into account.<sup>214</sup> The regime also envisages that the municipal manager must ensure that the municipal administration is open to and facilitates the input of the public in municipal affairs. In furtherance of this objective, the municipal manager is under statutory direction to devise a mechanism to assess the satisfaction of the community with the municipal services.<sup>215</sup>

The South African regulatory framework provides for an annual monitoring, measurement and review of municipal performance.<sup>216</sup> The reports of performance

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<sup>209</sup> Part XII of the County Government Act.

<sup>210</sup> Section 39(b) of the Systems Act.

<sup>211</sup> Sections 44(3)(a) & 56(3)(a) of the Municipal Structures Act.

<sup>212</sup> Section 16(1)(a) of the Municipal Systems Act.

<sup>213</sup> Section 41(1)(e) of the Municipal Structures Act.

<sup>214</sup> Sections 44 and 56 of the Structures Act.

<sup>215</sup> Section 55(1)(o) of the Systems Act.

<sup>216</sup> Section 41(1)(e) of the Systems Act.

management assessments are submitted to the municipal council by the executive mayor and executive committee.<sup>217</sup> To further develop the monitoring framework, the Municipal Finance Management Act provides that performance agreements must be communicated to the public.<sup>218</sup> Since performance agreements improves the municipality's capacity to monitor implementation of the integrated development plans and to act on any implementation this ensures public participation in service delivery.<sup>219</sup>

The crucial role that the municipal manager plays in municipal administration necessitates the need for public accountability.<sup>220</sup> It is on this basis that accountability to the public has been recognised as one of the tenets upon which the performance of the municipal administration is to be anchored.<sup>221</sup> This entitles the public to expect transparency, responsive to issues raised and engagement.<sup>222</sup> This is similar to the Local Government Development Programme in Uganda, 'where project management committees, elected from benefiting communities, oversee project implementation and hold those implementing the works accountable.'<sup>223</sup>

There is also a need to provide for sector specific public participation in service delivery monitoring and evaluation. This is evident in the South African system where sectoral structures are linked to the ward committees, such as school governing bodies and community policing forums.<sup>224</sup> In Tanzania, a similar practice involves local councils establishing service boards where residents are afforded the opportunity to influence service provision.<sup>225</sup> This is particularly evident in the involvement of the public in other areas of service provision including school committees<sup>226</sup> and health boards.<sup>227</sup>

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<sup>217</sup> Section 41(1)(e) of the Systems Act.

<sup>218</sup> Section 57 of the Municipal Finance Management Act.

<sup>219</sup> J de Visser 'Common sense rather mere compliance: Service delivery and budget implementation plan' (2007) 9(2) *Local Government Bulletin* 11

<sup>220</sup> Section 51 of the Systems Act.

<sup>221</sup> Section 2(b) of the Systems Act.

<sup>222</sup> Section 58 of the Systems Act as an example envisages that the municipality to publish the salary scales and benefits of the municipal manager.

<sup>223</sup> N Devas & S Delay 'Local democracy and the challenges of decentralizing the state: An international perspective' (2006) 32(5) *Local Government Studies* 677-695, 684.

<sup>224</sup> M Sebugwawo 'Advancing participatory democracy and development in South Africa: Towards a new strategy of governance' (2012) 18(2) *Transformer* 5.

<sup>225</sup> Section 86A District Authorities Act.

<sup>226</sup> Section 39 of the Education Act.

<sup>227</sup> District Council (Council Health Service Board Establishment) Instrument, 2001.

## 4.2.6 Citizen forums

The establishment of citizen forums are geared at providing a check and balance to decision making by ensuring that county affairs are conducted openly and subject to effective scrutiny. The forums are established to allow citizens to voice their concerns, allowing representatives to get insights in their demands, preferences and needs. In addition, they should allow representatives to explain and justify their decisions and choices to the public.<sup>228</sup>

The County Government Act imposes an obligation on the county governments to 'facilitate the establishment of structures for citizen participation.'<sup>229</sup> The structures envisaged for establishment include: town hall meetings and establishment of other citizen forums at county and decentralised units.<sup>230</sup> However, this regime is insufficient to guarantee effectiveness of participation given the challenges that similar initiatives have faced in other countries like South Africa. The experience of ward committees in South Africa is a pointer to the challenges that the citizen forums can reasonably be expected to face.

### I South African and Tanzanian experience with ward committees

In the context of South Africa, ward committees were introduced in municipalities to link and inform municipalities about the needs, aspirations, potentials and problems of the public.<sup>231</sup> The ward committees have attracted fierce criticism. This arises from disillusionment and feeling that participation in ward committees does very little to express the voices of the public.<sup>232</sup> This demonstrates that adoption of public participation as a policy or the establishment of ward committees is not proof of fulfilment of the constitutional obligation to facilitate public participation. For the counties to fulfil their constitutional obligation, they must ensure that the citizen forums are accessible and effective in facilitating real and meaningful participation by the public in county affairs.

Some observers have argued that the ward committees are not functioning as intended and instead of enhancing the environment of participatory governance these structures have actually undermined it by displacing many other channels for public participation.<sup>233</sup> For others,

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<sup>228</sup> HF Pitkin *The concept of representation* (1967) 43.

<sup>229</sup> Section 91 of the County Government Act.

<sup>230</sup> Section 91 of the County Government Act.

<sup>231</sup> GN Mgwebi 'Contemplating ward committees – civil society alliances: Opportunities and challenges' (2010) 16(6) *Transformer* 15.

<sup>232</sup> A May & J de Visser 'Community participation & ward committees' (2008) 10 *Local Government Bulletin* 13.

<sup>233</sup> S Terence 'Are ward committees working? Insights from six case studies' (2008) 10(1) *Local Government Bulletin* 14

the committees only serve a ceremonial role as they don't influence decisions in the wards.<sup>234</sup> It is further posited that ward committees are partisan structures and serve the interest of political party agendas. Furthermore, questions have been asked as to whether the representation is inclusive and meaningful. In order to avoid walking the same road, the nomination, election processes and functioning of citizen forums should be shielded from political party influence.

The limited mandate of the citizen forums should also be put in the public domain. This is to avoid the potential conflation of the role of members to involve responsibility for service delivery as if they were an extension of county government. If this is not clarified, it can create expectations that lead to disappointment by the public that threatens the credibility of the citizen forums. It behoves the government to create public awareness on recognition and understanding of the limited powers that will be vested in the members of the citizen forum within the county governments.

In order to ensure that resolutions of citizen forums are integrated into county decisions and taken into account, it is imperative that their interface with county administration is clearly defined. Failure to do this creates opportunities for the county governments to ignore the citizen forums input and relegate the forum to ceremonial roles. South African has legislated a requirement that municipalities delegate certain powers and duties to ward committees.<sup>235</sup> However, the practice has seen municipalities give ward committees little or no space as envisaged by the legislation thus excluding them from decision making and hampering their effectiveness.<sup>236</sup>

The direct influence of citizen forum on county government decision-making has not been guaranteed thus raising the prospect of the forums turning to talking shops whose input can be ignored by the county governments at will. This creates a need for creation of structured mechanisms that would guarantee that input from the citizen forums feed into the formal county government deliberation processes. This could be addressed by creation of institutional mechanism for citizen forum reports to be presented to county assembly and executive meetings.

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<sup>234</sup> B Masiwa 'Ward committees: not yet out of the woods' (2008) 14(4) *The Local Government Transformer* 8.

<sup>235</sup> See generally Municipal Structures Act.

<sup>236</sup> GN Mgwebi 'Contemplating ward committees – civil society alliances: Opportunities and challenges' (2010) 16 (6) *Transformer* 15.

In South Africa, a number of municipalities have carved out a role for the speaker of municipalities to enable public participation in the affairs of the local government.<sup>237</sup> The speaker has therefore been vested with the role of facilitating, overseeing and supervising the election of ward committees. The speaker is also charged with the responsibility of deploying proportional representative councillors to ward committees, monitoring and reporting on the performance of ward committees to the municipal council. In order for the municipal council to take any steps regarding the functioning of a ward committee, the speaker has to make recommendations to the municipal council on the dissolution of a ward committee, capacity building of ward committees and determination of and coordination administrative arrangements to enable ward participatory mechanisms to perform their functions.<sup>238</sup> Kenya should borrow a leaf from this innovation and carve a role for the county assembly speaker in ensuring that views of citizen forums are presented before the county assembly.

Tanzania's District Authorities Act and the Urban Authorities Act provide for a system of public participation through ward development committees. The function of these committees is to initiate and promote participatory development of the ward.<sup>239</sup> The Policy Paper on Local Government Reform of 1998 directs that the committees should facilitate the role of the people in deciding matters affecting their lives as well as on planning and executing development programmes.<sup>240</sup> In addition, meetings of local government authorities at the village assembly allow adult resident members of the village to participate in the meeting and discuss issues that relate to their welfare.<sup>241</sup> Everyone is allowed to participate and discuss the local governance issues. As a learning point, Kenya should decentralise the citizen forums to the village level as it is at that level where public input can be effectively generated.

### 4.3 Conclusion

The critique has shown that few formal and statutory spaces designed for public engagement in the governance process has been provided in the Kenyan regime for county governance. This is clearly demonstration of the inadequacy of the framework. Moreover the few spaces and opportunities provided for participation do not guarantee success as the capacity of the public to engage in an informed manner in the processes has not been ensured.

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<sup>237</sup> R Baatjies & J de Visser 'Facilitating public participation: A niche role for the speaker' (2003) 9(5) *Local Government Bulletin* 3.

<sup>238</sup> As above.

<sup>239</sup> Section 30A(2)(n) District Authorities Act and Section 15A(2)(n) Urban Authorities Act.

<sup>240</sup> United Republic of Tanzania, Policy Paper on Local Government Reform (1998) 6.

<sup>241</sup> Section 55 Urban Authorities Act.

Failure to provide the public with an enabling environment for participation is a glaring lacuna in the scheme. It should also be pointed out that even where informed participation is achieved there are no in built mechanisms within the system to ensure that the public input is taken into account in decision making and implementation.

## Chapter five

### Conclusions and recommendations

#### 5.1 Conclusions

This study was premised on the fact that one of the objectives underpinning the adoption of a devolved system for government in the Constitution of Kenya, 2010 was the need to engender public participation in governance. The study has interrogated the adequacy of the legal and policy framework adopted by Kenya to realise this constitutional aspiration. It has therefore identified the opportunities provided for public participation within the devolved governments and compared their structure to the regimes adopted in South Africa, Uganda and Tanzania in order to analyse their adequacy.

The study has established that public participation is a ‘continuum that ranges from providing information and building awareness, to partnering in decision-making and implementation.’<sup>242</sup> Thus the golden thread that must run through the suite of the county governments’ legal and policy framework is the provision of opportunities and facilitation of participation by providing an enabling environment. However, as critiqued in chapters three and four of this study, the architecture and design for public participation in county governance in Kenya is inadequate to guarantee meaningful and effective public input in the governance of this level of government. The structure fails to provide adequate opportunities for public participation. In addition, it insufficiently imposes a duty on the county governments to facilitate public participation and to ensure that the public are enabled to seize the opportunities for participation. In any case, where the framework provides for opportunities to engage in public debate and dialogue, there is no guarantee that the public can ‘meaningfully engage’ in the process due to the absence of effective structures of ensuring the input feeds into the decision making and implementation process.

#### 5.2 Recommendations

Drawing from the preceding chapters of the study, a number of legal and policy interventions can be made in order to reform the county government public participation framework to guarantee its effectiveness.

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<sup>242</sup> G Mettler & R Baatjies ‘Participatory democracy: The duty to involve the public, the constitutional court speaks’ (2006) 8(4) *Local Government Bulletin* 3.

### **5.2.1 Reform options for creation of public awareness**

To create an enlightened and empowered public that can effectively engage in the governance process there is need to create opportunities for accessing information through the adoption of online tools, one stop shops and call centres that make it easier to begin to engage with the county governments. This is even more necessary given the need to involve young people who increasingly form the bulk of the Kenyan population. Moreover, there is need for legal guarantee of provision of information in formats accessible to persons living with disabilities and translation of the same to local languages for accessibility.

County governments should have an obligation to provide sufficient notice of meetings to enable the public to prepare to attend and participate effectively in consultations. To bring this to fruition, funds should be designated to facilitate the process of creation of public awareness. This can be realised by designation of budgetary quotas towards funding public awareness initiatives.

There is need to sensitize the public and county government officials on importance of public participation. This is to enhance commitment towards implementation. A mechanism for redress where the public can seek recourse when information is unduly withheld should also be introduced. Moreover penalties should be specified for such acts to deter any public officials from withholding information that would aid participation by an individual in the governance process.

### **5.2.2 Reform options for capacity building**

To ensure effective public involvement in policy formulation and implementation there is need to build capacity building initiatives within the participatory framework and institutions. To further this goal, a national statutory body should be created to spearhead capacity building efforts. Moreover, adequate budgetary provisions should be made to enable the body to effectively carry out its mandate.

In addition, a specific statutory obligation should be imposed on the county governments to organise for public training on various subjects that would enhance public participation in the governance process. In order to ensure effectiveness of the envisaged training, it must be sensitive to and target concerns of different social categories of inhabitants of that particular county.

### **5.2.3 Reform options for integrated development planning**

To strengthen the participatory framework for planning there is need decentralise planning to the lowest level, the village, by embracing a bottom up participatory model. There should also be a linkage between the village level and the county level to ensure synergy of plans.

There is need to impose a statutory obligation on the county governments to maintain and publicly disseminate a calendar of all planning meetings. The county planning data should also be disseminated within an adequate stipulated time to enable informed engagement.

### **5.2.4 Reform options for the budgeting process**

The statutory framework for public participation in the county budgeting process should be enhanced. County financial data should be shared with the public through citizen budgetary forums within stipulated time prior to the county budget formulation to enable informed discourse. In order to ensure public input is taken into account, development budget funds should not be approved unless approved by citizen forums.

### **5.2.5 Reform options for service delivery performance management**

Taking into account the fact that Kenya's legal framework fails to provide for public participation in service delivery there is need for a wide array of interventions. The citizen forums should be conferred with a clear mandate and power to evaluate and monitor service delivery. The citizen forums should be given statutory powers to enforce accountability from duty bearers. In addition, the county governments should create a county monitoring that will in discharging its functions issue social audits, citizen report cards and score cards to enable the public evaluate service delivery. To complete this envisaged regime, county governments should have fixed time frames within which to report to citizens on performance. Such status reports should be comprehensive but simple to enable ordinary members of the public to appreciate them.

### **5.2.6 Reform options for citizen forums**

Citizen forums, their mandate and powers should be protected in statute, with operational procedures detailed in implementation guidelines. The system as regulated at the moment on provides for the establishment of the forums but lacks the regulatory framework to

undergird their operations. It must be appreciated that the success or failure of the citizen forums will depend on the operational framework and not mere establishment.

Citizen forums should be fairly representative and inclusive of all stakeholders and thus cut across youth, women, marginalised groups to represent community interests. It is important that this is given legal grounding for to avoid any attempts at using the citizen forums as political platforms and thus diluting the representational role the forums are envisaged to play.

(18, 260 words)

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