Inclusive Public Policy, Power and the Struggles of Non-State Actors in Kenya

[1]Tiberius Barasa, [2]Frank Matanga [3]Fredrick Wanyama, [4]Murumba Wangamati

[1,4] Maseno University

[2] Masinde Muliro University of Science and Technology

[3]Kisii University

Abstract: State domination in public policy process constrain the participation of non-state actors. However, non-state actors seem to have succeeded in influencing public policy to satisfy their interests as well as removing obstacles to citizens' engagement in the midst of a reluctant state. What is unclear is the manner in which non-state actors have tried to open public policy spaces. This raises questions not only about the non-state actors' contribution in opening the policy process and increasing space for participation but also how they negotiate to be included in the process and contribute to inclusive process. Based on an empirical case of Kenya, this study examined the contribution of non-state actors to inclusive public policy process particularly, public policy decision and delivery processes. The study was conceptually supported by the theory of power relations which assisted in understanding and explaining a complex interplay of people, organisations and institutions with beliefs and experiences and how they communicate value judgements to produce policy decisions and delivery. The study employed a survey and qualitative research design with population including four categories of organisations: the local and international non-governmental organisations, private sector membership organisations, donor organizations and multinational corporations, all operating in Kenya. Data was collected through an in-depth interview using schedule and guidelines and supplementary information was obtained through document reviews. Data analysis was by content analysis, carefully moving from manifest level analysis of providing a descriptive account of data, to latent level analysis of more interpretive analysis of responses and inferences. The validity and reliability of this study was assessed by four-fold criteria including sensitivity to context; commitment and rigour; transparency and coherence; and impact and importance. The study found out that non-state actors have influenced public policy at the national and county levels. The national NGOs have straggled to claim policy spaces for engagement with the state actors more than international NGOs. The private membership organisations have struggled less than both the national and international NGOs to create spaces for engagement, instead they have been invited by state actors in many occasions to contribute their views to inform various policies particularly, those likely to affect their business interests. They have claimed their own spaces in many occasions where their interests have been threatened by government policy. They have used their "power with" and "power within" to influence government policies. Donor organisations have engaged with state actors as partners using formal structures in place that favour and respect the interests of each partner. Inversely, the multinational corporations have been complex as state actors have a stake in the industry and influence major policy decisions for the interest of the industry. The findings of this study may not be generalised for the whole of Africa or across other regions of the world. However, the study may be replicated in other countries by adopting the same methodology.

Keywords: Non-state actors, Inclusive public policy process, Power analysis, Spaces of engagement, Policy space, Forms of power, Levels of power, State actors and countervailing power.

1. INTRODUCTION

1.1 Background to the study:

Around the world, more than ever there is heightened emphasize on the need for a more consensual way of making policy through involvement of all relevant stakeholders [1]. The language of new more inclusive policies is widespread in many governments' and donor strategy documents as well as reflected increasingly in the discourse of state officials, international NGOs and civil society activists [2].This is based on the assumptions that citizens have the ability to change policy environment and that the expected benefits of such a deliberative and inclusive process of public policy decisions and delivery include increased ownership of the public policy process, new public-private partnerships, consolidation of democratisation, and improved sustainability of social-economic and political development and trust [3], [4]. Open and inclusive policy making offers one way to improve policy performance and meet citizens' rising expectations [5], [6], [7], [8], [9], [10]. Public engagement in the design and delivery of public policy and services can help governments better understand people's needs, leverage a wider pool of information and resources, improve compliance, contain costs and reduce the risk of conflict and delays downstream [11]. Despite increased discourse in favour of inclusive and citizen's participation in public policy process, public policy process continues to be dominated by governments with little involvement of non-state actors. How have non-state actors resisted the dominance of the state actors in public policy process? How have non-state actors contributed to inclusive and participatory public policy process? Using Kenya as an empirical case, this study addresses these questions.

1.2 Inclusive public policy process in the context of Kenya:

There have been immense efforts by non-state actors, particularly the human rights organisations to open up space for inclusive public policy process [12], [13]. Andreassen and Barasa observed that the rise of human rights organisations in Kenya over the last decade has been restrained, but countervailing power has been produced through social mobilisation and collective action to advance the course of these organizations [14]. Similarly, the early 2000s witnessed significant political improvements in terms of the state's increasing space for democratic advancement which facilitated the production of public policy space that promoted the participation of non-state actors thereby contributing to inclusive or participatory public policy process in Kenya [15], [16]. The political liberalisation process that started in the early 1990s gradually led to erosion of the monopolistic state and patronage government [17], [16]. The changing environment of the 1990s helped to unleash the potential of non-state actors to demand political and economic reforms [14]. Despite the process being very fragile and heavily resisted by the ruling regime, non-state actors continued to push to entrench the new space and to improve their overall advocacy capacity. The process was enhanced by the knowledge institutions including Institute of Policy Analysis and Research (IPAR), Institute of Economic Affairs (IEA), Kenya Institute for Public Policy Research and Analysis (KIPPRA), Centre for Governance and Development (CGD) and CLARION as they strengthened national knowledge institutions and recognition of knowledge creation and management for policy [18]. Henceforth, in 2002 the ruling regime gradually started responding to the demands of increased participation by involving non-state actors in policy debates including Constitutional Review Process (CRP) and the Poverty Reduction Strategy Programme (PRSP). However, there was a lot to be done to mainstream non-state actors' participation in policy formation and delivery process.

1.3 Statement of the problem:

Public policy decision and delivery process in Kenya has been dominated by the Government to the extent of excluding citizens from the process. Throughout the Jomo Kenyatta, Moi and Kibaki administrations, public policy formation seemed to be a closed-door business of the president, executive and a clique of few politicians surrounding the presidency [19]. This clique dominated the entire policy decision and delivery process with their weight being most visible in the decision-making process that saw preferred options selected, values allocated and resources distributed. Despite the constraint on the participation of non-state actors in the policy process, many organizations have over the years engaged in collective action to advance their interests. The implication is that these organizations have succeeded in influencing public policy to satisfy their interests in the midst of a reluctant state. Thus, whereas non-state actors seem to have made a contribution towards removing obstacles to citizens' engagement in public policy process, the actual role of the non-state actors in public policy process remains unclear. More significantly, the manner in which non-state actors have tried to open public policy space in Kenya is unclear. How the non-state actors play this role and influence public policy input and

outcomes is under-researched. Most research on public policy has focused on the state, this has been at the expense of non-state actors and yet their contribution in the process could be immense. It is important to understand the manner in which both non-governmental organisations and the private business community have sustained their struggles to be included in the policy process. This raises questions not only about the non-state actors' contribution in opening the policy process and increasing space for participation but also how they engage state actors in the process and contribute to inclusive public policy in Kenya. This study set out to investigate the contribution of non-state actors to opening the public policy process in Kenya. It sought to understand how non-state actors not only participate in public policy decisions and delivery but also how they struggle to democratise the policy process so as to allow wider participation of citizens and other stakeholders in the process.

1.4 Research Objectives:

The overall objective of this study was to explore the contribution of non-state actors in making public policy process in Kenya inclusive. Specific objectives were to:

i.   Examine forms of power non-state actors have used to contribute to public policy decision and delivery processes;

ii. Examine policy spaces non-state actors have used to engage and challenge dominant and constraining power of state actors;

iii. Explore possibilities of non-state actors building and sustaining countervailing power against coercive power.

1.5 Significance of the study:

First, this study contributes to knowledge and public policy literature by seeking to gain an understanding of what goes on in the policy process when various policy actors are involved [20]. The study bolsters the increasing realisation in literature on public policy that the policy process is complex, embracing a range of actors who are sometimes not aware that they are making or influencing policy [21]. The study supports Ozo-Eson's observations that relationships between actors within and outside the formal policy structure constitute the processes of inclusion and exclusion, contestation and consensus through which particular policy positions are shaped [22].

Second, the study clearly demonstrates how non-state actors have sustained and enhanced their efforts to keep policy spaces inclusive and open, how they do overcome the constraining and countervailing power relations in policy process. In addressing these knowledge and skills gaps, the study has provided a platform for discourse on the best practices for inclusive public policy process.

Third, the study therefore deepens our understanding of how non-state actors contribute to inclusive and effective public policy process. It is a systematic study of this important but overlooked question in the public policy process. It provides literature for future studies in this area as well as informing public policy process. It illuminates and evaluates unquestioned assumptions of whether and how non-sate actors create policy spaces to foster inclusive process that influence public policy. Therefore, this research fills the following gaps: First, the existing gap due to limited literature on the subject matter as very few studies have attempted to explain the subject matter; and second, the policy gap as important stakeholders such as non-state actors have been systematically excluded from the policy process necessitating a fight for their inclusion.

1.6 Literature review:

Literature on public policy inclusion and empowerment in Kenya depicts non-state actors as people who lack power compared to state actors who have power over the former [16], [18], [17]. The powerless then need to be empowered by the powerful to enable them to engage in public policy process [14]. Power relations that exist between both actors are useful for our understanding of what each can contribute to the policy process [23]. What type of empowerment would enable non-state actors participate effectively in public policy process and how can they challenge domineering or coercive power? The main challenges for inclusive policy process include inappropriate strategies and lack of adequate mechanisms for non-state actors to participate in policy process; and inadequate knowledge on how non-state actors have created and expanded spaces for participation [24]. How have non-state actors overcome these challenges? While literature has encouraged discourse on public policy it has overlooked two very important assumptions: First, that policy process is complex, embracing a range of actors who are sometimes not aware that they are making or influencing policy.

Second, that relationships between actors within and outside the formal policy structure constitute the processes of inclusion and exclusion, contestation and consensus through which particular policy positions are shaped. These raise the issues of exclusive policy process, closed policy spaces and domination of the policy process by a few actors.

1.7 Theoretical framework:

The above assumptions imply that policy process is relational, complex, involving various actors' influencing each other in a dynamic process of inclusion and exclusion, contestation and consensus through which particular policy positions are shaped. Relations among policy actors are relations of power. This is about individuals or different groups of people interacting with each other involving control, resistance and force, all played out in different spaces and levels. Though everyone possesses and is affected by power, the meaning of power and how to understand it is diverse and often contentious [25], [26], [27], [28], [29]. Power relations are dynamic, to understand them one needs to do a power analysis.

1.7.1 Power analysis in public policy process:

Power analysis is important for understanding the context in which public policy process happens. A more nuanced and relational power analysis can provide insights to the contexts in which public policy decision and delivery process happens [30], [31], [32]. Despite increased new governance and institutional arrangements for citizen engagement in public policy process, these have not led to greater inclusive public policy process [33]. Openning up spaces where participation and citizens' voice can have influence in public policy process, depends on the nature of the power relations which surround and imbue these potentially and more democratic spaces. Power relations have strong links with processes of citizen engagement, participation and deepening forms of democracy. Power relations operate in different levels, forms, and spaces.

The forms and visibility of power:

The three forms of power include visible, hidden and invisible power [23]. Visible power includes definable aspects of political power, the formal rules, structures, authorities, institutions and procedures of decision making. Strategies that target this level are usually trying to change the '*who*, *how* and *what*' of policymaking so that the policy process is more democratic and accountable, and serves the needs and rights of the citizens. Certain powerful people and institutions maintain their influence by controlling who gets to the decision-making table and what gets on the agenda. These dynamics operate on many levels to exclude and devalue the concerns and representation of other less powerful groups. Empowering advocacy strategies that focus on strengthening organisations and movements of the people can build the collective power of numbers and new leadership to influence the way the political agenda is shaped and increase the visibility and legitimacy of their issues, voice and demands. This is what is termed as hidden power. invisible power shapes the psychological and ideological boundaries of participation. Significant problems and issues are not only kept from the decision-making table, but also from the minds and consciousness of different players involved, even those directly affected by the problem. By influencing how individuals think about their place in the world, this level of power shapes people's beliefs, sense of self and acceptance of the even their own superiority or inferiority. Processes of socialisation, culture and ideology perpetuate exclusion and inequality by defining what is normal, acceptable and safe. Change strategies in this area target social and political culture as well as individual consciousness to transform the way people perceive themselves and those around them, and how they envisage future possibilities and alternatives.

As in the other dimensions of power, the multiple forms of power also pose challenges for non-state actors trying to change power relations. Some groups may focus on advocacy approaches, challenging the visible forms of power in visible arenas through public debate, informed research and working to influence public representatives. Others may focus on mobilising and collective action strategies, which work to challenge barriers which prevent certain actors and forms of knowledge from entering public arenas in the first place. Yet, others may focus more on changing the invisible, internalised forms of power, through awareness and consciousness-building campaigns. While often, these are different strategies involving different organisations and interventions to change power, in fact strategies are also needed which link across them. For instance, a policy victory in the visible arena of power may be important, but may not be sustained, if those outside the arena are not aware that it has occurred and how it relates to their interests, or are not mobilised to make sure that other hidden forms of power do not preclude its implementation.

Policy spaces:

Although the notion of space is widely used across the literatures on power, policy democracy and citizen action, our interest is with the notion of space as used in policy. Policy spaces are the moments and opportunities where citizens and policymakers come together, as well as 'actual observable opportunities, behaviours, actions and interactions sometimes signifying transformative potential [8]. The policy process is a series of interlinked, overlapping spaces, traversed by different actors, ideas and practices. These spaces range from the more traditionally understood official spaces for policy such as largely found in government bureaucracies, legislatures and assemblies to more autonomous spaces created by popular forms of action through social movements, for instance, breakfast meetings, round-table forums etc. There are also new invited spaces in which both state and non-state actors are encouraged to come together for more consultative and deliberative forms of interaction. Hence there is multiplicity of spaces which are potentially relevant for attempts to influence policy process. But this multiplicity may create tension between different actors. The actors that create spaces affect who enters it, the forms of knowledge considered appropriate there and how people participate within it. In examining the spaces for participation in public policy, it is important we understand how spaces have been created, with whose interest and what terms of engagement. There are three types of spaces namely, closed, invited and created or claimed [32], [8].

With respect to closed spaces we assume that decisions are made by a set of actors behind closed doors, without any pretence of broadening the boundaries for inclusion. Within the state, the elites (be they bureaucrats, experts or elected representatives) make decisions and provide services to 'the people', without the need for broader consultation or involvement. Many non-state actors' efforts focus on opening up such spaces through greater public involvement, transparency or accountability.

Invited spaces denote spaces into which people (as users, citizens or beneficiaries) are invited to participate by various kinds of authorities, be they government, supranational agencies or non-governmental organisations' [8]. Invited spaces may be regularised, that is, they are institutionalised on-going, or more transient, through one-off forms of consultation. Increasingly with the rise of approaches to participatory governance, these spaces are seen at every level, from local government, to national policy and even in global policy forums.

Claimed or created spaces are opportunities which are claimed by less powerful actors from or against the power holders, or created more autonomously by them. Cornwall refers to these spaces as 'organic' spaces which emerge 'out of sets of common concerns or identifications' and 'may come into being as a result of popular mobilisation, such as around identity or issue based concerns, or may consist of spaces in which like-minded people join together in common pursuits' [32]. These spaces range from ones created by social movements and community associations, to those simply involving natural places where people gather to debate, discuss and resist, outside of the institutionalised policy arenas.

Gaventa observed that spaces exist in dynamic relationship to one another, and are constantly opening and closing through struggles for legitimacy and resistance, co-optation and transformation [34]. Closed spaces may seek to restore legitimacy by creating invited spaces; similarly, invited spaces may be created from the other direction, as more autonomous people's movements attempt to use their own fora for engagement with the state. Similarly, power gained in one space, through new skills, capacity and experiences, can be used to enter and affect other spaces. From this perspective, the transformative potential of spaces for participatory governance must always be assessed in relationship to the other spaces which surround them. Creation of new institutional designs of participatory governance, in the absence of other participatory spaces which serve to provide and sustain countervailing power, might simply be captured by the already empowered elite.

The interrelationships of the spaces also create challenges for non-state actors' strategies of engagement. To challenge 'closed' spaces, non-state actors may serve the role of advocates, arguing for greater transparency, more democratic structures, or greater forms of public accountability. As new 'invited' spaces emerge, non-state actors may need other strategies of how to negotiate and collaborate which, may require shifting from more confrontational advocacy methods. Research shows that 'invited spaces' must be held open by on-going demands of social movements, and that more autonomous spaces of participation are important for new demands to develop and to grow. Non-state actors must have the 'staying power' [35] to move in and out of them over time, or the capacity to build effective horizontal alliances that link strategies across the various spaces for change.

Places and levels of power:

Public policy spaces for participation involve the contest between local, national and global arenas as locations of power. For instance, a great deal of work on decentralisation discusses the dynamics of power between the local or county level and the nation state, while other literature emphasise the importance of community or neighbourhood-based associations as key locations for building power from below. Conversely, a growing body of literature warns of the dangers of focusing only on the local and or the national in a globalising world. Globalisation is shifting traditional understandings of where power resides and how it is exercised, transforming traditional assumptions of how and where citizens mobilise to hold states and non-state actors to account [36], [37]. Therefore, the local, national and global are increasingly interrelated. This interrelatedness and the changing local, national, regional global levels of power pose challenges for non-state actors with respect to where and how to engage. Some non-state actors have focused at the global level, waging campaigns to open the closed spaces of groups like the World Trade Organization (WTO) and the World Bank. Others have focused more on challenging economic power regionally and locally. Nonetheless, the interrelationships of these levels of power with one another suggest that the challenge for action is not only how to build participatory action at differing levels, but how to promote the democratic and accountable vertical links across actors at each level.

Thus, power analysis theory was useful for this study as policy process involves different actors with varying interests all articulated, shared and exchanged in dynamic power relationships. However, power relationships do not play out in isolation whether at the individual or organisational levels. Power is relational, recreates itself by empowering others to form even stronger power relations, all played out in different structural frameworks which enable policy actors to interact. Public policy process requires that different actors are involved in the process. Non-state actors are one set of policy actors with interest in public policy process. Public policy formation as part of policy cycle is determined by power relations between the actors. The power relations involve power-holders, force and resistance all played out in different spaces, places and levels and forms. The study developed a conceptual framework based on power analysis theory [38] which presents a dynamic understanding of how power operates, how different interests can be marginalised from decision-making, and the strategies needed to increase inclusion. This understanding also captured in Fig. 1 below was useful for this research as it made it possible to explain how power is used by both the state and non-state actors across the three continuums of spaces, forms and places.
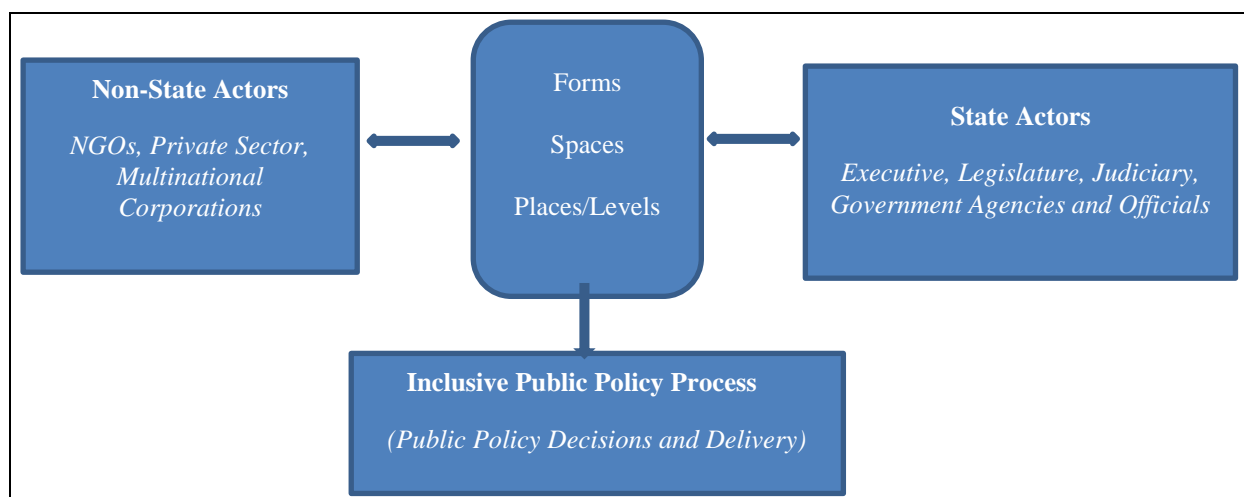
Source: Author analysis

Figure. 1: Conceptual framework

1.8 Methodology:

This study used a survey and qualitative design. The study area was the City of Nairobi which is also the headquarters of all the non-state actors involved in the study and government ministries. Stratified sampling technique was applied to form four strata from which four organisations were purposively sampled to allow for an in-depth study of how they influence public policy process in Kenya. The selected organisations include national non-governmental organisations; international non-governmental organisation; the private sector membership organisations; donor organisations and

multinational corporations. Stratified sampling was used to select 20 organisations while purposive sampling used to select 2 senior managers from each organisation who were knowledgeable about public policy process.

Data collection methods consisted of in-depth interviews and a review of relevant key documents in the secondary literature. Data analysis was done at two levels. First, manifest level analysis of providing a descriptive account of data. Second, latent level analysis of more interpretive analysis of responses and inferences. The validity and reliability of this study was assessed by four-fold criteria including sensitivity to context; commitment and rigour; transparency and coherence; and impact and importance. The findings may not be generalised for the whole of Africa or across other regions of the world. However, the study may be replicated in other countries by adopting the same methodology. The main ethical principles that were strictly observed during and after this study included but not limited to not harming the participants in any way; seeking informed consent of the participants; not invading the privacy of the participants; avoiding any form of deception.

Using the methodology discussed above, this study explores in the following sections the contribution of non-state actors in making public policy process in Kenya inclusive. The main argument of this study is that non-state actors have straggled to contribute to inclusive public policy process in Kenya. They have used their power to contribute to inclusive public policy process in Kenya. The independent variable for this study is non-state actors while the dependent variable is inclusive public policy process. The foregoing section presents the results.

2. RESULTS

2.1 National non-governmental organisations:

Non-governmental organisations have engaged largely in advocacy work around human rights in general and in specific groups to promote engagement of various peoples in socio-economic development and political participation.

2.1.1 Policy area and level of influence:

The concentration of their influence has been at both national and county or community levels. The issues they have influenced at different stages of public policy process (i.e. agenda setting, policy formulation, implementation and evaluation).

Table 1: National non-governmental organisations and areas of policy engagement

	Name of organisation	Area of policy engagement
1.	Economic and Social Rights centre (Hakijamii)	Urban housing and land
2.	Institute of Economic Affairs (IEA)	Trade and competition, national budget transparency and accountability.
3.	Centre for Governance and Development (CGD)	Electoral governance, campaign financing and government accountability to taxpayers.
4.	Institute of Certified Public Accountant of Kenya (ICPAK	National budget transparency and accountability

Source: Field data, 2014

2.1.2 Approaches and strategies of engagement:

National NGOs have used various approaches and strategies to engage the government in public policy process. Table 2 summarises the widely-used approaches and strategies. These range from direct engagement to coalition and network building.

Table 2: Approaches and strategies used by national non-governmental organisations

	Name of organisation	Approach or strategy
1.	Hakijamii - Economic and Social Rights centre	Direct engagement, position papers, publications and information sharing.
2.	Institute of Economic Affairs (IEA)	Direct engagement with parliament, government, business community and international organisations, conduct in house analysis and share the memos, invites media and civil society to put pressure on government, parliamentary committee chair persons.

3.	Center for Governance and Development (CGD)	Fact finding, research, building coalition and using champions.
4.	Institute of Certified Public Accountant of Kenya (ICPAK	Research, collaboration, position papers, one-on-one discussions with parliamentarians, print media, conferences, partners and CSOs.

Source: Filed data, 2014

2.2 International non-governmental organisations:

International non-governmental organisations are also known as development non-governmental organisations. They have engaged in both development and advocacy work on various issues. The senior staff of these organisations are usually expatriates. They raise resources from outside the country. They not only supplement government service delivery but also protect human rights particularly for the poor and marginalised people in both urban and rural areas.

2.2.1 Policy area and level of influence:

The international non-governmental organisations have concentrated their policy engagement in areas of economic, social and cultural rights particularly in education, health, food security and livelihood in informal settlements and arid and semi-arid parts of Kenya. Table 3 below presents the main areas of engagement. Most of these international organisations have dealt mainly with policy delivery issues unlike the national organisations which have focused mainly on policy formation issues. Policy delivery requires implementation budgets which most national non-governmental organisations may not have.

Table 3: International non-governmental organisations and areas of policy engagement

	Name of organisation	Area of Policy Engagement
1	Action Aid Kenya	Human rights, livelihood issues, governance, poverty, education, justice and food security
2	World Vision	Education, health, water, livelihood (food security, environment, climate change, and risk reduction), and gender and child protection
3	Amnesty International	Economic, social and cultural rights: poverty, housing and forced evictions in informal settlements.
4	Oxfam Kenya	Livelihood, water, sanitation, social security, climate, governance

Source: Field data, 2014

Action Aid Kenya is involved in human rights issues, livelihood issues and governance particularly democracy and accountability for poverty reduction in local communities. Action Aid works through partners and sometimes directly with communities and government. In 2012 Action Aid begun to shift its strategy from service delivery to justice particularly tax justice and basic human rights such as food security. Action Aid has contributed much influence on Basic Education Act. It pushed for amendments through CLARION work Empowerment Programme funded by DANIDA from 2012 to 2013. National and local partners were involved including *Sauti ya Wanawake, Pambazuko la Wanawake Magaribi, Kibira, Makina, Mwari* Paralegal Associations (Women empowerment link). CLARION reviewed basic education Act, met with CSOs and key government officials and presented its position. The government considered its position and incorporated the suggested views in the Education Act. This was at the agenda setting stage and the decision-making stage.

World Vision has been involved in policy and advocacy for human transformation. It has developed service delivery responses to policy gaps in implementation and those that are non-existent. It has engaged in development to address the root causes of community problems in areas of education, health, water, livelihood (food security, environment, climate change, and risk reduction), and gender and child protection. It has also supported the design of programs at the community level and engaged in policy process with government, civil society and donors.

World Vision (WV) has technical resources in education sector including well trained personnel. It has been implementing educational programs together with Kenya Education Sector Support Programme (KESSP). It reviewed the KESSP Sessional paper and gave recommendations to the government. It has engaged directly at the national level with both the government ministries and civil society coalitions. It has also engaged with task force on review of education, it prepared a policy paper and gave submissions to the taskforce, facilitated generation of community views and convened

civil society meetings to analyse the task force report. WV also collaborated with *Elimu yet* Framework which has members including Transparency International Kenya, Agha Khan Foundation, CONCERN, Save the Children, Goal and Plan International. These organisations pulled efforts together to review the report and provided useful comments. World Vision also organized a national conference to influence thematic leaders and groups. It also involved local organizations in collecting views to inform their position.

WV worked with parliamentary committee on education and civil society national conference on education, submitted a policy view to the government and developed a memorandum of understanding with Parliamentary Committee on Education. The current Basic Education Act has a lot of input from the WV and other non-state actors. It also continued to contribute to the regulation of the Bill. WV sponsored the Ministry of Education to draft the framework for the national education support program and involved other stakeholder consultation programs and partners including FIDA, SNV, and USAID. It worked on a concept on how to implement education policy within devolved government system and sponsored a workshop on the same. It worked on the structure of education system, conflict of decision making, and supported county educational strategy development. WV influence was mainly at the agenda setting stage. It began working at the constitutional level with all rights regarding education, regulation and development of the Bill taking the lead; it has a memorandum of understanding with the Ministry of Education and collaborates with *Elimu Yetu* to set the agenda of education.

Amnesty International (AI): is a global movement of about 2.8 million supporters, members and activists operating in more than 150 countries and territories that campaign to end grave abuses of human rights. Its vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards[1]. It is independent of any government, political ideology, economic interest or religion and is funded mainly by its membership and public donations. Amnesty has focused its programmes and activities on economic, social and cultural rights, particularly in the area of poverty, housing, forced evictions, and slums. Amnesty International has been working with the residents of slums and informal settlements in Nairobi particularly, Kibera, Mathare, Korogocho, Mukuru Kwa Njenga and Deep Sea. AI has assessed the lives of the people living in these informal settlements and raised concerns to the government as part of demand dignity campaign. It examined the human rights issues faced by the residents of these informal settlements including access to affordable, habitable housing and essential services.

Oxfam in Kenya (Oxfam): In Kenya, Oxfam works with other non-state actors to alleviate poverty and inequality. It works with the most vulnerable communities in the dry and remote northern regions, and in the impoverished slums of the capital, Nairobi. In Kenya, the highest poverty levels are in the northern pastoralist districts with some areas registering 95% of people living below the poverty line[2]. Like many developing countries, Kenya is undergoing rapid urbanisation. It is estimated that by 2050 half the Kenyan population will be living in urban areas. This high population presents a myriad of challenges. About 34% of the 18 million poor Kenyans are urban poor and most of them live in informal urban settlements. Oxfam aims to address all these challenges by working with local communities and other organisations including both national and county governments. Oxfam aims to help citizens to stand up for their rights.

Since the commencement of its work in Kenya in 1963, Oxfam has: provided long-term development aid and emergency relief. For example, supporting refugees; promoting peace and managing conflicts that exist between local communities; and campaigning for better governance and equitable access to services. In communities living in the dry-lands Oxfam works with Turkana and Wajir Counties, developing market-based alternative and complementary livelihoods, supporting fishermen and traders. In the capital city, Nairobi, Oxfam works with poor urban communities and with partners to run water kiosks, "bio-centres" that turn human waste into usable energy and improves sanitation, and recycling plants for unemployed youth. Oxfam's social protection programs provide cash to help poor families cope with rising costs of food and water and kick-start small businesses.

Oxfam focuses on enhancing communities' capacity to resolve conflicts and co-exist peacefully. It has influenced national policy through the National Steering Committee on Peace-Building and Conflict Management under the Office of the President. Oxfam is also working closely with other civil society organisations, supporting local civil society to hold the Government accountable for its response to climate change. It generates relevant climate change data to inform advocacy positions locally and internationally. Oxfam's work in Kenya is embedded in promoting better governance at local, regional and national levels thereby strengthening poor people's ability to defend and demand their rights. Oxfam works

---

[1] Amnesty International, 2009
[2] Oxfam, Kenya. http:// www.oxfam.org/en/keny *(Accessed 18 October 2013)*

to ensure that its partners and the communities have their voices and concerns heard, and that the Government fulfils its responsibilities to poor Kenyans. Table 4 summarises approaches and strategies used by INGOs to engage in public policy process.

Table 4: Approaches and strategies of engagement for international non-governmental organisations

	Name of organisation	Approaches and Strategies of engagement
1	Action Aid Kenya	Lobbying, one-on-one meetings, collaboration, direct engagement, conferences
2	World Vision	Social accountability, position papers, breakfast meetings, collaboration, boardroom meetings and conferences
3	Amnesty International	Research and publication, public demonstrations, vigils, letter-writing campaigns, human rights education, awareness-raising concerts, direct lobbying, targeted appeals, email petitions and other online actions, partnerships with local campaigning groups, community activities and co-operation with student groups.
4	Oxfam Kenya	Civil society capacity building, local community capacity building, direct engagement, collaboration and direct provisions.

Source: Field data, 2014

2.3 Private sector membership organisations:

Private sector membership organisations are business groups with the intention of pursuing the development of favourable environment for business growth. They utilise collective action to create environment for greater corporate gain. There are many business associations in Kenya promoting the interests of industrialist, cordial industrial relations, large private business and small business in informal sector.

2.3.1 Policy area and level of engagement:

Private sector membership organisations have focused their policy influence in areas that affect their members and business community. The main areas are taxation, public finance, procurement, minimum wage, National Social Security Fund (NSSF) and National Health Insurance Fund (NHIF) as presented in Table 5 below.

Table 5: Private sector membership organisations and areas of policy engagement

	Name of Organisation	Area of policy engagement
1	Kenya Association of Manufacturers (KAM)	Tax policy, Finance Bill, Energy Bill, Procurement Bill, Bills affecting business community
2	Kenya Private Sector Alliance (KEPSA)	Tax (VAT); National Social Security Fund (NSSF); Police Amendment Bill; Public Finance; Taxation Policy; and Monitory and Fiscal Policy.
3	Federation of Kenya Employers (FKE)	NSSF Act, minimum wage Act, Labour relations Act and national budget.
4	Jua Kali Association (JKA)	JKA sector recognition and support, social security policies: NHIF and NSSF.

Source: Field data, 2014

Kenya Association of Manufacturers (KAM) is a business association that serves as representative of Kenya's manufacturing industry. It was established in 1959 as a private sector body that unites industrialists and serves as a common voice for manufacturing and other value add sectors in Kenya. It is owned, funded and managed by its members. It has its headquarters in Nairobi and regional offices in Mombasa, Kisumu, Nakuru, Eldoret, Athi River and Thika. KAM strives to be a world class business membership organization effectively delivering services to its members wherever they operate. Its mission is to promote competitive local manufacturing in a liberalized market[3]. Its goal is to transform KAM

---

[3] KAM Agenda, 2014

into a sustainable member focused association delivering relevant, quality, timely and effective services to its members. KAM cherishes values of innovation, effectiveness, responsiveness and resilience.

The strategic objectives of KAM are to: provide proactive, evidence based and result focused policy advocacy services for members; provide quality demand driven and profitable services to the business community; ensure that KAM is the most preferred business organization for manufacturing value added industries; ensure KAM is financially sustainable and motivates professional and committed staff members and adheres to the highest standards of corporate governance; and deliver timely and effective communication to both internal and external stakeholders. KAM is structured around Annual General Meeting (AGM), Executive Committee (Board of Directors), Secretariat, 3 Board Committees, 4 Working Committees, 14 Industrial Sectors and 6 Regional Chapters.

KAM has been involved in VAT 2013 policy with an objective of enabling business environment for policy. It also contributed to tax policy (both domestic and external tax) through fact based advocacy research. The focus was on pharmaceutical sector which is the largest industry in COMESA.

Box 1: KAM's Direct Engagement with the Government

"This industry is riddled with issues including taxation, employment, health and competition. KAM has also been involved in devolution particularly financial Bill; procurement Act particularly for local suppliers; Energy Bill advocating for reduction of the price of electricity from the current 85cents the highest in Africa to 9 cents; climate change Bill and all other bills affecting the business community. KAM is a proactive organization but reacted to the first draft Bill on VAT. It initiated meetings with parliamentary committees. The government was at that time holding Kshs. 30 billion money for business organizations. KAM pushed the government to release this money to the business organizations. KAM assessed the impact of the VAT Bill on business particularly on drugs, on productivity of other business companies. KAM engaged the government at the national level and also at the County government level through its chapters strategically located in Kisumu, Thika, Athi River, Eldoret, Nakuru, and Mombasa and in Industrial Area Nairobi. These chapters are important as they enable KAM to reach out to the local level"[4].

KAM received some resistance from the government regarding their recommendations on VAT but not on pharmaceuticals. The time taken by the government to respond to KAM's recommendations has also been long. KAM was then invited by the government to discuss the VAT Bill. It collected the views of the members through a process of "sector specific issues", prepared a position paper and presented it to the government.

Kenya Private Sector Alliance: There is a common understanding within the private sector in Kenya that at independence in 1963, Kenya adopted a private sector-led development with a strong social spending so as to increase social and economic equity[5]. Thus, the private sector understands that one of its main mandates is to steer social economic development in Kenya. The private sector in Kenya is always referred to as the 'engine' of growth. To fulfil this obligation, the private sector together with other non-state actors have been actively engaged in public policy process, partnering with the government to develop and implement public policies.

Box 2: KEPSA Areas of Engagement with the Government

"KEPSA usually looks at the Bills in perspective of their impact to the private sector. For example, KEPSA was very influential in the preparation of the VAT Bill 2012 and provided input on the operational and administration of the Bill. KEPSA also provided input by way of submissions in the preparation of the NSSF Bill. Similarly, to the Police Amendment Bill. KEPSA sponsored Micro and Small Enterprise Act through public private partnership Act. When KEPSA contribution is not adopted, KEPSA uses people and groups to influence. For example the environment council on climate change group. It also withdraws and waits to interject at a higher level say presidential office. It also employs other formal and informal ways of influencing including asking its members to review the bill and its impact on their business and share their concerns with KEPSA to be channeled to the office of the president. KEPSA provides technical information on the many aspects including tendering in the oil industry, ERC fixing prices that hurt the poor. KEPSA has persisted in telling the government that oil price fixing is hurting the industry and the poor"[6].

---

[4] KAM Programme Officer, 2014
[5] KEPSA Programme Officer, 2013
[6] KEPSA Programme Officer, 2013

The private sector has therefore contributed to the various government Bills and public policies including the Value-Added Tax (VAT); National Social Security Fund (NSSF); Police Amendment Bill; Public Finance; Taxation Policy; and Monitory and Fiscal Policy.

Federation of Kenya Employers (FKE):

The mandate of Federation of Kenyan Employers (FKE) is to influence policy environment; labour laws such as NSSF Act; determine wages especially minimum wage; industrial relations such labour relations Act; and determine national budget that is friendly to business. FKE has therefore contributed to public policy process in these areas.

Jua Kali Association (JKA) is an umbrella organization of an informal sector in its seventh year of existence.

Box 3: JKA Significance in public policy process

"JKA has experienced rejection by government but due to unemployment situation in the country the Government has come to recognize the contribution that the sector makes to economy. Micro and Small Enterprise Authority (MSEA) was formed by the government but excluded jua kali in the deliberations partly because the sector has been semi illiterate for a very long time. The sector faces many challenges including inappropriate education programme and difficulties in accessing loans to grow their business. The sector is despised due to informal education of the members. The sector has a strategic plan 2013-2017. The government invites the leaders of the sector to forums to discuss matters of the sector but this happens once in a while. The sector has wanted to be under the Ministry of Labour because of its small size but the government placed it under the Ministry of Industrialization" [7].

In 2010 the government invited the sector to discuss the issues affecting the sector. The sector seized this opportunity to demand for social protection and not to be harassed by the City County of Nairobi. The sector also demanded for adequate working space, an end to grabbing of its land, funds and expansion. Among the challenges the sector is facing have to do with the proposed road to pass through the main work stations of the sector in Nairobi. *"Kenya Urban Road Authority (KURA) had proposed a major road to pass through the jua kali land area. The Environmental Impact Assessment (EIA) was not conducted; the proposed road is likely to be constructed because the Nairobi Governor has already received 3 billion shillings to build the road. Our concerns have been presented to the government. Regarding the social security policy, the jua kali members have not seen the importance of contributing to the NHIF, they need to be educated on the importance of this fund"* [8].

Inadequate recognition and support for the sector by the government and the many challenges the sector faces undermine the capacity of the sector to contribute effectively to public policy process. The sector is part of the largest informal sector that drives the economy of Kenya and yet its policy capacity has not developed. Table 6 summarises approaches and strategies used by private sector membership organisations to engage in public policy process.

Table 6: Approaches and strategies for engagement used by private sector membership organisations

	Name of Organisation	Approaches and strategies for engagement
1	Kenya Association of Manufacturers (KAM)	KAM Board, Chapters, working committees, individual members, position papers, publicity through media, sharing information and education campaign.
2	Kenya Private Sector Alliance (KEPSA)	Ministerial stakeholder forums, taskforce and presidential round tables.
3	Federation of Kenya Employers (FKE)	Direct participation in policy formulation, memos, capacity development, press releases in media/social media, forums and direct engagement.
4	Jua Kali Association (JKA)	Forums and position papers

Source: Field data, 2014

2.4 Donor organisations:

Donor organisations are involved in development activities; they raise funds and support many other organisations and governments using the money they make through their governments, grant making and others. The way these

---

[7] JKA Chairman, 2014

[8] JKA Chairman, 2014

organisations engage with state actors is different from the way other non-state actors engage. They are more listened to by government than any other NGO. They are partners with the government and usually referred to as 'development partners' with bilateral and multilateral relationships. They possess decades of development knowledge and expertise, and provide millions of dollars in aid to support development in Kenya. Donor institutions help build the enabling environment for effective, sustainable and inclusive development.

2.4.1 Policy area and level of influence:

Donor organisations have concentrated their policy influence at the national government with minimal activities at the county and community levels. Their areas of policy engagement range from supporting devolution and implementation of the Constitution to provision of services as shown in Table 7.

Table 7: Donor organisations and areas of policy engagement

	Name of organisation	Area of Policy engagement
1	World Bank	Devolution, public finance and social accountability
2	European Union	Democratic governance, human rights, Millennium development goals, trade, regional integration and infrastructure
3	Department of Foreign International Development (DFID)	Health, education, poverty and private sector growth.
4	International Budget Partnership (IPB)	Budget transparency and citizen participation in national budget process

Source: Field data, 2014

The World Bank is involved in many policy areas but in this study, we focused on one policy area, devolution. The World Bank has resources, knowledge and expertise. It has been involved in knowledge sharing at both the national and county level, public finance regulation in health and social accountability, collaboration with IBP and IEA on social accountability, generation of county model revenue through collaboration with CRA, Council of Governors, CIC and county governments.

The EU - Kenya relations date back to more than 30 years. Since then, Kenya has established a durable and dynamic partnership with the EU. The cooperation between the EU and Kenya, as well as the other ACP countries has been guided by the principles of the Cotonou Agreement and the Country Strategies. The EU Delegation in Nairobi opened in 1976, following the signature of the first Lomé Convention. At the time of the Delegation's establishment, its principal mandate was, close co-operation with the Government of Kenya, and implementation of the development cooperation. Over the years, the role of the Delegation has expanded considerably. EU is now fully involved in political dialogue with the government, as well as in the political co-ordination process with the 19 EU Member States represented in Nairobi. The 2008-2013 Kenya Country Strategy Paper and the National Indicative Programme are currently under implementation. The main areas of the EU cooperation with Kenya are infrastructure, rural development and social sector. The ultimate goal of the strategy is to support Kenya in achievement of Sustainable Development Goals through political and economic reforms and integration into regional and world economy.

The EU is strongly committed to cooperation with Africa and over the years has developed solid ties to the continent through various agreements, policy and strategy papers. Joint Africa-EU Strategy together with the Lisbon Declaration adopted in 2007 defines the framework for the Africa-EU strategic partnership. This partnership is being implemented in eight areas including; Democratic governance and human rights; Sustainable Development Goals; Trade; and regional integration and infrastructure, with the overall goal reduction and elimination of poverty.

Department of foreign International Development (DFID) in Kenya: In general, DFID has focused on improving health, increasing the quality of education, reducing vulnerability among Kenya's most disadvantaged, and catalysing private sector growth to create more jobs for young people. DFID has concentrated on improving maternal and reproductive health; accelerating the fight against malaria; increasing school access and the quality of education; reducing vulnerability and malnutrition among Kenya's most disadvantaged; supporting refugees, improving governance and accountability; catalysing private sector growth to create more jobs for young people; helping Kenya to develop green energy and adapt to a changing climate. DFID funds many organisations that are working to end poverty through open competition.

International Budget Partnership (IBP): The work of IBP in Kenya has been developed around the strategy developed and approved in 2013. The strategy had four main objectives: national budget transparency or the demand side, productive relationship with the Treasury, Constitution Implementation Commission (CIC) and Commission on Revenue Allocation (CRA) or the supply side, revenue sharing and partnership at the county level. The first three are at the national level while the fourth and the last is at the county level.

As part of the implementation of the first objective of the strategy, IBP focused on increasing demand for budget transparency through collaboration and supporting IEA budget programme. IBP observed that CSOs submissions on budget had not been crafted well to win influence of the Treasury and members of parliament. Recently, IBP has been shifting towards capacity building of the CSOs to assist them develop better submissions. IBP hired two people to work full time with the parliamentary budget office to coordinate the work of the parliament.

On the second objective, IBP tried finding ways of engaging with the Treasury, CIC directly and through IEA and also through working with CABRI. IBP conducted training with the Controller of budgets and has been increasing its work with Auditor General's Office.

On the third objective on revenue sharing, IBP was invited to make a submission to the CRA concerning the revisions to the first formula for revenue sharing approved by Parliament in 2012. IBP tried to bring in members of civil society organizations to participate in the negotiations with the CRA [9]. It has also considered working with Media focus on Africa which has in the past organized some dialogue. IBP is also working with health groups to improve the financing of Level 5 hospitals. It has been mobilizing budget sector working groups to engage in discussions about the financing of these hospitals.

On the fourth objective IBP worked with the counties and NTA which has national outreach programme, NGOs and members of county assembly. It has worked in three counties. In Uasin Ngishu IBP focused on improving oversight of the country assembly members through training and providing information.[10] In Taita Taveta IBP supported the setting up of economic forum and expanding the structure of public participation. Its work at the county level can also be seen more as the accompaniment of the partners than training.

IBP work in Kenya is basically in two dimensions: that is, budget transparency and budget participation. "But I am quite unconvinced by the distinction because having the content enables one to participate effectively. Budget participation and budget transparency is one package the difference comes because one may not work on the two at the same time" [11]. Transparency and participation can be looked at as two sides of the same coin.

Donor organisations have used a variety of means and strategies to challenge power relations in various spaces. Although donor organisations have employed various approaches to engaging the government in public policy process, financial support and bilateral agreements remain the main approaches used as show in Table 8 below.

Table 8: Approaches and strategies for engagement used by donor organisations

	Name of organisation	Approaches and Strategies for engagement
1	World Bank	Research and fact finding, financial support and joint consultation
2	European Union	Diplomatic relations, Financial support and bilateral agreements
3	DFID	Financial aid and bilateral agreement
4	International Budget Partnership	Collaboration with local NGOs and direct engagement with Treasury and parliamentary budget research office.

Source: Field data, 2014

2.5 Multinational telecommunications corporations:

Kenya's telecommunication industry has grown over the years from a small government department to a big industry with multinational corporations. This industry is one of the key industries in Kenya's economy and it has some of the highest revenue generating companies for the government in form of taxation.

---

[9] International Budget Program. www.Internationalbudget.org/Kenya
[10]Interview with IBP Kenya
[11] Interview with IBP Kenya Officer

2.5.1 Policy area and level of influence:

In 2014 Kenya had more than 31.8 million mobile subscriptions an increase from 31.5 million subscribers in 2013. This increase represents a 1.7 per cent growth during the period[12]. This puts Kenya's mobile penetration to 78.2 per cent after a 1.3 percentage growth as illustrated in Table 9.

Table 9: Mobile subscriptions and company market share in Kenya

	Subscription		% Market share	
Company	December 2013	March 2014	December 2013	March 2014
Safaricom	21,248,287	21,567,388	67.9	67.8
Airtel	5,156,269	5,251,087	16.5	16.5
Orange Kenya	2,255,099	2,453,898	7.2	7.7
Essar Telkom	2,649,362	2,557,630	8.5	8.0
TOTAL	31,309,017	31,830,003	100	100

Source: ICT Sector Quarterly Statistics Report for Q3 Financial Year 2013/14

Safaricom, Airtel and Orange Kenya have majority subscribers. Safaricom and Airtel gained 1.5 and 1.8 per cent subscriptions respectively while Telkom Kenya had the highest gain in subscriptions of 8.8 per cent compared to Essar Telecom's 3.5 per cent loss of its subscriptions. Safaricom Limited subscriptions had increased between December 2013 and March 2014 to 21,567,388 from 21,248,287 while Airtel Networks Limited had increased to 5,251,087 from 5,156,269 and Essar Telecom Limited increased to 2,557,630 from 2,649,362. Orange or Telkom Kenya increased to 2,453,898 from 2,255,099 subscriptions. The market share for telecoms increased marginally for Orange while it remained the same for Airtel and decreased marginally for Safaricom and Essar.

Safaricom Limited:

Safaricom limited is the mobile telephony communication giant, the biggest and most profitable company in East and Central Africa. Safaricom employs over 10,000 people directly or indirectly and is the biggest tax payer corporation in Kenya. The two majority shareholders of Safaricom limited are Vodafone Group Plc. with 39.9 percent and the Government of Kenya 35.0 percent. [13] With a subscriber base of over 18 million customers Safaricom enjoys the giant share of the Kenyan mobile phone voice, internet and data market. Figures from the communication commission of Kenya[14] indicate that 72% of the country's mobile phone subscribers are Safaricom customers. Its biggest competitor, Airtel Kenya has a subscriber base of 17% while the remaining amount is shared by Essar's Yu and Telkom Kenya's Orange. Formed in 1997 Safaricom is a pacesetter in the country's communication industry. Safaricom Limited, together with its subsidiaries, provides mobile phone, fixed line wireless telecommunication, Internet, and data services in Kenya[15]. It offers mobile voice and data prepaid and post-paid services to consumers and businesses; coverage services to businesses, including small and medium enterprises, and corporates. The company also provides a range of voice pricing plans on prepaid and post-paid options bundled with SMS and or data services; voice services, including national, regional, and international roaming services; *Bonga*, a customer loyalty program; value added services, such as *Skiza*, a caller ring back tone service; and *M-PESA* to send and receive money through a mobile. Safaricom is the largest multinational telecommunication company in Kenya.

Airtel Limited:

Airtel provides mobile communications services across 16 markets in Africa: Burkina Faso, Chad, Democratic Republic of the Congo, Gabon, Ghana, Kenya, Malawi, Madagascar, Niger, Nigeria, Seychelles, Sierra Leone, Tanzania, Uganda and Zambia. Airtel's African operations are owned by Bharti Airtel Limited, a leading global telecommunications company with operations in 19 countries across Asia and Africa[16]. The company offers mobile voice and data services, fixed line, high speed broadband, IPTV, DTH, turnkey telecom solutions for enterprises and national and international

---

[12] ICT Sector Quarterly Report 2013/14

[13] Nairobi Stock Exchange, 2015 Report.

[14] Communication Commission of Kenya (CCK), 2015 Report

[15] Safaricom, Kenya.http: www.safaricom.co.ke

[16] Airtel, Kenya.http://www.africa.airtel.com/Kenya

long distance services to carriers. Bharti Airtel has over 200 million customers (November 2010) across its operations, including 50 million in Africa. Airtel is driven by the vision of making mobile communications affordable for all to give people the freedom to meet their daily challenges and to drive economic and social development. Airtel is making a positive impact in the communities in which it operates through extending its networks to rural areas and through its education initiatives.

Orange Kenya:

Orange is the only integrated telecommunications solutions provider operating in Kenya. It offers mobile telephony services under the GSM and CDMA platforms, fixed line telephone services and internet services[17]. Orange also owns shares in the TEAMS and EASSy cables, in addition to running the National Optic Fibre Backbone Initiative (NOFBI) and its own terrestrial fibre optic network supporting its data carrier-to-carrier business. Orange currently covers the entire country on both the voice and data channels, with comprehensive plans in place to meet the Universal Service Provision's requirements set out by the industry regulator in Kenya, CCK. Orange is part of the Lower Indian Ocean Network (LION) cable, an under-sea fibre optic cable connecting Kenya to Madagascar and the rest of the world.

Essar Telecom Kenya:

Essar (YU) Telecom Kenya is Kenya's fourth mobile cellular network under the brand "yuMobile", launched in December, 2008[18]. YuMobile achieved the fastest network rollout speed in the region, by achieving countrywide coverage in approximately 10 months from launch. The network has a base of 3 million subscribers and offers best in class rates. YuMobile offers several innovative product and service offerings all targeted at making the subscribers life easier and more convenient. The Essar Group is a multinational conglomerate and a leading player in the sectors of Steel, Oil & Gas, Power, BPO & Telecom Services, Shipping, Ports, and Projects. With operations in more than 25 countries across five continents, the Group employs 75,000 people, and has revenues of USD 27 billion.

3. DISCUSSION

3.1 State actors as constraints to inclusive public policy process:

This section identifies the power constraints faced by non-state actors in the form of visible, hidden and invisible. There are several constraints to inclusive public policy process in Kenya. These are power relations and structural frameworks for policy process all played out as coercive power or "power over". All non-state actors have encountered power over though in varying intensities as obstacle to effective participation in public policy process. The primary source of power is the state and state-related agencies at both national and local levels particularly, the presidency. Given that government is the main duty-bearer with responsibility for promotion of inclusive and effective public policy process, state power can be used either to enhance or impede realisation of inclusive public policy process. The state can actively close and limit policy spaces or can be a passive obstacle to promotion of inclusive policy process through its inaction, for instance by not developing appropriate laws and systems for promoting inclusive public policy process. Based on power analysis (the levels, spaces and forms of power), this section examines the policy area and level of influence of non-state actors, analyses the three forms of "power over" namely, visible, hidden and invisible power, spaces for engagement, countervailing power and strategies non-state actors have used to influence public policy.

3.2 Visible power:

National NGOs:

Visible power is universally exercised in observable decision-making such as public policies in procedures and systems the state puts in place to address or respond to public problems and in the use of public authority. Non-state actors have encountered visible power as they have engaged state actors on many public problems and issues. National non-governmental organisations engaged largely in advocacy work around human rights in general and or in specific groups, for example, Hakijamii. Others have engaged in promotion of the participation of various people in mainstreaming development, for example CGD. They have worked around political participation and have been funded by donors. Others

---

[17] Orange Kenya.http://www.orange.co.ke
[18] Essar Telecom yuMobile Kenya.http://www.yu.co.ke

have engaged in research, knowledge generation and sharing, for example, IEA. They have conducted applied research and policy advocacy. They have produced and utilised knowledge and research for advocacy thus, improving policy understanding of groups in private sector local communities. They have also brokeraged and promoted the utilisation of knowledge by legislature, executives, judiciary and other NGOs. They have supported other policy actors with processed applied knowledge useful for policy reflections. Hakijamii provide various examples of manifestations of visible power of the state. It worked with several national and international community based organizations to resist some decisions and policies made by the state actors. Working around land housing, water sanitation and health, social security, national budgeting and education issues has been challenging.

The Centre for Governance and Development also provide another good example of visible power. CGD initiated a discussion around political party funding in 2000, prepared a draft Bill which was highly opposed by the ruling political party, KANU since it was the only political party enjoying public funding of the party. The visible power of the government ensured that the Bill did not pass. The Bill was resisted until CGD was able to lobby and get the support of members of other political parties and non-state actors. The political parties Bill was finally passed in 2005, several years after its initiation.

Similarly, IEA has also experienced visible power when initiating draft Bill on Competition law and policy. IEA observed that the old law on competition was incoherent and overtaken by events in the era of liberalisation hence there was need for new competition law to match international changes and regulate domestic competition. IEA collaborated with the Ministry of Industrialisation, created awareness about the significance of the law among the parliamentarians to get their support for the law. Although the law was tabled in parliament, debated and passed, several alterations were made in favour of some business organisations that had connection with some top government officials and politicians. Visible power is evident in this examples manifesting in the power of the state, the ruling party, government and the ministries.

INGOs:

The contribution of Action Aid Kenya on Basic Education Act encountered the reality of 'visible power'. Action Aid pushed for amendment of Basic Education Act. Although the government finally accepted Action Aid position which was also backed by the support of other non-state actors, the government initially had rejected Action Aid's position.

World Vision's encounter with visible power of the state actor can be summarised as follows:.

"The level of creating awareness and information release from the government has been slow. The government does not easily give documents especially for those who need them for grass root awareness. The government does not assist by producing relevant documents, hence community members are not able to engage in policy process and build their own capacity for policy analysis and informed participation. Communities do not engage with high level policy makers. However, WV has established community structures in and has 59 development programs with several wards operating in 35 counties" [19].

Amnesty International (IA) encounter with visible power of state actors is manifest in government resistance to change oppressive laws and enact laws that are likely to improve the lives of the people living in slums and informal settlements. IA raised concerns to the government as part of demand dignity campaign. It examined the human rights issues faced by the residents of informal settlements in their access to affordable, habitable housing and essential services.

Private sector membership organisations:

Private sector membership organisations are business groups with the intention of pursuing the development of favourable environment for business growth. They utilise collective action to create environment for corporate gain. There are many business associations promoting different interests including those of the industrialists, industrial relations, all private business and small informal business. These organisations have used power to contribute to inclusive public policy process in Kenya. They have encountered power constraints under the three dimensions of power over as discussed in the next subsection.

The case of KAM and VAT Act presents a good example of visible power. KAM initiated meetings with the parliamentary committees to react to the first draft Bill on VAT The government was at that time holding Kshs. 30

---

[19] Interview with World Vision Official, 2014

billions, money for business organizations. KAM pushed the government to release this money to the business organizations. KAM assessed the impact of the VAT Bill on business particularly on drugs and on productivity of other business companies. KAM engaged the government both at the national and county levels through its chapters strategically located in Kisumu, Thika, Athi River, Eldoret, Nakuru, and Mombasa and in Industrial Area Nairobi. These chapters are important as they enable KAM to reach out to the local level. KAM received resistance from the government regarding their recommendations on VAT Bill but not on pharmaceuticals. Although the government responded to KAM, it took too long to respond to KAM's recommendations.

Similarly, Federation of Kenyan Employers (FKE) has encountered much resistance from government while executing its mandate which is to influence policy environment; labour laws such as NSSF Act; determine wages especially minimum wage; industrial relations such as labour relations Act; and determine national budget that is friendly to business. In many occasions the visible power of state actors rejected the proposals and recommendations of FKE regarding increasing the country's minimum wage. Government visible power can be summed up as follows; *"Sometimes our position is not adopted by government; we accept is but communicate consequences to the government"* [20]. In these occasions the government has gone a heard and increased the country's minimum wage despite the warning from FKE that the increase will hurt the economy as labour productivity did not support increase in wages.

Another case of visible power is JKA. Kenya Urban Roads Authority had proposed a major road to pass through the jua kali land area which houses majority of jua kali industries. JKA perceived this action as land grabbing that aimed at collapsing their business. Although the environmental impact assessment had not been done, construction of the road was to take place as the Nairobi Governor had already received 3 billion shillings to build the said road. JKA presented its concerns to both Nairobi City County and the National government but were ignored. JKA received a similar response regarding the social security policy, which expected all the jua kali members to contribute to the fund. JKA had not seen the importance of contributing to the NHIF, they needed to be educated on the importance of this fund, but this did not happen [21].

Donor organisations:

It is not clear that the donor organisations studied in this study have experienced the sharp end of visible state power in Kenya. DFID best summarises the phenomenon of visible power in the context of donor organisations in Kenya.

"We will encourage project partners in government, private sector and non-governmental organisations to abide by international standards of transparency and accountability. We will require them to raise awareness of DFID-supported projects among targeted beneficiaries using appropriate local languages" [22].

The language and tone used here depicts little or no visible power of the state. Instead, it depicts the visible power of donors. In this case, donors seem to be more powerful than the state. However, the implication here is that there are norms and standards which guide power relationships between the state and donors. Compliance is an essential requirement in this case as parties treat each other as equals. Theirs is a partnership agreement supported by norms and standards communicated clearly to all parties.

The EU example suffices to illustrate this point. The EU and Kenya have been in a relationship for more than 30 years that established a durable and dynamic partnership between Kenya and the EU. The cooperation between the EU and Kenya, as well as the other ACP countries has been guided by the principles of the Cotonou Agreement and the Country Strategies. The EU Delegation in Nairobi opened in 1976, following the signature of the first Lomé Convention. At the time of the Delegation's establishment, its principal mandate was, close co-operation with the Government of Kenya, and implementation of the development cooperation. Over the years, the role of the Delegation has expanded considerably. It is apparent that donor organisations find it easy to dialogue with state actors.

"We are now fully involved in political dialogue with the Government of Kenya, as well as in the political co-ordination process with the 19 EU Member States represented in Nairobi" [23].

---

[20] Interview with FKE official, 2014
[21] Interview with JKA official, 2004
[22] DFID Report, 2014

However, the state may exercise visible power under the following conditions: when partnership ends usually by revoking the partnership agreement, the prevailing norms are not honoured or respected and when standards are not kept or followed. Under these conditions the donor organisations may experience the sharp end of visible power of the state.

3.3 Hidden power:

National NGOs:

Hidden power relates to the ability to shape and influence state policies behind the scenes, for example by controlling who sits at the decision-making table and what gets into the policy or decision agenda. The power of the state, government in many instances manifest as hidden power. The state and government through its ministries, commissions and agencies control or determine whose voices are heard, who sits on board of governors of state agencies and what is included in its agenda. Hidden power is clearly used by the Ministry of Finance and Treasury and government to control the national budget process. In its quest for transparency and accountability in national budgeting, IEA has experienced many instances of resistance from the Treasury to give Kenyans open budget and citizen's budget which, require that budget information is availed to the citizens when they need it at no cost and that the national budget primarily benefits the citizens. The Treasury in many instances has failed to provide crucial information for instance on security budget and expenditures. IEA has also advocated for timely release of the budget estimates to allow citizens to analyse the budget and give their views. But the Treasury has in many instances responded that it needs more time to prepare the budget. IEA observed that citizens when they are given an opportunity by the Treasury they usually present their views regarding their needs and changes they expect to be included in the national budget but in most cases their views do not inform or become part of the national budget estimates.

INGOs:

Action Aid confirms that engaging state actors can be tough,

"Policy advocacy is not easy sometimes we hit a snag, we then work around some platforms. We link local partners to national partners and establish rapport with Members of County Assembly (MCAs), strategic partners, governors and other NGOs. Sometimes their alternatives are successful other times not. We have worked with UNICEF, Goal Kenya, Girl Child Network, Ministry of Education Sweden, and parents and teachers' associations (PTAs) [24].

Action Aid implies that it sometimes experiences instances of resistance from state actors but it struggles to overcome this resistance by using available platforms.

Private sector membership organisations:

Hidden power is manifest in KEPSA's activities with government. KEPSA has experienced conflict of interest between itself and government and between itself and its members. For example, there was conflict of interest between KPL and IPPs, Oil and gas LPG companies. When conflict is rife the government has its way due to influence of the big interests. For example, investment in private transport contributed to the collapse of public transport in Kenya. KEPSA members supported the revival of the railway transport sector. Sometimes the private interests override public interests. Examples of areas where KEPSA has experienced conflict of interest include the cement industry, communication sector particularly Safaricom and Orange. *"When Agha Khan comes to Kenya usually there is an issue he comes to settle mainly a threat to media". When parliamentary committee on Labour and social welfare was taken to Mombasa to discuss and understand the proposed Bill only 3 members understood the Bill"* [25]. Hidden power operates in both the government and KEPSA as some KEPSA members shape and influence state policies behind the scenes.

The case of JKA is also a good example to illustrate hidden power. JKA has experienced rejection by government for a long time, but due to runaway unemployment situation in the country, the government has come to recognize and appreciate the jua kali sector. Micro and Small Enterprise Authority (MSEA) was formed by the government but excluded jua kali in the deliberations partly because the sector has been semi illiterate for a very long time. The sector faces many challenges including in appropriate education programme for members. The sector is despised due to informal education

---

[23] EU website. Accessed 12/05/2014
[24] Interview with Action Aid Official, 2014
[25] Interview with KEPSA official, 2013

of the members. The government has rarely invited the sector leaders to forums to discuss matters affecting the sector. The sector wanted to be under the Ministry of Labour because of its small size but the government placed it under the Ministry of Industrialization where it has no visibility. The hidden power that constrains the sector can be found within government, KEPSA and KAM, 'the big shorts' in the private sector.

Donor organisations:

While visible power of the state may be a bit difficult to locate in the relationships between the donors and the state, hidden power of the state can be located within the citizens who benefit from donors' assistance. It is usually in the interest of the donor and the state for the donor to provide development assistance. Each party would do what is possible to ensure that her interests are met. The case of the World Bank provides an illustration of hidden power.

"The Bank's sustainability is based on transparency, understanding government needs, building long lasting relationships with the networks and the government, sharing information and constantly identifying gaps to update the government and support it" [26].

It is clear that it is within the interest of the Bank to work with the government and respond to its needs. But the government represents the citizens of Kenya. Therefore, if citizens perceive that they do not benefit from the assistance given by the Bank, the Bank may hold the government accountable or the Bank may take responsibility for not achieving its desired objectives. The hidden power of both the government and the Bank is visible in the citizens who are the targeted beneficiaries of the Banks interventions.

3.4 Invisible power:

National NGOs:

Invisible power means control over people's internalised norms and beliefs achieved mainly through processes of socialisation and the diffusion of dominant ideologies. Although invisible power is difficult to identify, IEA experience with public policy issues that become overly over-politicised presents a good case. "These have been subject/theme specific but mostly when the subject is very political it is very difficult to sale it through" [27]. Similarly, ICPK had an experience of invisible power as interpreted in the statement below.

"We had a South African institute visiting us but we did not learn much from it because our standards are much better than theirs. However, we have something from the UK particularly benchmarking with international bodies. We have benchmarked ourselves against local players such as Law Society of Kenya (LSK), Kenya Private Sector Alliance (KEPSA). These institutions have maintained constant presence" [28].

The case of IEA is quite common among senior state officials who use politics to either trivialise very important issues or exaggerate unimportant matters to the public. The hidden power through political and cultural socialisation enables them to influence many people and divert attention and focus of the people to propaganda. ICPAK invited South African Institute because ICPAK believed that since it is coming from outside Kenya and from a country that is more developed than Kenya, the Institute had something valuable to deliver to ICPAK. But ICPAK members were surprised that some of the local institutes deliverd much more than the Institute from South Africa.

INGOs:

In July 2013 Action Aid pushed the government to be transparent with its handling of the issue of tax incentives for multinational corporations (MNCs). The government was offering multinational corporation some tax incentives to attract them invest in Kenya. This would negatively affect tax revenue for the government and in turn impact negatively on the citizens as it would amount to revenue loss. There were interested parties in government who wanted tax incentives to be given to MNCs and they were busy pushing for government decision on incentives to be adopted. This was a clear case of invisible power working behind the scenes.

---

[26] Interview with World Bank official, 2014
[27] Interview with IEA Official, 2014
[28] Interview with ICPAK official, 2014

Private sector membership organisations:

JKA case clearly shows how invisible power is used by government to undermine its efforts to participate in public policy decision-making. Biases are used to keep the association away from participating in decision-making process. For instance, the views of the JKA Official show biases and stereotypes, "Micro and Small Enterprise Authority (MSEA) was formed by the government but excluded *jua kali* in the deliberations partly because the sector has been semi illiterate for a very long time. The sector faces many challenges including in appropriate education programme. The sector is despised due to informal education of the members" [29].

Donor organisations:

Invisible power is discernible in the EU Lisbon Treaty of December 2009 which strengthened and consolidated EU's position as an international player. The Treaty sets out common principles and objectives for the Union's external action such as democracy, rule of law, universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, principles of equality and solidarity. These principles underline all EU relations and cooperation activities with third countries. These common principles and objectives form the basis of EU's internalised norms and believes achieved mainly through process of socialisation and the diffusion of dominant ideologies. However, government's invisible power is discernible in similar internalised norms and believes such as the state is sovereign thus, should not be dictated to especially, by other foreign states.

Invisible power of the state is also discernible in what DFID calls, its motivation to work in Kenya. This motivation is summed up in Box 4 below as follows:

> **Box 4: What motivates DFID to work in Kenya**
> *Kenya has the largest and most diverse economy in East Africa, growing at an average rate of over 5% a year for nearly a decade – with the notable exception of 2008, following post-election violence. Its entrepreneurial energy, human capacity and available capital give it huge potential to create jobs and reduce poverty. However, Kenya faces a number of challenges. Although poverty declined from 52% in 1997 to 46% in 2006, inequality remains high. About 25% of Kenyans do not have enough income to meet their basic food needs. Progress on the Millennium Development Goals is patchy, and especially weak on maternal and child health. New approaches to providing basic services such as health and education are needed if the millions of poor Kenyans are to prosper. Kenya is also particularly vulnerable to the impacts of climate change, with increasingly frequent droughts and floods. Above all Kenya is politically fragile, with a risk that its economic potential will not be realised if political stability cannot be maintained. Kenya's development is also constrained by high and stable levels of corruption and impunity among political, government and business leaders. Kenya is ranked 154 out of 182 countries on the Transparency International Corruption Perception Index.* [30].

The states inability or inaction to address the needs of its citizens also demonstrates the states' power over its citizens. It is one of the primary functions of the state to ensure that its citizens do not live in poverty and in other forms of deprivations such as insecurity, hunger, poor health, ignorance and illiteracy, harsh climate etc. The efforts of DFID focused at changing these conditions are often not complemented by government's interventions thus; they work against DFID's contribution to inclusive public policy.

Multinational telecommunications corporations:

Stiff competition within the telecommunication industry has prevailed with some of the companies changing company names and or threatening to close down and exit the industry all together. The dominant company Safaricom has on several occasions been accused by its competitors for unfair competition.

> **Box 5: Victory of Airtel against Safaricom**
> The Communications Authority of Kenya (CAK) ruled in favour of Airtel after the company accused its rival Safaricom of anti-competitive practice, a move coming weeks after Safaricom had decided to open up the network. The CAK prohibited the mobile operator from levying extra charges on competitors using its network. This brought to an end a long battle between Airtel and Safaricom over exclusivity of the service, which barred M-Pesa agents from engaging in business with other mobile operators. In a letter signed by the CAK, and sent to Safaricom and Airtel on

---

[29] Interview with JKA official, 2014
[30] DFID website. Accessed in 2014

Friday July 25, 2014 Safaricom was ordered to affect the directive before July 18, 2014. *"All restrictive clauses in the agreements between Safaricom and mobile money transfer (M-Pesa agents) are immediately expunged but in any event not later than July 18, 2014,"* the letter stated. The CAK in its ruling also declared that Safaricom oversight shall be limited to its business with the agents. Each mobile money service provider shall also be responsible for ensuring compliance with the Central Bank of Kenya regulations [31].

In May 2014 Business Daily carried a story about the government preference for Safaricom to build and manage a modern security system in the two major cities, Nairobi and Mombasa. This revelation caused uproar among other telecommunication companies, the opposition coalition and the general public. The normal procedures for tendering were not conducted as the government single picket Safaricom.

Box 6: Safaricom to run the security system

Safaricom will earn Sh2 billion annual fee for its management of the national security communication system, which the government has contracted it to build and operate for a period of five years. Safaricom will build a high-speed fourth generation network also known as Long Term Evolution network and supply the police with radio communication devices (GSM walkie-talkies fitted with SIM cards). Telecoms industry analysts said the deal has effectively tilted the market in favour of Safaricom because it frees the operator's hands to move to a higher quality platform. Rivals Airtel, Orange and yuMobile must keep using the third generation platform until the State cuts through the maze of regulations it had set around the 4G network. Safaricom savvy offer to the government is being seen as part of the company's charm offensive meant to win it more frequencies and grant it an easy pass through an impending renewal of its operating licence next month. The mobile operator has also promised to offer free internet connectivity to all public primary schools that will benefit from the government-sponsored laptops project[32].

Safaricom has resiliently protected its market share by fighting off any new intruder. The recent intruder, Equity Bank, has also introduced similar service to M-Pesa, mobile money service pioneered by Safaricom.

Box 7: Control of mobile money market

Safaricom, the country's largest telecoms operator and Equity, the leading bank by customer base have been battling out for the control of Kenya's mobile money market since June 26, 2014. Safaricom wrote to the telecoms market regulator claiming that Equity's thin SIM technology poses a security threat to mobile subscribers. Finseve responded to Safaricom letter, saying that it intends to source the thin SIMs from a reputable technology company, Taisys of Taiwan, which has reputable clients such as the International Finance Corporation the investment arm of the World Bank [33].

The strongest company, Safaricom has remained in control of Kenya's mobile market. It has continued to enjoy both business and political spaces with the support of the government. The recent favour extended to the company by the government reveals partnership relations existing between the two. This partnership is built on mutual trust and interest. Investing in trust requires providing sufficient assurance as to the protection of the private interest when policy decisions are made and ensuring a level playing field for the corporation and government in the policy making process.

3.5 Challenging power of the state actors:

National NGOs:

National non-governmental organisations engage with and contest "power over" in several ways and contexts. These ways and contexts are the spaces within which power relations manifest themselves and are subject to contestation and challenge by non-state actors. Have the above organisations been active and successful in opening closed spaces, in participating in invited spaces, in claiming spaces from state actors or power holders, or creating spaces for themselves? Before we focus on each of these spaces, we need to recognise that the mandate, visions and missions of these organisations have necessitated some level of invitation by government to suggest relevant views to include in policy drafts and contribute to policy consultations. Not all the organisations have enjoyed same level of invitation. For instance,

---

[31] Communication Authority of Kenya Director General, July 2014
[32] Business Daily, Thursday, May 15, 2014
[33] Control of mobile money market: *http://kenya.rcbowen.com/talk/topic/safaricom-gets-suppor-in-war-with-equity/by Lilian Mutegi. Accessed on September 13, 2014.*

IEA and ICPAK have been invited by the government in many occasions to contribute views to the annual Finance Bill, while CGD contributed a great deal of ideas during the preparation of the Political Parties Act. Hakijamii had to claim her own space by teaming up with other organisations to inform the Urban Housing Act. "*We created our own spaces for engagement and we became part of the policy process as members of the working groups on urban policy*" [34].

These organisations save for ICPAK, had to challenge the arena of limited space where only state actors enjoyed the prerogative of participating in public policy decision-making and to a large extent policy delivery. In this arena, some of the decisions were made in closed doors mainly involving the elite actors such as government members and bureaucrats, but could also involve high ranking members of the ruling parties, military leaders and some prominent business elite. This confirms the observation made earlier that opening up closed spaces has been a collective effort of the non-state actors including the rights organisations.

Hence, each of these organisations began by claiming some space to be recognised by the government. This was the beginning of their countervailing power, as they tried to open doors so that decision-making is subject to wider public consultation, engagement and influence. They targeted political representatives and attempted to hold them to account. It was only after these organisations took several initiatives to contribute to their policy area that government began recognising their valuable contributions. For example, IEA is registered as a company limited by guarantee while ICPAK was established through an act of parliament and given mandate by government to monitor and advice government on matters of public finance management. While ICPAK has a direct mandate from government to contribute to government policy, IEA gave itself the mandate to mobilize the views of the citizens on national budget and present to the government as well as providing information to the citizens to enable them participate in the national budgeting process. ICPAK has thus enjoyed "invited space" as it was selected from civil society and invited to participate in policy decision-making and delivery process. Initially this participation was a one-off thing but with time it has been institutionalised and is now continuous.

INGOs:

Action Aid pushed for amendments to Basic Education Act through CLARION work empowerment programme funded by DANIDA from 2012 to 2013. National and local partners were involved including Sauti ya Wanawake, Pambazuko la Wanawake Magaribi, Kibira, Makina, Mwari Paralegal Associations (Women empowerment link). CLARION reviewed basic education Act, met with CSOs and key government officials and presented its position. Action Aid has consistently created spaces for engagement with the government both directly and indirectly. It has engaged the government directly by meeting with government officials to present its position and indirectly by working through local communities and other non-state actors.

WV straggled to find space for participation through the Ministry of Education and the task force. But later, the Ministry of Education opened doors when the late Mutula Kilonzo was the Minister for Education (2008-2013). Since then the relationship between the Ministry of Education and WV has been good and has improved with time. The WV has created its own space and believes that it is not easy for the state actors to ignore its role in education.

AI seized an opportunity and created its spaces for engagement with the government through the support of the international declarations on human rights, it engaged the government to comply and honour human rights for all citizens without discrimination. AI has continued to provide oversight of the realisation of the international declarations on human rights reminding the government to honour the declarations.

Oxfam has also created its own space for engagement with the government overtime. Oxfam's work in Kenya is entrenched in promoting better governance at local, regional and national levels by strengthening poor people's ability to defend and demand their rights. Oxfam has ensured that its partners and the communities it works with have their voices and concerns heard, and that the Government fulfils its responsibilities to poor Kenyans. Oxfam has supported civil society networks to campaign for transparent policies on natural resources such as oil. Oxfam has assisted urban traders to have access to justice, protection and legal systems. It has campaigned for equitable provision of basic services such as water and sanitation, and access to finance. In supplementing governments' efforts in the provision of social services, Oxfam found an opportunity to engage government through collaboration. Therefore, all international non-governmental

---

[34] CEO Hakijamii, 2014

organisations have created their own spaces for policy engagement with the government. Their ability to claim their own spaces and contribute to public policy has also been aided by the resources they have and their visions and missions.

Private sector membership organisations:

KAM created its own spaces for engagement with the government. Due to its large membership, sustainable resource pool and the significance of the members in the overall economy, the government has found it very difficult to ignore KAM's contribution to public policy process. KAM has been proactive although it reacted to the first draft Bill on VAT. It initiated meetings with parliamentary committees. KAM was invited by the government to discuss the VAT Bill. It collected the views of the members and prepared a position paper and presented it to the government. There are instances where KAM has initiated discussions with the government without being invited. KAM has been involved with the government at all stages of public policy process. But it has been more involved at the agenda setting stage and the policy formulation stage. KAM has tried to set agenda for the whole year involving the government and following through to monitor the implementation and evaluation.

KEPSA adopted a non-political, non-partisan approach to working with the government of the day through public private dialogue frameworks complementing or supplementing government efforts. KEPSA has unwritten rule about being non-political. KEPSA enjoys coercive power through its large membership and use the same power to marshal the entire private sector which has membership of about 95 per cent of the entire private sector affiliated to KEPSA. KEPSA also enjoys power of individual industrialists such as Manu Chandaria, Chris Kirubi and others.

The JKA has enjoyed limited invited space to contribute to public policy process. Although the government has invited the sector to public policy forums, the sector has not benefited much from these forums due to low educational levels of the leadership and the members. The sector lacks adequate capacity to create and claim spaces for engagement in public policy process. Given that public policy process is highly knowledge based and unlike their counterparts KAM who are able to generate knowledge through research and members' expertise, JKA sector members lack sufficient knowledge and skills to engage in high-level policy debates especially about business interest-related policies.

Donor organisation:

The World Bank (The Bank) consults more often with the government and collaborates in many areas. The Bank reaches out to government but sometimes the government invites the Bank to support government progammes and projects. The Bank uses its own human resources where necessary and offer financial support where necessary. However, The Bank has been on constant look out to identify gaps in government activities and engage the government for assistance. The Bank enjoys incredible spaces given its status and resources and often claims its own spaces whenever government delays to invite it to participate in the policy process. The Bank works with both the national and county governments. At the county government level, the Bank is more involved in capacity building of county staff for efficient financial management of the county finances. The Bank has been invited by many county governments to train its staff in proper management of county funds.

The EU created spaces for engagement with third world countries through the Lisbon Treaty on 1st of December 2009, the European Union has strengthened and consolidated its position as an international player. The Treaty sets out common principles and objectives for the Union's external action such as democracy, rule of law, universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, principles of equality and solidarity. These principles underline all EU relations and cooperation activities with third countries. The Treaty also has implications for the role of Delegations by giving them more robust political role that is shared with the rotating EU Presidencies.

In accordance with Article 177 of the Treaty establishing the European Community, Community policy in the sphere of development cooperation is to foster: the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them; the smooth and gradual integration of the developing countries into the world economy; and the campaign against poverty in the developing countries. By virtue of its treaty and mandate, EU also enjoys enormous spaces claimed and invited. The government finds it almost impossible to close space for EU participation in public policy as it depends heavily on EU's financial support for funding of government's development programmes. Given its status and role in public policy process, EU is therefore a special partner with the government.

What motivates DFID to provide financial support to Kenya is that Kenya has the largest and most diverse economy in East Africa, growing at an average rate of over 5% a year for nearly a decade – with the notable exception of 2008, following post-election violence. Kenya's entrepreneurial energy, human capacity and available capital give it huge potential to create jobs and reduce poverty. However, Kenya faces a number of challenges. Although poverty declined from 52% in 1997 to 46% in 2006, inequality remains high. About 25% of Kenyans do not have enough income to meet their basic food needs. Progress on the Millennium Development Goals is patchy, and especially weak on maternal and child health. New approaches to providing basic services such as health and education are needed if the millions of poor Kenyans are to prosper. Kenya is also particularly vulnerable to the impacts of climate change, with increasingly frequent droughts and floods.

DFID acknowledges that Kenya is politically fragile, with a risk that its economic potential will not be realised if political stability cannot be maintained. Kenya's development is also constrained by high and stable levels of corruption and impunity among political, government and business leaders. Kenya is ranked 154 out of 182 countries on the Transparency International Corruption Perception Index [35]. DFID also has financial resources that enable it to participate in Kenya's public policy process. Given its status and mission based on eradicating poverty, DFID also enjoys both claimed and invited spaces for participating in Kenya's public policy process.

As part of the implementation of the first objective of the strategy IBP has focused on increasing demand for budget transparency through collaboration and supporting IEA budget programme. IBP observed that CSOs submissions on budget have not been crafted well to win influence of the Treasury and members of parliament. IBP is shifting towards capacity building of the CSOs to assist them develop better submissions. IBP has hired two people to work full time with the parliamentary budget office to coordinate the work of the parliament.

On the second objective, IBP has tried finding ways of engaging with the Treasury, CIC directly and through IEA and also through working with CABRI. IBP has done training with the Controller of budgets and is moving into doing more work with Auditor General's Office. IBP is making a strategic entry into Kenya's public policy community through a systematic collaboration with the civil society organisations. IBP hopes to contribute to public policy by working and supporting the efforts of the civil society organisations. IBP is therefore yet to claim its own space for participation in public policy process. It has so far enjoyed limited invited spaces to contribute to national budgeting process both at the national and county levels. With its broad strategic vision, IBP may in the near future also begin to enjoy both claimed and invited spaces to participate actively in public policy process.

3.5.1 Opening closed spaces through direct engagement, partnerships, financial support and existing structures:

National NGOs:

IEA has several examples of spaces that it has opened. These include direct engagement with parliamentarians to create awareness of the need for competition law in the current era of neoliberalism, one on one meetings and consultations with individual members of parliament (MPs) to enable the MPs understand national budget estimates and dissemination of their research findings particularly, to Treasury, Senate and Parliament. "We use parliamentarian chairpersons. Some parliamentarians come to us requesting for a write up which they can use to present their position" [36]. Similarly, ICPAK has tried to open policy spaces by identifying key institutions and managing relationships. "The use of position papers, continued engagement with key actors in government and outsourcing submissions through collaborations has worked well for us" [37].

All organisations have used some form of direct engagement with members of parliament and other policy actors, sharing research/fact findings with parliamentarians, position papers and collaboration with other organisations. It appears as if all the organisations favour direct engagement as the most preferred way of opening closed or limited public policy spaces. But how has direct engagement worked? This has worked in three ways: one-on-one meetings or discussions with members of parliament and the government officials; meeting the chairpersons of parliamentary committees; and identifying a champion among the parliamentarians to present the views of the non-state actors to the other members of parliament and exerting influence. Collaboration with other organisations has also worked well through establishing networks.

---

[35] Transparency International, Kenya 2014
[36] CEO IEA, 2014
[37] Programme Officer ICPAK, 2014

INGOs:

Partnerships with other non-governmental organisations and lobbying as well as direct engagement are the main strategies used by international non-governmental organisations to challenge power relations. A few examples will suffice to illustrate closed spaces. Amnesty International has challenged closed spaces by using innovative strategies including email petitions and other online actions. Table 6 bellow presents various strategies employed by the organisations.

The approaches used by Action Aid and CLARION include lobbying, one on one meetings, collaborating with other organizations, direct engagement with government, and conferences. *"Action Aid has also been working with partners to build capacity for advocacy. Action Aid is now changing its strategy from service delivery to empowerment of the communities to demand or claim rights from the government"* [38]. It views this strategy as sustainable given that there is dwindling of funding for their projects.

Private sector organisation:

KAM has engaged the government at the national and county level through its chapters strategically located in Kisumu, Thika, Athi River, Eldoret, Nakuru, and Mombasa and in Industrial Area Nairobi. These chapters are important as they enable KAM to reach out to the local level. While responding to the VAT Bill, KAM received resistance from the government regarding its recommendations on VAT. The time taken by the government to response to KAM's recommendations has also been long.

KAM has used own existing structures including the Board, Chapters, working committees, individual members in the industry and different sectors to open closed spaces. KAM has been guided by its business development and strategic plan. Other strategies used by KAM to engage the industry players particularly the government and other stakeholders include position papers; media publicity of the issues under considerations; education dissemination of information to its members.

Donor organisations:

It is apparent that fact finding and research are key approaches used by the Bank before any intervention is made. These approaches help the Bank to open closed spaces to enable it participate in public policy process. Fact finding and research enable the Bank to gain knowledge about the issues before it can respond to them. Based on the uniqueness of each county there is more of ownership of strategy and consultation. Joint consultation has proved quite useful as a tool of engagement. The Bank provides financial support for the implementation of government policies, facilitating capacity building, generation and dissemination of information. The Bank's strategy has worked well so far as it has abandoned its old and infamous "carrot and stick" approach (which was predominantly characterised by imposed policies and sanctions). The current joint consultation approach seem to work well as it also brings on board other actors from civil society organisations including the business community. These consultations are structured to allow and respect the views and contributions of different actors and their interests. This approach also allows the Bank to work directly with the national and county governments as well as the civil society organisations including the business community [39].

Similarly, EU has opened closed spaces by signing bilateral agreements with Kenya to support several programmes that aim to enhance infrastructure, governance, democracy, trade, economic growth, human rights and regional integration. The EU maintains diplomatic relations with Kenya in. It has strategic partnerships with key international players, is deeply engaged with emerging powers around the globe, and has signed bilateral Agreements with several states. In other countries, the Union is represented by a network of 141 EU Delegations, which have a similar function to those of an embassy. European Union development assistance is supporting new born babies and farmers; devolution and access to justice; roads and energy infrastructure; access to affordable food and clean water; the urban poor and those living in Kenya's remote regions. The European Union supports Kenya's leadership in the region, as an economic gateway and trade leader, and supporter of good governance. Alongside national policies, the European Union believes that development support is necessary for increasing prosperity. The EU also recognises a growing role of the private sector, trade and investment in development [40].

---

[38] Action Aid Programme Officer, 2014
[39] Interview with World Bank Official, 2014
[40] EU website. Accessed in 2014

EU has planned to spend Euros 435 million between 2014 and 2020, working closely with the Government of Kenya, to continue to improve key Infrastructure, agricultural development and food security, and to support governance that builds social unity. Development assistance is only one pillar of the comprehensive partnership with Kenya. Kenya's Security is dependent on regional stability and is important to the security of Europe. The European Union is the largest supporter of the peace process in Somalia, including financial support to the African Union Mission to Somalia. EU also supports regional institutions of security and stability. The European Union's Humanitarian Aid and Civil Protection agency, ECHO, responds quickly to emergencies and seeks to tackle the underlying causes of malnutrition, recurring famine and refugee issues in Kenya and the wider region. Above all, Europeans have invested in a relationship with the people of Kenya, a close cultural and social relationship that is expected to last for many decades to come.

3.5.2 Invited spaces:

National NGOs:

Non-state actors that have been invited by the state actors are those that have gained good public profile and legitimacy in the eyes of the state-actors. Invitation into closed spaces is not automatic. It comes either as a direct result of lobbying by non-state actors or of gaining sufficient recognition to warrant state actors, however reluctantly and with whatever motives feel compelled to give them some access to decision-making spaces. For instance, ICPAK's mandate is to advice government on accountability issues. "For a long time ICPAK has reacted to Treasury but now we are proactive. The main source of our strength is the human resource we have. We have 13,000 accountants we work with and who are also our members" [41].

The main policy space for ICPAK has been in public finance planning and monitoring. ICPAK has participated in developing policy recommendations through engagement with national treasury. It has provided analysis of the MTF framework. It has prepared budget circulars and proposals on issues informing economic stability of the country and discussed the proposals and analysis with the national Treasury. ICPAK has also engaged directly with the budget office at the national level to interrogate the Finance Bill and parliamentary finance committee thereby informing the fiscal policy of the country. *"We look at the country's perspective, taxation, deficits and interest rates. These are items in the budget not analyzed by ordinary mwanainchi"* [42].

The government recognised the interest and input of CGD into Political Parties Act 2011 and invited CGD to participate in the process of finalising the Bill. CGD also lobbied to be part of the team that was putting the Bill together, thus the government could not ignore its relevance.

INGOs:

Amnesty International (AI) collects facts on the ground by engaging those affected and listening to their stories. These is then documented and analysed and further informed by other reports and documents related to the issues. Through these activities, AI has occasionally been invited by state actors for engagement. AI holds meetings with the government officials and other relevant stakeholders. During the meetings, AI presents its concerns in form of recommendations drawn from its fact findings. AI also disseminates its research findings to many stakeholders including funding organisations. It consults with people who are affected by the issue under consideration and captures their stories.

Similarly, for a very long time Oxfam has been working in the northern parts of Kenya, where cattle-rustling, banditry, and inter-ethnic and cross-border clashes over resources are common. Human development has been slow in these areas. It has also worked in urban centres where there has been an increase in violence due to unemployment and lack of alternative livelihoods among urban poor people. Oxfam focuses on enhancing communities' capacity to resolve conflicts and co-exist peacefully. It influences national policy through the National Steering Committee on Peace-Building and Conflict Management, under the Office of the President. Oxfam has therefore also occasionally been invited by government to contribute to and inform government decisions on resources handling in northern Kenya and other parts of the country.

---

[41] Interview with ICPAK Official, 2014
[42] Interview with ICPAK Official, 2014

Private sector membership organisations:

The power relations between government and KEPSA have been more cordial than restraint. Kenya Private Sector Alliance (KEPSA) is internally organized by sectoral boards on: health, education, environment etc. KEPSA has provided technical capacity to policy forums. These forums are the Ministerial Stakeholder Forums (MSFs) through which KEPSA influences various government policies. KEPSA involves sector members to discuss policy issues, drafts and contributes to the MSFs. KEPSA receives communication from the government to provide input to policy drafts. KEPSA sits on the task force for various policy development processes. Its members participate in sector meetings giving high level representation from the private sector. In the past KEPSA participated in Prime Minister's round table discussions to discuss various policy issues that the Office of the Prime Minister was considering. It also participates in Presidential round table discussion on cross-cutting issues of national interest such as security, tax policy, energy, unemployment, regional integration, etc. KEPSA has also strong engagement with the parliament and the senators.

KAM was invited by the government to discuss the VAT Bill. It collected the views of the members through a process of sector specific issues, prepared a position paper and presented it to the government. There instances where KAM has initiated discussion with government without being invited. KAM has been involved with the government at all stages of public policy process. But it has been more involved at the agenda setting stage and the policy formulation stage. KAM has tried to set agenda for the whole year involving the government and following through to monitor the implementation and evaluation.

Similarly, in 2010 the government invited the JKA sector to discuss its challenges with a view to enabling it to be more productive. The sector demanded that the government gives the sector members social protection and the Nairobi County officials from harassing its members. The sector also demanded for adequate working space, an end to grabbing of its land, financial assistance, and expansion.

Donor organisations:

IBP was invited to make a submission to the Commission on Revenue Allocation (CRA) concerning the revisions to the first formula for revenue sharing approved by Parliament in 2012. IBP tried to bring in members of civil society organizations to participate in the negotiations with the CRA).[43] It considered working with Media focus on Africa which in the past had organized some dialogue [44].

3.5.3 Claimed and created spaces:

National NGOs:

The above non-state actors have actively claimed and created spaces within which they have voiced their demands and activities to gain government's attention. Their demands and activities have included mobilizing community groups; developing position papers to discuss with the government officials; disseminating the outcomes (reports, publications of their research and analysis), wider audience consultation, training, research and fact finding and building coalition. For instance, CGD formed a coalition called Accountable financing coalition with Transparency International Kenya, Centre for Multi-party Democracy and political caucus. CGD also identifies champions from different political parties to collaborate with. CGD with other non-state actors created National Taxpayers Association (NTA) which provides them with a forum to monitor the collection and use of taxes.

In the foregoing discussion three observations can be made. First, individual organisations use a variety of means to challenge power. Second, although the organisations have been able to create spaces, they have done so most frequently and effectively in claimed and created spaces. Third, spaces have a dynamic nature, for example created spaces can contribute to claiming spaces.

INGOs:

All international non-governmental organisations have been active in claiming and creating their own spaces for engagement with state actors. World Vision (WV) made use of social accountability approach which enables it to provide

---

[43] www.Internationalbudget.org/Kenya
[44] Interview with IBP Official, 2014

community information to government. It also reviews technical documents with the input of other civil society organizations and give submissions to the government. It makes use of breakfast meetings and board room meetings with the Ministry of Education personnel and other stakeholders. It participates in conferences and lobby members of parliament to share documents and information on specific policy issues.

Amnesty employs various approaches and strategies to assist stop human rights abuses. It mobilises the public to put pressure on governments through publication and promotion of research findings, public demonstrations, vigils, letter-writing campaigns, human rights education, awareness-raising concerts, direct lobbying, targeted appeals, email petitions and other online actions, partnerships with local campaigning groups, community activities and co-operation with student groups.

Oxfam works closely with others, supporting local civil society to hold the Government accountable for its response to climate change. Oxfam also generates relevant climate change data to inform advocacy positions locally and internationally. According to Oxfam, previous polices have failed to take into account the needs of the poorest and most marginalised communities, a situation which has contributed to the current climate related disasters experienced in Kenya [45].

Many areas in the Northern part of Kenya face chronic droughts, the rains failed in 2010 and 2011, pushing up food prices, killing cattle and ruining harvests, causing millions of pastoralists and small farmers to lose their livelihoods. In 2011/12 Oxfam responded as millions of people faced desperate food and water shortages and lost their cattle. Oxfam also responded in Dadaab refugee camp, home to over 450,000 Somali refugees who have fled conflict and famine in their homeland. In times of conflict, such as the 2007-08 election violence, Oxfam provided vital water and sanitation to those affected.

Private sector membership organisations:

FKE created its own spaces for engagement through its own initiatives. This has enabled it to participate in public policy process right from the policy formulation stage all the way to policy implementation. FKE participates in public policy at national, regional, sector and enterprise levels. FKE makes use of the following strategies in its engagement with government: direct participation in policy formulation, memos, capacity development in relevant areas, press releases in media/social media, host forums for its members, direct engagement with policy makers, public forums (especially on labour day celebrations), engaging through both local and international forums. FKE partners include the government and company employers. Its key approaches to policy interventions include tripartite agreements between employers, government and FKE; presenting interest of employers; maintaining high level professional standards; use of facts, data supported arguments [46].

Similarly, KAM created its spaces for both internal and external engagement. It has used own existing structures including the Board, Chapters, working committees, individual members in the industry, different sectors. KAM has been guided by her business development and strategic plan. Other strategies used by KAM to engage the industry players particularly the government include; preparing and presenting position papers; claimed media space to do media publicity of the issues; educating the members to rally their support and providing them with full information.

Donor organisations:

DFID has a duty to show that it is achieving value for money in everything it does. Results, transparency, and accountability are its watchwords and it is determined to get value for money for every hard-earned taxpayer pound spent on development. Kenya has seen significant growth in the UK's bilateral aid programme over 2011-2016. DFID spent £70 million in 2010/11, which could reach over £130 million in 2014/16. Its value for money strategy ensures its programmes achieve the maximum impact for the money spent, based on a clear understanding of the unit costs of delivery. Its strategy also strengthens awareness and capacity to improve procurement, and seeks efficiency through effective programme management. In line with the UK Aid Transparency Guarantee, DFID had published the Kenya Operational Plan (2011-2015) online where it is accessible to partners, the public and other stakeholders. Comprehensive project information, including levels of funding, procurement, expenditure, easy-to-understand project documents and project data are also

---

[45] Oxfam website. Accessed, 2014
[46] FKE Programme Officer, 2014

available on the DFID website. DFID encourages project partners in government, private sector, and non-governmental organisations to abide by international standards of transparency and accountability. DFID requires them to raise awareness of DFID-supported projects among targeted beneficiaries using appropriate local languages.

The European Union is committed to helping deliver the Government of Kenya's development agenda, to help build lasting peace and prosperity in the country. Working in close cooperation with Ministries and officials, the European Union provides assistance in line with the government's Medium Term Plan and ultimately the goals laid out in Vision 2030. From small-scale health community-led projects to long-term investment in energy and transport infrastructure, the European Union is at the forefront of international support to Kenya's growth and development. In 2011, the 28 member states of the European Union disbursed Euros 600 million to Kenya in development assistance. The main approach used by EU is therefore development assistance in form of financial assistance to fund developmental programmes and stable governance. However, this approach is based on EU's diplomatic relations and bilateral agreements with Kenya.

IBP has also claimed and created spaces to enable it engage state actors on national budget transparency issues. The work of IBP in Kenya has been developed around the strategy developed and approved in 2013. The strategy is now in its second year of implementation and it has four main objectives: national budget transparency or the demand side, productive relationship with the Treasury, Constitution Implementation Commission (CIC) and Commission on Revenue Allocation (CRA) or the supply side, revenue sharing and partnership at the county level. The first three are at the national level while the fourth and the last is at the county level. IBP's approach is basically a multipronged strategic intervention to participating public policy process in Kenya. With this approach, IBP expects to achieve its goals of openness and transparency in national budget process.

Multinational telecommunications corporations

Apparently, the government is finding it difficult to make decisions in the mobile telephony industry which are acceptable to all the industry players. Strong and dominant corporations seem to have their way and the government seems to support them. We can deduce that the same corporations have greater influence on telecommunication policies in Kenya as two of these corporations are partly owned by the government of Kenya and conduct business with political leadership of the country. Safaricom and Orange Kenya are partly owned by the Government of Kenya and senior politicians both in the former and the current government also own significant shares. It is therefore obvious that the government and politicians who have a stake in the companies will protect their interests in the corporations while they are in authority.

It is therefore unlikely that these corporations do not directly influence some key public policies that relate to their businesses. This view has also been echoed by techmoran.com *"Being partly owned by the government, it becomes hard to regulate Safaricom and even harder to allow a direct competitor to its suppliers. Safaricom M-PESA is hosted by Kenya's Commercial Bank of Africa a bank said to have ties with the first family. It would be hard for anyone to let go of their golden goose just like that."* [47]. The dominance of Safaricom in the mobile telephony industry and the awarding of tenders to it by the government without competitive bidding process can partly be explained by these relationships. From the above discussion there is no doubt that non-state actors are in a collaborative relationship with state actors in public policy process.

3.6 Building countervailing power:

National NGOs:

Positive power manifests in three ways, 'power to', 'power with' and 'power within'. Have these organisations been successful in developing countervailing power and challenging the power structure of the state? Again, examples from the experiences of these organisations are quite useful in answering this question. ICPAK has been successful as its position papers have been considered by government. ICPAK played a significant role in the national budget (2014/2015) where it informed the Finance Bill leading to its passing with their input. ICPAK has a progressive history of informing Finance Bills. It also informed the VAT Bill and Commission on Revenue Allocation formula for sharing revenue between the national and county governments. This experience and success reflect a process of building up 'power to'

---

[47] Dominance of Safaricom in mobile industry: *(*http://techmoran.com/*).*

Another example of 'power to' is the IEA's achievement. The successful passing of the competition law and policy by parliamentarians can be attributed to IEA that worked with the Ministry of Industrialization and made the parliament aware of the need for such law and policy. 'Power to' also overlaps with the development of 'power with'. For example, IEA did an analysis of the draft law presented in parliament in 2009 and informed parliament about the usefulness of the law. This was an example of 'power with'. The law was eventually passed.

Another example of successful development of countervailing power is the work of IEA on national budget. This is another major area or programme of IEA where it continues to influence public policy a great deal. National budget is conducted every year and hence IEA is involved in the national budget process throughout the year. IEA invites CSOs to give their views about the budget on specific budget items such as education, health, environment etc. It also collaborates with citizens to produce an alternative budget called citizens' budget and submit to the Treasury. IEA also analyses legislations related to public finance such as Public Finance Bill, Competition Bill, Parastatal Reform Bill, VAT Bill and Fiscal Management Act that created budget office and budget committee. IEA level of influence is mainly at national level but also influence several CSOs through training particularly those working at the count level. "For budget analysis we go to counties to share our analysis, create awareness and monitor the budget implementation. We usually share our proposals with the Ministry of Finance" [48]. The work of IEA especially training of CSOs reflects enhancement of 'power within' of individuals and can also imply a process of empowerment of the CSOs to enable them engage the power holders.

It is therefore apparent that these organisations have made some achievement whether these achievements are substantial or modest they are partly as a result of increase in 'power to', 'power with' and 'power within'. Therefore, there is no doubt that non-state actors have challenged power and developed alternative sources of countervailing power.

INGOs:

All international non-governmental organisations have been successful in developing countervailing power and challenged the power structures. For example, Amnesty International utilised 'power to', 'power with', and 'power within' as it has focused its programmes and activities on economic, social and cultural rights, particularly in the area of poverty, housing, forced evictions, and slums. Being a global movement with over 2.8 million supporters and members and activists operating in more than 150 countries and territories, Amnesty International has developed 'power to' campaign to end grave abuses of human rights. Drawing on its vision, (that is, every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards) and independent of any government, political ideology, economic interest or religion and funded mainly by membership and public donations, Amnesty International has developed 'power with' as evidenced by immense support from people worldwide.

Similarly, Oxfam has worked with other organisations including local communities to alleviate poverty and inequality in Kenya. Oxfam has worked with the most vulnerable communities in the dry and remote northern regions with the highest poverty levels in the country, and in the impoverished slums of the capital, Nairobi. Since 1963, Oxfam has provided long-term development aid and emergency relief, for example supporting refugees; promoted peace and managed conflicts between communities; and campaigned for better governance and equitable access to services. Oxfam aims at helping citizens stand up for their rights. Oxfam has developed 'power with' by working with others from government, civil society, communities, international development actors and the private sector.

Enhancement of 'power to', 'power with', and 'power within' is apparent in World Vision. World Vision has made achievements in Basic Education Bill as it worked with parliamentary committee on education and civil society national conference on education, submitted a policy view to the government and developed MoU with parliamentary committee on education. The current Basic education Act in Kenya has a lot of input from World Vision and civil society. World Vision sponsored several workshops including the workshop on national education support involved consultation with other stakeholders and partners including FIDA, SNV, and USAID; implementation of education policy within devolved government system and county education strategy development.

---

[48] Interview with IEA Official, 2014

The examples above provide evidence that international non-governmental organisations have challenged power and developed alternative sources of countervailing power. In this way, they have contributed to inclusive public policy process in Kenya.

Private sector membership organisations:

Apparently, all the private sector membership organisations have been successful in developing countervailing power to challenging power structures that have constrained their participation in public policy process. They have used their positive power including 'power to', 'power with, and 'power within'. The biggest achievement of KAM is its contribution to the VAT Act 2013 with an objective of providing an enabling business environment. It also contributed to tax policy through fact based advocacy research. The focus was on Kenya's pharmaceutical sector which is the largest industry in COMESA. This industry is riddled with issues including taxation, employment, health and competition.

Another achievement is the example of FKE. Its achievement was summarised by its official as follows: "FKE has been successful in some areas, with a rating of 60-70%. Its milestones include the passing of NSSF Act where it contributed a great deal and the Productivity Bill". These are clear examples of 'power to' as utilised by these organisations. These organisations are membership organisation thus they represent their members interests all the time. But they also educate them and provide them with information regarding the business environment, thus they manifest 'power with' and 'power within'. They not only represent the interests of their members but also empower their members with relevant knowledge and information that is good for the success of their business. There is no doubt that these organisations have challenged power and developed alternative sources of countervailing power.

Donor organisations:

Donor organisations have also been successful in developing countervailing power and challenging power structures using positive power that is, 'power to', 'power with' and 'power within'. Major achievements for the World Bank have been in the following areas: knowledge sharing at both the national and county level, public finance regulation in health and social accountability, collaborating with IBP and IEA on social accountability, generated county model revenue through collaboration with CRA, Council of Governors, CIC and county governments.

DFID's achievements have been determined to get value for money for every hard-earned taxpayer pound that it has spent on development in Kenya. It has spent increased its bilateral aid for Kenya significantly over 2011-2016. For instance,

 "We spent £70 million in 2010/11 which could reach over £130 million in 2014/15. Our Value for Money strategy will ensure our programmes achieve the maximum impact for the money spent, based on a clear understanding of the unit costs of delivery. It will strengthen awareness and capacity to improve procurement, and seek efficiency through effective programme management" [49].

In addition, DFID has encouraged her project partners in government, private sector and non-governmental organisations to abide by international standards of transparency and accountability. DFID has necessitated that project partners including the government raise awareness of DFID-supported projects among targeted beneficiaries using appropriate local languages. Therefore, it is clear that donor organisations have also challenged 'power over' and developed alternative countervailing power to promote inclusive public policy process in Kenya.

4. CONCLUSION

This study has assessed the use of power relations by non-state actors in influencing public policy process in Kenya. The study has observed that non-state actors influence public policy at the national and county levels. While national NGOs have struggled to claim space for engagement with the government, their counterparts international NGOs have not struggled as much to claim space for engagement. The private membership organisations have not struggled as much as both the national and international NGOs to find space for engagement, instead they have been invited by government in many occasions to contribute their views to inform various policies particularly, those policies likely to affect their business interests. They have claimed their own spaces in many occasions particularly, where their interests have been threatened by government policy. They have used their "power with" and "power within" to influence government

---

[49] DFID website. Accessed, 2014

policies. Donor organisations seem to have enjoyed a very good working relationship with the government as they have engaged as partners using formal structures in place that favour and respect the interests of each partner. Partners normally treat each other as equals hence there is mutual respect and trust. In such relationships, it is unlikely that one partner will want to intimidate or coerce the other partner as this may lead to dissolution of partnership. Power relations in multinational telecommunication corporations are more complex as state actors have a stake in the industry and influence major policy decisions for the industry.

REFERENCES

[1] Sisk, T, et al (2001). 'Expanding Participatory Democracy', Chapter 5 in *Democracy at the Local Level: The International IDEA Handbook on Participation, Representation, Conflict Management, and Governance*, International Institute for Democracy and Electoral Assistance

[2] Taylor, P and Fransman, J, (2004), 'Learning and teaching participation: Exploring the role of Higher Learning Institutions as agents of development and socialization.

[3] Bossuyt, J. (2000). Involving Non-State Actors and Local Governments in ACP-EU Dialogue (Policy Management Brief No. 13). Maastricht: ECDPM).

[4] Maddox, G. (2005). *Australian democracy in theory and practice* 5th Edt. Pearson Longman.

[5] Simmons, Julie M. (2013) "The role of citizens in the "soft law" of select social policy areas in Canada and the European Union", *Canadian Public Administration*, Vol 56 No 2, pp 270-86

[6] Millar, Heather (2013) "Comparing accountability relationships between governments and non-state actors in Canadian and European international development policy" *Canadian Public Administration*, Vol 56 No 2, pp 252-69

[7] Eyben, R, 2003, 'The rise of rights', *IDS Policy Briefing*, issue 17, May

[8] Cornwall, A. (2002). 'Making Spaces, Changing Places: Situating Participation in Development', *IDS Working Paper 170*, Brighton, CDRC, IDS.

[9] Cornwall, A, (2003), 'Whose Voices? Whose Choices? Reflections on Gender and Participatory Development', *World Development*, Vol 31 No 8: 1325-42

[10] Cornwall, A, (2004), 'Spaces for transformation? Reflections on issues of power and difference in participation and development', Chapter 5 in Hickey, S and Mohan, G, (eds), *Participation: From Tyranny to Transformation*, London, Zed

Books:

[11] OECD, (2012) Global Forum on Public Governance "Better Governance for Inclusive Growth". Global Forum on Public Governance http:// www.oecd.org/governance/globalforum (Accessed 2 December 2013)

[12] Comprehensive Africa Agriculture Development Programme (CAADP), (2011)

[13] CUTS international (2009), *"Towards More Inclusive Trade Policy Making: Process and Role of Stakeholders in Select African Countries",* ISBN: 978-81-8257-123-5

[14] Andreassen, Bard and Barasa Tiberius, (2013) Kenya: Civic Action from Confrontation to Collaboration. *In Human Rights, Power and Civic Action: Comparative analysis of struggles for rights in developing societies* by Andreassen, Bard and Crawford, Gordon (2013) (edts.). New York: Routledge.

[15] Barasa, Tiberius (2007) *Redesigning Kenya's Political System through shared Governance*. IPAR Discussion Paper No.094. Nairobi: Institute of Policy Analysis and Research

[16] Odhiambo – Mbai, (1999). 'The Nature of Public Policy-Making in Kenya 1963-1996' In Ng'ethe, N. and Owino, W. (1998). (Editors) *Towards Indigenizing the Policy Debate: From Sessional Paper No. 10 to Structural Adjustment.* Nairobi: Institute of Policy Analysis and Research.

[17] Hyden, G. (1995). "Party, State and Civil Society: Control versus Openness". In Joel D. Barkan. Beyond Capitalism vs Socialism in Kenya and Tanzania.

[18] Bossuyt and Carlsson, (2002). *Institutional Analysis of Non-state Actors in Kenya.* Nairobi: ECDPM Report

[19] Ng'ethe, N. and Owino, W. (1998). (Editors) *Towards Indigenizing the Policy Debate: From Sessional Paper No. 10 to Structural Adjustment.* Nairobi: Institute of Policy Analysis and Research.

[20] Gaventa, J. (2005). 'Reflections of the Uses of the 'Power Cube' Approach for Analysing the Spaces, Places and Dynamics of Civil Society Participation and Engagement', CFP Evaluation Series No 4

[21] Howlette, M. and Ramesh, M. (1995). *Studying Public Policy: Policy Circles and Policy Subsystems.* Oxford: Oxford University Press.

[22] Ozo-Eson, P. (2004). 'Pension Reforms and Economic Recovery' in Nigeria Social Insurance Trust Fund (NSITF): The Quest for Social Security. Abuja: NSITF.

[23] McGee, B. and Gaventa, J. (2004). *Unpacking Policy, Knowledge, Actors and Spaces in Poverty Reduction in Uganda and Nigeria.* Kampala: Fountain Publishers.

[24] Randall, I. (2011). *Guidelines for Non State Actor participation in CAADP processes* Prepared for the working group, Wasafiri Consulting.

[25] Althusser, L. (1969). *For Marx* (trans. B. Brewster), Harmondsworth: Penguin.

[26] Poulantzas, N. (1978). *Political Power and Social Classes* (translation editor: Timothy O'Hagan) London: Verso.Talcott, 1967

[27] Giddens, A. (1984). *The Constitution of Society: Outline of the Theory of Structuration*, Cambridge: Polity Press.

[28] Mann, M. (1993). The Sources of Social Power Vol. 2. The Rise of Classes and Nation States 1760-1914, Cambridge: Cambridge University Press.

[29] Arendt, H. (1970). *On Violence*, Orlando and London: Harvest

[30] Lukes, S. (2004). *Power: A Radical View*. London: Macmillan Palgrave.

[31] Rowlands, J. (1998). 'Empowerment and Development', in H. Afshar (ed.), Women and Empowerment, Macmillan: Basingstoke.

[32] Gaventa, J. (2006). "Finding the Spaces for Change: A Power Analysis". IDS Bulletin. Sussex: Institute of Development Studies.

[33] Ven Klasen, L. and Miller, V. (2002). *A New Weave of People, Power and Politics: The Action Guide for Advocacy and Ctizen Participation*. Oklahoma: World Neighbours.

[34] Pearce, J. and Vela, G. (2005) 'Colombia Country Report for the Dutch CFA Programme

[35] Parsons, W. (1999). *Public Policy: An Introduction to the Theory and Practice of Policy Analysis*. Cheltenham: Edward Elgar.

[36] Tarrow, S. (2005). The New Transnational Activism. Cambridge: Cambridge University Press.

[37] Batliwala, S. and Brown D., (eds) (2006). *Transnational Civil Society: An Introduction*. Bloomfield: Kumarian Press.

[38] Gaventa, J. (2003). 'Towards Participatory Local Governance: Assessing the Transformative Possibilities', Paper prepared for Conference on Participation: From Tyranny to Transformation, Manchester, 27-28 February.

INTERNET AND WEBSITES:

[39] Action Aid, Kenya. http://www.actionaid.org/kenya (Accessed 18 October 2013)

[40] Amnesty International, Kenya. http://www.amnesty.org/en/region/kenya (Accessed 18 October 2013)

[41] *Airtel, Kenya. http://*www.africa.airtel.com/kenya *(Accessed 18 October 2013)*

[42] European Union website Accessed 12/05/2014

[43] Department of Foreign International Development (DFID) website Accessed 2014

[44] Essar Telecom YuMobile Kenya. http://www.yu.co.ke

[45] Fischer, W. 1984: http://www.slideshare.net/xhee27/the-narrative-paradigm-6707957?next_slideshow=1

[46] Airtel, Kenya. http://www.africa.airtel.com/kenya

[47] *Kenya Association of Manufacturers. http://*www.kam.co.ke/ (Accessed 18 October 2013)

[48] *Kenya Federation of Employers. http://* www.fke-kenya.org (Accessed 18 October 2013)

[49] *Kenya National Federation of Jua Kali Association. http://* www.livecard.co.ke (Accessed 18 October 2013)

[50] *Kenya Private Sector Alliance. http://* www.kepsa.or.ke (Accessed 18 October 2013)

[51] Safaricom, Kenya. http://www.safaricom.co.ke

[52] Orange Kenya. http://www.orange.co.ke

[53] URL: http://kenya.rcbowen.com/talk/topic/safaricom-gets-support-in-war-with-equity by Lilian Mutegi. Accessed September 13, 2014

[54] URL: http://technomoran.com accessed September 13, 20014

[55] URL: http://www.internationalbudget.org,

[56] World Vision, Kenya. http://www.wvi.org/kenya (Accessed 18 October 2013)