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Influence of Legal Framework in Enhancing Democratic Governance Process in Kenya

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Abstract

The Kenyan 2010 constitution provides a legal framework with a republic founded upon the idea of all sovereign power belonging to the people of Kenya and the establishment of two levels of government namely; the national government and the County government (Article 1 (4) Constitution of Kenya). The legal framework posits a legal positioning of the county governments to be respected by the national government in a relationship of equals through a moderating national and county government summit and the intergovernmental relations. In order to effectively support a country to achieve democratic governance, understanding of the legal framework effectiveness is necessary. Institutions need to be able to analyze legislation and regulations and advocate for appropriate provisions. They also have to be able to monitor implementation of provisions and take steps to ensure that they are enforced effectively and impartially. The objective of the study was to establish the influence of legal framework on enhancing democratic governance. The study adopted descriptive and correlation research design. All the forty-seven (47) counties in Kenya were targeted, with five officers per counties forming the sample frame. Regression models were used to examine the influence of the legal framework on democratic governance in Kenya. The study found that there was a positive relationship between legal framework and democratic governance. The results provided sufficient statistically significant evidence to signify the relationship. Legal framework provides for the establishment of an administrative and institutional framework at the national and county government to ensure access to national government services in all parts promoting responsiveness to citizens' needs and aspirations. Institutions need to be able to analyze legislation and regulations and advocate for appropriate provisions. This study addressed the

existing knowledge gap by determining the effect of legal framework on democratic governance process in Kenya.

Keywords: *Legal Framework, Democratic Governance & Kenya.*

1.0 Introduction

1.1 Background of the study

Kenya's rebirth as a first republic in 1963 has been characterized by episodes of political events which have critically affected the socio-economic and political performance of the country. The happenings climaxed to the much published 2007/8 election violence which was largely seen as anti-climax of cumulative governance failures. Kimenyi and Meagher (2004) posit that these failures are attributable to the quality of governance, which depend largely on institutions.

The Kenyan 2010 constitution provides a legal framework with a republic founded upon the idea of all sovereign power belonging to the people of Kenya and the establishment of two levels of government namely; the national government and the County government (Article 1 (4) Constitution of Kenya). The legal framework posits a legal positioning of the county governments to be respected by the national government in a relationship of equals through a moderating national and county government summit and the intergovernmental Relations Technical Committee (Section 7 & 11 of the Intergovernmental Relations Act, 2012). This framework for mutual respect is a unique model that will determine the success or lack of smooth democratic governance in Kenya. The framework requires that the national and county governments cooperate with, assist, support and consult each other and, as appropriate implement the legislation of other levels of government. The national and county governments are also obligated to liaise with each other for purposes of exchanging information, coordinating policies and administration and enhancing policy (Art. 6 (2); 189 (1)(b)(c) of the Constitution).

The institutions comprise of among others the constitution, political systems, democratic principles and sub-national entities bylaws. The two scholars infer that different governance frameworks yield varying political, economic and social outcomes and that the differences emanate from the differences in the rules, organizing capabilities, social and political principles captured in the governance concept (Kimenyi & Meagher 2004). Parliament has enacted enabling laws. In addition to these, several legal, policy and institutional frameworks have been put in place by the national government, the Senate, the National Assembly and the County Assemblies

to guide the democratic governance process at both levels of government. Stakeholders to law and policy enacting should as well understand the essential elements of legal frameworks in order to arrive at practical and realistic legal framework processes in which they have confidence.

1.2 Statement of the Problem

On 27th August 2010, Kenya ushered in the Constitution of Kenya 2010. This has been classified as one of the most robust and progressive Constitutions in the world. It comprehensively provides for the Bill of Rights that binds all state organs and persons. The State is under an obligation to respect, protect, promote and fulfill the rights as contained in the Bill of Rights. Of equal importance are the national values and principles of governance that have now been captured in the Constitution. These values which form part of essential fundamental beliefs help in guiding decision-making, the actions and behavior of citizens and to a great extent influence the relationship between citizens. Engagement between communities in the country borrows a lot from these values and principles. It is true that these values and principles focus on engraving the spirit of nationalism and promotion of corporate rather than individual interests. Kenya Vision 2030 and the national development agenda in general are anchored on these national values and principles under which the two development agenda can thrive. (Kenya National Commission on Human Rights, 2016)

In order to effectively support a country to achieve democratic governance, understanding of the legal framework effectiveness is necessary. Institutions need to be able to analyze legislation and regulations and advocate for appropriate provisions. They also have to be able to monitor implementation of provisions and take steps to ensure that they are enforced effectively and impartially. They must develop expertise at intermediate and local levels as well, if they are to ensure that the legal framework for democratic governance is properly implemented. Citizens and civic society organizations therefore need to be knowledgeable about legal frameworks, engage in their development and monitor their implementation. The study therefore sought to investigate the influence of legal framework in enhancing democratic governance process in Kenya.

1.3 Objective of the study

The objective of the study was to establish the influence of legal framework on enhancing democratic governance.

1.4 Research Hypothesis

H_i: Legal framework has an influence on democratic governance in Kenya.

2.0 Literature Review

2.1 Theoretical Review: Theory of Distributive Justice

Theories of distributive justice are associated with Rawls's justice as fairness argument. In his *Magnus opus*, a theory of Justice (1971), it offers a modern form of social contract theory which argues on the appropriate arrangement of a society's basic structure, which is embedded on social and economic institutions. For the social and economic institutions arrangements can be ascertained by imagining the arrangements that would be selected by self-interested individuals in a hypothetical original position (Knight, 2014). In the original position, individuals are behind a veil of ignorance that deprives them of information about their particular preferences, objectives, and talents, though they have access to general social and economic information (Rawls, 1999).

Rawls contends that persons in the original position would be highly interested and preoccupied to secure the issues and values which are most essential to pursuing their goals, whatever they may prove to be, even if at the cost of foregoing the possibility of great material benefits (Knight, 2014). Rawls thus offers that individuals would prize equal provision of the basic liberties which comprise of political liberties, freedom of thought, and freedom of association among others. Above all, once all these were satisfied, insist on a robust form of equal opportunity that maximizes fair equality of opportunity.

The issue of equity and its contribution to democratic governance through the pursuance of justice has been invoked as a non-instrumental consideration for taking into account the interests of a wide range of stakeholders in the management of economic enterprises (Freeman, 1994; Hartman, 1996, 2001). Although their accounts differ in a number of ways, they both ask what a conception of justice would be required if transposed from the level of society to the level of an economic enterprise. Relying on Rawls (1971), Freeman argues that economic enterprises ought to be managed in the interests of its stakeholders, financiers, customers, employees, and

communities (Freeman, 1994). (Rawls 1971) account the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned about furthering their own interests would accept in an initial position of equality as defining the fundamental terms of their association. The theory will therefore be useful in investigating the significance of equity on democratic governance

2.2 Empirical review

Agrawal and Ribot (2002) studied types of powers in government units. The scholars sought to establish the powers actors created by systems of governance. They used the hypothesis that ‘the set of powers that any actor exercises are usually located within an area of decision making partly defined by existing laws. The study sampled randomly the various institutions of governance which had been tasked with decision making. The finding of the study indicated that the nature and reality of democratic governance is determined by the powers exercised under the laid down legal infrastructure. The study concluded that if democratic governance of powers by a government does not affect changes in the existing powers of actors at lower levels of the political hierarchy, it may be argued that democratic governance has not taken place. By and large therefore, the legal framework structures service delivery and decision making in any democratic governance process.

The Kenyan 2010 constitution provides a legal framework with a republic founded upon the idea of all sovereign power belonging to the people of Kenya and the establishment of two levels of government namely; the national government and the County government (Article 1 (4) Constitution of Kenya). The legal framework provides for the democratic governance of legislative and executive powers whereas the judicial powers are not devolved. The constitution further creates 47 counties with delineated functions and responsibilities (Art. 6 (1) and Schedule 1 of the Constitution).

Democratic governance presents itself in various models depending on the legal framework of each country (Kincaid & Tarr, 2005). Kenya has adopted a form that is unique to itself. The devolution model is based on Article 6 (2) of the Constitution which describes the governments at the two levels as being distinct and inter-dependent and which conduct their mutual relations on the basis of consultation and cooperation. The devolution model therefore is not grounded on

the principle of absolute autonomy, but on that of inter-dependence and cooperation. The system combines a measure of autonomy and inter-dependence leading to a cooperative system of devolved government. Cooperative devolved government is founded upon three relational principles: the principles of distinctness, interdependence and the principle of consultation and cooperation (Simeon & Conway, 2001).

The two levels of governments in Kenya are distinct in their constitutional functions, institutions, resources and legal frameworks. The governments are coordinate and not subordinate to each other and therefore none is a mere agent of the other and neither can be abolished by the other. This engenders a legal framework where national and county governments have to work in cooperation because they must be distinct from each other, with the county governments drawing their authority direct from the Constitution (Ochieng, 2012).

The legal framework posits a legal positioning of the county governments to be respected by the national government in a relationship of equals through a moderating national and county government summit and the intergovernmental Relations Technical Committee (Section 7 & 11 of the Intergovernmental Relations Act, 2012). This framework for mutual respect is a unique model that will determine the success or lack of smooth democratic governance process in Kenya. The framework requires that the national and county governments cooperate with, assist, support and consult each other and, as appropriate implement the legislation of other levels of government. The national and county governments are also obligated to liaise with each other for purposes of exchanging information, coordinating policies and administration and enhancing policy (Art. 6 (2); 189 (1)(b)(c) of the Constitution).

Besley and Burgess (2002) did a study about democratic governance on federal state of India established that democratic governance enhances governments responsiveness in service delivery; especially if the media is adequately active at the local level. This study was an additional literature, provided by Ndegwa (2002) which had delved into taking stock of decentralization efforts in Africa across 30 Sub-Saharan Africa (SSA) countries based on the perceptions determined by the World Bank experts at the various countries.

2.3 Conceptual framework

A conceptual framework is a concise description of the phenomenon under study accompanied by a graphical or visual description of the major variables of the study (Cooper & Schindler,

2008). Young (2009), states that a conceptual framework is a diagrammatical representation that shows the relationship between dependent variable and independent variables. A conceptual framework is also a set of broad ideas and principles used to structure a subsequent presentation (Kombo & Tromp, 2009).

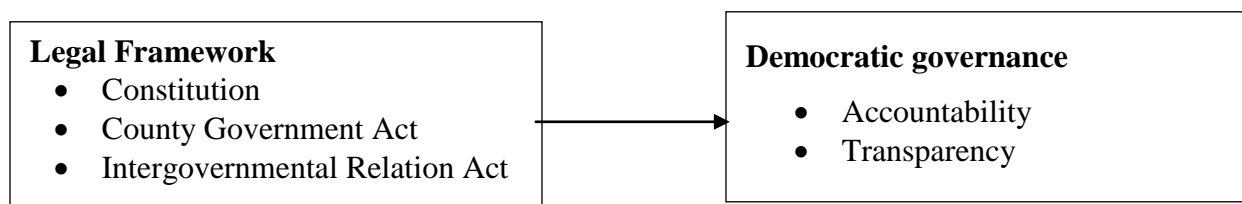


Figure 1: Conceptual framework

3.0 Research methodology

This research adopted descriptive and correlation research design. Study population consisted of all the 47 Counties in Kenya. The study used a census for all the forty-seven counties in Kenya, targeting critical officers in the implementation framework on democratic process in Kenya. The County executive was represented by the governor or his representative, while the county assembly speaker was represented the County assembly. The IEBC County coordinator represented the electoral agency, which is tasked with the enormous task of civic education in the country. County attorneys provided the much desired legal framework situation of the devolution framework in the counties.

The study adopted a census technique with respect to the unit of analysis. Questionnaires were designed to collect information on the influence of capacity development in Kenya on democratic governance. The questionnaire instrument for data collection was preferred as it helps the respondents to be objective and more precise in responding to research questions. In designing the question items, both closed and open ended format of the item will be used. Care will be taken to ensure that the design is simple and respondent friendly. A five – point likert scale (Likert, 1961) which ranges from ‘very great extent’ to ‘very low extent’ (5= ‘very strong extent’, 4=’great extent’, 3=’moderate extent’, 2= ‘low extent and 1= very extent’) will be used, to reflect the strength of agreement or disagreement of the respondents. In this study the primary data obtained from the questionnaires was checked for omissions, legibility and consistency before being coded for analysis. Statistical Package for the Social Sciences (SPSS) software was

used to organize code and analyze information and generate quantitative report. Newman (2009) indicates SPSS's main advantage as includes many ways to manipulate data and containing most statistical measures. Regression analysis was used to determine the relationship between the dependent variable (Democratic Governance) and the independent variable (Legal Framework)

The regression model adopted was:

$$Y = \beta_0 + \beta_1 X$$

Y = Democratic Governance

X = Legal Framework

e is error term

β_0 represents the constant

β_1 regression coefficient

4.0 Results and findings

4.1 Descriptive Statistics on Legal Framework

In this study, legal framework was measured by 7 statements. Respondents were asked to rate on a scale of 1 to 5; where 1= strongly disagree, 2= Disagree, 3= Neutral, 4= Agree and 5= Strongly Agree. The analysis is on table 1.

Table 1: Descriptive Statistics on Legal Framework

Statements	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	Mean	Std. Dev
The primary source of legislation on democratic process is the Constitution of Kenya.	3.9%	4.6%	8.4%	24.7%	58.4%	2.69	1.22
Legal Framework Provides for public participation in the conduct of the activities of the county assembly	0.0%	0.0%	10.8%	63.9%	25.3%	4.14	0.59
Legal Framework Provides for the mechanism for capacity building requirements of the national government and the county governments	14.5%	18.1%	4.2%	59.6%	3.6%	3.20	1.21
Legal Framework Provides for the establishment of an administrative and institutional framework at the national, county and decentralized units to ensure access to national government services in all parts of the Republic	0.0%	1.8%	13.9%	66.3%	18.1%	4.08	0.62
Legal framework promotes responsiveness to citizens needs and aspirations	0.0%	0.0%	0.0%	28.9%	71.1%	4.71	0.46
Legal framework engenders legitimacy of governance structures and systems	0.0%	34.9%	12.7%	42.8%	9.6%	3.27	1.05
Legal framework enhances national and county governance transparency	0.0%	0.0%	0.0%	62.0%	38.0%	4.38	0.49
Average						3.78	0.80

The results show that 58.4 % agreed with the statement that the primary source of legislation on democratic processes is the Constitution of Kenya, 63.9% strongly agreed that Legal Framework Provides for public participation in the conduct of the activities of the county assembly, 59.6% agreed that Legal Framework Provides for the mechanism for capacity building requirements of the national government and the county governments, 66.3% agreed that Legal Framework Provides for the establishment of an administrative and institutional framework at the national, county and decentralized units to ensure access to national government services in all parts of the Republic, 71.1% agreed that legal framework promotes responsiveness to citizens needs and aspirations, 42.8% agreed that legal framework engenders legitimacy of governance structures and systems while 62.0% agreed that legal framework enhances national and county governance transparency. The overall mean of the responses was 3.78 which indicates that majority of the

respondents agreed with the statements on legal framework. The standard deviation of 0.80 indicates that the responses were closely varied. This study is consistent with that of Ochieng, (2012) that the adoption of the constitution of Kenya 2010 fundamentally alters the governance through far reaching reforms.

4.2 Correlation analysis.

The Pearson's r correlation between legal framework and democratic governance is 0.276. This means that there is a weak relationship between the two variables. It means the change in one variable is weakly correlated to change in the second variable since 0.386 is not close to one. 0.276 is however positive therefore an increase in one value leads to increase of the other. There is a statistical significance between public participation and democratic governance ($p=0.000$). The analysis is on table 2.

Table 2 Correlation between Legal Framework and Democratic Governance

		Democratic Governance	Legal Framework
Democratic Governance	Pearson Correlation	1.000	
	Sig. (2-tailed)		
Legal Framework	Pearson Correlation	.276**	1.000
	Sig. (2-tailed)	0.000	

** Correlation is significant at the 0.01 level (2-tailed).

4.3 Regression analysis

The fitness of model explains the relationship between legal framework and democratic governance. Legal framework was found to be satisfactory variables in determining democratic governance. This was supported by the coefficient of determination also known as the R-square of 0.076. This means that legal framework explains 7.6% of the variations in the dependent variable. These results further mean that the model applied to link the relationship of the variables was satisfactory. The analysis is on table 3.

Table 3: Model Fitness

Model	Coefficient
R	0.276
R Square	0.076
Adjusted R Square	0.071
Std. Error of the Estimate	0.593

The ANOVA results indicate F statistic of 13.565 which was greater than f critical of 5.8 implying that the model was statistically significant. Further, the results imply that the independent variable, legal framework was a good predictor of democratic governance. This was also supported by the reported $p=0.00$ which was less than the conventional probability of 0.05 significance level. The analysis is on table 4.

Table 4: Analysis of Variance

	Sum of Squares	df	Mean Square	F	Sig.
Regression	1.751	1	1.751	13.565	.000
Residual	21.170	164	0.129		
Total	22.921	165			

Table 5 below results revealed a positive relationship between legal framework and democratic governance ($\beta=0.344$). The relationship was also significant at 5% level of significance (P -value=0.000). This finding implied that an improvement in legal framework by one unit led to a 0.240-unit improvement in democratic governance.

Table 5: Regression Coefficient

	B	Std. Error	beta	t	sig
(Constant)	2.975	0.397		7.488	.000
Legal Framework	0.344	0.093	0.276	3.683	.000

The specific model is;

$$\text{Democratic Governance} = 2.975 + 0.344 X$$

Where;

X= Legal Framework

The hypothesis was tested by using the linear regression (table 4.6.19). The acceptance/rejection criteria were that, if the p value is less than 0.05, the H is not rejected but if it's greater than 0.05, the H fails to be accepted. Based on this objective and literature review, the following alternative hypothesis was formulated for testing.

H_i: Legal framework has a positive influence on democratic governance

Results in Table 5 show that the p-value was $0.000 < 0.05$. This indicated that the alternative hypothesis was not rejected hence legal framework has a positive and significant influence on democratic governance.

5.0 Conclusions

The objective of the study was to establish the influence of legal framework in enhancing democratic governance. Based on this objective, hypothesis was formulated which predicted that legal framework has a significant influence on democratic governance in Kenya. Simple linear regression analysis was used to test this hypothesis. The results established that legal framework explains 7.6% of the variations in the dependent variable. It was further found there is a positive relationship between legal framework and democratic governance ($\beta=0.344$). The relationship was also significant at 5% level of significance (P-value=0.000). This finding implied that an improvement in legal framework by one unit led to a 0.344-unit improvement in democratic governance in Kenya.

6.0 Recommendations

It was found that there is a positive relationship between legal framework and democratic governance. The results provided sufficient statistically significant evidence to signify the relationship. Legal framework provides for the establishment of an administrative and institutional framework at the national and county government to ensure access to national government services in all parts promoting responsiveness to citizens' needs and aspirations. Institutions need to be able to analyze legislation and regulations and advocate for appropriate provisions. They also have to be able to monitor implementation of provisions and take steps to ensure that they are enforced effectively and impartially. They must develop expertise at

intermediate and local levels as well, if they are to ensure that the legal framework for democratic governance is properly implemented. Citizens and civic society organizations therefore need to be knowledgeable about legal frameworks, engage in their development and monitor their implementation.

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