



TURKANA COUNTY POLICY BRIEF ON PUBLIC PARTICIPATION 2023

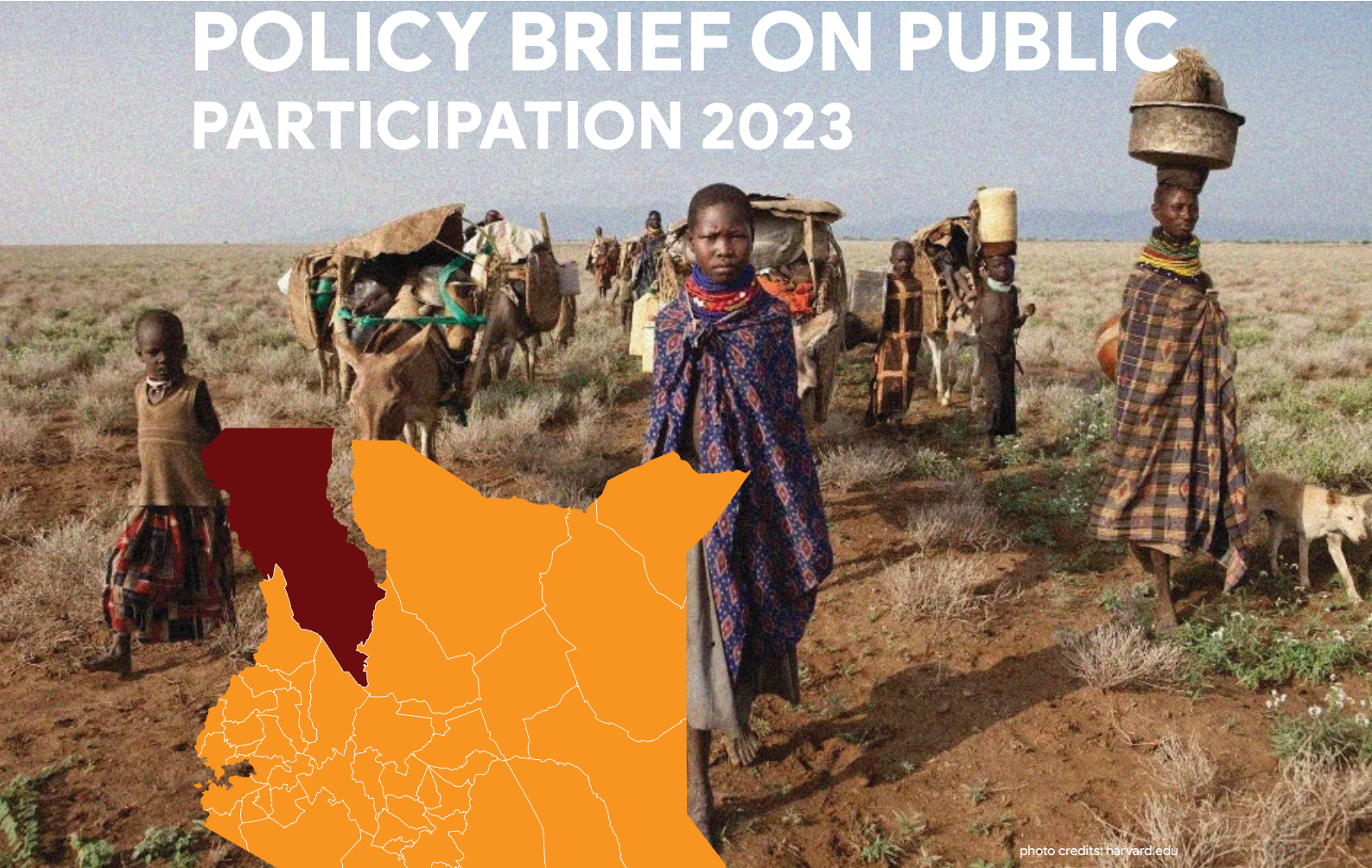


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Building Alliances Better Lives

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ACKNOWLEDGEMENT

This Policy Brief is an important tool contributing to the governance and public participation of Turkana County. The civil society organization will use the document to engage the government as a reference for the gaps and recommendations regarding public participation within the County Government of Turkana.

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Special thanks go to Davis Wafula and CSO leaders who compiled this document, Turkana CSO members, and government representatives who contributed to 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 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 enhanced delivery of services at the county level, meaningful citizen, and civil society participation in governance, and a more enabling environment for civil society operations.

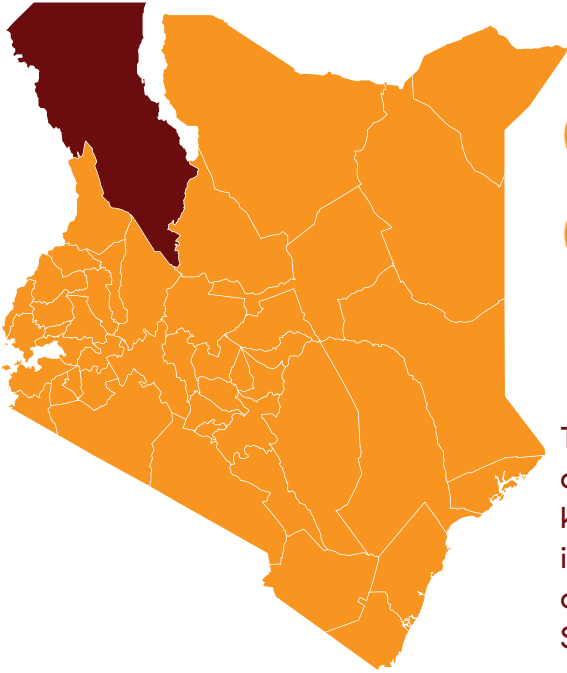
EXECUTIVE SUMMARY

The main aim of this policy brief is to inform Turkana County CSO members of engagement with the duty bearers, including the county government and other stakeholders, on public participation. Specifically, the Policy briefs covers context and problem analysis; key priority laws and policies, including opportunities and gaps; and key recommendations for advocacy actions at the county level.

The process of developing the policy brief involved: the selection of county-based consultants by the CSO networks; consultation with members of the CSO networks; validation forums for county stakeholders (including county government officers); and consultation with the PEN and CFF team.

The policy brief identifies legal and policy gaps in several policies including the Turkana County Public Participation Act of 2015, and Turkana County Village Administration Act of 2019, the Access to Information Act of 2016, the Public Finance Management Act of 2012, and the County Government Act among others. While some of the gaps are administrative, others require legislative actions. Some of the gaps include Constrained resources; Limited Awareness among citizens of the County and development Processes Limited capacity on roles among administrators and the village council; Inadequate citizen Awareness; and Lack of citizen feedback mechanism.

The brief also identifies selected recommendations and advocacy opportunities at the county level namely: Increase the provision of resources to implement the Turkana County Village Administration Act; establish Citizen's Service Centres at the county, Sub-County, Ward, and any other decentralized levels; Use vernacular radio stations as their main communication channel of sharing information; Build capacity of the administrators and the Village council on their roles and responsibilities on public participation at village level ; Ensure that marginalized groups are included in decision-making; and Establish a robust feedback mechanism through amendment of the Turkana Public participation Act or development of regulations.



GENERAL COUNTY INFORMATION

Turkana County is the second largest of the 47 counties in the Republic of Kenya, covering 71,597.6 km² and accounting for 13.5% of the total land area in the country. Turkana County has a population of 926,976 as per the Kenya National Bureau of Statistics (KNBS) 2019.

The Turkana people predominantly secure their livelihood from pastoralism. However, this has come under pressure due to inter-related issues including population growth, the impacts of climate change, increased drought, and continued environmental degradation. Subsequently, natural resources are limited and often prompt conflict among neighboring countries and counties. Addressing food security, provision of safe and adequate water, poverty, malnutrition, education, gender inequities, and ecosystem degradation are critical for Turkana County in terms of its development ambitions and economic, social, environmental, and political potential. Turkana is rich in mineral and oil resources and oil is expected to contribute significant wealth to the county.

BACKGROUND & INTRODUCTION



Meaningful citizen participation in governance is a key ingredient for public reforms that were instituted by the Constitution of Kenya (CoK) 2010. Article 11 of the Constitution vests all sovereign power to the people of Kenya. This power can be expressed through direct participation or indirectly through elected representatives. In addition, various pieces of legislation anchoring devolution highlight the principles of citizen participation. Together, these constitutional and legislative provisions avail various platforms for citizen participation in devolved governance. Citizen participation is one of the national values and is also one of the principles of public service as articulated in the Constitution in Articles 10 (2, a) and Article 232 1.

Public participation is a political principle or practice that is also recognized as a right. Generally, public participation seeks and facilitates the involvement of those potentially affected by or interested in a decision. The principle of public participation holds that those who are affected by a decision have a right to be involved in the decision-making process. Public participation implies that the public's contribution will influence the decision. Through public participation, the public determines its development objectives, and it is the role of the leaders including representatives and bureaucratic staff to get the people there. The public ends (goals and objectives) should be chosen democratically even though the means (or strategies) for achieving these may be chosen by the State and public officials.

Public participation has many benefits some of which are: citizen empowerment; the generation of new, diverse and innovative ideas and actions; enhancement of citizen-

government relations; appropriate prioritization of projects; improved delivery of public services and; government responsiveness. A public participation exercise that does not lead to the public affecting or influencing the outcome of the process can be frustrating and futile.

After the 2013 general elections 47 counties established, devolved system of public management and service delivery were initiated in conformity with the 2010 constitution of Kenya. Turkana, like other counties, is obliged by the constitution to ensure public participation in all governance and public service delivery processes. This is further outlined in the Turkana County Public Participation Act 2015 and the County Public Participation Guidelines of 2015 (Ministry of Devolution and Planning, 2015). Despite clear successes in establishing county governments and public participation framework, the Interim Report Taskforce on Devolved Government Reform in Kenya (ITFR, 2016) revealed corruption, mismanagement, political patronage, and exclusion of citizens in governance.

The constitution demands that all people are included in making decisions on matters that affect them. However, most government institutions rarely give their citizens meaningful engagement in policy and decision-making processes. In Turkana, for example, the new public management ideals of providing public value through public participation programs are notably challenged (ITFR, 2016). On Review of the status of public participation programs and county information dissemination frameworks, it was observed that the County Government of Turkana did not adequately provide public participation platform to its citizens.



POLICY LEGAL FRAMEWORK ON PUBLIC PARTICIPATION



NATIONAL LEVEL LEGAL FRAMEWORK



The Constitution of Kenya 2010

Public participation is a principle that has been given prominence in the Constitution of Kenya 2010. The people's sovereign power can be expressed through direct participation or indirectly through elected representatives. Article 10 provides that public participation is a national value and principle of governance. The principle of public participation is echoed across the Constitution. The public is expected to participate and be involved in the legislative and other business of Parliament and its committees. One of the objects of devolution is to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them. Participation should imbue all public affairs and be promoted by both State and Non-State Actors (NSAs) acting in the interest of the public.

The Constitution particularly sets key requirements for Parliament and the County

Assemblies to provide frameworks for public participation in legislative processes. This emphasis on the people's representatives to ensure public participation underscores the fact that the election of representatives does not negate the need for people to continuously be involved in governance processes. This could be established through administrative and/or legislative frameworks/guidelines. Parliament and County Assemblies are required to enact legislation on participation and develop procedural guidelines for people to exercise this right.

The Constitution provides that the marginalized and minorities have the right to fully participate in the integrated social and economic life of Kenya as a whole and in the counties. County governments should enact legislation that promotes the interests and rights of minorities and marginalized communities in county development. Additionally, there should be a commitment to affirmative action and equal opportunity if participation in governance and development is to be realized by all individuals and groups of people regardless of bias factors such as ethnicity, race, color, religion, sex, age, genetic information, or disability.



County Governments Act

The County Government Act, 2012 at the preamble articulates what is meant by the 'public' stating that, when used for public participation it means: (a) the residents of a particular county; (b) the ratepayers of a particular city or municipality; (c) any resident civic organization or non-governmental, private sector or labor organization with an interest in the governance of a particular county, city or municipality; and (d) non-resident persons who because of their temporary presence in a particular county, city or municipality make use of services or facilities provided by the county, city or municipality. The Act in Part 2 Section 6 states that in exercising its powers or performing any of its functions, a county government shall ensure efficiency, effectiveness, inclusivity, and participation of the people. Section 87 of the Act provides for the principles of citizen participation in county governance.

The County Governments Act, in sub-section 91 identifies modalities and platforms for citizen participation. These obligate the county government to facilitate the establishment of structures for citizen participation among them Information, Communication and Technology (ICT) based platforms, town hall meetings, budget preparation, and validation fora, notice boards that announce jobs, appointments, procurement, awards, and other important announcements of public interest, development project sites, avenues for the participation of peoples' representatives including but not limited to members of the Parliament (the National Assembly and Senate) and establishment of citizen fora at county and decentralized units. Effective public participation requires enabling conditions such as a clear mechanism for participation and communication channels between citizens and government, and the actors, private individuals, and organizations, need to have an understanding and knowledge of the issues and public processes to engage meaningfully. In essence, while the supply side of participation requires that enabling systems,

mechanisms, and frameworks are in place, the extent to which participation achieves its intended objectives largely depends on how the demand side (the public) is organized and informed on the issues they seek to influence.

Part IX, of the Act, establishes the Principles and Objectives of public communication. Furthermore, in subsection 96, the Act establishes the modalities of access to information. It specifies that ‘every county government and its agencies shall designate an office for purposes of ensuring access to information.’ It further enshrines the inclusion and integration of minorities and marginalized groups. In Part X, the Act obligates the county governments to conduct civic education as part of enhancing public participation. And subsection 105, obligates the county governments to ensure ‘meaningful engagement of citizens in the planning process.’ It further specifies this in sub-section 115 ‘Public participation in county planning Subsection 119, it obligates the County Executive Committee (CEC) to establish Citizen’s Service Centres at the county, Sub-County, Ward, and any other decentralized levels. The Citizen Service Centres are expected to ‘serve as the central office for the provision by the county executive committee in conjunction with the national government of public services to the county citizens.’



Public Finance Management Act

One economic issues, the Public Finance Management Act 2012 provides for the establishment of a County Budget and Economic Forum (CBEF) in each county. The CBEFs are intended to provide a platform for the county and public to consult on areas such as the preparation of a County Fiscal Strategy Paper, preparation of the County Budget Review and Outlook Paper (BROP), and other matters relating to budgeting, the economy, and financial management at the county level. The CBEF is specifically designed to ensure the participation of the public in the county’s budgeting process. These were to be instituted in each county to ensure public participation in public finances.



Access to Information Act

Part II, Section 4 provides that every citizen has the right of access to information held by (a) the State; and (b) another person and where that information is required for the exercise or protection of any right or fundamental freedom. Despite being national legislation that is binding on all counties, most county officers use the lack of the county’s version as an excuse to deny citizens and CSOs the information they request for.

Section 8 of the Access to Information Act, 2016 requires that a request be specified with ‘due particularity.’ It requires that anyone requesting information shall provide details and sufficient particulars to the public officer or any other official to understand what information is being requested. Not all CSO actors understand the detailed social accountability

information to request from public officers due to a lack of prior sensitization. Since most of this kind of information isn't posted on the county government's website, it becomes difficult for CSOs to determine the kind of information to request for. Public officers use this gap to deny CSOs critical information or social accountability documents. Community members are more disadvantaged when seeking particular information.

Since the Act provides that a requester must provide their name and address so that the Authority may determine whether the Access to Information Act, 2016 applies to the request, it makes it difficult for certain CSO actors who may be perceived as anti-government or critical. The major challenge is the lack of regulations to ensure ease of implementation of this Act.

COUNTY-LEVEL LEGAL FRAMEWORK



The Turkana Public Participation Act, 2015

The Act provides for public engagement on matters of public interest concerning policy formulation processes, and legislative processes in Turkana County. It provides for mechanisms by which the public may participate in the affairs of the County to ensure openness, transparency, and accountability on the part of the County, its County Assembly, County Executive, and County Public Service by providing avenues for Citizens to exercise their Constitutional and Legislative right to Public Participation and for connected purposes. Sections 8 (1); 9 (1) and 10 (1) of the Turkana County Public Participation Act establish the offices of the sub-county administrator and ward administrator and village administrator respectively. Based on the findings of a study by URAIA Trust¹, Turkana County has managed to establish the office of the Ward Administrators and Sub-County administrators.

Section 11 of the Turkana County Public Participation Act established the County Budget and Economic Forum. Chaired by the Governor, the CBEF allows citizens to give their views and input in planning and budgeting. The forum includes members of the County Executive, representatives from professional bodies, businesses, women, Persons With Disabilities (PWDs), and faith-based groups. In terms of financing its activities, the county government set aside one percent of the total county revenue for facilitating public participation per fiscal year. The CBEF has not been very involved in budget-making and policy formulation because the members have not been inducted into their roles and mandate in matters related to public participation.

Since the establishment of the Turkana County Public participation Act, the County has not enacted guidelines/policy to enhance effective implementation of public participation in the County. This gap has resulted in public participation forums being held at the Sub County level and not devolved to the Ward level despite the establishment of the units.

Another challenge affecting public participation in Turkana County lies in the absence of

<https://uraia.or.ke/uraia/wp-content/uploads/2016/06/Review-of-status-of-Public-Participation-and-County-Information-Dissemination-Frameworks.pdf>

Access to information Act in the County. CSOs undertaking social accountability as well as citizens requiring government information especially on County budgets, have had to follow unofficial routes of who is known to acquire the information since the rightful channels take long or do not yield positive results especially when one seeks information for social accountability.



The Turkana County Village Administration Act

This Act provides for the delineation and administration of village units in Turkana County. The Act provides extensively for the establishment of village units, a specification of their respective names and boundaries, and provides for their administration. The Act also provides for the establishment of village councils to administer these village units. Some roles of the village council include ensuring and coordinating the participation of the village unit in governance; assisting the Village Administrator to develop the administrative capacity for the effective exercise of the functions and powers at the local level; monitoring the implementation of policies and development plans at the village level; and advising the village administrator on matters about the village unit. However, according to the county's directorate of administration, the government hasn't provided a budget to enable the administrators to carry out the facilitation. In addition, the administrators haven't been trained and thus have a very limited understanding of public participation.

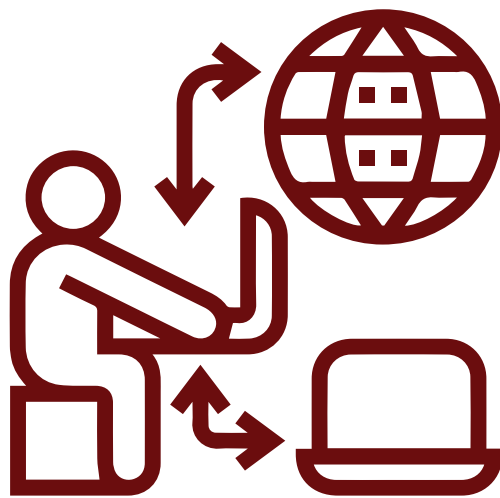


RECOMMENDATIONS

LEGAL FRAMEWORK	GAPS	RECOMMENDATIONS	KEY PLAYERS	TIMELINES
Turkana county public participation Act	<ul style="list-style-type: none"> The some CBEF members lack capacity to effectively carryout their mandate. 	<ul style="list-style-type: none"> CSOs and the County government to build capacity of the CBEF members and the citizens on their roles as regard public participation. CSOs initiate dialogues with the County leadership for goodwill in future nomination process for CBEF members. Civic education for citizens to be prioritized and budgeted for by the County government and CSOs. This will enhance oversight by members of the public to be prioritized and budgeted for by the County government. 	County Executive, MCAs, CSOs	2023-2025
	<ul style="list-style-type: none"> Public participation has not been devolved up to the Ward level. Forums are done at the sub county headquarters leaving the rural majority out considering the vastness of Turkana County 	<ul style="list-style-type: none"> CSOs to lobby County government to devolve public participation forums to Ward level 	CSOs, County Executive/Assembly	By August 2024
	<ul style="list-style-type: none"> Absence of County Public participation guidelines hence making it difficult to implement public participation without a clear guideline 	<ul style="list-style-type: none"> CSOs to advocate for enactment of public participation guidelines to pave way for better planning for public participation by the County government 	CSOs, County Executive, County Assembly	August 2024

RECOMMENDATIONS

LEGAL FRAMEWORK	GAPS	RECOMMENDATIONS	KEY PLAYERS	TIMELINES
	<ul style="list-style-type: none"> Absence of Access to Information Act 	<ul style="list-style-type: none"> CSOs to initiate dialogues with the government for the need of an Access to information Act to ease Public participation and enhance social accountability in the County 	CSOs County Executive, County Assembly	June 2025
Turkana county village administration Act	<ul style="list-style-type: none"> Limited funding to the administrators. The village administrators lack capacity to execute their mandate. 	<ul style="list-style-type: none"> Lobby for budgetary allocation to enable administrators execute their roles. Build the capacity of village administrators on public participation and their mandate CSOS and County government budget and undertake civic education to members of the public to enhance oversight 	<p>County executive, MCAs, and CSOs</p> <p>County executive, MCAs, and CSOs</p>	<p>2023- 2025</p> <p>2023- 2025</p>



“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” - Chris Mbiti



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