

https://dspace.org/

Parliament, Participation and Policy Making

Pabari, Mine; Odhowa, Ahmed Hassan

2020-06
CLEAR-AA
https://hdl.handle.net/10539/29177

Downloaded from a DSpace repository. https://dspace.org/

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

clear
Centers for Learning on Evaluation and Results
ANGLOPHONE AFRICA

POLICY BRIEF

JUNE 2020

PARLIAMENT, PARTICIPATION AND POLICY MAKING

Mine Pabari
Researcher, Athari Advisory

Ahmed Hassan Odhowa
Principal Research Officer, Parliament of Kenya



SUMMARY & KEY MESSAGES

This policy brief describes the experiences and lessons emerging from the revision of Kenya's Wildlife Conservation and Management Act (2013) through the use of public participation. The Act was reviewed with a parliamentary body, the Departmental Committee on Environment and Natural Resources (DCENR), playing a direct role in facilitating the public engagement. The Committee was supported by the Parliamentary Research Services (PRS), that played a critical role as a knowledge broker.

After multiple attempts over the course of 16 years, the Act was successfully reviewed and with a strong sense of ownership across a diverse and somewhat fragmented group of stakeholders. However, the shortcomings and challenges in the process are recognised and give rise to a number of lessons for the country in going forward. These include:

- The value and opportunities offered by the direct engagement of Parliament in facilitating public participation
- The significance of the role of the PRS as a knowledge broker
- The importance of good leadership; and
- Ensuring that the necessary resources, including time, budget and skills is critical to successful public engagement

The findings from this case study, identified the following recommendations to strengthen the effectiveness of public participation in policy making processes in Kenya:

- A clear legal framework is established to guide public participation;
- Strong facilitation skills are made available to government bodies responsible for leading and guiding policy processes;
- The roles of knowledge brokers (such as the PRS) in policy making processes are strengthened, ensuring that they have the necessary skills and expertise to carry out their roles;
- Guidelines are developed to provide a diversity of tools and processes to support public participation in different contexts; and
- Mechanisms are established to ensure that wider public and civil society members are aware of public participatory processes, principles and tools in order to engage constructively.

Background

THE LEGISLATIVE PROCESS AND PUBLIC PARTICIPATION IN KENYA

In 2010, with the enactment of the new Constitution, Kenya adopted a presidential system of government which strengthened the role of the legislature in the legislative process and reduced the influence of the executive. Legislative authority comprises of the national parliament (the National Assembly and the Senate) and County Assemblies for the county level of government.

Public participation is a core pillar and principle of governance under the Kenya Constitution. Public participation is defined by the National Assembly as, "the process of interaction between an organisation and the public with the aim of making an acceptable and better decision"(The Clerk of the National Assembly, 2017). Public participation in the governance process is guided by various provisions of the Constitution and numerous statutes including the Public Finance and Management Act[1], The County governments Act[2], The Access to Information Act[3] and the Public Procurement and Assets Disposal Act[4]. The Parliamentary standing orders set out the procedures for lodging a petition by a member of the public.

The wildlife sector

The 2010 Constitution allocates the responsibility of protection of wildlife to the national government[5] and obligates the state to "encourage public participation in the management, protection and conservation of the environment"[6].

A central challenge of the wildlife sector in Kenya has been to move away from the state-driven top-down management systems established by the colonial regime. Following formation of the Kenya Wildlife Service (KWS) in 1989, alternative management models were introduced aimed at enabling greater involvement of communities in wildlife management (Anyonge-Bashir & Udoto, 2012; Western et al., 2015). However, power and authority over wildlife remained a key point of contention between government and non-governmental stakeholders. This, together with a number of other policy challenges, drove multiple attempts to review the Wildlife (Conservation and Management) Act of 1976[7] and establish legislation relevant to contemporary needs and realities.

1 https://devolutionhub.or.ke/resource/public-financial-management-act-2012, Ss 10(2), 25 (5) ,36 (5), 137

2 http://www.health.go.ke/wp-content/uploads/2015/09/County%20Government%20Act.pdf,ss 2,3 (f), 30 (3) (g), 47 (2) (d)

3 "Kenya Law: Laws on Devolution," accessed February 16, 2020, http://kenyalaw.org/kl/index.php?id=3979.https://www.cuk.ac.ke/wp-content/uploads/2018/04/Access-to-Information-ActNo31.pdf

4 "The Public Procurement and Asset Disposal Act, 2015 – Public Procurement Regulatory Authority," accessed February 16, 2020, http://ppra.go.ke/ppda/.

5 Kenya Constitution 2010, 4th Schedule Part I Paragraph 22(b).

6 Kenya Constitution 2010, Article 69, (1) (d).

7 The Wildlife (Conservation and Management) Act was amended in 1985 and a revised edition published in 2009.

THE CASE STUDY – PARLIAMENT AND PUBLIC PARTICIPATION IN REVIEWING THE ACT

The Departmental Committee on Environment and Natural Resources (DCENR) is a Parliamentary Committee in the National Assembly. At the time of reviewing the WCMA it comprised of 29 members of parliament (MPs) from different political parties. The Committee is responsible for oversight and introduction of legislation related to the wildlife sector, climate change, environment and natural resources. In 2012 DCENR was able to successfully guide the enactment of the Wildlife Conservation and Management Act (WCMA 2013) which repealed the existing 1976 Act. The WMCA 2013 came into force on 10 January 2014.

The WCMA 2013 was one of the first pieces of legislation to be reviewed immediately after the first general election held under the new Constitution which was promulgated in 2010. In line with the Constitutional requirements, the Act was revised through a participatory process involving the wider public. This process incorporated the views of the wider public on new directions for the sector and resulted in the enactment of the Act. As such, the new Act also had the support and a sense of ownership across diverse stakeholders.

This policy brief describes this process and the lessons that emerged for public participation and evidence use in policy processes in Kenya. This brief is informed by case study research carried out in November/ December 2018, involving 22 key informant interviews with representatives across the different stakeholders. The research examined the processes supporting or inhibiting evidence use. The case study research was one of eight case studies carried out across five countries and a region[8] in Africa. Findings emerging from the research are also shared through videos and a published book: '*Using Evidence for Policy and Practice – Lessons from Africa*', Goldman, I and Pabari, M (eds), with 39 contributing authors

The journey

The wider context within which the review of the WCMA took place created **a shared sense of urgency** amongst different stakeholder groups to push forward with a new Act. There was a poaching crisis, pressure from the international community to strengthen legislation to stem this crisis and 2013 marked the cut off point for Kenya to revise all policy and legislation to ensure alignment with the requirements of the new Constitution.

In 2013, the Ministry of Environment, Water and Natural Resources (MEWNR) submitted the bill to Parliament for review. Thereafter, the responsibility of guiding the review process was charged to the DCENR. The Committee was supported by the Parliamentary Research Services (PRS), a parliamentary unit responsible for supporting evidence-based legislation and decision making by members of parliament.

The Committee invited members of the public through national newspapers to submit their representations for consideration. Written and verbal responses were received from a variety of different organisations including community coalitions and associations, NGOs and members of the public. All forms of evidence were accepted, including the use of published research, grey literature and individual experiences. The PRS played a significant role as a **knowledge broker**, providing an interface between the Committee and stakeholders, receiving, collating and analysing the submissions. The PRS also proactively reached out to key stakeholders and actors to seek their views and ensure that they were informed on how best to engage. Stakeholder forums were carefully **facilitated** to ensure equal voice of all participants and avoid influencing the submissions. The Committee also used interventions such as convening debates between individuals with opposing views and breakfast meetings to provide policy makers from both the executive and legislature the opportunity to engage with experts from the sector, and to broaden their understanding of the realities and needs of the sector. In addition, MPs from different wildlife-rich counties convened meetings with communities that live with wildlife, including bringing together community representatives from across different counties. As elected representatives, they were keen to ensure that the views of their constituents were known to the Committee and influenced decision making.

Essential facilitation and knowledge brokering roles were also played by non-governmental actors (NGOs) who independently convened and facilitated dialogue and debate amongst the different actors and organisations.

Changes that enabled effective participation

Stakeholders in the wildlife sector in Kenya have a long history of fragmented and polarised views. There are a diversity of land uses in wildlife-rich areas (tourism, agriculture, livestock and conservation), which are often at odds with one another. Furthermore, there are strongly opposing views around modalities of managing and conserving wildlife, particularly with regards to consumptive use. Individuals and groups with the highest stakes live in remote areas which tend to be difficult to access and communicate with.

For participatory processes to be effective in this context, the following changes were critical:

Interaction – Building trusted relationships and understanding of different perspectives and realities

This developed over many years and the process would have been much more complicated and challenging

8 Case study research took place in five countries (Benin, Ghana, Kenya, South Africa and Uganda) plus the Economic Community of West African States, ECOWAS.

without established relationships within and amongst non-government actors, as well as between government and non-governmental stakeholders. The multiple attempts to revise the legislation allowed stakeholders to interact, exchange views and strengthen their understanding of one another's perspectives.

Agreement – Negotiating and arriving at joint positions

The provision of joint submissions on key issues ensured that public engagement was constructive and that the limited time available to the process could be used to focus on building understanding and consensus on areas of contention. In this regard, the facilitation role played by the Chairperson of the Committee as well as by other non-governmental actors was essential.

Abilities – Strengthening policy makers understanding of sectoral realities

The Chairperson of DCENR and the Cabinet Secretary of the Ministry ensured that there was sufficient opportunity for members of the National Assembly (beyond just members of the DCENR) to engage in discussions and debate with experts and practitioners. This was aimed enabling access to the evidence and mitigating the risks of recommendations being eventually rejected because of an inadequate understanding of the sector by the MPs.

Access – Enabling convenient access to evidence

The knowledge brokering role played by the PRS in accessing and consolidating the evidence allowed the Committee to engage with the evidence and use it in their deliberations.

CRITICAL LESSONS EMERGING FROM THE PROCESS

The role of Parliament in engaging the public in the use of evidence in policy making can be very valuable

As MPs were directly engaged in facilitating the participatory processes, they were aware of the issues under discussion and implications of the debates. It was therefore in their interests that they understood the realities and views of their constituents and ensured that these were tabled for consideration in the policy review process. Six of the MPs involved came from wildlife rich areas and took it upon themselves to reach out to their constituencies to convene community meetings. Community meetings were held within Counties as well as between neighbouring Counties. This essentially created the opportunity to strengthen outreach and the 'voice' of communities from remote areas.

The significance of the PRS as a knowledge broker

The participatory processes were fairly 'noisy', involving numerous submissions of different types and sources of evidence by the wider public. The role of the PRS in this regard was critical as it would have been impossible for the DCENR to make sense of the volume of evidence and synthesize to allow for use. In addition, the relationships developed by the PRS over time allowed it to proactively reach out to encourage and support the engagement of different types of citizens (e.g. the smaller and less confident NGOs/CBOs).

The right leadership is essential

The characteristics of the leadership during this process were extremely important, particularly in light of the turbulent history of the legislative processes and the complex nature of the sector. Also, of importance to note is the positive relationship between the leadership of the legislature (in this instance, the Chairperson of the Committee) and that of the executive (the Cabinet Secretary of the Ministry).

Characteristics of the leadership identified through the case study research as being instrumental in ensuring effective participation included the following:

- Trusted and respected individuals;
- Positive track records in policy making and in the sector;
- In-depth knowledge of the sector;
- Established relationships and networks;
- Politically wise with abilities to understand and navigate politics and power; and
- They were champions of public participation.

Public participation requires the availability of adequate resources, including time, budget and skills

The stakeholders interviewed in the research all valued the public participation in the revision of the Act in 2013. They indicated that it had resulted in the buy-in and a sense of ownership that was vital to the enactment and survival of the Act. However, they also recognised that reliance on contributions from citizens and the wider public alone also carries significant risks. These include, for example, selective use of evidence to argue for particular positions and agendas and ignoring issues that fall outside of existing interests.

However, there was an almost unanimous sense that the "processes used for public participation in the WCMA 2013 were inadequate" (Interview respondent, G14). This was unsurprising as this was one of the first pieces of legislation to be revised following the enactment of the 2010 Constitution, which made public participation mandatory. A number of lessons were learnt from this, which were subsequently used to strengthen these processes in Parliament. These include the following:

- Importance of using a stakeholder analysis to identify stakeholder groups and develop a strategy for engagement prior to the onset of the policy review process;
- Deliberate and effective outreach to stakeholder groups, particularly those that do not have easy access to public media and communication channels and/or influential entities through which they can express their views;

- Clear and transparent processes for public participation that are effectively and widely communicated well in advance;
- Bodies charged with the responsibility for guiding the policy process need to have the right mix of knowledge and skills (e.g. sectoral and legal) as well as being perceived to be legitimate and trusted by the wider public;
- Ensuring that the evidence used is robust and appropriate by drawing on multiple types and sources, including citizen views and contributions, scientific expert advice, traditional knowledge and lessons and experience from other parts of the world.

> *The structure of Committees is often political (based on parties) rather than technical skills and knowledge. So, efforts must be made to bridge the politics with the technical and ensure that the individuals have the information and knowledge they need to effectively engage (Interview respondent, G14)*

Policy implications and recommendations

Public participation has arguments on both sides. Some argue that direct participation carries with it too many risks (for example, navigating individual interests, too costly and requires skills that are rarely found in government or citizens (Callahan, 2007). On the other hand, there is also a significant body of work around the positive outcomes that can emerge from participatory approaches (see, for example, Abelson & Gauvin, 2006). This is becoming increasingly relevant with the growing complexity of decision making (Abelson & Forest, 2004).

Benefits of public participation include strengthening the understanding of citizens on both the policy challenges as well as the workings of government and allowing governments to access and use wider sources of evidence and perspectives – thereby strengthening citizen capabilities to contribute to the collective as well as the legitimacy of government (Abelson & Gauvin, 2006; Carpini et al., 2004; Michels, 2012).

Emerging from this work, some recommendations to strengthen the effectiveness of public participation in policy making processes (carried out by different government entities at national as well as county government levels) in Kenya are that:

- A clear legal framework is established to guide public participation;
- Strong facilitation skills are made available to government bodies responsible for leading and guiding policy processes;
- The roles of knowledge brokers (such as Parliamentary Research Services) in policy making processes are strengthened, ensuring that they have the necessary skills and expertise to carry out their roles;
- Guidelines are developed to provide a diversity of tools and processes to support public participation in different contexts; and
- Mechanisms are established to ensure that wider public and civil society members are aware of public participatory processes, principles and tools in order to engage constructively.

This brief draws on case study research carried out for the project, 'Evidence in practice: documenting and sharing lessons of evidence-informed policy making and implementation in Africa", supported by the Hewlett Foundation.

The case study research was guided by an analytical framework that combines two different frameworks: i) the Science of Using Science's framework that looks at evidence interventions and outcomes from a behaviour change perspective (Langer et al., 2016) and the Context Matters framework that serves as a tool to better understand contextual factors affecting the use of evidence (Weyrauch et al., 2016). The framework approaches evidence use from a policy makers' perspective (i.e. from a demand rather than supply perspective). The framework takes into account contextual influencers and breaks down an evidence journey into the ways in which evidence is generated, the interventions taken in order to ensure evidence use, the change mechanisms that arise as a result and the relationships between the evidence journey and the immediate and wider outcomes that emerge.

The authors of the case study were: Mine Pabari,[1] Yemeserach Tessema,[2] Amina Abdalla, CBS,[3] H.E Prof. Judi Wakhungu, EGH,[4] Ahmed Hassan Odhowa,[5] Ali Kaka.[6] This policy brief was reviewed by Amina Abdalla.

Materials from the research project including videos, webinars and policy briefs on all chapters are shared through this webpage: https://www.wits.ac.za/clear-aa/supporting-evidence-use-in-policy-and-practice/

1 Researcher, Athari Advisory

2 Researcher, Athari Advisory

3 Policy Advisor: Governance and Natural Resources Consultant. Previously, nominated MP and Chair of the Committee on Environment and Natural Resources, Kenya National Assembly

4 Kenya Ambassador to France, Portugal, Serbia & Holy Sea. Previously, Cabinet Secretary, Ministry of Environment and Natural Resources

5 Principal Research Officer, Parliament of Kenya

6 Wildlife Sector Policy Advisor to the Cabinet Secretary, Ministry of Tourism and Wildlife

References

Abelson, J., & Forest, P.-G. (2004). *Towards more meaningful, informed and effective public consultation*. Canadian Health Services Research Foundation.

Abelson, J., & Gauvin, F.-P. (2006). *Assessing the impacts of public participation: Concepts, Evidence and Policy Implications*. Canadian Policy Research Networks (CPRN).

Anyonge-Bashir, M., & Udoto, P. (2012). Beyond philanthropy: Community nature-based enterprises as a basis for wildlife conservation. *The George Wright Forum*, *29*(1), 67–73. JSTOR.

Callahan, K. (2007). Citizen Participation: Models and Methods. *International Journal of Public Administration*, *30*(11), 1179–1196. https://doi.org/10.1080/01900690701225366

Carpini, M. X. D., Cook, F. L., & Jacobs, L. R. (2004). PUBLIC DELIBERATION, DISCURSIVE PARTICIPATION, AND CITIZEN ENGAGEMENT: A Review of the Empirical Literature. *Annual Review of Political Science*, *7*(1), 315–344. https://doi.org/10.1146/annurev.polisci.7.121003.091630

Langer, L., Tripney, J., Gough, D., University of London, Social Science Research Unit, & Evidence for Policy and Practice Information and Co-ordinating Centre. (2016). *The science of using science: Researching the use of research evidence in decision-making*.

Michels, A. (2012). Citizen Participation in Local Policy Making: Design and Democracy. *International Journal of Public Administration*, *35*(4), 285–292. https://doi.org/10.1080/01900692.2012.661301

National Parliaments: Kenya. (n.d.). Retrieved 3 February 2020, from https://www.loc.gov/law/help/national-parliaments/kenya.php

Pagatpatan, C. P., & Ward, P. R. (2017). Understanding the factors that make public participation effective in health policy and planning: A realist synthesis. *Australian Journal of Primary Health*, *23*(6), 516. https://doi.org/10.1071/PY16129

Parkhurst, J. O. (2017). *The politics of evidence: From evidence-based policy to the good governance of evidence*. Routledge, Taylor & Francis Group.

The Clerk of the National Assembly. (2017). *Public participation in the legislative process. Fact sheet No. 27*. The National Assembly of Kenya.

Western, D., Waithaka, J., & Kamanga, J. (2015). Finding space for wildlife beyond national parks and reducing conflict through community-based conservation: The Kenya experience. *PARKS*, *21*(1), 51–62. https://doi.org/10.2305/IUCN.CH.2014.PARKS-21-1DW.en

Weyrauch, V., Echt, L., & Suliman, S. (2016). *Knowledge into policy: Going beyond context matters framework*. 73.



www.routledge.com/9780367440077

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

clear Centers for Learning on Evaluation and Results ANGLOPHONE AFRICA

CLEAR Anglophone Africa
@CLEARAA1
CLEAR Anglophone Africa
CLEAR.AnglophoneAfrica@wits.ac.za
www.wits.ac.za/clear-aa
Telephone: +27 11 717 3157

The Oval Building, University of the Witwatersrand
2 St David's Place, Parktown, Johannesburg