



KENYA



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# Enhancing public participation during design and implementation of Large-Scale Infrastructural Development: A Case of Lamu Port

## 1. Key Messages:

- Effective public participation can only be achieved when the right documents are availed to the public in a timely manner
- Relevant people targeted in public participation
- Public participation should be viewed as an iterative process and not a one-off process
- Guidelines and laws on public participation should be developed by counties

## 2. Introduction:

Citizen involvement in development and implementation of public projects makes decision-making more well versed and sustainable, and public institutions more effective, accountable and transparent. This also boosts the legitimacy of States' decisions and their ownership by all members of society<sup>1</sup>. The UN Human Rights Council provides guidelines for the effective implementation of the right to participate in public affairs. The guidelines provide the basic principles underpinning the effective implementation of the right to participate in public affairs. Kenya has adopted the UN Human Rights and has taken key steps to put in place legal and policy frameworks for public participation. To this end the Kenya Public Service Commission has developed guidelines on public participation<sup>2</sup>. Similarly, the Ministry of Devolution and Planning has developed county public participation guidelines. WWF Kenya through the support of WIOMSA conducted a study in Lamu County to understand the extent of public participation during the design and implementation of LAPSSET project.

## 3. Purpose of the policy brief:

This policy brief highlights the findings of a study on public participation prior to the commissioning of LAPSSET and interrogates who is consulted during public participation. Specifically, the brief highlights the challenges in achieving

public participation and how the information obtained informed design and implementation of projects. Lastly the brief interrogates the use of indigenous knowledge during public participation to inform design and implementation of LAPSSET.

## 4. Key Findings:

The study collected data in key sights in Lamu county through a mixed method approach where key informants and a sample of 385 residents were studied. Data were analyzed using descriptive techniques and thematic analyses. The Findings are categorized into 3 themes

- 4.1 Is there effective public participation by communities? The study shows that majority of Lamu residents were not involved in public participation processes (%) and those who participated (%) indicated that they did not have adequate information to effectively participate. For example, all respondents who indicated that they participated did not have access to prior information that would enable them to participate effectively.
- 4.2 Who is targeted in public participation processes. The study found that local leaders and politicians attended consultation workshops, conferences and benchmarking tours as part of public participation.

<sup>1</sup> [https://www.ohchr.org/sites/default/files/2021-12/GuidelinesRightParticipatePublicAffairs\\_web.pdf](https://www.ohchr.org/sites/default/files/2021-12/GuidelinesRightParticipatePublicAffairs_web.pdf)

<sup>2</sup> Public Service Commission (2015) Guidelines on Public Participation in Policy formulation

There is no evidence that the local leaders and politicians went back to their constituents to share information on the proposed LAPSSSET project. This raises the question of who is the public when public consultations are conducted and whether it is sufficient to consult representatives of the public during public participation processes.

- 4.3 What actions are taken after public participation to ensure the project affected population's interests are met. Project affected persons are not meaningfully involved in the project design, implementation and closure and whenever they are involved their involvement is cosmetic and without consequence. Project affected persons hold a lot of information of the history of the area and can provide significant contribution if consulted. This means that indigenous knowledge can contribute to the successful design and implementation of large scale projects such as LAPSSSET. The findings show that there was no consultation with the custodians of indigenous knowledge (community elders) during the design phase of LAPSSSET.

## 5. Policy Frameworks for Public Participation in Kenya

### National Policy Frameworks

The centrality of public participation is emphasized in Kenya's constitution. Participation of the people is recognized in Article 10 of the Constitution of Kenya as one of our national values and principles of governance. Further Article 174(c) provides that the object of devolution is to: "enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them." Article 184 (1) (c) also requires that mechanisms for participation by residents be included in the national legislation relating to urban areas and cities governance and management.

The Public Finance Management Act, Section 207 states that the County Governments are to establish structures, mechanisms and guidelines for citizen participation. Urban Areas Act Section 21 and 22 states that the overarching theme is the public participation by residents in the governance of urban areas and cities and provides for rights of and participation by residents in affairs of urban areas. The Public Procurement and Disposal Act, Section 68(3), 125(5), 138 and 179 emphasizes on transparency of the procurement process including publicize notices of intention to enter contract.

### County Policy Frameworks

The County Government Act Section 91 states that the County Government shall facilitate the establishment of modalities and platforms for citizen participation. Similar Section 94, 95 and 96 of the same Act states that Counties are to establish mechanisms to facilitate public communication and access to information using media with the widest reach. Every county shall designate an office for ensuring access to information.

## 6. Recommendation:

Involvement of project affected persons in public participation processes ensures that any planned project takes into consideration the potential impacts on their livelihood, culture and practices. Studies have shown that when project affected persons are meaningfully and consistently engaged through public participation then

there are added benefits such as social and environmental protection during the project design and implementation. This is attributed to the fact that communities have an interest to protect themselves socially and environmentally in order to preserve their livelihood.

In spite of the laws in place and the benefits linked to public participation is still low in Kenya and as a result the presence of legally binding rules for public participation has not translated into meaningful practice. Below are some recommendations on implementing existing laws that will ensure public participation.

- Public consultation can only be meaningful if the official documents are available to the public prior to the consultation. County governments should setup repositories of official documents to enable meaningful contribution to the consultation
- Public participation should be a continuous process and should be scheduled at key phases of the project cycle. A schedule to be shared to the public in order to allow for planning for participation
- The language used to advertise the dates for public participation should take into consideration the specific context of the area. In some cases, vernacular language may be appropriate to use in order to reach a wider audience.
- Establishment of a designated office that ensures that public participation is implemented. The designated office should work closely with the local administration and other ministries in the government to convey relevant information to the public in a timely manner.
- County governments should establish public participation models that allow for its citizens to actively participate in the prioritization, planning, budgeting and implementation of development projects

## 7. Reference Material

- I. GoK. (2016) County Public Participation Guidelines. Ministry of devolution and Planning.
- II. GoK. (2010). Constitution of Kenya. Government of Kenya
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