



# ***RAPID ASSESSMENT OF CIVIC AND DEMOCRATIC SPACE WITHIN THE COUNTIES***



## ***ABOUT THIS REPORT***

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The State of Civic and Democratic Space – Rapid Assessment Report is one of the key publications run by Civic Freedoms Forums to assess specific county status to inform targeted interventions. This summary report draws from the four county case studies to present key common findings, particularly as they relate to the operating environment for civil society organisations (CSOs).

The four county case studies, each contain a great deal more information and insights on the state of civil society in each of the four counties. Each of the four counties in which the assessment was conducted is of course quite different, including in terms of population size, cultures, democratic history and economic performance. The selection was informed by the ongoing “Giving for Change” project funded by Kenya Community Development Foundation (KCDF) whose priority counties include Kakamega, Makueni, Busia, Kisumu, Kwale and Nairobi.



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## CHAPTER 1:

# INTRODUCTION



## 1.1 Context of the Study

The history of contestations over rights and interests between the ruling elite and citizenry is as old as humankind and society. It is the reason countries across the world have gone through periods of repressive leadership that have deepened limitations to human rights and related civil and political liberties. In the context of Kenya and Africa, the concept and struggles for “civic and democratic space” are deeply interrelated. This straddles the colonial and post-independence regimes to date. With a political economy and long-term analysis, one can understand the deep-seated interests that have informed the endless and unfinished fight for a democratic Kenya<sup>1</sup>.

The phenomena of governments (mainly the executive wings) working tirelessly towards limiting spaces for citizens and other key actors critical in the governance of public affairs (mostly outside the realm of the State, popularly known as Non-State actors) is as old as the society itself. There is a positive correlation between the State of democracy and the spaces or freedoms to be accorded or limited and vice versa. In most cases, it is the most repressive or authoritarian regimes that are prevalent to the limitation of the same. It is also

<sup>1</sup><chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://penkenya.org/wp-content/uploads/2022/07/KENYA-OBSTRUCTED-PARTLY-FREE.pdf>

critical to provide a human rights perspective in this discourse because the restriction of civic space impacts on the enjoyment of civil rights and liberties, especially the right to expression, freedom and security of the person, freedom of conscience, religion, belief, and opinion; freedom of the media; access to information; freedom of association; right to assembly, freedom of movement among others. These have been enshrined and protected in our Constitution and the regional and international human rights frameworks. Article 24(1) of the Constitution declares that a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom, and taking into account all relevant factors.

This is integral in Kenya and Africa because governments (mainly the executive) target the people and civil society actors by implementing retrogressive operational and policy actions that are geared to curtailing their legitimacy and efficacy. The fact that other independent state offices and institutions are equally impacted validates the need for a more expanded conversation around civic and democratic space. These violations are more prevalent especially before, during, and after the General Elections for most regimes want controlled processes and outcomes. An open civic and democratic environment makes it impossible to achieve this.

Civil society organizations in Kenya have been major players in the agitation for political change during the country's single-party dictatorship and introduction of multiparty politics. Some of their activities included holding the state accountable, often undertaken within a restricted civic space replete with state violence. External support has led to the evolution of a civil society that can demand political reforms and accountability in the management of public affairs and can shape discourses on democratization, accountability, and human rights.

The shrinking civic and democratic space has become a major governance issue for the civil society and other independent voices and actors, at all levels in the society. From 2005 to date, there have been several attempts by the Kenyan State to constrain the civic and democratic space through punitive and prohibitive governance frameworks targeting the Public Benefits Organizations (PBOs), Faith Based Organizations (FBOs), media organizations, trade unions, constitutional commissions among other independent state and non-state actors.

In 2010, Kenya promulgated one of the most progressive constitutions in the world with a strong bill of rights that guaranteed not only civic and political rights but also socioeconomic and group rights. The Constitution confers strong

national values and high integrity standards. It also guarantees civic action and calls on the people to take charge of their political, social, and economic affairs. In addition, the Constitution creates devolved systems where the rights and freedoms under the Bill of Rights can be exercised. The citizens as well as Civil Society organisations (CSOs) have the right to enjoy the space to operate freely both at the national and county level.

Despite these constitutional guarantees, the civic space has continued to suffer state restrictions at county levels. Public Participation and access to information are some of the key areas where CSOs and citizens encounter challenges, especially in their quest to push for responsive budgetary allocations, accountability on public funds and procurements, and better service delivery among others. Public participation in Kenya's devolved system of government has had challenges, such as limited support from the political class and low levels of civic education.

The creation of a decentralized system of government by the Constitution of Kenya 2010 meant that citizens would be empowered through the provision of information and be allowed to participate in the decision-making process on matters that affect their livelihoods and seek to change the developmental imbalances that have hindered the country's social and economic development in the past through enhanced transparency, accountability, service delivery, equity, and inclusiveness.



## 1.2 Objectives of the Study

This study set out to document the general status of civic and democratic space at the county level with a particular focus on public participation, freedom of assembly, association, and access to information. Specifically, the study aimed to:

- i. To document the general status of civic and democratic space at the county level with a particular focus on public participation, freedom of assembly, association, and access to information;
- ii. Document case studies on civic and democratic space trends for Kakamega, Makueni, Kwale, and Kisumu counties.



iii. Make recommendations on specific policy and administrative action to relevant duty bearers, civil society actors, and development partners.



### 1.3 Scope and Methodology

This was mostly a desktop study executed via qualitative methodologies. The study delivered on both the broad topic and main objective; and went further to zooming into the core issues captured in the specific objectives. Each of the specific objectives has formed the basis for formulating the research questions and topical presentations in the final report.

The study used both primary and secondary methods to collect data. Primary sources of data included Key Informant Interviews to identify information dissemination frameworks in the target counties. Key informants included public officials and civil society representatives from the target counties. Secondary data included a review of the Constitution and legal framework put in place by the Government of Kenya (GoK) that affect civic and democratic spaces. It also





## CHAPTER 2: **CIVIC & DEMOCRATIC SPACE TRENDS IN KENYA**



### **2.1 Background**

In the last few years, the environment for civil societies around the world has become increasingly constrained. All around the world, active citizenship is under attack and the space for civic engagement is closing – not just in countries that have struggled under repressive or autocratic governments, but also in democracies with longstanding traditions of supporting freedom of expression. In many countries, state authorities are consistently placing restrictions on the free space occupied by civics, by formulating or overstepping laws ostensibly to regulate civil societies. This legal arsenal can be exported from one country to another to stifle all forms of promoting and defending human rights.

Kenya’s civic space rating remained ‘obstructed’ in the Report by the CIVICUS Monitor in December 2022. Although a vibrant and engaged civil society sector exists in the country, systemic challenges to the enabling environment continue to throttle the full exercise of civic freedoms and undermine civic space. It is

important to note that the state of civic and democratic spaces in Kenya is directly affected by the political regimes. This is evident from the changing civic and democratic journey over the past eight decades. Civic and democratic space in the previous regimes have been classified as Colonial government (1920-1963): CLOSED; Jomo Kenyatta (1963 to 1978) and Daniel Arap Moi (1978-2002) regimes: REPRESSED; Mwai Kibaki regime (2002 to 2013): INITIALLY OPENED (2003-2004), LATER NARROWED (2005 to 2007) and FINALLY OPENED (2008 to 2013); Uhuru Kenyatta and William Ruto regimes as both Obstructed and Partly Free.<sup>2</sup> Since 2013, civic space in the country has been obstructed by the systematic repression of protests and protesters; attacks against journalists, the judiciary, and the LGBTIQ+ community; and sporadic deregistration and vilification campaigns targeting specific CSOS.



## 2.2 Freedom of Assembly

Freedom of Assembly and peaceful protests have witnessed a series of threats over the past two years. As documented on the CIVICUS Monitor, the Kenyan authorities' systemic response to protests in the country has been characterized by excessive force, despite the constitutional guarantee of the right to peaceful assembly. The police have continued to brutally disperse peaceful protests using lethal weapons, such as live ammunition, and crowd control weapons, such as teargas and rubber bullets, as well as batons to assault protesters, and subject them to arbitrary and illegal detentions.

In mid-January 2022, striking inmates at the Kamiti Maximum Prison in Nairobi County were badly beaten by officers after they protested over the lack of food and restrictions on movement in the facility. The protests erupted when the prison began rationing food to the inmates as a punitive measure after three terrorism convicts escaped from the facility, sparking public outrage.

According to some of the inmates, they were going up to 24 hours without food, while some of them were placed in complete isolation. In a separate incident on 7th April 2022, police officers arrested and beat human rights defender Julius Kamau for protesting the high cost of living outside the Department of the Treasury building. Kamau held a banner reading "lower food prices", as part of the NjaaRevolution (translated to 'hunger revolution') protests that began online, where Kenyan citizens have been demonstrating against the high cost of living and inflation using the hashtag #NjaaRevolution. Similarly, four other

<sup>2</sup>See <https://penkenya.org/publications/kenya-obstructed-and-partly-free/>

protesters, Mino Kya, Clinton Ojiambo, Nahashon Macharia, and Anthony Kanyiri, were arrested on 9th April 2022 for protesting the high cost of living.

The protesters were detained at Mwiki police station in Nairobi. In a related protest, police dispersed peaceful protests and used batons to scare demonstrators in another NjaaRevolution protest held in Mombasa on 19th April 2022.<sup>3</sup> From July 7 to 19, 2023 Civil Society Organizations (CSOs) have reported 27 extrajudicial, summary, and arbitrary executions (EJE) – Fatal police shootings. While President Ruto had promised to end the era of police killer squads, the recent unfolding events reveal that the security agencies have clear intentions to execute protestors. In fact, it has been reported that some of these officers masquerade as journalists to arrest and execute protestors. Thirty-four HRDs and three HRDs were arrested on July 7, 2023, in Nairobi and Turkana Counties respectively, 1 HRD was assaulted, arrested, and detained without access to medical attention on 12 July 2023, two HRDs in Kajiado County on 12 July 2023 while one, Boniface Ogutu was abducted by ununiformed police officers on 20th July, 2023.



## 2.3 Freedom of Expression and Free Media

Press freedom has constantly come under attack, especially during the covering of protests by citizens, CSOs, and political class. Attacks on journalists have notably increased in the country, as documented in the Monitor over the last few years. This trend continues to be a key violation of civic space. In several instances, national and local government officials and their staff have been implicated in the attacks. On 6th January 2022, Citizen TV journalist Martin Kosgey was threatened via text after airing a story implicating a governor's bodyguard in a murder case. Kosgey also reported that he had received information that there was a plan to harm him over the story. On March 23, 2023, the Communications Authority threatened to sanction Citizen TV, NTV, K24, KBC, TV47 and Ebru TV for broadcasting the protests claiming the broadcasters had violated the code of coverage.

In June 2023, the Cabinet Secretary for Investments, Trade, and Industry threatened Nation Media Group after airing an investigative story alleging government officials' involvement in a corrupt scheme to import duty-free cooking oil that cost taxpayers billions of shillings. In March 2023, the Media Council of Kenya reported several cases of journalist harassment during

<sup>3</sup>See <https://www.civicus.org/documents/KenyaCountryBrief.August2022.pdf>

demonstrations. Specifically, it was reported that two Africa Uncensored journalists were arrested by police, an NTV journalist was forced to delete photos taken, and several others were shot with tear gas canisters.



## 2.4 Freedom of Association

Kenyans exercising their freedom to associate have had their fair share of frustrations and threats. Over the past few years, CSOs have suffered threats of deregistration, freezing of bank accounts, deportation of foreign staff, and criminal charges of fraud, money laundering, and supporting terrorist activities in the country. In 2022, the NGOs Coordination Board reported that over 2,000 had been deregistered for various reasons while over 7,000 risked being deregistered if they would not comply with the law within 90 days.

Such directions are in contravention of Article 47 of the Constitution of Kenya provides for fair administrative action and contravenes the fundamental right to freedom of association protected by Article 36 of the Constitution of Kenya as well as under international treaties to which Kenya is a State Party. While the Supreme Court of Kenya in February 2023, declared discrimination against the LGBTQ community unconstitutional and affirmed their right to association after a 10-year legal battle, many politicians and religious leaders condemned the ruling and promised to push for tougher legislative actions. Member of Parliament George Peter Kaluma made true the threat by introducing the Family Protection Bill of 2023 which would jail for life people convicted of homosexuality or the promotion of it.



## CHAPTER 3:

# ***CIVIC & DEMOCRATIC SPACE WITHIN THE COUNTIES***



### **4.1 Background**

Devolution has brought with it opportunities and threats in the arena of citizens' and CSOs' operating environment. As Kenya enters the third term of devolved governance, CSOs continue to face several challenges related to participation in public affairs, access to information, and threats to freedom of association as well as assembly.

This chapter therefore describes selected case studies namely:

***Kwale  
County***

***Makueni  
County***

***Kisumu  
County***

***Kakamega  
County***



## 4.2 Kwale County Case Study

Freedoms of residents of Kwale County to form groups, express themselves, and assemble to champion their agenda have been at the center of controversy over what the government has termed as either “radicalization” or “ethnic division”. Just recently, the County Commissioner banned the Taireni Association of Mijikenda from holding any meetings and ordered the members to present themselves to the county security committee before police hunt them down. The County Commissioner claimed that the group has been conducting illegal meetings meant to divide communities based on tribalism.

The actions of the Commissioner were in contravention of the Constitution and International guidelines on freedom of association which Kenya is a party to. These actions come years after The Mombasa Republican Council (MRC) was banned and classified as a terrorist group by the Ministry responsible for internal security. The leaders of MRC argue that its agenda is a legitimate expression of self-determination under the African Charter on Human and Peoples’ Rights.<sup>4</sup> According to some human rights defenders, most of the social justice centers undergo administrative challenges during registration. Specifically, the groups are ordered to change their names or register as NGOs since their agenda is governance. One human rights defender said,

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*“When we went to register our XYZ Social Justice Center, the Sub-County Social Development Officer told us that we had to change our name to allow him register. He told us that the name is like that of an NGO because our objective was to monitor human rights violations. He also told us that his office only registers groups that promote livelihood programs in the community, yet our objectives and names implied otherwise. It took the intervention of our national Social Justice Centers Working Group for us to secure registration.”*

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- Hamisi (Not his real)

<sup>4</sup><https://www.modernghana.com/news/1014241/mombasa-republican-council-mrc-joins-oeas.html>

that Kwale County has also provided for very strong public participation and access to information laws to enhance an enabling environment for CSOs and citizens. However, the County still struggles with several challenges. 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 deviate from what the law states. The County Government has never provided an environment where the public can access information before the actual public participation exercise.

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 as they are not given special treatment. 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 brails for the visually impaired nor do the deaf have the privilege of sign language interpreters to enable them to interact with 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 allowed 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.

Kwale County Access to Information Act of 2016 gives clear guidance on enhancing social accountability in the county planning and budgeting process as well as ensuring that the communication needs of the Kwale people are well addressed. 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. 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.

It is also important to note that according to Kenya's County Budget

Transparency Survey (CBTS) Report<sup>5</sup> Kwale County was rated among the most transparent counties providing a full range of comprehensive information in some key budget documents in an easily accessible manner to enable citizens to contribute meaningfully towards planning and prioritization of the resources and monitoring the budget implementation. The key justification for this ranking was that Kwale County, for the first time, started publishing all four quarterly implementation reports which are very comprehensive compared to the other counties. The county also published the approved Programme-Based Budget. This is, however, contrary to the opinion of CSOs working in the Kwale.



### 4.3 Makueni County Case Study

Makueni County has over the past years been ranked as one of the best-performing counties in the country. However, it has not been spared from issues related to shrinking space for citizens and CSOs. In December 2020, over one hundred healthcare workers were dismissed for participating in the nationwide strike organized by the nurses' union. On 30th June 2023, members of the public, CSOs, and members of the Makueni County Assembly poured into the streets to protest rising human-animal conflicts. However, the police responded by arresting the protestors including two members of the county assembly who were later released.<sup>6</sup>

On July 19, 2023, police shot dead one person, and another suffered a gunshot wound during the recent country-wide protest against the high cost of living. During the same demos, five people were arrested. This happened exactly a week after a middle-aged man died from a police gunshot during the protests in Emali Township on the Mombasa-Nairobi Highway.<sup>7</sup>

<sup>5</sup><https://internationalbudget.org/wp-content/uploads/Kenya-County-Budget-Transparency-Survey-2022-web.pdf>

<sup>6</sup><https://www.the-star.co.ke/news/2023-07-03-2-mcas-held-during-protests-in-makueni-released-after-two-hours/>

<sup>7</sup><https://www.k24tv.co.ke/news/makueni-2-shot-during-anti-government-protests-110172/>



Despite challenges related to freedom of assembly, Makueni County boasts one of the most robust public participation models in the Country. The model is anchored in the Makueni County Public Participation Policy and Makueni County Public Participation and Civic Education Act. The model is an inclusive bottom-up system that involves the public from the village level to county headquarters. The public engages through elected development committee members representing villages, a cluster of villages, subwards, wards, sub-counties, and the county. The development committee members at every level are custodians of progress within their respective areas. Each committee comprises 11 members made up of men, women, youths, people with disabilities, and other marginalized groups. They lead the development agenda and work in liaison with the County Government. The lifespan of each development committee is three years. The committee members are selected based on integrity and leadership. Members are not political appointees.

It is the citizens who vote them in to support oversight in development projects. Youths and women are elaborately involved to incorporate their needs. The people's attitude toward public participation is so deeply entrenched that it is unlikely to change even with a new county administration. County Government officials go to the citizens to listen to their needs. That way, it is easier to let the public decide what the government does for them. The government also gets information in a more precise way to enable them to serve the public better. Public participation in Makueni County also involves the people in the diaspora, who put across their interests and priorities. Makueni was also among the top five counties with the most transparent budgets for publishing all ten key budget documents in CBTS 2022.

Despite the county's efforts at the implementation of public participation and civic education, the process has faced several challenges including: Lack of harmonization of public participation across departments leading to compartmentalization and duplication of efforts; Inadequate coordination among providers; Ineffective Inclusion of special interest groups; Disjointed participation logistics: Poor Communication - slow, late, inaccurate or incomplete communication; Citizen Apathy - due to inadequate implementation of the citizens' priorities; Limited Civic Education - majority of citizens lack adequate awareness of their rights and responsibilities; Inadequate funding for public participation and other financial and budgetary constraints have reduced the frequency and quality of participation; Ineffective Monitoring & Evaluation Systems, Poor Learning and Feedback Mechanism; Minimalism and "Compliance Only" Attitude; Low capacity of development committees and project management committees; and Persistence of exclusion and marginalization.



## 4.4 Kisumu County Case Study

Kisumu County is a host of civic space opportunities and threats. While it is one of the most progressive counties in terms of infrastructural development, the city also bears the brunt of historical police brutality, state repression, and low economic development despite having one of the largest freshwater lakes in the East Africa region. Freedom of peaceful assembly has been a challenge in Kisumu County over the past decades. In July 2023 alone, over 16 people died from gunshots while over 30 people were seriously injured because of police brutality.<sup>8</sup> Interview with Kondele Social Justice Centre officials, it has been revealed that the freedom of association is also a big challenge in Kisumu County.

Registration of the social justice centers has not been easy. Several members of the public have been denied registration by the local authorities for attempting to register the centres which are seen by the authorities as anti-government agencies for the agenda of monitoring human rights violations. According to some of the officials, the relationship between the centers and the security agencies has also been sour. This is partly the reason why the Nyando Social Justice Center in Awasi was allegedly set ablaze by the police on July 19, 2023, during the nationwide protests.

To effectively support the participation of citizens in state affairs, Kisumu County has an existing Public Participation Act, but it has no policy on public participation. The Kisumu County Public Participation Act of 2015 establishes a public participation unit. The chair of the unit is nominated by the people and then appointed by the Governor after the approval of the County Assembly.<sup>9</sup> The Act also provides the guidelines for operationalizing public participation

<sup>8</sup><https://nation.africa/kenya/counties/kisumu/police-brutality-death-toll-in-kisumu-anti-government-protests-reaches-16-4320366>

<sup>9</sup><https://countytoolkit.devolution.go.ke/sites/default/files/resources/27.%20The%20Status%20of%20Public%20Participation%20in%20National%20and%20County%20Governments%20.pdf>

in the sub-counties and reaching all the citizens of the county. The county government has put in place elaborate infrastructure for citizen engagement that has devolved public participation to the Sub-County and Ward levels. In this regard, the County has established seven Sub-County Administration Offices and thirty-seven Ward Administration Offices. Through this structure, public meetings at the ward level are held every quarter to engage the public in planning and policy development. Members of the public usually attend these meetings to give their views on development projects in their ward.

The Sub-County and Ward Administrators were found to be the core of public participation, especially the mobilization of citizens and dissemination of information to the community at the lowest level. The administrators are of great utility to the various county government departments as they provide an entry point, especially at the ward level when conducting public participation forums and meetings<sup>10</sup>.

The County Assembly on the other hand use the MCAs' local networks to mobilize citizens whenever they need to undertake public participation forums. The enactment of the Public Participation Act, of 2015 and the Access to Information Act in Kisumu County provides the requisite legislative infrastructure for public participation. The two laws create structures, platforms and a conducive environment to encourage active participation from citizens so that they can make valuable contributions to the decision-making processes. The Public Participation Act establishes citizen participation forums that decentralize the engagement of the people up to the village level. Further, it provides petitions as a means through which citizens can effectively engage with the county government.

The Access to Information Act guarantees the citizens' rights to access crucial information which consequently enables citizens to make more informed political choices, contribute to public initiatives, and advocate for policy improvements on issues. The existence of local CSOs, CBOs, and FBOs implementing governance programs in Kisumu County complements the roles of the county government in establishing forums for participatory engagement and facilitating effective public participation. These institutions design and execute civic education programs that educate people on their rights and obligations as democratic citizens. They support the development of citizens' skills to work with one another to solve common problems, to debate public issues, and express their views.

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<sup>10</sup><chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://tikenya.org/wp-content/uploads/2018/08/Public-Participation-Frameworks-Kisumu-County.pdf>

However, this study noted that the county lacks a policy framework that is expected to define the key policy guidelines and interventions to guide the implementation of the Act.

Kisumu County has put in place some of the required mechanisms of public participation. These include the establishment of a County Budget and Economic Forum (CBEF) and the enactment of the Public Participation Act, the main law required to guide public participation. Further decentralization through sub-counties and wards improved public participation by decentralizing forums from the county headquarters to the lower units.

Ward administrators were found to play an important role in linking citizens to various County activities and therefore act as key avenues of mobilizing and informing citizens on what is happening in the County. Citizens in Kisumu use the established mechanisms including petitions to engage with both the executive and the legislative arms of the government. Citizens were mainly invited to the forums through County notice boards, newspapers of national circulation, word of mouth by the County officials and leaders, radio, website, and formal invitation of organized groups and opinion leaders<sup>11</sup>. According to the CBTS Report of 2022, Kisumu was among the counties that provided limited and weak expenditure information.<sup>12</sup>

The study noted some gaps in information dissemination and proposed requisite recommendations for the same. The Kisumu county government noted low funding of the ICT platform as one of the main challenges to information dissemination. The current platform (21142) is a joint partnership between the County government and the Ecumenical Church Organizations. The study further noted the lack of civic education occasioned by the failure of the public to attend public meetings as yet another challenge.

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<sup>11</sup><chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://tikenya.org/wp-content/uploads/2018/08/Public-Participation-Frameworks-Kisumu-County.pdf>

<sup>12</sup><https://internationalbudget.org/wp-content/uploads/Kenya-County-Budget-Transparency-Survey-2022-web.pdf>





## 4.5 Kakamega County Case Study

Kakamega County has enjoyed successes in infrastructural and economic growth over the past decade. It is also one of the counties that experiences peaceful protests with limited violence and moderate police response. Over the past two years, several protests and demos have been witnessed in the county. In August 2020, a protest broke out after a truck ferrying sugarcane ran over a boda boda rider. The protestors had also placed rocks and tree trunks across the road, paralyzing traffic in the area. Kakamega County Deputy Police Commander James Ngetich deployed officers to the scene to restore calm, with teargas being used to disperse the mob. No injuries from police response were reported.

On 18th November 2022, Masinde Muliro University of Science and Technology (MMUST) students on Saturday went on a rampage after one of them was found murdered in the morning. It took the intervention of the police, who lobbed teargas to disperse the students who had blocked the Kakamega-Webuye Highway. No student suffered injuries from the police response. In March and July 2023, citizens protesting the high cost of living engaged the police in running battles, but no injuries were reported.

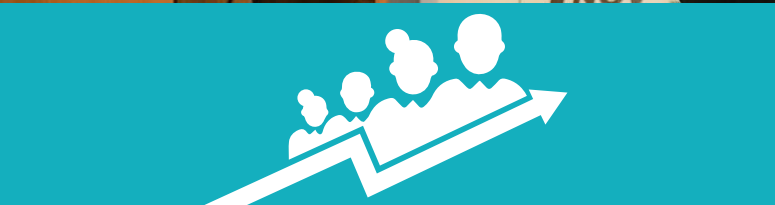
Kakamega County encourages public participation and engagement in decision-making processes. The county government has a Public Participation Act that provides guidelines for public participation in decision-making processes. The Act requires the county government to provide adequate notice and information about the proposed decision to provide an opportunity for public input and consider public input when making decisions.

However, several challenges hinder the effectiveness of this process in Kakamega County namely: Language and literacy - in communities where there are high levels of illiteracy, meaningful public participation is a challenge, especially

when there is inadequate civic education in the local language on the issues in question; Inadequate representation - certain community groups may not be adequately included in decision-making processes, particularly, women, youth, persons with disabilities and other marginalized groups;

Difficulties in accessing information - communities often lack adequate information on policy, plans and budgets, programs and services, all of which is needed for effective public participation. Some of the information is difficult to obtain and understand; The High cost of public participation - has been put forward as a challenge in conducting meaningful public participation since the beginning of devolved governments; Elite capture - this is where a public participation process is dominated by local 'elites', who will influence the direction of local decision-making to benefit their agenda; Inadequate decentralization of public consultations - in some cases, public consultations by the county government are mainly held at the sub-county level, and do not always reach the ward or even sub-ward level; Negative attitude or apathy from the public - this can be due to a lack of a common understanding of what constitutes public participation and the methods, processes and content needed to ensure effective engagement. It may also be because of a lack of feedback, from previous consultations, where the public feels that nothing ever comes out of their participation. The lack of Public Participation policy has also contributed to the fragmented implementation of the Act.

## CHAPTER 5: **CONCLUSION & RECOMMENDATIONS**



### **5.1 Conclusion**

There is a consensus that the nature and extent of enabling environment for citizens and CSOs contemplated by the Constitution, laws of Kenya, and international standards have not been achieved in either level of government. The findings from the case studies reveal the unique civic and democratic trends at the county level. The study has also revealed that public participation and information access play a critical role in entrenching democracy as well as expanding the operating space for civil society actors. While a lot of public participation efforts have been made at both levels of government, there is no clarity on what constitutes adequate participation, the nature of the participation that meets the constitutional threshold, or the most effective mechanisms for public participation.

Studies/surveys of public participation reveal that some form or other of public

participation is taking place in most of the processes in the devolved system of governance at both levels of government. The form, nature, and levels of public participation are however unsatisfactory in both the county and national government. Both the national and county governments have not yet developed effective frameworks to facilitate public participation. Although most of the counties have developed and enacted legislation on public participation, very little has been done to operationalize the legislation by developing regulations, setting up relevant institutions/offices, systems, guidelines, and procedures, or providing adequate budgetary provisions for public participation.

The national government is operating largely the way it operated before the constitutional requirements for public participation were adopted, thus public participation remains peripheral and perfunctory. Civic education has not been carried out by either level of government in any significant manner. Access to public information in a timely, inexpensive manner has not been achieved at either level of government.

There are however emerging good practices in some of the county governments such as Makueni County, which has wholeheartedly embraced public participation and established a citizen-led participation framework going all the way to the village level. Key challenges to effective public participation, therefore, include the lack of a national policy setting out the norms and standards for effective public participation; lack of public awareness due to failure to provide adequate civic education; lack of access to critical information; inadequate public participation infrastructure; and lack of funding for public participation.



## **Recommendations based on County Case Studies of Kwale, Kakamega, Makueni, and Kisumu**

County governments should ensure expanded operating spaces for citizens and civil society organizations through the following ways:



### **1. Enhance Participation through Awareness Creation**

County governments should adopt an open governance policy, especially through proactive disclosure of information to enhance meaningful participation. This should promote the sharing of information through the use of accessible

channels of communication such as county websites, transparency boards, bulk Short Message Service (SMS), local newsletters, local or community radio, television, barazas, and any other media. County governments should provide timely information and sufficient notice for forthcoming meetings; and provide information in formats that are accessible to a wide group of people including persons with disabilities. This includes the translation of information to a local language where necessary for wider reach.

Well-equipped and managed information centers should be established up to the village levels. These centers should be furnished with all important critical government documents such as County Fiscal Strategy Papers, County budget documents including approved budgets and estimates, County Budget Review and Outlook Paper, and the County Integrated Development Plan among others. The information centers should be furnished with relevant documents on a timely basis to ensure that citizens have access to information before public forums for meaningful participation.



## **2. Capacity Building of Citizens/ Community and Public Officers**

Capacity building is aimed at promoting community involvement in policy formulation, implementation, and all stages of project cycle management to achieve sustainability of development initiatives and enhance poverty reduction. County governments should: enlist resource persons to conduct community profiling and a comprehensive needs assessment and organize seminars and short courses for the community on devolution and public participation. The majority of the population is not well informed about the duties and responsibilities of the county government, their rights, and civic duties; amongst others.

Civic education needs to be rolled out throughout the county consistently and continuously. To do so, the countries need to invest adequately in human and financial resources. An adequate budget and trained civic educators with clear civic education implementation plans are important to achieve this. County governments should also encourage training in local language and the use of creative media such as drama, art, and music, and make adequate budgetary provisions and work plans for the training seminars.

County governments should also build the capacity of public officers on social accountability including participatory decision-making and other participatory methodologies. There has been an assumption that public officers know, understand, and appreciate public participation. This assumption has led to poor rollout of public participation; resistance by some of the public officials; and a furor of public forums that have been meaningless.



### **3. Composition of County Budget and Economic Forums**

County governments should establish and operationalize County Budgets and Economic Forums. This is aimed at ensuring the integrity and capability of committees to perform effectively in the development of counties. County governments should engage in democratic or popular processes in the selection of committee members of the forum. The popular process injects integrity into the process. Because the popular process will not always guarantee the best expert. The forums should comprise individuals with specialized knowledge and information.

### **4. Regular reporting by county governments**

Reporting should aim at creating a culture of accountability both amongst public officers and citizens exacting accountability. County governments should submit periodic reports e.g. reports on the Status of implementation of the County budget and the Governor's annual report on public participation to the citizens through their committees. Review of the status of Public Participation, and County Information Dissemination Frameworks.

### **5. Development of policy and legislation and establishment of institutions for further decentralization**

County governments should establish policy, legislative, and institutional frameworks to facilitate effective public participation in devolved governance processes. They should also fully develop and resource all institutional frameworks including the offices of the administrators at various levels. For instance, Kisumu and Kwale County developed and adopted the Access to Information Policy while Kakamega County developed and adopted a public participation policy.

### **6. Strengthening of CSO civic education capacity and programs, and CSO and government synergy**








Civil society is a key player in establishing effective public participation systems and county government should take advantage of the social capital, skills, and knowledge in civil society organizations to establish the mechanisms and platforms for engagement of the public. Civil society organizations should also create spaces and invite the State and public officials to have greater influence and impact on governance processes and development implementation. Civil society organizations at the county level should deepen and strengthen their civic education programs to promote active citizenship. They should also strengthen their capacity and that of the communities in participating in devolved

governance processes, review of performance by their county governments, and exact accountability and improved delivery of public services.

- 7. The National and County Governments should regularly engage Civil Society Organizations in the law-making process, especially around pieces of legislation that relate to or directly affect Civic space.**
  
- 8. Civil society organizations should use different media platforms to robustly engage with members of the public, and state and non-state actors around critical civic space issues.**
  
- 9. There is an urgent need for the National and County Governments to frequently respond to access to information requested by Civil Society Organizations and Independent voices.**



## Recommendations for CSOs and Other Stakeholder Groups

-  Work in collaboration with the County government to implement the Public Participation Act and the Access to Information Act.
-  Work towards a more structured working relationship with the county government through a Memoranda of Understanding.
-  Put in place a CSO network for more collaborative civil society work including thematic networks to enable better management of public participation.
-  Advocate for the further decentralization of public participation through the formation of village administration units.
-  Collaborate with the County government in building the capacity of sub-county and ward administrators to undertake more effective public participation and educate citizens on the functions of the county government, among other issues of importance.
-  Collaborate with the county government in undertaking civic education.
-  Advocate for the County government to deliberately allocate funds for Public participation, including monitoring and evaluation of the process.

