



KWALE COUNTY POLICY BRIEF ON PUBLIC PARTICIPATION 2023

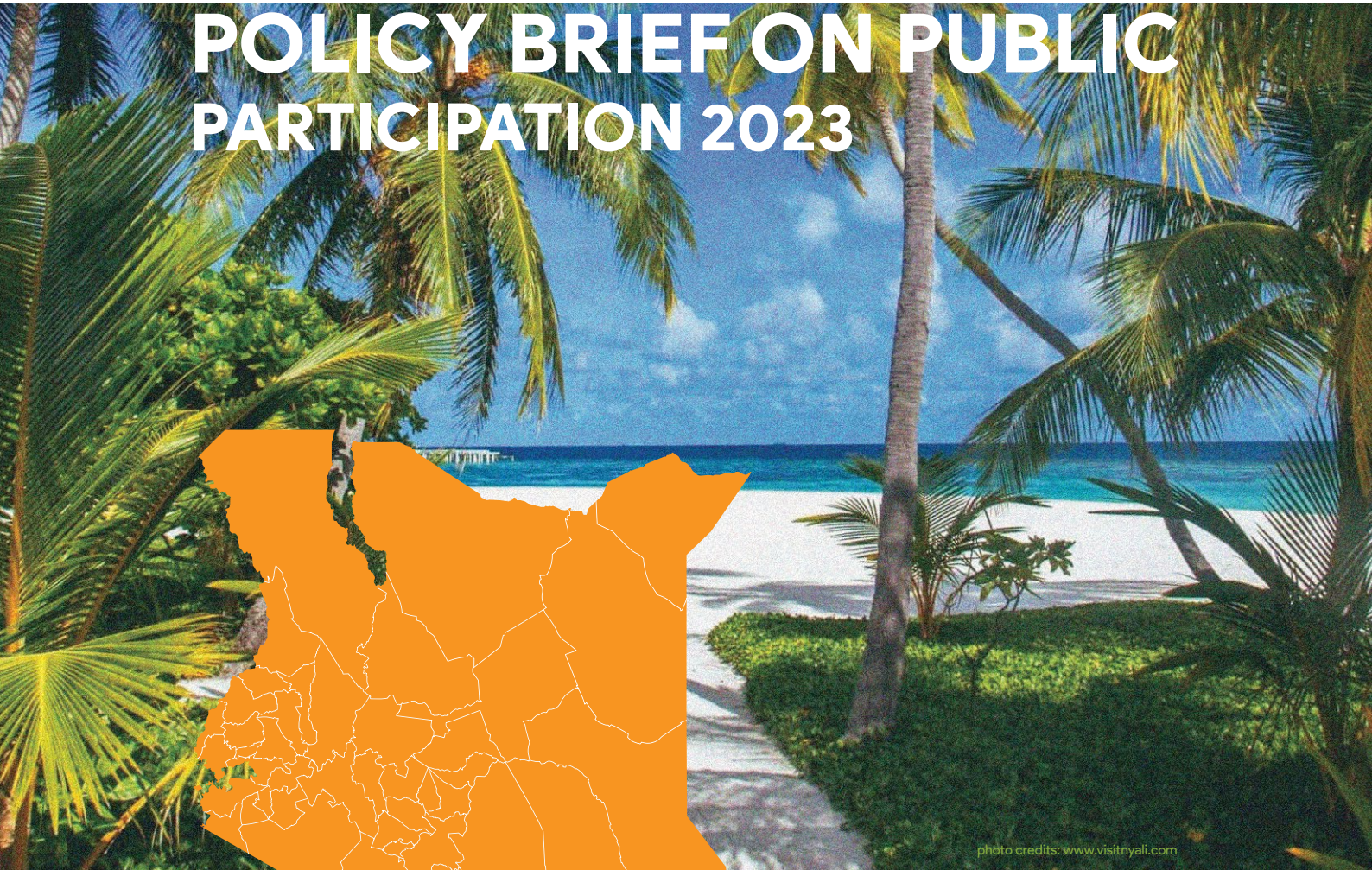


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Building Alliances Better Lives

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ACKNOWLEDGEMENT

This Policy Brief is an important tool contributing to the governance and public participation of Kwale County. The document will be used by the Kwale Civil Society Consortium to engage the government as a reference on the gaps as well as recommendations in regard to Public participation within the County.

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Special thanks go to Jalim Mohamed (Consultant) who compiled this document, Kwale Civil Society Consortium, and government representatives who inputted the document during the validation meetings. The information that they freely provided has been very useful for the production of this document.

We thank the PEN team and its partners, particularly the Civic Freedoms Forum (CFF) for facilitating the conceptualization, reviewing, and overall coordination of this policy brief.

This collective effort will go a long way in improving the engagement between civil society and county governments for improved delivery of services at the county level, meaningful citizen and civil society participation in governance, and for a more enabling environment for civil society operations.

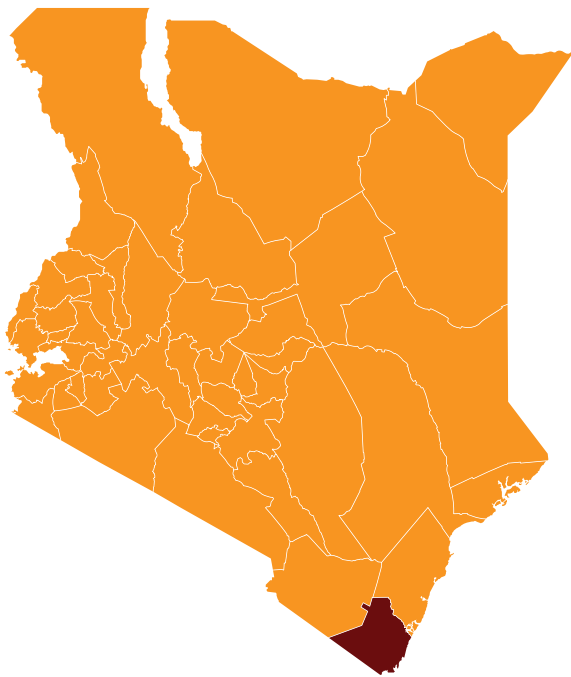
EXECUTIVE SUMMARY

Public participation is a constitutional requirement to enable citizens be part of the decision-making processes on sociocultural, economic, and political issues affecting them. Kwale County Assembly enacted the Public Participation Act before the then Governor H.E Salim Mvurya assented to the law on January 16th, 2016. However, the law is yet to be fully operationalized. This draft policy Brief peeps into some of the gaps that exist in the law long before it is fully operationalized. The policy brief identifies some loopholes in the law and further recommends on how to seal the same.

The Brief also discusses the state of public participation and points out how the County Government through the village and ward administrators has been manipulating the process by inviting individuals well-known to be supporters of the governing regime while keeping away those perceived to be anti-government. The Brief critiques the culture of giving handouts disguised as transport reimbursement to the citizens turning up for public participation exercises and goes on to recommend that public participation exercises be further decentralized to the village unit level as opposed to the current situation where the exercise is conducted at the ward and sub-county level.

The brief recommends the creation of the Public Participation Office and equipping it with the necessary tools to be able to improve the state of public engagement in Kwale County. It also critiques the County Government for its failure to respond to requests for information including memorandums and petitions submitted to County Executive and Assembly. Lack of a feedback/ structure mechanisms to effectively enhance public participation has also been addressed.

Also featured in the brief is the welfare of persons living with different disabilities with a particular focus on the visually impaired and citizens with hearing and speech challenges who require the use of braille materials and sign language interpreters.



GENERAL COUNTY INFORMATION

Kwale County is one of the six counties in the coastal region of Kenya. It borders Taita Taveta County to the Northwest, Kilifi County to the North and Northeast, Mombasa County and the Indian Ocean to the East and South East, and the United Republic of Tanzania to the South West. The county is divided into four sub-counties namely, Kinango, Matuga, Msambweni, and Lunga-Lunga which are further divided into 20 wards.



According to the 2019 Population census it is estimated that Kwale County has a population of 866,820 (KNBS, 2019).

CURRENT CONTEXT OF PUBLIC PARTICIPATION IN KWALE COUNTY

Kwale County Public Participation Act is an Act of the County Assembly of Kwale to give effect to paragraph 14 of part 2 of the Fourth Schedule of the Constitution of Kenya; to establish modalities and platforms for public participation in the governance of the county and connected purposes.

The Constitution of Kenya in Article 10 (2a) emphasizes the participation of the people as one of the values and principles of governance. Similarly, Article 232 (1 (d) provides for the inclusion of citizens in the process of policy-making. Article 174(c) gives powers of self-governance to the people by enhancing their participation in the exercise of the powers of the state and in making decisions affecting them.

Other key sections of the supreme law include Article 184(1c) which requires that mechanisms for participation by residents be included in the governance and management of the urban areas and cities. Article 118 (1b) and 196 (1b) direct the national and county legislatures respectively, to facilitate public participation. Additionally, Article 119 (1 gives citizens the right to petition parliament to consider any matter within the authority, meaning that Kenyans can request parliament to take up issues important to them. Public information sharing in Article 201 (1a) states that there be “openness and accountability” and public participation when it comes to public finance matters. Furthermore, Article 35 of the constitution stipulates that citizens have the right to access all information held by the state or public officials. Article 232 (1f) states that the values and principles of public service include “transparency and provision to the public of timely and accurate information.”

Additionally, Section 87 of the County Government Act 2012 outlines the principles of public participation while the Public Finance Management Act (PFM Act) Section 125 emphasizes the need to involve the citizens in the budget-making process. The law makes further emphasis on the need for the timely distribution of the relevant budget documents to the public at least 7 days prior to the actual exercise. But also very important, the Act provides that the venue of public participation must be accessible to all citizens.

That citizens right to participate in the process of governance to strengthen the concept of participatory governance is not in question. However, lack of knowledge regarding participatory mechanisms is one of the challenges that hinders the involvement of citizens in matters of local government for social welfare service delivery.

Kwale is one of the counties that has enacted public participation act to facilitate the citizens' involvement in the county's decision-making processes. Even though the law was assented to in 2016 by the then Governor of Kwale H.E Salim Mvurya, it is yet to be fully operationalized. The county government's Department of Finance and Economic Planning alongside the County Budget and Economic Forum (CBEF) has however continued to engage the public in discussing development plans albeit not in strict compliance with the law enacted to advance the same objective.



In place of the Public Participation Act, the county government has opted to use the village and ward administrators to mobilize members of the public to attend its meetings – an opportunity that has been used by the latter to invite to meetings the individuals believed to be supporters of the governing regime while deliberately keeping away those perceived to be holding dissenting opinions.

Persons living with disabilities remain the most disadvantaged in this arrangement. For instance, the visually impaired and those with speech and hearing challenges are hardly invited to public participation forums. In the unlikely event that they are invited, they are not provided with materials in braille for the visually impaired nor do the deaf have sign language interpreters to facilitate their engagement the process.

Previously, civil society organizations have also been sidelined in the process, prompting them to gate-crash some of the town hall forums organized by the government; but even if they do, they are hardly given the opportunity to participate for fear that they will criticize the government and/or incite the public against the government.

The government has also entrenched the culture of handouts where those invited to participate in these forums are reimbursed with transport at the end of the meeting. This state of affairs has diluted the public participation process as those invited hardly speak their mind for fear of not being invited again.

Concentrating public participation exercises at the Ward and Sub-county level has denied the grassroots communities the opportunity to participate in the process. That decentralizing public participation to the village unit level could harvest better outcomes is informed by a process that the local civil society initiated in 2015/16 where residents in 68 out of 77 village units in Kwale County were sensitized prior to the main public participation organized by the county government. The outcome of these “pre-public participation”

forums was very impressive as the citizens were sensitized and equipped with the relevant knowledge and information to be able to participate in the government-organized events from a more informed position. Consequently, in the succeeding government-organized exercises, each of the 68 village units submitted a written memorandum – a factor that the Governor himself and his team in the executive applauded as having made work easy for them.

Another challenge in public participation is the lack of skilled facilitators. The county government relies on its staff to facilitate forums but some of the subjects of discussion are very technical for such staff to break down for the citizens.

The untimely availability of relevant public participation documents which are also written in complex language that the ordinary citizen can hardly grasp is another gap in the process.



Public participation exercise at Kinondo Social Hall: If the mobilization was not done selectively such activities would attract many residents. If they were done at the village unit level, there would be no reason to pay participants.

COUNTY POLICY & LEGAL FRAMEWORK



Kwale County Public Participation Act

Whereas Section 4 of the Kwale County Public Participation Act is very clear on how the County Government should undertake public participation exercises, the actual practices still deviates from what the law states. For instance, sub section 4 (e) and (f) have hardly been implemented since the Act came into being in 2017. The County Government has never provided an environment where the public can access information prior to the actual public participation exercise.

County Budget and Economic Forum (CBEF)

County governments are required to establish County Budget and Economic Forums (CBEF) not later than 60 days after the governor appoints the County Executive Committee Members [CECMS] in as per the Public Finance Management Act 2012 section 137.

The Kwale County CBEF composition has not been well constituted as required, the members have not been consulting and representing interests of the citizens on County planning and budgeting process. Notably, there exists a capacity gap where majority do not understand their mandate and therefore poorly executing them and instead representing government interests.



Kwale County Access to Information Act 2016

This is an Act of Kwale County Assembly that became into law in the year 2016. The objectives of this law in Section 3 is to give citizens the right of access to information as provided under Article 35 of the Constitution of Kenya.

The law gives clear guidance on enhancing social accountability in the county planning and budgeting process as well as ensuring that communication needs of the Kwale people are well addressed. This is in terms of considering the need of persons with various disabilities, literacy levels of the participants attending a public participation activity, and the language to use.

The Act has, however, not been fully implemented seven years after hence making access to information an advocacy issue to be pursued by the CSOs to make it be better realized.

Some sections require amendments to make the law clear and progressive, for instance, section 5 under subsection 2, the law states that the County government shall take into consideration the following;

- [i]  The need to reach persons with disabilities
- [ii]  The local language
- [iii]  Literacy levels
- [iv]  The mode of communication that reaches most people within that area

The above information requires an amendment to make it clear and qualify how the above shall be executed.

The County Government has consistently failed to give feedback on various correspondences including memoranda, and petitions submitted to its various departments by members of the public and organized groups. In 2019 for instance, Kwale Civil Society Consortium submitted a memorandum challenging the reappointment of the then Chief Officer for Finance and Economic Planning, after the Auditor-General's report raised crucial issues with regard to the public expenditure of Kwale County Government.

Despite the fact that the Consortium's memorandum was informed by credible information from the Office of the Auditor General(OAG), the County Assembly of Kwale did not see it fit to inform the Consortium why their concerns were not addressed. Article 35 of the

Constitution provides for access to information while the Access to Information Act Section 4 (2a)(2b) and Section (3) of Kwale Access to Information Act state that A person has the right to access information of the county government or private body freely. Section (10) states that A county information officer shall determine an application made under section 8 as soon as possible, but in any event, within twenty-one days of receipt of the application. Section 6 (1b) of the Act provides that special interest groups shall nominate 5 persons who shall be appointed by the Governor and approved by the County Assembly appointed to the office of public participation. Even though this section mentions “5 members nominated by special interested groups” sub-section (2) of the Act spells out only 4 members of the special interest groups namely:

This Section is unclear whether the youth should be both male and female and does not take into consideration the religious diversity of the county of Kwale. The county has two dominant religious groups namely Islam and Christianity but also has a traditional religious formation known as Kaya. Despite being a critical player in governance issues, the composition of the office of public participation in Kwale County does not currently include representation from the civil society.



Youth



Women




Persons with Disability

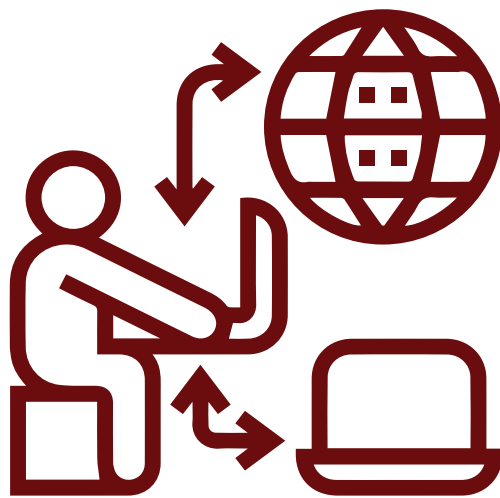


Religious groups

RECOMMENDATIONS

NO	LAW/POLICY	GAP	RECOMMENDATION	TIME FRAME
1	 Kwale County Public Participation Act (2016)	Lack of policy/ regulation for public participation Kwale County Access to information Act 2016	The Kwale County Assembly should formulate a policy and accompanying Regulations to enhance public participation.	By August 2023
2		Failure to implement section 4(e) and (f) of the Kwale County Public Participation Act which requires the Public to access equitable information on their meaningful participation and feedback to them on how their input affect decision	The County Executive should operationalize the Public Participation Act fully and enforce the Guiding Principles as enshrined in Section 4 of the Act.	By May 2023
3		The Act has not been fully implemented Section 5 and Subsection 2 of the Act is not clear	Kwale County Assembly should amend the Act to give room for a legal framework that provides for access to information and structured feedback mechanism including availing vital documents in good time for public access before the actual public participation.	By Sep 2023
4		Lack of Public Participation Office	Civil Society should lobby the County Executive and the Implementation Committee in the County Assembly to enforce Section 5 of the Kwale County Public Participation Act 2016 by establishing the Public Participation Office to coordinate public participation in Kwale County.	By August 2023
5		Lack of a Person with Disability Policy	Civil society to lobby the County Assembly and County Executive to formulate a policy to facilitate the participation of Persons with Disabilities in the decision-making processes by setting aside a budget for brails to aid individuals with visual impairment as well as ensuring that sign language interpreters are available to assist the deaf.	By August 2023

NO	LAW/POLICY	GAP	RECOMMENDATION	TIME FRAME
6		Concentration of public participation exercises at the ward and sub-county level	The County Department of Finance and Physical Planning and the County Budget and Economic Forum should decentralize public participation exercises to the village unit level to enable more grassroots populations to participate in the decision-making processes.	By June 2023
7		Lack of clarity in Section 6 of the Act	Civil society should lobby the County Assembly to amend Section 6 (b) of the Act to create room for representation of civil society as well as for both male and female youth in the committee.	By July 2023
8	County Budget and Economic Forum (CBEF)	Low Capacity of CBEF Members	Internal capacity building for the committee to be conducted by Finance and Economic Planning.	By June 2023
		Irregular Composition of CBEF	Civil Society should advocate for the disbandment of the current CBEF so that a new CBEF can be constituted in line with Section 137 of the PFM Act.	By April 2023



“The County government cannot work in isolation, CSOs, the private sector and citizens must be involved because they all supplement the work of the government and enhance better service delivery” -PEN Executive Director



“Seeking information from the government rightful offices should form the basis for advocacy which is evidence based, facts yield results and enhances better partnerships, engagement and public involvement” - Chris Mbiti



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