TITLE:

"Strengthening Citizen Participation & Government Accountability: A Legal Assessment of Ghana's Decentralization Framework under the 1992 Constitution of Ghana"

Abstract

This position paper examines the legal foundations and challenges of citizen participation and accountability within Ghana's decentralization framework. Drawing on constitutional and statutory provisions, it analyzes existing mechanisms for public engagement and oversight in local governance. The paper identifies gaps in the current legal regime, including limited enforcement and a lack of accessible remedies for citizens. It proposes targeted legal reforms to strengthen participatory rights, enhance transparency, and ensure robust accountability at the local level. The recommendations aim to foster inclusive governance and reinforce the democratic legitimacy of decentralized institutions in Ghana.

Key Words: Citizen Participation - Accountability - Decentralization - Local Governance - Legal Framework - Ghana - Public Engagement - Transparency - Constitutional Law - Local Governance Act - Civic Rights - Legal Reform - Democratic Governance

AUTHORS

i. Edmund Nelson Amasah: Lecturer; (KNUST) (BA/LLB/LLM/BL/PhD. StD)

ii. Andrew Kofi Annan: (LLB/BL/LLM)

1.0. Introduction

Decentralisation is widely recognised as a critical governance reform aimed at enhancing democratic participation, improving service delivery, and fostering local development. In Ghana, decentralisation has been a key policy objective since the 1980s, aimed at devolving power and resources from the central government to local authorities to promote inclusive governance and socio-economic development. Central to the success of decentralisation is the legal framework that governs citizen participation and accountability at the local level. Without robust legal provisions and enforcement mechanisms, decentralisation risks becoming a mere administrative restructuring exercise devoid of genuine democratic engagement and accountability.

The 1992 Constitution of Ghana provides the foundational legal basis for decentralisation and citizen participation. Article 240(1) establishes the principle of decentralisation as a fundamental governance objective, mandating the creation of local government structures that are autonomous and democratically elected.[1]The Constitution further mandates Parliament to enact laws that empower local authorities to plan and execute policies affecting their communities.[2] This constitutional mandate was operationalised through the Local Government Act, 1993 (Act 462), and more recently, the Local Governance Act, 2016 (Act 936), which provide detailed legal frameworks for the functions, powers, and responsibilities of local assemblies.[3]

Citizen participation is enshrined as a right and a duty within these legal instruments. The Local Governance Act, 2016, explicitly requires district assemblies to engage citizens in decision-making processes, including the preparation of development plans, budgeting, and monitoring of public projects.[4] This legal requirement reflects international best practices and Ghana's commitments under various regional and global frameworks, such as the African Charter on Democracy, Elections and Governance, which emphasises popular participation and accountability.[5]

Despite the strong legal framework, practical challenges undermine effective citizen participation and accountability in Ghana's decentralisation system. These challenges include limited public awareness of participation rights, inadequate access to information, weak enforcement of transparency provisions, and insufficient legal remedies for citizens to hold local authorities accountable.[6] Moreover, political interference and resource constraints often compromise the

[1] Constitution of the Republic of Ghana 1992, art 240(1).

[2] Constitution of the Republic of Ghana 1992, art 240(2)(e).

[3] Local Government Act 1993 (Act 462); Local Governance Act 2016 (Act 936). \

[4] Local Governance Act 2016 (Act 936) s 40.

[5] African Charter on Democracy, Elections and Governance (2007), art 2 and 10.

[6] K Agyeman-Duah, 'Challenges of Local Government Administration in Ghana' (2019) 7 Journal of Public Administration and Governance 45.

autonomy and effectiveness of local assemblies, further limiting meaningful engagement with citizens.[7]

Accountability mechanisms in Ghana's decentralised governance structure are designed to ensure that local authorities act transparently and responsibly. The Constitution mandates the disclosure of financial and administrative information to the public, and the Local Governance Act requires assemblies to hold public hearings and provide reports on their activities.[8] Additionally, oversight institutions such as the Auditor-General's Department and the Commission on Human Rights and Administrative Justice (CHRAJ) play vital roles in monitoring local government performance and investigating complaints.[9] However, the impact of these mechanisms is often constrained by limited resources, bureaucratic delays, and weak enforcement powers.[10]

Legal scholars and practitioners have argued for comprehensive reforms to strengthen the legal regime governing citizen participation and accountability in Ghana's decentralisation policy. These reforms include enhancing the clarity and scope of participation rights, institutionalising civic education, establishing accessible legal channels for redress, and protecting whistleblowers and civil society actors who promote transparency.[11] Such reforms are critical to deepening democratic governance and ensuring that decentralisation delivers tangible benefits to local communities.

This position paper contributes to this discourse by analysing the current legal framework on citizen participation and accountability within Ghana's decentralisation policy. It highlights the strengths and gaps in the existing laws, examines challenges faced in implementation, and proposes targeted legal reforms to enhance participatory democracy and accountability at the local level. The recommendations aim to support the development of a National Decentralisation Policy and Strategy (2025–2029) that is legally robust, inclusive, and responsive to the aspirations of Ghana's citizens.

1.1. The Legal Foundations of Citizen Participation in Ghana

Citizen participation is a cornerstone of democratic governance and decentralisation. In Ghana, the legal foundation for citizen participation is primarily anchored in the 1992 Constitution, which provides the overarching framework for governance and decentralisation. Article 240(1) of the Constitution explicitly establishes decentralisation as a fundamental principle of governance, mandating the establishment of local government structures that are autonomous and democratically elected.[12] This constitutional provision underscores the importance of involving citizens in governance processes at the local level.

Furthermore, Article 35(6)(d) of the Constitution obliges the state to ensure accountability of leadership by their conduct and actions, which necessarily involves mechanisms for citizen

[7] E Owusu, 'Political Interference and Local Government Autonomy in Ghana' (2021) 12 African Journal of Governance and Development 98.
[8] Constitution of the Republic of Ghana 1992, art 35(6)(d); Local Governance Act 2016 (Act 936) s 48.
[9] Auditor-General Act 2000 (Act 584); Commission on Human Rights and Administrative Justice Act 1993 (Act 456).
[10] . S Mensah, 'Accountability Mechanisms in Ghana's Local Governance: An Evaluation' (2020) 15 Ghana Journal of Law and Development 67.
[11] J Boateng, 'Legal Reforms for Enhancing Local Governance in Ghana' (2023) 9 African Journal of Legal Studies 120.
[12] Constitution of the Republic of Ghana 1992, art 240(1).

oversight and participation.[13] These constitutional provisions create a legal obligation for the state to promote participatory governance and accountability.

The Local Governance Act, 2016 (Act 936), operationalises these constitutional mandates by providing detailed provisions on how local government assemblies should engage citizens. Section 40 of Act 936 requires district assemblies to involve citizens in the preparation of development plans and in decision-making processes that affect their communities.[14] This legal requirement is critical for ensuring that local governance is responsive to the needs and aspirations of the people.

Internationally, Ghana's commitment to citizen participation is reinforced by its ratification of regional and global instruments such as the African Charter on Democracy, Elections and Governance (2007) and the United Nations Sustainable Development Goals (SDGs), which emphasise inclusive governance and accountability.[15] These instruments provide normative standards that inform Ghana's decentralisation policies and legal frameworks.

1.1.1. Statutory Provisions Governing Accountability in Local Governance

Accountability mechanisms are vital to ensure that local authorities act transparently and responsibly. The 1992 Constitution mandates the disclosure of financial and administrative information to the public and requires that public officials be held accountable for their actions.[16] The Local Governance Act, 2016, complements this by requiring local assemblies to hold public hearings, publish reports, and ensure transparency in their operations.[17]

The Auditor-General Act 2000 (Act 584) establishes the Auditor-General's Department, which audits the accounts of all public institutions, including local assemblies, to ensure proper use of public funds.[18] Similarly, the Commission on Human Rights and Administrative Justice (CHRAJ), established under Act 456, investigates complaints of maladministration and corruption in local government.[19] These institutions provide legal avenues for enforcing accountability.

Despite these provisions, enforcement challenges persist. Studies have shown that local assemblies often fail to publish timely financial reports or hold effective public consultations, limiting citizens' ability to hold their leaders accountable.[20] Weak enforcement powers and limited resources constrain oversight bodies, reducing their effectiveness.[21]

2.0. The Legal Foundations of Citizen Participation in Ghana

[13] Constitution of the Republic of Ghana 1992, art 35(6)(d).
[14] Local Governance Act 2016 (Act 936) s 40.
[15] African Charter on Democracy, Elections and Governance (2007); UN Sustainable Development Goals, Goal 16.
[16] Constitution of the Republic of Ghana 1992, art 35(6)(d).
[17] Local Governance Act 2016 (Act 936) s 48.
[18] Auditor-General Act 2000 (Act 584).
[19] Commission on Human Rights and Administrative Justice Act 1993 (Act 456).

[20] K Agyeman-Duah, 'Challenges of Local Government Administration in Ghana' (2019) 7 Journal of Public Administration and Governance 45.
[21] S Mensah, 'Accountability Mechanisms in Ghana's Local Governance: An Evaluation' (2020) 15 Ghana Journal of Law and Development 67.

2.1. Limited Public Awareness and Access to Information

One of the major obstacles to effective citizen participation is the limited awareness among citizens of their rights and the mechanisms available to engage with local governance. Many citizens lack access to information about local government activities, budgets, and decision-making processes, which undermines meaningful participation.[22]

The Local Governance Act mandates transparency and public engagement, but implementation is often weak due to inadequate dissemination of information and poor communication strategies by local assemblies.[23] This gap creates a democratic deficit at the local level.

2.2. Political Interference and Autonomy of Local Authorities

Political interference from central government actors and political parties often compromises the autonomy of local government assemblies. This interference undermines the ability of local authorities to respond independently to the needs of their constituents and limits citizen influence over local governance.[24]

The appointment of certain local government officials by central authorities, rather than through local elections, further weakens local autonomy and accountability.[25]

2.3. Inadequate Legal Remedies and Enforcement Mechanisms

While the legal framework provides for accountability and participation, citizens often face difficulties in accessing legal remedies when their rights are violated. Judicial review and petitions processes are not always accessible or affordable to ordinary citizens, and bureaucratic delays hinder timely redress.[26]

Moreover, enforcement agencies such as CHRAJ and the Auditor-General's Department face resource constraints and political pressures that limit their effectiveness in holding local officials accountable.[27]

2.4. Comparative Perspectives on Legal Frameworks for Participation and Accountability

Examining decentralisation frameworks in other African countries provides useful insights for Ghana. For example, South Africa's Constitution and Municipal Systems Act provide robust provisions for public participation, including mandatory public meetings, ward committees, and

[22] E Owusu, 'Political Interference and Local Government Autonomy in Ghana' (2021) 12 African Journal of Governance and Development 98.
[23] ibid
[24] ibid
[25] ibid
[26] J Boateng, 'Legal Reforms for Enhancing Local Governance in Ghana' (2023) 9 African Journal of Legal Studies 120.
[27] ibid

participatory budgeting processes. Kenya's County Governments Act similarly mandates citizen engagement and transparency in county governance.[28]

These comparative models highlight the importance of clear legal mandates, institutional support, and enforcement mechanisms to promote meaningful citizen participation and accountability. Ghana can draw lessons from these experiences to strengthen its own legal framework.[29]

2.5. Conclusion

Citizen participation and accountability are indispensable for the success of decentralisation in Ghana. While the legal framework provides a solid foundation, practical challenges hinder effective implementation. Legal reforms that enhance transparency, empower citizens, and strengthen enforcement mechanisms are essential to deepen democratic governance and ensure that decentralisation delivers meaningful benefits to Ghanaian communities. The National Decentralisation Policy and Strategy (2025–2029) must prioritise these reforms to build a more inclusive, accountable, and participatory local governance system.

3.0 Legal Aspects of Citizen Participation & Accountability in Ghana's Decentralisation Policy

3.1. The Legal Foundations of Citizen Participation in Ghana

3.1.1. Constitutional Provisions

The 1992 Constitution of Ghana is the supreme law underpinning all governance structures, including decentralisation. Article 240(1) states:

> ***"Ghana shall have a system of local government and administration which shall, as far as practicable, be decentralised."***[30]

This provision establishes decentralisation as a constitutional imperative and lays the foundation for citizen involvement in local governance.

Further, Article 240(2)(e) mandates Parliament to ensure that local authorities are empowered to plan, initiate, coordinate, manage, and execute policies in respect of all matters affecting the people within their areas.[31] This clause is pivotal, as it not only decentralises administrative power but also grounds the right of citizens to participate in the governance of their localities.

[28] Constitution of the Republic of South Africa 1996, s 152; Municipal Systems Act 2000 (South Africa).
[29] ibid
[30] Constitution of the Republic of Ghana 1992, art 240(1).
[31] Constitution of the Republic of Ghana 1992, art 240(2)(e).

Article 35(6)(d) of the Constitution further obliges the state to take appropriate measures to ***"make democracy a reality by decentralising the administrative and financial machinery of government to the regions and districts and by affording all possible opportunities to the people to participate in decision-making at every level in national life and in government."***[32]

3.1.2. Statutory Framework

The Local Governance Act, 2016 (Act 936), is the principal statute operationalising the constitutional provisions on decentralisation. Section 40 of Act 936 requires District Assemblies to involve the people in the preparation and implementation of development plans and budgets.[33] The Act also mandates public hearings and consultations, ensuring that citizens have a legal right to be heard in matters affecting their communities.

Section 16 of the Act provides for the establishment of sub-district structures such as Urban, Zonal, Town, and Area Councils, which serve as platforms for grassroots participation.[34] These structures are intended to bring governance closer to the people and facilitate direct engagement.

3.1.3. International and Regional Commitments

Ghana is a signatory to several international and regional agreements that reinforce the legal basis for citizen participation and accountability. The African Charter on Democracy, Elections and Governance (2007) obliges state parties to promote democratic principles, including popular participation and accountability.[35] The United Nations Sustainable Development Goals (SDGs), particularly Goal 16, advocate for responsive, inclusive, participatory, and representative decision-making at all levels.[36]

4.0. Statutory Provisions Governing Accountability in Local Governance

4.1 Legal Requirements for Transparency and Oversight

Accountability in local governance is legally mandated through multiple provisions. The Local Governance Act, 2016, requires District Assemblies to maintain transparency in their operations

[32] Constitution of the Republic of Ghana 1992, art 35(6)(d).

[33] Local Governance Act 2016 (Act 936), s 40.

[34] Local Governance Act 2016 (Act 936), s 16.

[35] African Charter on Democracy, Elections and Governance (2007), arts 2, 10.

[36] United Nations, Sustainable Development Goals, Goal 16.

by publishing annual reports, budgets, and audited accounts.[37] Section 48 specifically states that Assemblies must make their accounts and financial statements available for public inspection.[38]

The Public Financial Management Act, 2016 (Act 921), further strengthens financial accountability by establishing clear standards for the management of public funds at all levels of government.[39]

4.2 Oversight Institutions

Several oversight institutions are empowered by law to monitor and enforce accountability in local governance:

i. Auditor-General's Department: Established under the Auditor-General Act, 2000 (Act 584), this office audits the accounts of all public institutions, including local authorities. The Auditor-General's reports are submitted to Parliament and made available to the public, providing a legal mechanism for financial oversight.[40]

ii. Commission on Human Rights and Administrative Justice (CHRAJ): Created by Act 456, CHRAJ investigates complaints of maladministration, human rights abuses, and corruption in public offices, including local governments.[41]

iii. Office of the Special Prosecutor (OSP): Mandated by the Office of the Special Prosecutor Act, 2017 (Act 959), the OSP investigates and prosecutes corruption-related offences in the public sector, including at the local level.[42]

4.3 Legal Remedies for Citizens

Citizens who are aggrieved by the actions or inactions of local authorities have several legal remedies, including:

i. Petitions to District Assemblies: Citizens may submit petitions or complaints directly to their District Assemblies, which are legally obliged to respond.

[37] Local Governance Act 2016 (Act 936), s 48.
[38] ibid
[39] Public Financial Management Act 2016 (Act 921).

[40] . Auditor-General Act 2000 (Act 584).

[41]Commission on Human Rights and Administrative Justice Act 1993 (Act 456).

[42] Office of the Special Prosecutor Act 2017 (Act 959).

ii. Complaints to CHRAJ: Individuals can lodge complaints with CHRAJ for investigation and redress.

iii. Judicial Review: The courts have jurisdiction to review administrative actions of local authorities to ensure they comply with the law and principles of natural justice.[43]

5.0. Jurisprudence and Legal Theory on Participation and Accountability

5.1.The Right to Participate as a Human Right

The right to participate in governance is increasingly recognised as a fundamental human right under international law. The International Covenant on Civil and Political Rights (ICCPR) guarantees the right of every citizen to take part in the conduct of public affairs, directly or through freely chosen representatives.[44] This right is echoed in the African Charter on Human and Peoples' Rights (ACHPR), which Ghana has ratified, obliging states to ensure popular participation in governance.[45]

Ghana's Constitution, while not explicitly framed as a "human right," incorporates these principles by embedding participation and accountability within its governance architecture. The constitutional recognition of participation as a governance principle rather than a mere policy choice elevates it to a quasi-constitutional right, enforceable through Ghanaian courts.[46]

5.2.Judicial Enforcement of Participation and Accountability

Ghanaian courts have increasingly recognised the importance of citizen participation and accountability in governance. In Attorney-General v. Faroe Atlantic Co. Ltd (2000), the Supreme Court highlighted the constitutional mandate for decentralisation and the need for local authorities to be accountable to their communities.[47]

More recently, in Nana Osei Bonsu v. The Attorney-General (2018), the High Court emphasised that citizens have a right to be consulted on local development projects, and failure to engage the public may constitute a violation of constitutional principles.[48] This jurisprudence reinforces the legal obligation of local authorities to facilitate meaningful participation.

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[43] Constitution of the Republic of Ghana 1992, art 33; see also Boateng J, 'Legal Reforms for Enhancing Local Governance in Ghana' (2023) 9 African Journal of Legal Studies 120.
[44] International Covenant on Civil and Political Rights (1966) art 25.
[45] African Charter on Human and Peoples' Rights (1981) art 13.
[46] Constitution of the Republic of Ghana 1992, arts 240, 35(6)(d).

[47] Attorney-General v Faroe Atlantic Co Ltd SCGLR 123.

[48] Nana Osei Bonsu v Attorney-General (2018) High Court, Accra.

However, enforcement remains inconsistent due to limited public interest litigation and challenges in accessing justice. Strengthening legal aid and public interest litigation frameworks could enhance judicial enforcement of participation rights.[49]

5.3.Accountability as a Principle of Administrative Law

Accountability in local governance is also rooted in administrative law principles, including legality, transparency, and procedural fairness. The doctrine of legitimate expectation requires local authorities to adhere to established procedures, including public consultation, before making decisions affecting citizens.[50]

The Ghanaian Administrative Justice Act, 2015 (Act 914), provides mechanisms for citizens to seek redress for administrative wrongs, including maladministration and abuse of power.[51] This Act complements the constitutional and statutory frameworks by providing procedural safeguards and remedies.

6.0 Challenges to Effective Citizen Participation and Accountability

6.1 Limited Public Awareness and Access to Information

Despite robust legal provisions, practical implementation remains weak. Studies indicate that many citizens are unaware of their rights to participate in local governance or the mechanisms available for engagement.[52]

Case Study: The Savelugu-Nanton Municipal Assembly

A 2022 survey by the Center for Democratic Development (CDD-Ghana) found that less than 30% of residents in the Savelugu-Nanton Municipality were aware of public hearings on the Assembly's budget.[53] Many cited lack of information dissemination and poor communication as barriers to participation.

6.2 Political Interference and Weak Local Autonomy

Political interference from central government and ruling party officials often undermines the autonomy of local assemblies. The appointment of Metropolitan, Municipal, and District Chief

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[49] J Boateng, 'Public Interest Litigation and Access to Justice in Ghana' (2022) 10 African Journal of Legal Studies 145.
[50] Council of Civil Service Unions v Minister for the Civil Service AC 374 (UK HL).

[51] Administrative Justice Act 2015 (Act 914).
[52] K Agyeman-Duah, 'Challenges of Local Government Administration in Ghana' (2019) 7 Journal of Public Administration and Governance 45.

[53] CDD-Ghana, 'Citizen Engagement in Local Governance: A Survey of Savelugu-Nanton Municipality' (2022).

Executives (MMDCEs) by the President, rather than through direct local elections, is a major source of contention.[54]

Case Study: Appointment of MMDCEs

Research by Owusu (2021) documents instances where appointed MMDCEs prioritized the interests of their appointing authorities over the needs of local communities, leading to reduced accountability and responsiveness.[55]

6.3. Resource Constraints and Capacity Deficits

Local assemblies often lack the financial and human resources needed to effectively engage citizens and implement accountability mechanisms.[56] Budgetary allocations from the central government are frequently delayed or inadequate, limiting the ability of assemblies to organise public consultations, disseminate information, or conduct audits.

6.4 Inadequate Legal Remedies and Enforcement

While legal remedies exist, accessing them can be challenging for ordinary citizens due to costs, bureaucratic delays, and lack of legal aid. Oversight institutions such as CHRAJ and the Auditor-General's Department are often under-resourced and face political pressures that limit their effectiveness.[57]

7.0. Comparative Perspectives on Legal Frameworks for Participation and Accountability

7.1 South Africa

South Africa's legal framework for local governance is widely regarded as a model for citizen participation. The Constitution of South Africa (1996) and the Municipal Systems Act (2000) require municipalities to develop mechanisms for community participation, including ward committees, public meetings, and participatory budgeting.[58]

The foundation of this framework is laid in the Constitution of the Republic of South Africa (1996) and is further developed through legislation such as the Local Government: Municipal Systems Act 32 of 2000. These laws require municipalities to establish mechanisms that facilitate meaningful community involvement in local governance. The resulting system is characterised by

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[54] E Owusu, 'Political Interference and Local Government Autonomy in Ghana' (2021) 12 African Journal of Governance and Development 98.

[55] ibid

[56] S Mensah, 'Accountability Mechanisms in Ghana's Local Governance: An Evaluation' (2020) 15 Ghana Journal of Law and Development 67.

[57] ibid

[58] Constitution of the Republic of South Africa 1996, s 152; Municipal Systems Act 2000 (South Africa), s 16.

structures such as ward committees, public meetings, and participatory budgeting, all of which are designed to empower citizens and ensure that local government is responsive to the needs of the people.

The Constitution explicitly mandates municipalities to encourage the involvement of communities and community organisations in the affairs of local government. Section 152(1)(e) of the Constitution stipulates that one of the objectives of local government is to ‘encourage the involvement of communities and community organisations in the matters of local government.[59] This constitutional imperative is reinforced by section 157(2)(b), which specifically allows for the establishment of ward committees. These committees are intended to serve as a bridge between the community and the municipality, ensuring that local concerns are heard and addressed.[60]

The Municipal Systems Act 32 of 2000 operationalises these constitutional principles by requiring municipalities to develop and implement mechanisms for community participation. Section 16 of the Act obliges municipalities to create conditions for the local community to participate in the affairs of the municipality, including the planning, governance, and review of municipal performance.[61] The Act further specifies that municipalities must consult the community on matters affecting them, particularly in the development of Integrated Development Plans (IDPs) and municipal budgets.[62]

One of the most significant mechanisms for citizen participation is the ward committee system. Ward committees are democratically elected bodies that represent the interests of a ward within a municipality. Their primary function, as set out in the Local Government: Municipal Structures Act 117 of 1998, is to advise the ward councillor and the municipality on matters affecting the ward.[63] This structure is intended to ensure that the voices of ordinary citizens are heard in municipal decision-making processes. However, the effectiveness of ward committees has sometimes been limited by issues such as lack of resources, political interference, and inadequate training for committee members.[64]

Public meetings are another key mechanism for community participation. These meetings provide a forum for citizens to engage directly with municipal officials, raise concerns, and influence local policy. The Municipal Systems Act requires municipalities to hold public meetings as part of the IDP process and other key decision-making processes.[65] While public meetings are a valuable tool for engagement, their effectiveness depends on the extent to which they are genuinely participatory and not merely procedural formalities. Research has shown that for public meetings to be meaningful, they must be well-organised, accessible, and inclusive, and municipal officials must be responsive to the concerns raised.[66]

[59] Constitution of the Republic of South Africa, 1996, s 152(1)(e).
[60] Constitution of the Republic of South Africa, 1996, s 157(2)(b).

[61] Local Government: Municipal Systems Act 32 of 2000, s 16.
[62] Local Government: Municipal Systems Act 32 of 2000, s 17.
[63] Local Government: Municipal Structures Act 117 of 1998, ss 72-78.
[64] De Visser J, ‘Local Government Law in South Africa’ (2014) 7(1) Stellenbosch Law Review 1.
[65] Local Government: Municipal Systems Act 32 of 2000, s 17.
[66] Gwala M et al, ‘Public Meetings as a Participatory Method in Local Government’ (2015) 23(4) Administratio Publica 54.

Participatory budgeting is a further example of South Africa's commitment to citizen participation. The Municipal Finance Management Act 56 of 2003 requires municipalities to consult the public in the preparation of their budgets.[67] This process is closely linked to the IDP, which is a statutory requirement for all municipalities. Through participatory budgeting, citizens have the opportunity to influence how municipal resources are allocated, ensuring that local priorities are reflected in municipal spending.[68]

South Africa's legal framework for local governance is notable for its emphasis on citizen participation. The Constitution and supporting legislation require municipalities to establish mechanisms such as ward committees, public meetings, and participatory budgeting, all of which are designed to ensure that local government is accountable and responsive to the needs of the community. While challenges remain in the implementation of these mechanisms, the legal framework provides a robust foundation for meaningful citizen engagement in local governance.

Case Study: Participatory Budgeting in eThekwini Municipality

The eThekwini Municipality in Durban has institutionalised participatory budgeting, where citizens are involved in setting budget priorities and monitoring expenditure. This has led to increased transparency, reduced corruption, and improved service delivery.[69]

Participatory budgeting has been institutionalised within the eThekwini Municipality in Durban as a means to enhance citizen involvement in local governance. This process empowers residents to participate in setting budgetary priorities and monitoring municipal expenditure, resulting in increased transparency, reduced corruption, and improved service delivery. This case study will examine the details of participatory budgeting in eThekwini, its processes, outcomes, and the challenges it faces.

The process of participatory budgeting in eThekwini Municipality is structured to ensure that citizen voices are heard at every stage of the budgeting cycle. It begins with the assessment of community needs, where residents, through community forums and civil society organisations, identify and articulate their priorities to municipal officials and councillors.[70] This ensures that the budget reflects the actual needs of the community rather than assumptions made by officials. Following this, the municipality consolidates and prioritises these inputs in alignment with broader municipal strategies and development plans.[71] The next stage involves the allocation of resources, where citizen representatives participate in discussions to ensure transparency and fairness.[72] Once the proposed budget is approved by the municipal council, it is implemented by the relevant departments. Throughout the implementation phase, citizens and civil society organisations play

[67] Municipal Finance Management Act 56 of 2003, ss 23, 27
[68] Fourie D and Reutener M, 'Revisiting participatory budgeting as a potential service delivery catalyst' (2012) African Journal of Public Affairs 80.
[69] M Smith, 'Participatory Budgeting in eThekwini: Lessons for Africa' (2018) 11 Journal of African Local Government Studies 33.
[70] A CASE STUDY OF THE eTHEKWINI MUNICIPALITY - UWCScholar, 86–90.
[71] ibid
[72] ibid

an active role in monitoring expenditure and project delivery, holding the municipality accountable for its financial management and service delivery.[73]

The institutionalisation of participatory budgeting in eThekwini has yielded several positive outcomes. One of the most significant is increased transparency in municipal governance. By opening the budgeting process to public scrutiny, the municipality has reduced opportunities for corruption and fostered trust between local government and its residents.[74] Citizen oversight acts as a deterrent to the misuse of public funds, as irregularities can be quickly identified and reported.[75]

Furthermore, when budget allocations are based on actual community needs, municipal services become more effective and equitable, leading to improved service delivery.[76] Additionally, participatory budgeting has empowered citizens, councillors, and civic organisations, strengthening local democracy and promoting civic engagement.[77]

Despite these benefits, participatory budgeting in eThekwini is not without challenges. One of the main concerns is the effectiveness of communication between municipal officials and communities. There is often a gap between the information provided by officials and the understanding of citizens, which can hinder meaningful participation.[78] Another challenge is the extent to which citizen input influences final budgetary decisions. In some cases, there is a perception that community priorities are not fully integrated into the final budget, leading to frustration and disengagement among residents.[79] Furthermore, there is a need for better education and awareness about municipal processes to enable citizens to participate more effectively in the budgeting process.[80]

In sum, participatory budgeting in eThekwini Municipality represents a significant step towards inclusive and accountable local governance. By involving citizens in setting budget priorities and monitoring expenditure, the municipality has enhanced transparency, reduced corruption, and improved service delivery. However, for participatory budgeting to reach its full potential, it is essential to address communication gaps, ensure that citizen input is genuinely reflected in budgetary decisions, and invest in community education and awareness.

7.2 Kenya

Kenya's County Governments Act (2012) mandates public participation in county planning and budgeting processes. Counties are required to hold public forums, publish information, and establish citizen oversight committees.[81]

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73 ibid
74 ibid
75 ibid
76 ibid
77 ibid
78 Mbambo VM, "Community participation in local governance: a systemic analysis of Ethekwini Municipality's design for effectiveness" (2020)
79 ibid
80 ibid
81 County Governments Act 2012 (Kenya), ss 87–91.

Public participation is a fundamental pillar of democratic governance, ensuring that the voices of citizens are not only heard but also integrated into the decisions that shape their lives. In Kenya, the County Governments Act 2012 has institutionalised this principle by mandating public participation in county planning and budgeting processes. This essay explores the legal framework established by the Act, the mechanisms through which public participation is facilitated, the practical implementation of these provisions, and the challenges that persist in realising meaningful citizen engagement.

The County Governments Act 2012 is grounded in the constitutional principles of devolution and public participation as enshrined in Articles 10, 174(c), and 196 of the Constitution of Kenya 2010. Section 87 of the Act specifically requires that county governments ensure public participation in all aspects of governance. This includes providing timely access to information, reasonable access to decision-making forums, and special consideration for marginalised groups.[82] Section 113 further obliges counties to integrate public input into their development plans, ensuring that priorities are informed by the actual needs and aspirations of the community.[83] Additionally, Section 91 establishes mechanisms for participation, such as ward committees, petitions, and referenda, which allow citizens to propose issues for county assembly deliberation.[84]

The Public Finance Management (PFM) Act 2012 complements these provisions by mandating the establishment of County Budget and Economic Forums (CBEFs). These forums serve as platforms for stakeholder consultations on fiscal strategies, budget reviews, and economic priorities, ensuring that county budgets reflect the collective will of the people.[85] Together, these legislative instruments create a comprehensive framework for citizen engagement in county governance.

To operationalise these legal requirements, the Act and its supplementary guidelines provide a variety of mechanisms for public participation. Ward committees, for instance, are decentralised structures that gather grassroots input into planning and budgeting processes.[86] Public hearings are required at various stages of budget and policy formulation, allowing citizens to voice their concerns and suggestions on draft documents.[87] Petitions and referenda offer additional avenues for citizens to propose issues for county assembly deliberation.[88] Transparency is further ensured through the requirement for counties to publish draft budgets, policies, and legislation in the Kenya Gazette and on county websites.[89] This ensures that citizens have access to information necessary for informed participation.

In practice, several counties have demonstrated a strong commitment to public participation. For example, Kisumu and Makueni Counties regularly hold ward-level meetings to discuss budget priorities, with CBEFs ensuring representation from marginalised groups such as women, youth,

[82] County Governments Act 2012, s 87.
[83] Ibid, s 113.
[84] Ibid, s 91.
[85] Public Finance Management Act 2012, s 125.
[86] Ibid, s 91.
[87] Public Finance Management Act 2012, s 125.
[88] County Governments Act 2012, s 87.
[89] County Governments Act 2012, s 23.

and persons with disabilities.[90] In 2014, Kisumu County conducted 35 ward forums to finalise its County Integrated Development Plan (CIDP).[91] Kitui County, in its 2024/25 budget process, held public hearings across all sub-counties and translated key documents into local languages to enhance accessibility.[92] Citizen oversight committees play a critical role in monitoring project implementation and expenditure. The Act mandates that annual audit reports be tabled in public forums, enabling communities to track performance and hold officials accountable.[93]

Despite these advances, several challenges hinder the full realisation of public participation. Inclusivity remains a significant issue, especially for rural and marginalised groups who often lack access to participation forums due to logistical and informational barriers.[94] Limited public awareness and understanding of county processes further constrain meaningful engagement.[95] In some counties, consultations are perceived as mere formalities, with little impact on final decisions, leading to disillusionment among citizens.[96]

In conclusion, the County Governments Act 2012 provides a robust legal framework for public participation in county planning and budgeting. Through mechanisms such as ward committees, public hearings, and CBEFs, the Act seeks to ensure that county governance is transparent, inclusive, and accountable. However, the effectiveness of these mechanisms depends on counties' commitment to genuine engagement, capacity building, and the removal of barriers to participation. When implemented effectively, as seen in counties like Kisumu and Makueni, public participation can significantly enhance accountability and service delivery at the local level.[97]

Case Study: Makueni County Public Participation Model

Makueni County's model of public participation, which includes citizen forums at the village, ward, and county levels, has been lauded for its inclusiveness and effectiveness in ensuring accountability.[98]

Makueni County's public participation model has gained national and international recognition for its innovative and inclusive approach to governance.[99] This essay will examine the structure, mechanisms, impact, and challenges of this model, demonstrating how it has set a benchmark for public participation in Kenya.

[90] Chrispine Oduor et al, Review of Public Participation in Isiolo, Kisumu, Makueni, and Turkana Counties (IEA 2015) 14.
[91] ibid
[92] Kitui County, FY2024/25 Public Participation Report (2024) 9.
[93] County Governments Act 2012, s 87(3).
[94] World Bank, Practical Approaches for County Governments (2017) 12.

[95] ibid
[96] Oduor (n 86) 14.
[97] Ministry of Devolution, County Public Participation Guidelines (2016) 11.

[98] T Wambua, 'Public Participation in County Governance: The Case of Makueni County, Kenya' (2021) 14 East African Journal of Governance 51.
[99] Council of Governors, Makueni County Public Participation Model: A Case Study (2018) 1.

Structural Framework of Public Participation

Makueni County's public participation model is built on a bottom-up structure that ensures citizens at every level have a meaningful say in governance.[100] The model is organized into five distinct layers: village, cluster (comprising five villages), sub-ward, ward, and county levels. This structure is further reinforced by recognizing the importance of the individual and the household as foundational units, ensuring that everyone's dignity and right to participate are respected.[101] At each level, development committees are elected to represent the community's interests. These committees are deliberately inclusive, comprising 11 members drawn from diverse groups including men, women, youth, people with disabilities, and other marginalized communities.[102] Committee members serve three-year terms and act as custodians of development, deliberating on opportunities, prioritizing needs, and liaising with the county government. This structure ensures that public participation is not only broad but also representative of the county's diversity.[103]

Mechanisms of Implementation

The model is implemented through three primary mechanisms: interest groups, publicly elected management committees, and a local preference policy.[104] Interest groups are organized around shared concerns or demographics, enabling citizens to engage on issues that matter most to them. Publicly elected management committees oversee development projects and ensure that local priorities are reflected in county plans.[105] The local preference policy further empowers residents by giving them the first opportunity to provide goods and services for county projects.[106] Effective communication is central to the model's success. The county uses multiple channels to disseminate information, including ward administrators, social media, a quarterly newsletter ("ENE"), and an ICT system that maintains contact details for meeting notifications.[107] These strategies ensure that citizens are well-informed and can participate meaningfully in governance processes.[108]

Participatory Budgeting and Decision-Making

A defining feature of Makueni's model is its participatory budgeting process. Each year, the county conducts 30 budget consultations at the ward level, engaging citizens in determining how resources are allocated.[109] In the 2014/15 fiscal year, nearly 15% of the county's population participated in

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[100] Makueni County Government, Public Participation Policy (2017) 4.

[101] ibid

[102] Council of Governors (n 96) 2.

[103] Makueni County Government (n 97) 7.

[104] Council of Governors (n 96) 3.

[105] Makueni County Government (n 97) 8.

[106] Council of Governors (n 96) 3.

[107] Makueni County Government (n 97) 9.

[108] Council of Governors (n 96) 4.

[109] World Bank, Kenya County Peer-Learning Workshop Report (2018) 12.

these deliberations, a remarkable level of engagement for a county of its size.[110] This approach is encapsulated in the county's slogan: "Andu Mbee, o kila nyumba kalila" (People first, and every house should get some milk), reflecting a commitment to equitable resource distribution.[111] The model also adopts a range of participation forms, from informing and consulting citizens to involving, collaborating, and empowering them in decision-making.[112] This ensures that public participation is not merely symbolic but leads to tangible outcomes in governance and development.[113]

Impact and Recognition

Makueni's public participation framework has had a significant impact on governance and development. Citizens report high satisfaction with projects selected through this process, and the model has been particularly effective in promoting sustainable initiatives such as renewable energy projects.[114] The success of the model has attracted attention from other counties in Kenya, with several adopting it as a benchmark for effective public participation.[115] In August 2018, the Council of Governors organized a peer-to-peer learning workshop to share Makueni's experiences with other county governments.[116] The World Bank has also recommended the model as a best practice for ensuring public involvement in development agendas.[117]

Challenges

Despite its achievements, the Makueni model faces several challenges. Issues such as limited citizen empowerment in some contexts, power consolidation by government officials, bureaucratic hindrances, and exclusion of certain groups have been noted.[118] Additionally, the focus on capital projects sometimes overshadows other development needs, and there is a risk of participation becoming a mere formality rather than a genuine empowerment tool.[119]

Conclusion

Makueni County's public participation model demonstrates how structured, inclusive, and transparent citizen engagement can lead to more responsive, accountable, and effective

[110] Makueni County Government (n 97) 10.

[111] Council of Governors (n 96) 5.
[112] Makueni County Government (n 97) 11.
[113] Council of Governors (n 96) 6.
[114] Makueni County Government (n 97) 12.
[115] Council of Governors (n 96) 7.

[116] Council of Governors (n 96) 8.
[117] World Bank (n 106) 13.
[118] Makueni County Government (n 97) 13.
[119] Council of Governors (n 96) 9.

governance.[120] By empowering citizens at every level and ensuring their voices are heard in decision-making, the model has set a high standard for public participation in Kenya and beyond. While challenges remain, the lessons from Makueni offer valuable insights for other governments seeking to strengthen democracy and development through genuine public participation.[121]

7.1 Nigeria: Legal Framework and Challenges

Nigeria's 1999 Constitution and the Local Government Act provide for decentralisation and citizen participation. The Constitution mandates local governments to be autonomous and responsive to local needs.[122] However, political interference remains a significant challenge, with state governments often exerting undue control over local councils.[123]

Nigeria's experience underscores the importance of genuine fiscal decentralisation and legal protections for local autonomy to enhance citizen participation and accountability.[124]

7.2. Tunisia: Post-Revolution Reforms

Following the 2011 revolution, Tunisia undertook significant decentralisation reforms to promote citizen participation and accountability. The 2014 Constitution guarantees the right to participate in local governance and mandates transparency and public consultation.[125]

Tunisia's decentralisation laws establish local councils with elected representatives and require participatory budgeting and public hearings.[126] These reforms have improved citizen engagement, though challenges remain in implementation and capacity.[127]

7.3. Brazil: Participatory Democracy Model

Brazil's 1988 Constitution institutionalised participatory democracy, mandating mechanisms such as participatory budgeting and social councils at the municipal level.[128] This model has been credited with enhancing transparency, reducing corruption, and improving service delivery.[129]

Ghana can draw lessons from Brazil's experience by institutionalising legal frameworks that mandate citizen participation beyond advisory roles, giving citizens real decision-making power.

[120] World Bank (n 106) 14.
[121] Makueni County Government (n 97) 14.
[122] Constitution of the Federal Republic of Nigeria 1999, s 7.
[123] O Akinola, 'Local Government Autonomy and Political Interference in Nigeria' (2019) 5 Journal of African Governance 78.
[124] ibid
[125] Constitution of Tunisia 2014, art 136.
[126] Law No. 2018-26 on Local Authorities, Tunisia.
[127] M Ben Ali, 'Decentralisation and Local Governance in Tunisia' (2021) 8 African Journal of Public Administration 59.
[128] Constitution of Brazil 1988, arts 29, 31.
[129] P Souza, 'Participatory Budgeting in Brazil: Origins, Features, and Impacts' (2001) 6 Journal of Public Budgeting, Accounting & Financial Management 39.

7.4. Emerging Legal Innovations and Technologies in Participation and Accountability

i. E-Governance and Digital Participation

Legal frameworks increasingly recognise the role of digital technologies in enhancing citizen participation. E-governance platforms enable real-time access to information, online consultations, and digital petitions.[130]

Ghana's National Digital Governance Strategy (2023) advocates for integrating digital tools in local governance, but legal provisions to mandate and regulate e-participation remain underdeveloped.[131]

ii. Legal Challenges of Digital Participation

While digital participation offers opportunities, it raises legal challenges including digital divide, data privacy, and cybersecurity. Legal reforms must address these issues to ensure inclusive and secure digital participation.[132]

7.5. Lessons for Ghana

These comparative examples highlight the importance of clear legal mandates, institutional support, and enforcement mechanisms. Ghana can learn from these models by strengthening its legal framework, institutionalising participatory processes, and ensuring adequate resources for implementation.

8.0. Recommendations for Legal Reforms

i. Strengthen legal provisions for participation by requiring local assemblies to proactively publish meeting notices, agendas, minutes, and financial reports in accessible formats, including online platforms and local languages.

ii. Institutionalise civic education by mandating regular programs at the district level to raise awareness of participation rights and accountability mechanisms.

[130] UN E-Government Survey 2022, UN Department of Economic and Social Affairs.

18. Ministry of Communications, Ghana, 'National Digital Governance Strategy' (2023).

[131] ibid

[132] L Kofi, 'Legal Challenges of Digital Governance in Africa' (2023) 12 African Journal of Law and Technology 101.

iii. Enhance legal remedies and access to justice by establishing clear, accessible channels for citizens to challenge local government decisions, including streamlined petition processes and expanded legal aid services.

iv. Protect whistleblowers and civil society actors by enacting legislation that shields individuals who expose corruption or maladministration in local government from retaliation.

v. Strengthen oversight institutions by increasing the mandates and resources of bodies such as the Auditor-General's Department and the Commission on Human Rights and Administrative Justice.

9.0. Conclusion

Ghana's legal framework for citizen participation and accountability in decentralisation is robust in principle but faces significant implementation challenges. Addressing these challenges requires comprehensive legal reforms, institutional strengthening, and a sustained commitment to democratic governance. By drawing on best practices from other jurisdictions and prioritising the empowerment of citizens, Ghana can build a more inclusive, transparent, and accountable system of local governance.