

## **How BBI will rejig public participation**

**By Cornel Rasanga Amoth**

Effective public participation is the major prerequisite for transparent and accountable governance. In its report, “Importance of Participation: Designing Social Capital Sensitive Participation Methodologies”, Social Capital, the Australian-based Research and Training organization, says involving stakeholders and empowering community participants in programmes at all levels, from local to national, provide a more effective path for solving sustainable resource management issues. Participation enhances project effectiveness through community ownership of development efforts and aids decision-making.

Simply put, the main aim of public participation is to encourage the public to have meaningful input into the decision-making process. Guided by this, and in recognition of the fact that all public processes ranging from policy making, legislative process and ultimate decision making require the participation of the people of Kenya, the Building Bridges Initiative (BBI) Report proposes legislative and constitutional reforms aimed at enhancing public participation. The reforms are contained in the Public Participation Bill, 2020, the Devolution Laws (Amendment) Bill, 2020 and the County Wards Development Fund, 2020.

The Public Participation Bill, 2020, in particular, provides a standardized mechanism to facilitate an effective and coordinated public participation process in both levels of government that includes the introduction of the Registrar of the Public Participation Registry under the Office of the Attorney General. Further, the Bill provides for the role of the County Attorney in the public participation process in the county government and requires reports on any such exercise to be regularly shared and archived with the Registrar.

The Bill provides for the guiding principles for any public participation process in the country, the procedure for public participation and specifically requires a responsible authority, being any public or private institution that is required by law to conduct public participation to prepare a statement of proposal that would be the basis of any public participation exercise. The statement of proposal provides for the key matters that a member of the public would be required to give their opinion on.

Additionally, the Bill provides for how an interested person is to be aided in accessing and giving their views on the proposal, with a requirement that a responsible authority files the public participation report with the Registry, upon conclusion of a public participation exercise. Finally, the Bill provides for the Registry’s reporting framework to Parliament, which includes the submission to the Attorney General a consolidated report on all public participation exercises filed with the Registry within the preceding year.

On its part, the Devolution Laws (Amendment) Bill 2020 proposes an Act of Parliament to make various amendments to the laws relating to devolution. With reference to public participation, the principal Act is amended by inserting a new section immediately after section 6A that talks about a proposal to transfer a county headquarter from the physical location specified in the Third Schedule, to any other location within the boundaries of the county government.

This proposal may be initiated by the county executive, a citizen or a referendum. It also proposes the establishment of a Steering Committee that shall prepare a detailed proposal for the transfer of the county headquarter, including the proposed new location of the county headquarters; the projected expenditure to be incurred as a result of the transfer; how the transfer will impact the social wellbeing of the residents of the county; and a proposed framework for conducting public participation on the matter, among others.

The Steering Committee shall hold public meetings to explain the rationale and effects of the proposed transfer; notify the public of the dates and venue of the public meetings on the transfer through locally accessible means and in at least two newspapers of country wide circulation, state where copies of the detailed proposal to transfer the county headquarter may be obtained; ensure that persons likely to be most affected by the proposed transfer have an adequate opportunity to share their views on the transfer; and record the proceedings of the meetings.

Finally, the importance of public participation is well encapsulated in the County Wards Development Fund Bill, 2020, whose objective is to provide a legal framework for the operationalization of the Ward Development Fund intended to be introduced through an amendment to the Constitution. The proposed Act of Parliament shall provide for the management of the funds; criteria for disbursement of the funds to each ward in a county; and public participation and identification of the development projects. This will enable counties implement specific priority projects identified by the public at the ward level.

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The BBI Taskforce Report made several recommendations that require has drafted relevant amendment bills.