

County Budget and Economic Forums (CBEFs) and Public Participation in Kenya

A Synthesis of Case Studies from Five Counties¹

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Executive Summary

Kenya has enacted an ambitious set of reforms to provide the public with opportunities to participate in how the country is governed, including how public finances are managed to deliver services and foster development. Central to these reforms is a new budget process which can usefully be conceived as a *conversation* between multiple stakeholders – including the wider public – designed to ensure public resources are used effectively.

At the county level, a crucial tool for facilitating this conversation is the establishment of County Budget and Economic Forums (CBEFs). These are meant to have been operationalized in each and every county to serve as the primary institution for ensuring public participation in public finances. They are integral to the Kenyan government's strategy to improve accountability and public participation at the county level.

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Structure of Paper

This paper looks at how CBEFs are working and how they can be improved. It is divided into seven sections:

- An introduction which provides a broad overview and background on public participation in Kenya.
- A brief assessment of local public participation prior to devolution through the Local Authorities Service Delivery Action Plan (LASDAP).
- Analysis of the Constitution and legal framework for public participation.
- A review of civil society's interpretation of recent constitutional reforms, including the presentation of 10 principles for improving public participation in public finances, which draw on lessons from how LASDAP was functioning.
- Analysis of the judicial interpretation of public participation, drawing on a landmark high court case ruling on public participation in Kiambu County.
- Presentation of findings from case studies of five counties, and analysis of these through the lens of the 10 principles for improving public participation developed by civil society in Kenya.
- A conclusion which presents emerging good practice based on the case study finding and recommendations for improving public participation.

Findings and Recommendations

County Budget and Economic Forums (CBEFs) were to be established “as soon as practicable” in each of Kenya’s 47 counties.² However, 18 months after devolution, the vast majority of counties have yet to establish a CBEF. This finding, in and of itself, should be cause for some concern.

² County Government Act, 2012, Part VIII.

From the four counties that were found to have operational CBEFs, as well as Homabay, which has adopted a unique approach that is similar to CBEF, there are a number of issues – along with a number of lessons that can be drawn – in how they are functioning to serve public participation.

Emerging Good Practices	Recommendations
<ol style="list-style-type: none"> 1. Diverse mechanisms of communicating about meetings and consultations are emerging. 2. A variety of innovative mechanisms for engaging with county leaders are also surfacing. 3. Partnership between government and civil society to lead meetings, simplify documents, and promote civic education is encouraging. 4. Civil society is in some cases facilitating ongoing dialogue between government and citizens that ensures that citizen inputs are taken more seriously in decision-making. 5. While public meetings often lack key ingredients, such as timely notice and adequate access to information, they do represent an opportunity for the public to air concerns and pressure officials into discussing budget information in a more transparent manner. 	<ol style="list-style-type: none"> 1. County Budget and Economic Forums must be taken more seriously by county officials and used to consult the public on key planning and budget documents as required by law. 2. Representatives that sit on the Forum must understand their role with respect to their constituencies (women, business, the youth, etc.) and develop mechanisms for engaging regularly with them. 3. Access to information must be improved. 4. More advanced notice about public consultations and their purposes must be provided to the public. 5. Public participation is not only important during the formulation of the budget, but also during budget implementation and oversight. 6. To facilitate public engagement with budget documents, more effort needs to be put into presenting budget information in simplified formats and using local languages where appropriate.

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1 Introduction

Kenya's new constitutional framework has made public participation in decision making mandatory at both the national and the county levels of government, and for executive and legislature alike. The requirement for participation explicitly applies to the budget-making process, which is now structured as a long conversation between executive, legislature and the public over many months. The government is mandated to facilitate public participation by creating mechanisms for engagement, making the necessary information available to the public, and building the capacity of the public to engage effectively.

At the county level, one of the principal mechanisms for facilitating the budget conversation is the County Budget and Economic Forum. The Public Finance Management (PFM) Act 2012 provides for the establishment of a County Budget and Economic Forum (CBEF) in each county.³ CBEFs are intended to provide "a means for consultation" by the county governments on a number of areas, including:

- preparation of a County Fiscal Strategy Paper;
- preparation of a Budget Review and Outlook Paper for the county; and
- other matters relating to budgeting, the economy and financial management at the county level.

CBEF consultations are to be in line with provisions of Part VIII of the County Government Act, 2012 on citizen participation. They were intended to be established "as soon as practicable" after the PFM Act came into force.

This paper assesses the status of CBEFs a year and a half after devolution began. The findings are based on primary data on the establishment and operationalization of the CBEF in four counties (plus one more with a similar framework for public participation).⁴ The paper builds on

³ Kenya Public Finance Management Act 2012, Section 137.

⁴ Detailed case studies for each of the five counties are forthcoming and will be available at www.internationalbudget.org/kenya

previous analysis of public participation and CBEFs by the International Budget Partnership-Kenya (IBP-Kenya) and partners.⁵

2 Kenya's Prior Local Public Participation Experience

Participatory budgeting in Kenya predates the establishment of county governments. In 2001, Local Authorities (LAs) established a formal mechanism for public participation called the Local Authorities Service Delivery Action Plan (LASDAP). In order to access transfers from national government under the Local Authority Transfer Fund (LATF), LAs were required to give citizens an opportunity to participate directly in planning and budgeting for a certain fixed portion of the available resources, with a focus on development projects. Thus access to funding for LAs to pay for key services and manage their debts was dependent on their willingness to implement a form of participatory budgeting (heavily drawn from the Brazilian example).

A review of the design, implementation and impact of LASDAP reveals a complicated picture.

2.1 Design

LASDAP was established to provide opportunities for citizens to participate in decisions. This was to be accomplished through:

- Annual consultative meetings in each ward to discuss priorities in each ward.
- Consensus meetings at the LA level among representatives from all the wards. These meetings would also be attended and supported by a technical team providing a reality check on citizen preferences. The consensus meeting would decide which projects from across all the wards should be adopted in the council plan and budget.
- Project committees made up of volunteers elected from the community. These were intended to monitor implementation of agreed projects.

⁵ See: IBP (2014), "Public participation under Kenya's new public financial management law and beyond." IBP: Washington DC <http://internationalbudget.org/wp-content/uploads/PFM-Brief-.pdf>; Lakin, J (2013) "Public Participation in Kenya: County Budget and Economic Forums principles and options" IBP: Washington DC http://internationalbudget.org/wp-content/uploads/brief21_final.pdf; and Lakin, J (2013) "Toward Public Participation in the County Budget Process in Kenya: Principles and Lessons from the Former Local Action Service Delivery" IBP: Washington DC Action Program (LASDAP)" <http://internationalbudget.org/wp-content/uploads/brief20.pdf>

2.2 Implementation

Past reviews have found that, although the LASDAP process was based on fairly plausible principles of effective participation in local resource allocation, it ultimately fell short due to poor implementation.⁶ While LASDAPs did enhance public participation in the prioritization of projects, participation was largely limited to consultation. Participation was highest in LAs with small populations, such as town and county councils.⁷ Direct participation appears to have been limited to consultations on which projects should be taken forward, the outcomes of which were not always binding. Even as public awareness of the LASDAP process increased, active participation remained elusive. Participation tended to decrease as the process progressed from identifying needs to implementation and monitoring of projects, and concrete examples of participation in evaluation were basically non-existent.

With little or no information on what LAs were doing, citizens had no idea of how, when and where to participate. This allowed LA officials (especially the councilors) to wield information for their own benefit. Research into LASDAP revealed that the domination of councilors in the LASDAP process stifled participation and neutralized the impact of input from independent citizens.⁸

Furthermore, the annual consultation meetings were not effective platforms for participation. While they were sometimes attended by hundreds of people, final decisions were often determined by councilors. Local elites eschewed the meetings, preferring to engage directly with LA officials, many of whom were their peers, in informal settings.

LASDAP also suffered from limited participation by citizens in many cases. The ward level was too far from the average villager to encourage wide participation or meaningful priority setting. Lack of a clear mechanism to mobilize citizens to attend meetings also hampered participation

⁶ See: Lakin, J (2013) "Toward Public Participation in the County Budget Process in Kenya: Principles and Lessons from the Former Local Action Service Delivery Action Program (LASDAP)" IBP: Washington DC <http://internationalbudget.org/wp-content/uploads/brief20.pdf>; and Muriu, A (2013), "A study on the nature and influence of citizen participation of decentralized local service delivery," *International Journal of Social Sciences Management and Entrepreneurship* 1(2):85-105.

⁷ Muriu, A (2014) "How does Citizen Participation impact Decentralized Service Delivery? Lessons from the Kenya Local Authority Service Delivery Action Plan (LASDAP, 2002-2010)." IBP: Washington DC <http://internationalbudget.org/wp-content/uploads/How-does-Public-Participation-Influence-Decentralized-Service-Delivery-Muriu-April-2014.pdf>

⁸ Ibid.

in many LAs. Finally, lack of citizen understanding and awareness of the budget process also constrained the effectiveness of participation.⁹

2.3 Impact

Given the issues surrounding implementation, it was likely that the impact of participation on service delivery would be negligible. Indeed, a recently published review of the impact of public participation between 2002 and 2010 found public participation was minimal and its resulting influence on service delivery was inconsequential.¹⁰

In the process of constitutional reform, LAs were abolished and their mandates taken over by the county governments. LASDAP was also abolished. So far, there has been little analysis of why the LASDAP failed; and potential lessons from its failure have not been taken into account in the design of participation in budgeting under county governments.

3 The Constitution and Implementing Laws

The adoption of the 2010 constitution yielded a devolved system of governance, comprised of the national government and 47 county governments. This revived the hope for meaningful public participation. For the first time in Kenya's history, public participation was enshrined in the constitution and was infused into all aspects of public administration. For example, Article 201 (a) requires that "there be openness and accountability, including public participation in financial matters." Article 196 (2) of the constitution requires that the county assembly "facilitate public participation and involvement in the legislative and other business of the assembly and its committees."

To ensure that participation is effective, the constitution also established the right for the public to access all government information.¹¹ Of course, this also requires that the public's capacity to comprehend information is developed.

⁹ Lakin, J (2013) "Toward Public Participation in the County Budget Process in Kenya: Principles and Lessons from the Former Local Authority Service Delivery Action Program (LASDAP)" <http://internationalbudget.org/wp-content/uploads/brief20.pdf>

¹⁰ Muriu, A., 2014. "How does Citizen Participation impact Decentralized Service Delivery?" <http://internationalbudget.org/wp-content/uploads/How-does-Public-Participation-Influence-Decentralized-Service-Delivery-Muriu-April-2014.pdf>

¹¹ Constitution of Kenya, 2010, Article 35.

Public participation is a two way process: The government provides opportunities for public involvement; and the public chooses whether to utilize these opportunities. It falls on government to encourage active participation and ensure the public is sufficiently educated on public issues to make valuable contributions to government decisions. In so doing, the law provides counties with seven principles for public participation:

1. Timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;
2. Reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;
3. Protection and promotion of the interest and rights of minorities, marginalized groups and communities and their access to relevant information;
4. Legal standing to interested or affected persons, organizations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities, including women, the youth, and disadvantaged communities;
5. Reasonable balance in the roles and obligations of county governments and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide complementary authority and oversight;
6. Promotion of public-private partnerships, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development; and
7. Recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight.¹²

¹² County Government Act, 2012 Section 87

Various bodies are tasked with the facilitation and coordination of citizen participation. For example, the sub-county, ward, village administrators, and village councils, are given responsibility for encouraging public participation in governance.

Nonetheless, there is only one structure in the law that is explicitly tasked with fomenting participation in the budget, and that is the County Budget and Economic Forums. As noted above, CBEFs are the primary mechanism for encouraging citizen participation in planning and budgeting, with specific reference to key formulation and implementation documents (Fiscal Strategy Paper, Budget Review and Outlook Paper). The legal guidance for how CBEFs should function is minimal, and in this sense, a much more elaborate procedure of encouraging participation in budgeting (LASDAP) has been replaced by a vague substitute. It is also not clear from the law how CBEFs will address the challenges that were faced by LASDAP in the past. For example, if the ward level was considered too far from the village to encourage participation, how much more challenging is participation at the county level, which comprises in many cases more than 20 wards? Clearly, we must move beyond the PFM Act to understand how CBEFs can actually work.

4 Civil Society Interpretation of the Legal Provisions for Participation in Budgeting

When the Public Finance Management Act was signed into law in July 2012, a number of civil society organizations (CSOs), including IBP-Kenya, examined how best to implement the public participation requirements in the PFM Act, with a focus on CBEFs. They established 10 principles, with a focus on rectifying the limitations of past experiences with participation in LASDAP and at national level:

1. Public consultations should be open to all citizens and taxpayers, without discrimination.
2. Safeguards should be established to prevent consultative forums from being dominated by any one political group, organized interest, or politician.
3. Public consultations must have clear and specific purposes.

4. The timeline and venues for public consultations should be made known at least two weeks in advance of the consultation.
5. Public consultations must set aside dedicated time for public feedback and questions.
6. Public participation in the planning and budget process should occur at all stages in this process.
7. The public must have access to all relevant plan and budget documents in a timely fashion.
8. All plan and budget documents should contain an executive summary and a narrative.
9. Citizens should be able to provide input into public consultations through direct participation, through representatives, and through written comments.
10. There should be a feedback mechanism so that citizens know their inputs were considered.¹³

These principles were developed prior to the establishment of the county governments. Since then, some CSOs have advocated for these principles to be incorporated into county practice.

5 Judicial Interpretation of the Principle and Practice of Participation

County governments were established in March 2013, when a general election was held. They were faced with the immediate task of preparing county budgets for the 2013/2014 fiscal year. Despite their limited experience, county budgets were required to immediately adhere to the constitutional and legal provisions for participation in the budgeting process.

A key concern then, as now, is the question of what effective public participation entails. As noted above, while the law currently gives some broad guidance, it lacks a specific threshold for

¹³ IBP (2012) "Public participation under Kenya's new public financial management law and beyond." IBP: Washington DC <http://internationalbudget.org/wp-content/uploads/PFM-Brief-.pdf>

what constitutes effective participation or how to ensure that we move beyond the failed experiments of the past.

5.1 High Court Ruling on Kiambu County

In a landmark case determined by the high court of Kenya, residents of Kiambu County challenged the legality of the Kiambu Finance Act passed by the County Assembly. The primary grounds for the petition was that the formulation and approval of the Act did not sufficiently involve the public. The judge drew on case law from South Africa, based on the fact that Kenya's constitution draws heavily on the South African model. After assessing the case, the judge declared that the law was null and void as it had not met the threshold of public participation. This important high court ruling begins to define what effective public participation entails.¹⁴

Public participation is a constitutional principle that ensures that, over and above the people electing their representatives, they have an opportunity to make direct input into decisions. In defining the principle of public participation, the judge affirmed public participation as a constitutional and statutory requirement.¹⁵

The judge upheld that the government has an obligation to facilitate public participation. He specifically distinguished (citing South African case law) between "allowing" public participation and "facilitating" it, and argued that the constitutional burden on Kenya's lawmakers is to actively encourage participation or, as he put it, for the Assembly "to exhort its constituents to participate."

The judge reiterated the need to use as many fora as available to inform the widest number of citizens about decision before they are made. He drew on the structures mentioned in Section 91 of the County Government Act, 2012, but also singled out religious institutions, *barazas* and vernacular radio as key channels of communication.¹⁶

¹⁴ Petition No. 532 Of 2013 Consolidated With Petition Nos. 12 Of 2014, 35, 36 Of 2014, 42 Of 2014, & 72 and Judicial Review Miscellaneous Application No. 61, 2014.

¹⁵ Constitution 2010, Articles 10, 174, 196 and 201.

¹⁶ The Act specifies mechanisms of communication including: online platforms; town hall meetings; budget preparation and validation fora; notice boards for jobs, appointments, procurements, awards and other important announcements of public interest; development project

In line with the ten principles outlined above by civil society, he further emphasized that communication to the public has to be done in a time span that is sufficient for them to both prepare their submissions and present them. In the Kiambu case, the court found that an advert placed in the daily newspapers on 17 August for a meeting to be held on 20 August was insufficient notice.

Aligning with another of the ten principles related to consultations having clear purposes, the judge found that the agenda of the meeting and what is expected of the public must be clearly communicated. In the Kiambu case, the government did not adequately explain that the Finance Bill was going to be a key agenda item of the advertised meeting, thus falling short of this key principle.

Finally, consistent with the principle that all documents should contain narrative and executive summaries to help people to understand the figures, the judge found that there was an obligation on government to properly explain itself and the reason for its decisions.

Communication with the public should also recognize the prevailing literacy rates in considering what methods of dissemination are likely to reach the widest number of citizens.

6 Case Study Findings And Analysis

Based on the court ruling, and the earlier ten principles developed by the CSOs, this section assesses public engagement at the county level. It draws on case studies from five counties: Machakos, Bungoma, Elgeyo Marakwet, Taita Taveta and Homabay.

These counties were purposively selected as, despite a concerted effort to identify a long-list of counties with functioning CBEFs, they were found to be the only counties that had established them at the time the research began (February, 2014). Some counties, including Kajiado, Garissa, Narok, Laikipia, Busia and Kisumu, that were originally thought to have established CBEFs turned out not to have formed them upon further investigation.¹⁷

sites; avenues for the participation of peoples' representatives including but not limited to members of the National Assembly and Senate; or establishment of citizen fora at county and decentralized units.

¹⁷ Some of these counties, including Busia and Kisumu, have since established forums.

Our interpretation of the PFM Act is that the CBEFs are mandated to facilitate direct public consultations; they are not primarily a body of indirect representation. The County Assembly already has members elected to represent the people to fulfil this role. Thus, the case studies sought to establish the extent to which CBEFs create opportunities for the public to participate. This was alongside other mechanisms that the county has a mandate to establish for public engagement in finance management.

The following subsections analyze the evidence from the case studies against the 10 principles developed by CSOs.

6.1 Public consultations should be open to the widest spectrum of citizens and taxpayers, without discrimination.

On balance, across the five counties, it does appear that effort has been made to involve the public as widely possible. However, it was not possible to establish the extent to which all participants had the opportunity to speak freely and, of those who spoke, how much their views have been taken into consideration. Furthermore, while the meetings may be open to all, those that lived far from the meeting place and could not afford to travel may have been excluded.

Bungoma County: Calls for participation were far reaching. They were included in newspapers, local radio advertisements, notices on the county website, and announcements posted on notice boards around the county. Call in radio shows allowed for a wide spectrum of the public to participate. While this encourages broad discussion, those whose voices are heard are limited to those who have access to phones and whose calls are picked in the short time available. The governor has attended some of the shows and interacted directly with members of the public. An emerging concern is that where Members of the County Assembly (MCAs) are involved in publicizing participation forums, there has been a tendency to exclude those with differing opinions.

Elgeyo Marakwet County: Public consultations were open to all without discrimination. Calls for participation were communicated through the county website, text messages, newspapers and radio stations such as Kass Fm. Information was also provided to chiefs so that they could

inform the locals, which resulted in wide dissemination. Members of the public that were unable to attend public consultative forums could attend *barazas* conducted in every ward. Members of County Assembly were also used to mobilize members of the public to attend forums.

Taita Taveta County: Public consultations were open to all without discrimination. Consultations were scheduled and took place at the ward level, ensuring wide reach. Advertisements and discussions were also held on local FM stations and social media platforms. The county website and text messaging services were also used, and ward officers, chiefs and sub chiefs were sent to recruit members of the public.

Homabay County: Public consultations were open to all without discrimination. The meetings were highly publicized in both newspapers and radio stations to enable as many people as possible to attend. Notices of the public forums were also posted on the website. CSO networks were also used to reach a larger number of members of the public.

Machakos County: Public consultations were open to all without discrimination. Calls for participation were made through vernacular radio stations, newspapers, text messaging services, and announcements were made in churches. Information was also passed on to chiefs, elders and CSO networks. In addition, mobilization of participants was also done by MCAs. At a forum in Kathiani ward, the researcher observed different members of the public contributing to the discussion without discrimination.

6.2 Safeguards should be established to prevent consultative forums from being dominated by any one political group, organized interest, or politician.

In the past this has been manifested by officials only inviting those persons who support them, hence the deliberations lacked opposing or alternative viewpoints. In some instances, those with an opposing view would be denied an opportunity to speak. While it would be difficult to completely eliminate some aspects of dominance due to the nature of organization in local areas, the mandatory requirement to invite all people helps to ensure more voices are heard.

Bungoma County: Technical staff were present to oversee the writing and compilation of the documents in collaboration with the county planning officers and district development officers. They acted as moderators rather than controlling the deliberations. To ensure more opportunities for voice, the county has formed task forces which seek the input of the people. While this allows for more opportunities for engagement, it does not necessarily make it more inclusive, and it is difficult to establish if the consultations were free from the influence of any political group or politician.

Elgeyo Marakwet County and Taita Taveta County: There were no specific mechanisms established as safeguards to prevent consultative forums being dominated by any one political group, organized interest, or politician. In Taita Taveta County, MCAs and members of the CBEF organized public consultations for their constituents; but it was not clear what safeguards they put in place to ensure there was no capture by any of the groups. In addition, the feedback from members is purposely ad hoc because when it is structured some members of the public complain that they are being misled to only focus on the areas the government wants them to.

Homabay County: Although Homa Bay lacks a CBEF, it has encouraged considerable public participation. Transparent proceedings were conducted. For instance, the county facilitated consultations with the business community on the 2014/2015 Finance Bill so as to avert disagreements once it was passed. CSOs were found to be engaged through their networks, with representation in a unique government-CSO structure in Homa Bay, known as the County Budget Committee. Other mechanisms include hosting forums in partnership with non-government actors who work in the same field. For instance, the Department of Energy has been engaging with the German Corporation for Development (GIZ), the Rural Electrification Authority (REA), and local community based organizations in collaborative work around low cost energy. This ensures that many groups within the community can have their say without any domination from a particular group. That said, there are still no safeguards.

Machakos County: In some public forums it was found that no safeguards were in place. In cases where feedback was a requirement of the meeting, people with views opposed to the governor were not allowed to talk. Participants in the forum felt that the meetings were stage

managed and only held for compliance, and that public feedback is rarely considered. In some cases, participants noted that there were people hired to heckle anyone who tried to criticize the county operations. One respondent felt that MCAs should be deterred from mobilizing participants for public consultations as many only invite their cronies and friends. A neutral body to mobilize and reach all persons should be found.

6.3 Public consultations must have clear and specific purposes

To ensure public engagement is meaningful, the intention of consultations should be made clear and be communicated in simple and easy to understand language.

Bungoma County: Public consultations had clear purposes as stated in the advertisements. However, in most instances the relevant documentation was not provided in advance. Material was only provided during the consultative forum, leaving participants with little time to go through the document and give their input.

Elgeyo Marakwet County: Documentation was not issued prior to the public consultations. In some instances no documents were issued and only presentations were made during the consultations. The consultations did however have clear and specific purposes such as to retrieve input or discuss priorities of the community.

Taita Taveta County: The public consultations had clear purposes, and consultations were done through presentations and discussions in various meetings. As stated by the County Executive Committee Member for Finance of Taita Taveta, the county government's plan was to make the documents available to the public at least seven days prior to the meeting. However, this did not occur and the documents were only provided during the consultative meetings. This meant that both CBEF members and members of the public have had very limited time to read, consult and prepare their feedback. The public were concerned as most of the documents were provided in English, despite the common language being Swahili, meaning not all people could understand the content.

Homabay County: The purpose of the forums was made clear through the media. However, very short notice (often just one day) was given to the public to prepare. The documentation

was uploaded on the website, but was written in technical language. Many member of the public, especially in villages, do not have access to the internet, which was a further limiting factor.

Machakos County: Public consultations were found to have had clear and specific purposes and a number of the respondents indicated the purpose of the forum they attended. However, respondents stated that no documentation was available before the meeting, not even the itemized agenda, and little information was given out at the meetings. The overall observation was that, while the purposes was clear, the relevant information to guide engagement was rarely provided in time or a formats that were easy for the public to understand. This placed considerable challenges on the public.

6.4 The timeline and venues for public consultations should be made known at least two weeks in advance of the consultation

Clearly communicating the times and venues of consultations not only allows people to plan how they will attend, but also allows them to gather all the information they need to participate. Unfortunately, this is one area where most counties have failed.

Bungoma County: There was a lack of notice given prior to public consultations. Some members of the public stated that they were not able to attend the forums as they did not receive the information in time. Notice came one week prior to the consultative forum in just a single case. In regard to the venues within the county, most consultative forums took place at social halls within the constituency. This was felt to be adequately accessible.

Elgeyo Marakwet County: The venues selected were central and easily accessible to the urban public, but less convenient for the rural population. Timely communication was found to be lacking; some respondents indicated that calls for participation were only made the day before the public forum. Limited notice led to low turnout.

Taita Taveta County: Both the timeline for public consultations and the venues for the forums were found to be suitable. Consultations were held in central places, allowing easy access for many members of the public. Some respondents indicated they were given a few weeks' notice.

Similar to other counties, however, the county ended up handing out the documents to most participants during the forum.

Homabay County: Notices for public participation were found to be very short. In one case, a newspaper advertisement was placed the day before the consultation. The consultations were held in central locations, such as sub-county offices and secondary schools. However, some county officers observed that willing participants were unable to attend because they could not afford transportation.

Machakos County: The study was unable to establish the timelines of notices in the county. Respondents gave divergent views on whether information was available in advance about venues. Some participants in a focus group discussion noted that information provided about venues and timelines was often not correct. Venues were mostly at sub-county level for the executive, and ward level for the Assembly.

6.5 Public consultations must set aside dedicated time for public feedback and questions

Mobilizing public participation while failing to allow sufficient time for public feedback and questions is futile. While focus may be on the content of the matters under consideration, inputs from the public are critical. The case studies show that the counties did allocate time for feedback during the consultative forums and not afterwards. Participants were expected to give their feedback during the meeting with no other possibilities such as dedicated addresses or call in lines given.

Bungoma County: Officials indicated that feedback from the proceedings could be obtained through the website. However, a follow up check on the website revealed that they were not posted. Furthermore, during the meetings, questions were allocated very little time at the tail end of the meetings and were mostly rushed as people became tired and ready to leave.

Elgeyo Marakwet County: Members of the public were allowed time to give their input on various issues and documents. In some instances, feedback from the public was typed directly into the document. However, there was no mechanism to verify that what was being typed was accurate information. No feedback was provided on what was decided and why.

Taita Taveta County: Sessions were not long enough to allow substantive feedback from the public. Respondents noted that sessions could be as short as 2 hours (after starting late) and there was inadequate time for discussion.

Homabay County: Feedback from the public was sought in public meetings, on the county website, and occasionally via SMS. The County Assembly used its own mechanisms to source feedback through the offices of the MCAs at ward level. During the preparation of the 2014/2015 budget, participatory forums were held late; only one day's notice was given to the public for written feedback. This was in the form of memoranda. CSO networks were engaged in discussing the feedback from public meetings as part of the Budget Committee.¹⁸ This was not the case before where feedback was sought during the meeting. Furthermore, the county has now employed an NGO and Diaspora Coordinator who will help improve the relations and feedback from non-state actors. No feedback has been provided to the public on matters placed to them for input.

Machakos County: Time for input from members of the public was allocated. However, respondents stated that in some meetings their inputs were required immediately, which did not allow them enough time for consultation. The researcher in Kathiani ward found the public were able to give feedback and ask questions about service delivery in the county.

6.6 Public participation in the planning and budget process should occur at all stages in this process

Participation should be part of the service delivery cycle from formulation to evaluation. In the past (under LASDAP), participation was strong in the formulation stage but faded through the process of approval, implementation, and was minimal at the evaluation and auditing stages. This situation seems to have persisted under county governments. Few counties seem to have produced or published budget implementation reports. This outcome could, however, be attributed to the time the study was conducted and future studies may find improvements.

¹⁸ The Homabay Budget Committee was established comprising of government and non-government members from the CSOs network.

Bungoma County: Participation was only evident during the early stages of the budget process. The public were asked to give their input on budget estimates.

Elgeyo Marakwet County: Participation was evident in the early stages of budget preparation (preparing budget estimates) and also in later stages of reviewing the budget before it went to the County Assembly.

Taita Taveta County: Participation in the budget process covered the budget estimates.

Homabay County: Participation in the budget process was evident in budget review meetings to incorporate views into the main budget.

Machakos County: Participation was evident in the early stages of budget preparation (preparing budget estimates).

6.7 The public must have access to all relevant plan and budget documents in a timely fashion

Timely access to information is a key principle underpinning effective participation. Yet counties rarely make information available in advance.

Bungoma County: It was found that the public did not receive relevant documentation in a timely manner. Only one respondent indicated that they had received the document for review one week prior to the consultative forum; the majority respondents received the document on the day of the forum.

Elgeyo Marakwet County: A number of respondents received documents at the beginning of the forum; some indicated they had not received documents at all. For example, one respondent only received a pamphlet on planning which did not assist in the consultative forum. The study also indicated that some forums did not hand out documents, but just read them out loud at the meeting.

Taita Taveta County: In most cases the members of the public received documents at the beginning of the forum. Some citizens complained that during some forums very few copies of

documents were made available. At one of the forums, the 300 participants have to make do with just five copies of the documents.

Homabay County: Members of the public stated that some meetings, such as the consultation on the County Integrated Development Plan (CIDP), felt rushed and no information was made available prior to the meeting. However, county officials indicated that documents can usually be found on the website. While well intended, this had little impact due to the limited access to the internet in the county.

Machakos County: Members of the public reported having a difficult time accessing documents; one respondent believed the CEC decided not to provide the public with any finance documents before meetings. While no other respondents confirmed this, others indicated that all the documents they had on finance matters had been obtained through personal contacts with county officials. However, as observed by the researcher during the public forum in Kathiani, documents were circulated. Before the presentation had gone further, one member of the public asked for the implementation report for 2013/2014 as per the approved budget. He argued that there was no basis for discussing future plans without a clear picture of what was going on and was supported by other people present. The County Assembly (CA) officials were forced to produce the implementation reports.

6.8 All plan and budget documents should contain an executive summary and a narrative explanation of tables and figures

Numbers alone can be difficult to understand unless accompanied by some explanatory narrative. As the researchers did not have access to all the documents, the study was unable to establish if all plan and budget documents contained an executive summary, and a narrative explanation with tables and figures. However, the study was able to establish if the documents were user friendly according to the users themselves.

We received feedback from the interviewees about the structure of the various documents. Most respondents reported that they had challenges in understanding the information.

Bungoma County: Most respondents indicated that the documents were too technical to be understood by the common *mwananchi*. However, one respondent indicated that during the consultative forum, technical officers from the county executive were present to help explain the document.

Elgeyo Marakwet County: A number of respondents reported that the documents given at the public consultations were very technical.

Taita Taveta County: Respondents reported that the documentation was hard to understand because of the technical language used; documents were also only presented in English and most members of the public speak Swahili. One respondent suggested that the documents should be translated to Swahili.

Homabay County: Documents and presentations were first shared with CSOs who were consulted on simplifying them. This was found to have helped members of the public to understand the content during consultative forums.

Machakos County: Documentation was found to be too technical for participants to understand. The researcher in the Kathiani forum observed that most attendees had a difficult time comprehending the information presented. Summaries of achievements and summaries of budget estimates were found to be present in the documents, but there were questions over whether the narratives that accompanied the table and figures provided adequate information.

6.9 Citizens should be able to provide input into public consultations through direct participation, through representatives, and through written comments

The public should be provided with multiple channels for engaging, not only direct participation.

Bungoma County: Members of the public were able to provide input through the call in radio show known as “the Governor’s Corner”. The county website also contains a citizen

participation and feedback portal which allows the public to have their say on various issues, though it is not specifically focused on budget issues.¹⁹

Elgeyo Marakwet County: An online county forum was launched for the public to provide input and request feedback from county officials on various issues and documents.²⁰

Taita Taveta County: Members of the public have been engaging online through a popular blog, and the county has used this as a way of responding to public feedback.²¹ Other forms of participation include *barazas* conducted by chiefs; use of local media; and the coordination of public input through CSO groups. The challenge for the blog has been that although government officials frequently engage on the platform, there is no mechanism to enforce any commitments made by them.

Homabay County: Homabay's unique approach to participation was facilitated by CSO networks. They have hosted physical meetings and also launched an online portal for the public to present their views on different issues.²² The public is also able to participate by submitting written memoranda.

Machakos County: The study was unable to confirm if the public was allowed to submit written feedback, and no evidence of an online a forum or blog was found on the county website. The *barazas* were the only forums for public consultations that were found.

¹⁹ See www.bungoma.go.ke

²⁰ See <http://www.elgeyomarakwet.go.ke/index.php/forum/index>

²¹ See taita-taveta-kwetu@googlegroups.com

²² See <http://forums.homabay.go.ke/>

6.10 Where the public is asked for input, there should be a feedback mechanism so that citizens know whether or not their inputs were received, and whether and why they were or were not incorporated into the relevant plans or budgets.

Across the study counties, feedback to citizens has been a low point.

Bungoma County: All of the respondents reported that they had not received any feedback on the consultations they had attended. This suggests that the county lacks a feedback mechanism.

Elgeyo Marakwet County: No evidence was found of feedback being provided to the public. This was also cited as leading to a low turnout during calls for participation, as the members of the public felt they have no way of verifying whether their input was considered.

Taita Taveta County: Most respondents reported that they did not receive any feedback. However, one respondent reported receiving feedback from some MCAs after a period of 3 months, whereby a forum was conducted to discuss what had been considered in the document they had reviewed.

Homabay County: Feedback was provided to the CSO network members on the budget committee, who were expected to communicate the same to the public. However, in practice this rarely happened as they were wary of being seen as the mouthpiece of the county. Citizens are only able to see whether their inputs were taken on board in final documents, but these generally lack reasons for decisions taken. A county website has been established to provide information to the public, but internet penetration in the county is still low.

Machakos County: Feedback mechanisms were found to be lacking. None of the respondents reported receiving any feedback on the forums they attended. A CSO member of the CBEF indicated that providing feedback was handled by the County Assembly, but that the public made its own efforts to keep tabs on the implementation of activities and projects.

7 Conclusion

This review found that CBEFs and broader participation in the budget are emerging slowly. There is evidence of steps being made to comply with the minimum requirements of the law. However, it is clear that mechanisms such as the CBEF are yet to fully take shape and that most of what is happening is ad hoc. Nevertheless, we identified some emerging good practices.

7.1 Emerging Good Practices

Diverse mechanisms of communicating about meetings and consultations are emerging. Most counties are advertising for public forums through traditional means like newspaper adverts, but many have also adopted a broader set of media, such as local radio (Bungoma) and mobile phone messages (Machakos, Homa Bay). This builds on the former LASDAP guidelines and the County Government Act. It is also in line with the decision in the Kiambu case on public participation in the county finance bill, which found that government must proactively encourage the widest possible participation.

A variety of innovative mechanisms for engaging with county leaders are also surfacing. In Taita Taveta, the governor makes himself available for an hour a week to answer questions through an online platform run by an independent county network. In Bungoma, call-in radio shows have been used to air citizen concerns, and the governor has attended these from time to time. Elgeyo Marakwet and Homa Bay also have web portals where comments can be left for the county government. It is not clear how widely used these portals are, but they have the potential to become an important mechanism of engagement.

Partnership between government and civil society to lead meetings, simplify documents, and promote civic education is encouraging. In Homa Bay in particular, civil society has organized itself to participate in the countywide Budget Committee along with government, where sector meetings around budget priorities are co-chaired by CSOs. Civil society has also been consulted on how to present budget documentation to make them easier for the public to understand. The Taita Taveta CBEF has introduced a committee composed of government and non-state actors to help drive the agenda of the forum, and has also supported a number of citizen-led trainings and forums in the county.

Working with civil society on a consistent basis to link citizen concerns to government has improved the budget dialogue. For example, civil society in Homabay helps to ensure that information gets to citizens, but also that citizen views continue to be discussed within government after public consultations are held. This minimizes the sense that public consultations are tokenistic and increases the likelihood that public inputs will have an impact on decision-making.

While public meetings often lack key ingredients, such as timely notice and adequate access to information, they do represent an opportunity for the public to air concerns and pressure officials into discussing budget information in a more transparent manner. Our case study of Machakos found that residents were able to push for the release of budget implementation information in a public forum where that information was not initially presented. Civil society actors in other counties (such as the Governance Working Group in Uasin Gishu) have also been able, when they are prepared, to use these spaces to force deeper discussions on the budget than otherwise were planned by county officers. This suggests that the prevalence of public forums held by counties have greater potential for change than we have seen so far, if the public rise to the opportunities available.

7.2 Challenges and Recommendations

While we found some emerging good practices, we also identified significant challenges to the implementation of CBEF and broader participation.

County Budget and Economic Forums must be taken more seriously by county officials and used to consult the public on key planning and budget documents as required by law. In the vast majority of counties, CBEFs have yet to be operationalized as a “means to consultation” with the public. Even in the counties we studied, which were purposely selected for having established CBEFs, they have held few meetings and made few decisions. CBEFs are a legal requirement that every county is bound to uphold, but currently exist more in theory than practice. Few residents in the counties where CBEFs exist are aware of them or understand how people who sit in the Forum were appointed. Most people cannot distinguish between public participation forums held by the county and the actions or role of the CBEF.

Representatives that sit on the Forum must understand their representative role with respect to their constituencies (women, business, the youth, etc.), and develop mechanisms of engaging regularly with them. There is little evidence that the non-state members of CBEF regularly consult with their constituents, either to bring the views of the public to CBEF or to bring CBEF discussions back to the public. CBEF members are often not recognizable to their constituents, reflecting lack of countywide civic mobilization in some cases, and lack of understanding of members of their roles in others. In many cases, non-state members do not understand the budget process or documents they are supposed to discuss, and require additional capacity building.

Access to information in a timely way remains one of the fundamental obstacles to meaningful public participation and must be improved. Counties continue to make information available only on the day of public meetings, often in hard copy only, and sometimes no information is available. People are not given adequate access to documentation in advance to review it and form an opinion. They are often asked to give their views immediately after seeing bulky and technical documents in a public forum. This undermines the quality of the budget conversation by exacerbating inequality between government and non-government actors with respect to their ability to access and analyze key information.

More advanced notice about public consultations and their purposes must be provided to the public. Most opportunities for participation across the counties are announced less than a week prior to the meeting, and sometimes one or two days before the meetings. In addition to the fact that this does not allow people to adjust their schedules or prepare themselves, many of these meetings are county or sub-county meetings (rather than village meetings) and may require people to arrange transport.

Public participation is not only about setting priorities at the formulation stage of the budget, but also about engaging with budget implementation and oversight. None of our case study counties were found to be regularly producing or publishing budget implementation reports, although the law requires these to be made available to the public a month after the end of

every quarter. This problem is widespread across the country. It is indicative of the fact that counties, and CBEFs, have not taken the role of the public in budget implementation seriously.

More effort needs to be put into presenting budget information in simplified formats, using local languages where appropriate, in order to facilitate public engagement with budget documents.

At the national level, the Treasury produces what is known internationally as a “Citizens Budget,” a non-technical document that summarizes key points from the budget.

Counties could consider producing similar documents. They should also improve the presentation of the main budget documents, which are unnecessarily technical. Program-based budgeting offers an opportunity to improve the readability of the budget by using thoughtful narratives that illuminate budget tables, but budget narratives in most counties remain opaque.