

Participatory Mechanisms that Transcend Classic Representation in Kenyan Counties

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Abstract. Governments are increasingly using participatory mechanisms to further the goals of democracy and good governance. These mechanisms, particularly the informal ones, extend the possibilities for participation beyond the confines of classic representation because they tend to be more frequent and dynamic than the formal ones. In 2010, the Constitution of Kenya was broadly supported by Kenyans because it allowed for public participation in local policymaking. However, the Constitution did not include the implementation procedures for public engagement because of the distinct contextual features of the newly established devolved governments. The absence of an implementation framework means each government interprets the notion differently, impacting its overall execution. Hence, it is imperative to establish the informal participatory mechanisms established by these administrations to engage the public and their efficacy in policymaking. Based on in-depth fieldwork conducted in Kenya's two devolved governments in 2022 and 2023, as well as secondary sources, this paper uses qualitative analysis to map out the main informal participatory mechanisms established in these governments. The paper acknowledges that the administrations primarily consider production and participation costs when choosing and executing these mechanisms due to their financial capacities. As such, the financial resources at hand significantly influence the mechanisms selected. Based on the findings, the paper concludes that the mechanisms chosen should consider not only the financial capacities but also other local contextual factors. Therefore, these mechanisms should adjust to the configuration of the place where participation takes place for quality participation.

Keywords: Contextual Factors, Devolved Governments, Kenyan Constitution, Policymaking, Public Participation

1 Introduction

Participatory mechanisms refer to those specific approaches governments or institutions employ to enable participation by the people on public issues [1]. Governments are increasingly employing these mechanisms to enhance democracy and governance ideals. When the general public takes an active role in policymaking processes, this is perceived to lead to articulating the community's needs better and providing clearer

solutions to their challenges or policy issues being addressed [2], [3], [4], [5]. Therefore, it goes beyond listening to the citizens to hearing them and their voices shaping the outcomes. Rowe and Frewer [1] state that, in recent times, more people are increasingly participating in policy decision-making processes, and as a result of this increased drive to participate, there is a rise of participatory mechanisms that enable participation. These participatory mechanisms are also perceived as practical tools for social change and creating a greater sense of control among the citizens. Notably, governments are embracing more informal participatory mechanisms [6], which extend the possibilities for participation beyond the confines of classic representation as they tend to be more frequent and dynamic than formal ones.

In Kenya, the dialogue on public participation can be traced to the struggle for a political shift from one-party to multi-party autonomy during the early 1990s [7]. This period marked the beginning of enhancing the political participation space; however, a major transition in democracy was presented by the coalition government, which was formed after the unprecedented electoral violence that was linked to the 2007 disputed presidential election. A new Constitution was promulgated whose fundamental principle was devolution, which Kenyans overwhelmingly backed due to its prospect of people's participation in policymaking processes at the local level.

The basic principle of devolution was to be essential in two ways. First, to prevent conflicts [8], with the expectation of curbing the winner-takes-it-all challenge during political elections and creating a new arena for political contestation at the local level [9]. Therefore, it would take into account Kenya's multiethnic political landscape [10] to be more inclusive and representative, and share power in all the 47 newly formed devolved governments (*counties*) as opposed to the central governance [11]. The engagement of people at the local level would be a long-term project in minimizing ongoing and future political conflicts in the country. Second, devolution would solve the legitimacy crisis in governance structures to develop public policies through public participation (bottom-up strategy) as opposed to the top-down one that existed before the Constitution of Kenya (CoK) 2010 [12]. Likewise, the Constitution has expansively provided for people's participation in public policymaking. Therefore, people's involvement would advance equity and inclusiveness in local governance processes [8], as it would offer the public an opportunity for bottom-up engagements in policy development.

Despite public involvement in Kenya being foreseen by the law during policymaking as it is a constitutional requirement, the procedure for its implementation is not prescribed by the law nor the participatory mechanisms to use. The Constitution left this open for the newly established counties to determine themselves due to their distinct contextual features. The absence of an implementation framework means each government interprets the notion of public participation differently, thus impacting its overall execution. Therefore, it is upon the devolved governments to determine the mechanisms to use to engage the public. In many cases, the informal participatory processes are the preferred choice, and they are frequently utilized due to their flexibility [13]. Hence, the public administrations can determine their design and selection. Given this, this paper maps out the *informal participatory mechanisms* established by the devolved governments in Kenya to engage the public in policymaking at the local level. These

mechanisms are not authorized by formal establishments and, therefore, are not regulated by legislation, and their results are unbinding [6].

2 Methodology

This paper uses a Case Study-Mixed Methods (CS-MM) research design to comprehensively understand the phenomena under investigation: participatory mechanisms [14], [15]. The paper is an extract of the researcher's doctoral dissertation that examines the effects of participatory processes on public policy development in Kenya's devolved governments. The paper focuses on the first research question, which assesses the existing participatory processes in these governments. Through in-depth fieldwork, the research compares two devolved governments in Kenya with different settings, Nairobi City (urban) and Lamu (rural), which are vital in answering the research questions. Therefore, the "Most Different System Design" (MDS) is used in the comparative analysis [16], [17]. Nairobi City is a densely populated urban county, while Lamu is the least populated rural county. Thus, the study seeks to identify the key common features to account for the observed outcome [18].

As this is qualitative research, the non-probability sampling method of purposive selection procedures is used to enable an in-depth investigation and deeper understanding of the participatory mechanisms from the key respondents in both case studies. This sampling technique allows the study to choose informants deliberately due to the qualities they possess. The selected informants have knowledge and experience of the phenomena under investigation [19], [20].

The key respondents for this research comprise legislators, public administrators, civil society representatives, and Special Interest Groups (SIGs) representatives for youth, women, and people living with disabilities (PWDs). Information on this research is gathered in two phases: January to March 2022 and May to June 2023. Semi-structured interviews are applied to the mentioned key informants. Further, Focus Group Discussions (FGDs) are conducted with the members of the SIGs, with open and closed-ended survey questionnaires supplied to the general public in both cases as additional data collection instruments.

3 Results and Discussions

This section presents the results of the informal participatory mechanisms established by the county administrations to engage the public in policymaking in Nairobi City and Lamu counties. The results reveal that both conventional (traditional) and nonconventional (innovative) participatory mechanisms are utilized. These mechanisms include public meetings and hearings, workshops, Information, Communication, and Technology (ICT) enabled platforms, memoranda and public petitions, legislative committees, and site visits.

3.1 Public meetings and hearings

In both counties, most public respondents stated being aware of participatory mechanisms in this setting (98% in Nairobi City and 85% in Lamu). It is evident that both counties frequently engage their people through public meetings. This mechanism takes the format of a speaker who gives a presentation on a policy matter and an audience that either listens or contributes and asks questions in a plenary session. Therefore, this setting involves a speaker (policymaker) and the audience (public) before the approval of legislation or a policy.

Public meetings are recognized under the County Governments Act 2012, section 91 (b), as one of the channels for public involvement that the counties can utilize [21]. However, their implementation procedures are not provided. Therefore, the administrations have the leeway to determine the participatory mechanisms to use and can even combine them. The key respondents interviewed from the administrations (legislators and public administrators) in both counties state that since public engagements are voluntary, public meetings are open to everyone, and the public can engage willingly and freely without restrictions. They further state that this participatory mechanism accommodates a large audience and is easy to facilitate without incurring huge costs. Rosenbaum [22] states that public participation is a costly exercise, and, therefore, the use of public meetings is a strategy that enables the administration to execute public participation in both counties despite the exercise being expensive.

Participant N7, a senior administrator, states that in 2019, a baseline survey was held by Nairobi City County for the public to recommend participatory mechanisms that the government would use to engage its people, and public meetings were the most preferred. However, earlier studies that have been done state that unrepresentativeness is a common criticism of public meetings [23], [24], [25]. These studies reveal that a few people can dominate in public meetings. For example, drawing from the European perspective, this is the same situation in small municipalities in Switzerland, where the inhabitants can decide on municipal affairs without a council [26]. Further, public meetings can generate frequent submissions from groups of people within a community that are rich, learned, and more inclined to be male [27], [25], [28]. Hence, those involved often have more community status and power, rendering public meetings to be poor avenues for dialogue and decision-making.

In addition, the key respondents interviewed from the civil society and the SIGs in both counties state that public meetings are popular with the county administrations because they do not have rules; they are informal mechanisms of collecting views, and hence, it is not easy to hold the administrations accountable on public views gathered, those ignored or considered. It is, thus, easy for the administration to capitalize on many views rather than a few ones. Given this, participant N10, a SIGs representative, states that public meetings are used by the administrations ‘... for formality, to collect public signatures....’ so that the administrations can fulfill a legal requirement.

Nevertheless, the results from both counties reveal that public meetings are participatory mechanisms frequently used to engage the public. They offer an opportunity to engage the people and policymakers on policy issues. However, as these mechanisms

are dominated by a small number of people, they should be supplemented with other participatory mechanisms to safeguard inclusivity.

3.2 Workshops

The research findings reveal that both counties utilize workshops after public meetings have been conducted. However, only a few public respondents in both counties indicate being aware of participatory mechanisms in this setting (11% in Nairobi City and 5% in Lamu). This is because these forums are only attended by stakeholders explicitly invited by the administrations in both counties. The stakeholders are usually invited for further deliberations on specific public matters that require more input.

Workshops are forums with smaller groups, e.g., stakeholders or various interest groups, and can have lengthy and intensive deliberations on specific policy issues to develop desired outcomes [29], [30]. They enable the participants and the policymakers to collaborate to develop strategies, solve problems, and learn from each other [31]. According to Connolly [32], workshops are unsuitable for large audiences, and thus, public administrations have to organize workshops at various places for broader participation. As opposed to public meetings, workshops are task-oriented events and can last beyond a day.

Participant N6, a senior administrator, states that workshops are for a specific audience and gives an example of the workshop conducted on 25th January 2022 by the Nairobi City County Assembly to deliberate on the Nairobi City County Finance Bill 2021. The researcher attended this workshop, which was held at a private facility in a different county (*Kiambu County*). Approximately 100 stakeholders attended it; 30 of them had officially been invited by the county assembly as they had written memoranda on the proposed bill and had further requested a sitting with the county assembly budget and appropriations committee, which deals with the matters contained in the proposed bill; however, other stakeholders not invited and interested in the proposed legislation also attended the workshop.

Therefore, the results of both counties reveal that workshops are utilized during policy development. They are mechanisms that present an opportunity to align diverse public views towards a shared perspective. Although these mechanisms are used for small groups in both counties, they ensure dense deliberations are undertaken on policy matters, as the stakeholders involved are able to agree on these matters during the workshops and, therefore, influence the policy outcomes.

3.3 Information, Communication, and Technology (ICT) enabled platforms

The research findings reveal that online platforms are utilized in both counties. However, these mechanisms are more frequently used in Nairobi City than in Lamu, which rarely utilizes these platforms for participation due to technological connectivity challenges. Public respondents aware of participatory mechanisms in this setting are 22% in Nairobi City and 10% in Lamu. The key respondents interviewed from the administration (legislators and public administrators) in Nairobi City stated that online platforms are frequently used as they are readily available to the public and are accessible

to many, primarily through the county websites and the official county emails. These digitized participatory processes are significant in contemporary urban settings, which experience a mass movement of individuals from rural to urban places, bringing in new social and economic challenges of urbanization that require administrations to foster diverse and innovative approaches towards urban development. Therefore, public administrations are increasingly embracing ICT-enabled platforms in urban settings as they are the fastest means of public participation due to their ability to provide various platforms for participation.

Interviews carried out with the senior administrators in the Nairobi City legislature state that the county held virtual meetings through the Zoom platform during COVID-19; however, the meetings were for stakeholders and focused on specific groups within the county. Therefore, e-participation is an essential complementing mechanism to non-digital participatory ones due to their ability to reach masses of people who have access to digital devices, e.g., mobile phones, and can access online platforms, e.g., the county website portals as well as the county administration's social networks.

Also, the key respondents from the administrations in both counties reveal that some online communication channels are used for information purposes only, such as to relay government information to its people rather than fundamentally for active engagements. For example, when mobile phones, televisions, and radios are used. As per the County Governments Act 2012, the counties are required to enable information access and public communication via the media outlets that have the widest audience reach within the counties, such as ICT centers, local radios, television networks, websites, and newspapers. The facilitation of online communication is essential because of the power media has in policymaking with the advancement of technologies across the globe [33]. Therefore, these online-enabled platforms are essential in providing broad materials that can inform public policy and encourage project public voices to shape the outcome of public policies.

Further, the key respondents from the administration in Nairobi City state that these mechanisms offer the public opportunities to engage in policy matters with minimal resources and time. However, due to their limited access to those without technology and the internet, they should be used to complement non-digital processes and should not be seen as “*one-fits-all*” participatory mechanisms [34]. Thus, they should be facilitative mechanisms in addition to the feasible ones.

3.4 Memoranda and public petitions

The key respondents from the administrations (legislators and public administrators) in both counties reveal that the public is invited to present written *memoranda and petitions* on various policy matters for consideration by the administrations. A memorandum is a written message in diplomacy (to address a public matter), while a petition is a written prayer to Parliament to redress a grievance that falls under its purview, such as passing, changing, or abolishing any laws. The submission of public petitions is anchored in statutory instruments. For example, Articles 37 and 119 of the CoK 2010 recognize each person's right to petition Parliament to consider public matters within

the public authorities' jurisdiction. Further, sections 15 and 88 of the CGA 2012 provide the right to petition the county assemblies and permit the public to petition and challenge the county administrations on matters within their jurisdictions.

Despite memoranda and petitions being used by the elite, those who can read and write, key respondents interviewed from the administrations in both counties state that the memoranda were increasingly used during the COVID-19 period due to gathering limitations by the government. Nevertheless, interviews with the FGD participants in Lamu reveal that this mechanism still locked out the participation of many people in the county, especially those from illiterate communities and those from wards with technological connectivity challenges, e.g., Basuba and Kiunga. This situation is similar for Nairobi City, where key respondents from the administration state that these mechanisms disadvantage those from *slums* (informal settlements) since the majority are illiterate and have limited access to technology.

Only 1% of the public respondents from Nairobi City indicate being aware of these participatory mechanisms, with none in Lamu. Similarly, the FGD participants in both counties state that most people are not aware of these participatory instruments in the counties. However, the civil society representatives interviewed in both counties state that memoranda are better participatory mechanisms compared to others because when presented to the county administrations, it is difficult for the administrations to ignore them as they are documented; this is contrary to the public views that are collected during the public meetings or hearings, which require to be sorted by the administrations, a scenario referred to by participant N5, who is a senior administrator from Nairobi City, as *cherry-picking* of proposals (selection of only the most suitable), which is a subjective process determined by the public administrators involved. Therefore, memoranda and public petitions are better ranked for participation than the others; however, they have limitations as they exclude the involvement of those who cannot read and write.

3.5 Legislative committees

Interviews with the key respondents from the administrations (legislators and public administrators) in both counties reveal the use of the legislative committees. The *legislative committees* (miniature legislatures) are vital spaces for investigation and detailed scrutiny of public issues as opposed to the plenary (*House sitting*) that conducts structured debates and decision-making on various public policy issues. Therefore, they are similar to advisory committees, which are groups of individuals that institutions appoint to express their professional/technical opinions on policy or legislative matters. The legislator respondents in both counties state that these committees have explicit purposes and guidelines for their members and are also avenues for public participation. They are used as primary mechanisms to involve the public and thus offer avenues for the public to participate and give their views on public issues for consideration by the committees before drawing recommendations for approval. Thus, they are committees that usually report to larger gatherings and public institutions for final decision-making [35].

Further, the legislator respondents in both counties state that these committees offer the legislators a forum to interact and engage with the people and various stakeholders in the workings of the county administrations. The committees are expected to hold hearings and meetings to enable the public and various stakeholders to participate by presenting their views on various policy matters. Also, the legislator respondents reveal that the legislatures operate within the legislative committees to enable public engagement on policy and legislative businesses. These committees are legally provided for by the CoK 2010 under Article 124 and are incorporated in the assemblies' *standing orders* (written rules that regulate the legislature proceedings).

The use of legislative committees as participatory mechanisms effectively addresses technical matters in detail, e.g., budgeting and public policymaking, because they are small and manageable and, therefore, can facilitate in-depth discussions. Although none of the public respondents in both counties mentioned this participatory mechanism, it is linked to public meetings. These legislative committees facilitate the public meetings at the legislatures. Therefore, they are crucial to the legislatures as the operative platforms for engaging the public in government businesses and activities.

3.6 Site visits

The findings of this research reveal the use of site visits to engage the public in both counties. 9% of the public respondents in Nairobi City and 5% in Lamu state being aware of this participatory mechanism. Further, the key respondents from the administrations (legislators and public administrators) in both counties state that site visits are processes conducted by the legislative or investigative committees that are formed by the county administrations. They state that when the public lodges complaints on public matters that require to be inspected physically, for example, environmental pollution by industries or slaughterhouses, then the relevant committees, as mandated by the standing orders, are required to conduct the site visits (go to the respective project sites) to establish such claims.

The site visits are in the form of onsite public meetings where the projects in question are located. The onsite meetings are held by the relevant committees from the executive or legislative branches of government. The committees usually start by inspecting the project in question and afterward engage the affected stakeholders in a discussion for input. The standing orders for both county legislatures mandate the legislative committees to hold the site visits by conducting inspection tours, having deliberations with the affected stakeholders, and making recommendations for their approval by the legislature. Further, interviews with the FGD participants in both counties reveal that the site visits are essential in addressing complaints lodged on public matters that require physical inspections, e.g., construction projects, sanitation, and hygiene.

4 Discussion

The research findings reveal remarkable similarities regarding the utilized participatory mechanisms by both county administrations despite them having two different settings

(urban and rural). The mechanisms used in both counties (Nairobi City and Lamu) are conventional (traditional) and nonconventional (innovative), which suggests a rise in these participatory mechanisms. Further, this research establishes that the main participatory processes used by both counties are public meetings, supplemented by other participatory mechanisms, such as workshops, ICT-enabled platforms, memoranda and petitions, legislative committees, and site visits.

One major challenge exposed by the supplementary mechanisms is inaccessibility. For instance, ICT-enabled platforms have low usage in both counties, but they are also used more in Nairobi City (as stated by 22% of the public respondents) than in Lamu (as stated by 10% of the public respondents). This low usage is linked to the unavailability and inaccessibility of the technological structures. Further, as both counties use workshops for stakeholders (after public meetings) on particular matters that require further deliberations and input, the access is low, as reflected by the public respondents in both counties that are aware of them (11% in Nairobi City and 5% in Lamu). Also, memoranda and public petitions usage are low in both counties due to their written nature, hence locking out most people who cannot write and read. Likewise, legislative committees and site visits are not popular with the public because they are primarily the operative platforms for legislators; however, they are open for the public to participate in policy matters.

Notable from this research findings, participatory mechanisms used in both counties are determined by the counties' resource capacities (finances). The administrations frequently use public meetings in both counties because of their cost-effectiveness. They are regarded as low-cost processes by the administrations. Considering that participatory mechanisms are costly [22], [36], the selection of cheap participatory instruments, e.g., public meetings by the policymakers in Kenya, is a strategy that enables both county administrations under scrutiny to execute public participation without incurring huge costs. The design and usage of these mechanisms are heavily shaped by the resources available, with both administrations embracing cost-effective processes to engage the public while overlooking other contextual factors, which should ideally be considered because they affect quality participation. Context is essential in determining participatory processes and their outcomes [37], [38]. Contextual elements facilitate quality participation as they are specific to the locality [39], [40]. They are, therefore, linked to the quality factors for participation, such as proximity, accessibility, inclusivity, representativeness, interactivity, and ease of usage by the public.

From an administrative perspective, the low-cost processes utilized are usually linked to the production and participation costs of the participatory mechanisms, which inform administrations on how to engage the public [41]. The production costs are referred to as the expenses made directly by the administrations to plan and execute these mechanisms, e.g., staff time, public facilities hiring, and transportation costs for staff to participation sites, while the participation costs include public transportation, time off from work, and family by the public to participate. Ideally, production costs are accounted for by the administrations, while the public caters to participation costs. However, in the Kenyan context, some participation costs are partly catered to by the administration, e.g., when transport refunds or lunch allowances are offered (although occasionally) as public participation incentives. Therefore, these two costs influence

the administrations' behavior in both counties in the planning, designing, and executing public participation.

Thus, the results of this research expose that the resource capacities have greatly influenced the designs of participatory mechanisms in both counties, particularly while choosing the appropriate ones that are cost-effective to facilitate people's participation. Considering that both county administrations experience financial constraints due to the lack of stand-alone budgets for public participation and adequate personnel to coordinate participatory activities, this poses a challenge in executing these participatory mechanisms, especially in most administrations of developing countries [42].

5 Conclusions

It is evident that when participatory mechanisms are inadequately funded, public administrations will go for low-cost mechanisms (in both production and participation), such as public meetings, which are open to everyone and voluntary. Although public meetings remain the main mechanisms used in both counties, they are *not* the most effective and legitimacy-generating participatory mechanisms because they can be controlled by a few people and, therefore, become poor channels for discussion and decision-making; they even can lead to conflict escalation [23].

Such low-cost mechanisms should be supplemented by other participatory mechanisms to facilitate inclusivity, as participatory mechanisms perceived by the public to be representative and just are more likely to be credible. Although the supplementary participatory mechanisms established by both counties are inaccessible to many people due to various reasons such as financial constraints, limited technological structures, lack of knowledge, and difficulty in usage, thus the administrations should employ participatory mechanisms that can adjust to the local-specific contexts to navigate these limitations [43]. Further, even with the resource constraints, the administrations can still choose participatory mechanisms that are effective and efficient at the same time, e.g., those that produce better results with minimal financial costs.

The contextual element of financial resource capacities should not overshadow other components, such as geographical area settings, population dynamics, and technological development, which would otherwise enhance these mechanisms to consider quality factors. Despite resources being essential in executing successful participatory mechanisms, the emphasis should be placed on mechanisms that adapt to the configuration of the area where participation occurs to facilitate smooth engagements with all the participants and, therefore, reduce frustrations for those who organize these participatory mechanisms and for those who participate. Further, considering that contextual elements are varied, a single participatory mechanism would not be effective. Therefore, there are no universally applicable (one-size-fits-all) participatory mechanisms due to the different situations and contexts in the counties [44], [1]. Administrations should be flexible in using "what works best when," depending on the contextual aspects, and it would be feasible to complement the conventional-non-digital processes with the non-conventional-digital ones for effective participation [34].

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